

AMENDED IN ASSEMBLY APRIL 5, 2000
AMENDED IN ASSEMBLY MARCH 13, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1822

Introduced by Assembly Member Wayne

February 3, 2000

An act to amend Section 3373 of the Financial Code, to amend Sections 8546, 11340.5, 11343, 11343.4, 11343.5, 11344, 11344.1, 11344.2, 11344.4, 11344.6, 11344.7, 11344.9, 11346, 11346.1, 11346.2, 11346.3, 11346.5, 11346.8, 11346.9, 11347.3, 11349, 11349.1, 11349.6, 11350, 11350.3, 11353, 11356, and 27491.41 of, to amend the heading of Article 4 (commencing with Section 11344) of Chapter 3.5 of *Part 1 of* Division 3 of Title 2 of, to add Sections 11340.8, 11340.9, 11347, 11347.1, and 11349.2 to, to add Article 2 (commencing with Section 11342.510) to Chapter 3.5 of *Part 1 of* Division 3 of Title 2 of, to repeal Sections 11342 and 11346.54 of, and to repeal the heading of Article 2 (commencing with Section 11342) of Chapter 3.5 of *Part 1 of* Division 3 of Title 2 of, the Government Code, to amend Section 57004 of the Health and Safety Code, to amend Section 5058 of the Penal Code, to amend Section 25620.2 of the Public Resources Code, and to amend Section 11462.4 of the Welfare and Institutions Code, relating to administrative rulemaking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1822, as amended, Wayne. Administrative Procedure Act.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

This bill would make various revisions in the act, as follows:

(1) Provide for the use of electronic communication in the delivery and publication of notices and rulemaking documents, but provide that electronic communication is not to be the exclusive means by which the documents are published or distributed.

(2) Authorize state agencies to consult with interested persons before initiating regulatory action.

(3) Revise the provisions governing preliminary determinations made by a state agency with respect to certain notices of proposed actions to specify that the determinations may be made on the basis of the agency's belief.

(4) Specify that certain findings required with regard to report requirements for businesses be included in a rulemaking notice.

(5) Revise provisions requiring the use of plain English with regard to regulations affecting small businesses, to apply to all regulations, and to revise the definition of the term ~~plain English~~ "*plain English*" for these purposes.

(6) Require oral testimony to be allowed at public hearings on proposed regulations, subject to reasonable limitations.

(7) Revise the manner in which a state agency may respond to repetitive or irrelevant comments in its statement of reasons for adopting, amending, or repealing a regulation.

(8) Revise provisions governing the availability and content of the rulemaking file.

(9) Revise certain rulemaking requirements to apply to a proposed repeal of a regulation as well as a proposed adoption or amendment of a regulation.

(10) Create an exception to the rulemaking requirements of the act for a regulation that establishes criteria or guidelines to be used by the staff of a state agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial arrangement,

or in the defense, prosecution, or settlement of a case, subject to specified conditions.

(11) Create an exception to the rulemaking requirements of the act for a state agency rule that is the only legally tenable interpretation of a provision of law.

(12) Revise provisions of the act relating to standards for demonstrating the necessity of a proposed regulation by a state agency.

(13) Specify that the period for review of a proposal to make an emergency regulation permanent is 30 working days, rather than 30 days.

(14) Extend the period during which an emergency regulation is valid from 120 days to 180 days.

(15) Provide for judicial review of an order of repeal of a regulation as well as a regulation, and expand the types of evidence that a court may consider as part of the review proceeding.

(16) Change the name of the California Regulatory Code Supplement to the California Code of Regulations Supplement.

(17) Revise the format required for State Water Resources Control Board policies, plans, and guidelines submitted to the Office of Administrative Law.

(18) Require a state agency under specified circumstances to deliver notice of its decision not to proceed with a proposed action to the Office of Administrative Law for publication in the California Regulatory Notice Register.

(19) Make various technical or clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3373 of the Financial Code is
2 amended to read:

3 3373. (a) Notwithstanding any other provisions of
4 this article, whenever Section 215.2, 215.3, 215.4, 215.5,
5 215.7, or 215.8 is changed by the Board of Governors of the
6 Federal Reserve System, the commissioner may by
7 regulation adopt that same change. Any regulation

1 adopted under this section shall expire at 12 p.m. on
2 December 31 of the year following the calendar year in
3 which it becomes effective.

4 (b) (1) Section 11343.4 and Article 5 (commencing
5 with Section 11346) and Article 6 (commencing with
6 Section 11349) of Chapter 3.5 of Part 1 of Division 3 of
7 Title 2 of the Government Code do not apply to any
8 regulation adopted under subdivision (a).

9 (2) The commissioner shall file any regulation adopted
10 pursuant to subdivision (a), together with a citation to
11 subdivision (a) as authority for the adoption and a citation
12 to the provisions of federal law made applicable by the
13 regulation, with the Office of Administrative Law for
14 filing with the Secretary of State and publication in the
15 California Code of Regulations.

16 (3) A regulation adopted under subdivision (a) shall
17 become effective on the date it is filed with the Secretary
18 of State unless the commissioner prescribed a later date
19 in the regulation or in a written instrument filed with the
20 regulation.

21 (c) A regulation adopted pursuant to subdivision (a)
22 does not expire as provided by subdivision (a) and is not
23 subject to subdivision (b) if the commissioner complies
24 with all of the provisions of Chapter 3.5 (commencing
25 with Section 11340) of Part 1 of Division 3 of the
26 Government Code in adopting the regulation, including
27 those listed in paragraph (1) of subdivision (b).

28 SEC. 2. Section 8546 of the Government Code is
29 amended to read:

30 8546. It is the intent of the Legislature that the Bureau
31 of State Audits have the independence necessary to
32 conduct all of its audits in conformity with "Government
33 Auditing Standards" published by the Comptroller
34 General of the United States and the standards published
35 by the American Institute of Certified Public
36 Accountants, free from influence of existing state control
37 agencies that could be the subject of audits conducted by
38 the bureau. Therefore, all of the following exclusions
39 apply to the office:

1 (a) Notwithstanding Section 19790, the State Auditor
2 shall establish an affirmative action program that shall
3 meet the criteria and objectives established by the State
4 Personnel Board and shall report annually to the State
5 Personnel Board and the commission.

6 (b) Notwithstanding Section 12470, the State Auditor
7 shall be responsible for maintaining its payroll system. In
8 lieu of audits of the uniform payroll system performed by
9 the Controller or any other department, the office shall
10 contract pursuant to subdivision (e) of Section 8544.5 for
11 an annual audit of its payroll and financial operations by
12 an independent public accountant.

13 (c) Notwithstanding Sections 11730 and 13292, the
14 State Auditor is delegated the authority to establish and
15 administer the fiscal and administrative policies of the
16 bureau in conformity with the State Administrative
17 Manual without oversight by the Department of Finance,
18 the Department of Information Technology, or any other
19 state agency.

20 (d) Notwithstanding Section 11032, the State Auditor
21 may approve actual and necessary traveling expenses for
22 travel outside the state for officers and employees of the
23 bureau.

24 (e) Notwithstanding Section 11033, the State Auditor
25 or officers and employees of the bureau may be absent
26 from the state on business of the state upon approval of
27 the State Auditor or Chief Deputy State Auditor.

28 (f) Sections 11040, 11042, and 11043 shall not apply to
29 the Bureau of State Audits. The State Auditor may
30 employ legal counsel under those terms that he or she
31 deems necessary to conduct the legal business of, or
32 render legal counsel to, the State Auditor.

33 (g) The provisions and definitions of Article 2
34 (commencing with Section 11342.510) of Chapter 3.5 of
35 Division 3 shall not be construed to include the Bureau of
36 State Audits. The State Auditor may adopt regulations
37 necessary for the operation of the bureau pursuant to the
38 provisions of the Administrative Procedure Act (Chapter
39 3.5 (commencing with Section 11340) of Division 3), but

1 these regulations shall not be subject to the review or
2 approval of the Office of Administrative Law.

3 (h) The State Auditor shall be exempt from all
4 contract requirements of the Public Contract Code that
5 require oversight, review, or approval by the
6 Department of General Services or any other state
7 agency. The State Auditor may contract on behalf of the
8 State of California for goods and services that he or she
9 deems necessary for the furtherance of the purposes of
10 the bureau.

11 (i) (1) Subject to Article VII of the California
12 Constitution, the State Auditor is delegated the authority
13 to establish and administer the personnel policies and
14 practices of the Bureau of State Audits in conformity with
15 Part 2.6 (commencing with Section 19815) of Division 5
16 of Title 2 without oversight or approval by the
17 Department of Personnel Administration.

18 (2) At the election of the State Auditor, officers and
19 employees of the bureau may participate in benefits
20 programs administered by the Department of Personnel
21 Administration subject to the same conditions for
22 participation that apply to civil service employees in
23 other state agencies. For the purposes of benefits
24 programs administration only, the State Auditor is subject
25 to the determinations of the department. The Bureau of
26 State Audits shall reimburse the Department of
27 Personnel Administration for the normal administrative
28 costs incurred by the Department of Personnel
29 Administration and for any extraordinary costs resulting
30 from the inclusion of the bureau employees in these state
31 benefit programs.

32 SEC. 3. Section 11340.5 of the Government Code is
33 amended to read:

34 11340.5. (a) No state agency shall issue, utilize,
35 enforce, or attempt to enforce any guideline, criterion,
36 bulletin, manual, instruction, order, standard of general
37 application, or other rule, which is a regulation as defined
38 in Section 11342.600, unless the guideline, criterion,
39 bulletin, manual, instruction, order, standard of general
40 application, or other rule has been adopted as a regulation

1 and filed with the Secretary of State pursuant to this
2 chapter.

3 (b) If the office is notified of, or on its own, learns of the
4 issuance, enforcement of, or use of, an agency guideline,
5 criterion, bulletin, manual, instruction, order, standard of
6 general application, or other rule that has not been
7 adopted as a regulation and filed with the Secretary of
8 State pursuant to this chapter, the office may issue a
9 determination as to whether the guideline, criterion,
10 bulletin, manual, instruction, order, standard of general
11 application, or other rule, is a regulation as defined in
12 Section 11342.600.

13 (c) The office shall do all of the following:

14 (1) File its determination upon issuance with the
15 Secretary of State.

16 (2) Make its determination known to the agency, the
17 Governor, and the Legislature.

18 (3) Publish its determination in the California
19 Regulatory Notice Register within 15 days of the date of
20 issuance.

21 (4) Make its determination available to the public and
22 the courts.

23 (d) Any interested person may obtain judicial review
24 of a given determination by filing a written petition
25 requesting that the determination of the office be
26 modified or set aside. A petition shall be filed with the
27 court within 30 days of the date the determination is
28 published.

29 (e) A determination issued by the office pursuant to
30 this section shall not be considered by a court, or by an
31 administrative agency in an adjudicatory proceeding if all
32 of the following occurs:

33 (1) The court or administrative agency proceeding
34 involves the party that sought the determination from the
35 office.

36 (2) The proceeding began prior to the party's request
37 for the office's determination.

38 (3) At issue in the proceeding is the question of
39 whether the guideline, criterion, bulletin, manual,
40 instruction, order, standard of general application, or

1 other rule that is the legal basis for the adjudicatory action
2 is a regulation as defined in Section 11342.600.

3 SEC. 4. Section 11340.8 is added to the Government
4 Code, to read:

5 11340.8. (a) As used in this section, “electronic
6 communication” includes electronic transmission of
7 written or graphical material by electronic mail,
8 facsimile, or other means, but does not include voice
9 communication.

10 (b) Notwithstanding any other provision of this
11 chapter that refers to mailing or to oral or written
12 communication:

13 (1) An agency may permit and encourage use of
14 electronic communication, but may not require use of
15 electronic communication.

16 (2) An agency may publish or distribute a document
17 required by this chapter or by a regulation implementing
18 this chapter by means of electronic communication, but
19 shall not make that the exclusive means by which the
20 document is published or distributed.

21 (3) A notice required or authorized by this chapter or
22 by a regulation implementing this chapter may be
23 delivered to a person by means of electronic
24 communication if the person has expressly indicated a
25 willingness to receive the notice by means of electronic
26 communication.

27 (4) A comment or petition regarding a regulation may
28 be delivered to an agency by means of electronic
29 communication if the agency has expressly indicated a
30 willingness to receive a comment or petition by means of
31 electronic communication.

32 (c) An agency that maintains an Internet website or
33 other similar forum for the electronic publication or
34 distribution of written material shall publish the following
35 materials on that website or other forum:

36 (1) Any public notice required by this chapter or by a
37 regulation implementing this chapter. For the purposes
38 of this paragraph, “public notice” means a notice that is
39 required to be given by an agency to persons who have
40 requested notice of the agency’s regulatory actions.

(2) The initial statement of reasons prepared pursuant to subdivision (b) of Section 11346.2.

(3) The final statement of reasons prepared pursuant to subdivision (a) of Section 11346.9.

(4) Notice of a decision not to proceed prepared pursuant to Section 11347.

(5) The text of a proposed regulation or instructions on how to obtain a copy of the text.

(d) Publication under subdivision (c) supplements any other required form of publication or distribution. Failure to comply with subdivision (c) is not grounds for disapproval of a proposed regulation. Subdivision (c) does not require an agency to establish or maintain a website or other forum for the electronic publication or distribution of written material.

(e) Nothing in this section precludes the office from requiring that the material submitted to the office for publication in the California Code of Regulations or the California Regulatory Notice Register be submitted in electronic form.

SEC. 5. Section 11340.9 is added to the Government Code, to read:

11340.9. This chapter does not apply to any of the following:

(a) An agency in the judicial or legislative branch of the state government.

(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.

(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

(d) A regulation that relates only to the internal management of the state agency.

(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial

1 arrangement, or in the defense, prosecution, or
2 settlement of a case, if disclosure of the criteria or
3 guidelines would do any of the following:

4 (1) Enable a law violator to avoid detection.

5 (2) Facilitate disregard of requirements imposed by
6 law.

7 (3) Give clearly improper advantage to a person who
8 is in an adverse position to the state.

9 (f) A regulation that embodies the only legally tenable
10 interpretation of a provision of law.

11 (g) A regulation that establishes or fixes rates, prices,
12 or tariffs.

13 (h) A regulation that relates to the use of public works,
14 including streets and highways, when the effect of the
15 regulation is indicated to the public by means of signs or
16 signals or when the regulation determines uniform
17 standards and specifications for official traffic control
18 devices pursuant to Section 21400 of the Vehicle Code.

19 (i) A regulation that is directed to a specifically named
20 person or to a group of persons and does not apply
21 generally throughout the state.

22 SEC. 6. The heading of Article 2 (commencing with
23 Section 11342) of Chapter 3.5 of Part 1 of Division 3 of
24 Title 2 of the Government Code is repealed.

25 SEC. 7. Section 11342 of the Government Code is
26 repealed.

27 SEC. 8. Article 2 (commencing with Section
28 11342.510) is added to Chapter 3.5 of Part 1 of Division 3
29 of Title 2 of the Government Code, to read:

30

31 Article 2. Definitions

32

33 11342.510. Unless the provision or context otherwise
34 requires, the definitions in this article govern the
35 construction of this chapter.

36 11342.520. “Agency” means state agency.

37 11342.530. “Building standard” has the same meaning
38 provided in Section 18909 of the Health and Safety Code.

39 11342.540. “Director” means the director of the
40 office.



1 11342.550. “Office” means the Office of
2 Administrative Law.

3 11342.560. “Order of repeal” means any resolution,
4 order, or other official act of a state agency that expressly
5 repeals a regulation in whole or in part.

6 11342.570. “Performance standard” means a
7 regulation that describes an objective with the criteria
8 stated for achieving the objective.

9 11342.580. “Plain English” means language that
10 satisfies the standard of clarity provided in Section 11349.

11 11342.590. “Prescriptive standard” means a
12 regulation that specifies the sole means of compliance
13 with a performance standard by specific actions,
14 measurements, or other quantifiable means.

15 11342.600. “Regulation” means every rule,
16 regulation, order, or standard of general application or
17 the amendment, supplement, or revision of any rule,
18 regulation, order, or standard adopted by any state
19 agency to implement, interpret, or make specific the law
20 enforced or administered by it, or to govern its
21 procedure.

22 11342.610. (a) “Small business” means a business
23 activity in agriculture, general construction, special trade
24 construction, retail trade, wholesale trade, services,
25 transportation and warehousing, manufacturing,
26 generation and transmission of electric power, or a health
27 care facility, unless excluded in subdivision (b), that is
28 both of the following:

29 (1) Independently owned and operated.

30 (2) Not dominant in its field of operation.

31 (b) “Small business” does not include the following
32 professional and business activities:

33 (1) A financial institution including a bank, a trust, a
34 savings and loan association, a thrift institution, a
35 consumer finance company, a commercial finance
36 company, an industrial finance company, a credit union,
37 a mortgage and investment banker, a securities
38 broker-dealer, or an investment adviser.

39 (2) An insurance company, either stock or mutual.

40 (3) A mineral, oil, or gas broker.

1 (4) A subdivider or developer.

2 (5) A landscape architect, an architect, or a building
3 designer.

4 (6) An entity organized as a nonprofit institution.

5 (7) An entertainment activity or production,
6 including a motion picture, a stage performance, a
7 television or radio station, or a production company.

8 (8) A utility, a water company, or a power transmission
9 company generating and transmitting more than 4.5
10 million kilowatt hours annually.

11 (9) A petroleum producer, a natural gas producer, a
12 refiner, or a pipeline.

13 (10) A manufacturing enterprise exceeding 250
14 employees.

15 (11) A health care facility exceeding 150 beds or one
16 million five hundred thousand dollars (\$1,500,000) in
17 annual gross receipts.

18 (c) “Small business” does not include the following
19 business activities:

20 (1) Agriculture, where the annual gross receipts
21 exceed one million dollars (\$1,000,000).

22 (2) General construction, where the annual gross
23 receipts exceed nine million five hundred thousand
24 dollars (\$9,500,000).

25 (3) Special trade construction, where the annual gross
26 receipts exceed five million dollars (\$5,000,000).

27 (4) Retail trade, where the annual gross receipts
28 exceed two million dollars (\$2,000,000).

29 (5) Wholesale trade, where the annual gross receipts
30 exceed nine million five hundred thousand dollars
31 (\$9,500,000).

32 (6) Services, where the annual gross receipts exceed
33 two million dollars (\$2,000,000).

34 (7) Transportation and warehousing, where the
35 annual gross receipts exceed one million five hundred
36 thousand dollars (\$1,500,000).

37 SEC. 9. Section 11343 of the Government Code is
38 amended to read:

39 11343. Every state agency shall:

1 (a) Transmit to the office for filing with the Secretary
2 of State a certified copy of every regulation adopted or
3 amended by it except one that is a building standard.

4 (b) Transmit to the office for filing with the Secretary
5 of State a certified copy of every order of repeal of a
6 regulation required to be filed under subdivision (a).

7 (c) Deliver to the office, at the time of transmittal for
8 filing a regulation or order of repeal six duplicate copies
9 of the regulation or order of repeal, together with a
10 citation of the authority pursuant to which it or any part
11 thereof was adopted.

12 (d) Deliver to the office a copy of the notice of
13 proposed action required by Section 11346.4.

14 (e) Transmit to the California Building Standards
15 Commission for approval a certified copy of every
16 regulation, or order of repeal of a regulation, that is a
17 building standard, together with a citation of authority
18 pursuant to which it or any part thereof was adopted, a
19 copy of the notice of proposed action required by Section
20 11346.4, and any other records prescribed by the State
21 Building Standards Law (Part 2.5 (commencing with
22 Section 18901) of Division 13 of the Health and Safety
23 Code).

24 (f) Whenever a certification is required by this
25 section, it shall be made by the head of the state agency
26 or his or her designee which is adopting, amending, or
27 repealing the regulation and the certification and
28 delegation shall be in writing.

29 SEC. 10. Section 11343.4 of the Government Code is
30 amended to read:

31 11343.4. A regulation or an order of repeal required to
32 be filed with the Secretary of State shall become effective
33 on the 30th day after the date of filing unless:

34 (a) Otherwise specifically provided by the statute
35 pursuant to which the regulation or order of repeal was
36 adopted, in which event it becomes effective on the day
37 prescribed by the statute.

38 (b) A later date is prescribed by the state agency in a
39 written instrument filed with, or as part of, the regulation
40 or order of repeal.

(c) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

SEC. 11. Section 11343.5 of the Government Code is amended to read:

11343.5. Within 10 days from the receipt of printed copies of the California Code of Regulations or of the California Code of Regulations Supplement from the State Printing Office, the office shall file one copy of the particular issue of the code or supplement in the office of the county clerk of each county in this state, or if the authority to accept filings on his or her behalf has been delegated by the county clerk of any county pursuant to Section 26803.5, in the office of the person to whom that authority has been delegated.

SEC. 12. The heading of Article 4 (commencing with Section 11344) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is amended to read:

Article 4. The California Code of Regulations, the California Code of Regulations Supplement, and the California Regulatory Notice Register

SEC. 13. Section 11344 of the Government Code is amended to read:

11344. The office shall do all of the following:

(a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the California Code of Regulations. On and after July 1, 1998, the office shall make available on the Internet, free of charge, the full text of the California Code of Regulations, and may contract with another state agency or a private entity in order to provide this service.

(b) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations. This publication shall be known as the California Code of Regulations Supplement and shall contain amendments to the code.

1 (c) Provide for the publication dates and manner and
2 form in which regulations shall be printed and distributed
3 and ensure that regulations are available in printed form
4 at the earliest practicable date after filing with the
5 Secretary of State.

6 (d) Ensure that each regulation is printed together
7 with a reference to the statutory authority pursuant to
8 which it was enacted and the specific statute or other
9 provision of law which the regulation is implementing,
10 interpreting, or making specific.

11 SEC. 14. Section 11344.1 of the Government Code is
12 amended to read:

13 11344.1. The office shall do all of the following:

14 (a) Provide for the publication of the California
15 Regulatory Notice Register, which shall be an official
16 publication of the State of California and which shall
17 contain the following:

18 (1) Notices of proposed action prepared by regulatory
19 agencies, subject to the notice requirements of this
20 chapter, and which have been approved by the office.

21 (2) A summary of all regulations filed with the
22 Secretary of State in the previous week.

23 (3) Summaries of all regulation decisions issued in the
24 previous week detailing the reasons for disapproval of a
25 regulation, the reasons for not filing an emergency
26 regulation, and the reasons for repealing an emergency
27 regulation. The California Regulatory Notice Register
28 shall also include a quarterly index of regulation decisions.

29 (4) Material that is required to be published under
30 Sections 11349.5, 11349.7, and 11349.9.

31 (5) Determinations issued pursuant to Section 11340.5.

32 (b) Establish the publication dates and manner and
33 form in which the California Regulatory Notice Register
34 shall be prepared and published and ensure that it is
35 published and distributed in a timely manner to the
36 presiding officer and rules committee of each house of the
37 Legislature and to all subscribers.

38 SEC. 15. Section 11344.2 of the Government Code is
39 amended to read:

1 11344.2. The office shall supply a complete set of the
2 California Code of Regulations, and of the California
3 Code of Regulations Supplement to the county clerk of
4 any county or to the delegatee of the county clerk
5 pursuant to Section 26803.5, provided the director makes
6 the following two determinations:

7 (a) The county clerk or the delegatee of the county
8 clerk pursuant to Section 26803.5 is maintaining the code
9 and supplement in complete and current condition in a
10 place and at times convenient to the public.

11 (b) The California Code of Regulations and California
12 Code of Regulations Supplement are not otherwise
13 reasonably available to the public in the community
14 where the county clerk or the delegatee of the county
15 clerk pursuant to Section 26803.5 would normally
16 maintain the code and supplements by distribution to
17 libraries pursuant to Article 6 (commencing with Section
18 14900) of Chapter 7 of Part 5.5.

19 SEC. 16. Section 11344.4 of the Government Code is
20 amended to read:

21 11344.4. (a) The California Code of Regulations, the
22 California Code of Regulations Supplement, and the
23 California Regulatory Notice Register shall be sold at
24 prices which will reimburse the state for all costs incurred
25 for printing, publication, and distribution.

26 (b) All money received by the state from the sale of
27 the publications listed in subdivision (a) shall be
28 deposited in the treasury and credited to the General
29 Fund, except that, where applicable, an amount
30 necessary to cover the printing, publication, and
31 distribution costs shall be credited to the fund from which
32 the costs have been paid.

33 SEC. 17. Section 11344.6 of the Government Code is
34 amended to read:

35 11344.6. The publication of a regulation in the
36 California Code of Regulations or California Code of
37 Regulations Supplement raises a rebuttable presumption
38 that the text of the regulation as so published is the text
39 of the regulation adopted.

1 The courts shall take judicial notice of the contents of
2 each regulation which is printed or which is incorporated
3 by appropriate reference into the California Code of
4 Regulations as compiled by the office.

5 The courts shall also take judicial notice of the repeal
6 of a regulation as published in the California Code of
7 Regulations Supplement compiled by the office.

8 SEC. 18. Section 11344.7 of the Government Code is
9 amended to read:

10 11344.7. Nothing in this chapter precludes any person
11 or state agency from purchasing copies of the California
12 Code of Regulations, the California Code of Regulations
13 Supplement, or the California Regulatory Notice Register
14 or of any unit of either, nor from printing special editions
15 of any such units and distributing the same. However,
16 where the purchase and printing is by a state agency, the
17 state agency shall do so at the cost or at less than the cost
18 to the agency if it is authorized to do so by other provisions
19 of law.

20 SEC. 19. Section 11344.9 of the Government Code is
21 amended to read:

22 11344.9. (a) Whenever the term “California
23 Administrative Code” appears in law, official legal paper,
24 or legal publication, it means the “California Code of
25 Regulations.”

26 (b) Whenever the term “California Administrative
27 Notice Register” appears in any law, official legal paper,
28 or legal publication, it means the “California Regulatory
29 Notice Register.”

30 (c) Whenever the term “California Administrative
31 Code Supplement” or “California Regulatory Code
32 Supplement” appears in any law, official legal paper, or
33 legal publication, it means the “California Code of
34 Regulations Supplement.”

35 SEC. 20. Section 11346 of the Government Code is
36 amended to read:

37 11346. (a) It is the purpose of this chapter to establish
38 basic minimum procedural requirements for the
39 adoption, amendment, or repeal of administrative
40 regulations. Except as provided in Section 11346.1, the

1 provisions of this chapter are applicable to the exercise of
2 any quasi-legislative power conferred by any statute
3 heretofore or hereafter enacted, but nothing in this
4 chapter repeals or diminishes additional requirements
5 imposed by any statute. This chapter shall not be
6 superseded or modified by any subsequent legislation
7 except to the extent that the legislation shall do so
8 expressly.

9 (b) An agency that is considering adopting, amending,
10 or repealing a regulation may consult with interested
11 persons before initiating regulatory action pursuant to
12 this article.

13 SEC. 21. Section 11346.1 of the Government Code is
14 amended to read:

15 11346.1. (a) The adoption, amendment, or repeal of
16 an emergency regulation is not subject to any provision
17 of this chapter except this section and Section 11349.6.

18 (b) Except as provided in subdivision (c), if a state
19 agency makes a finding that the adoption of a regulation
20 or order of repeal is necessary for the immediate
21 preservation of the public peace, health and safety or
22 general welfare, the regulation or order of repeal may be
23 adopted as an emergency regulation or order of repeal.

24 Any finding of an emergency shall include a written
25 statement which contains the information required by
26 paragraphs (2) to (6), inclusive, of subdivision (a) of
27 Section 11346.5 and a description of the specific facts
28 showing the need for immediate action. The enactment
29 of an urgency statute shall not, in and of itself, constitute
30 a need for immediate action.

31 The statement and the regulation or order of repeal
32 shall be filed immediately with the office.

33 (c) Notwithstanding any other provision of law, no
34 emergency regulation that is a building standard shall be
35 filed, nor shall the building standard be effective, unless
36 the building standard is submitted to the California
37 Building Standards Commission, and is approved and
38 filed pursuant to Sections 18937 and 18938 of the Health
39 and Safety Code.



1 (d) The emergency regulation or order of repeal shall
2 become effective upon filing or upon any later date
3 specified by the state agency in a written instrument filed
4 with, or as a part of, the regulation or order of repeal.

5 (e) No regulation, amendment, or order of repeal
6 adopted as an emergency regulatory action shall remain
7 in effect more than 180 days unless the adopting agency
8 has complied with Sections 11346.2 to 11347.3, inclusive,
9 either before adopting an emergency regulation or
10 within the 180-day period. The adopting agency, prior to
11 the expiration of the 180-day period, shall transmit to the
12 office for filing with the Secretary of State the adopted
13 regulation, amendment, or order of repeal, the
14 rulemaking file, and a certification that Sections 11346.2
15 to 11347.3, inclusive, were complied with either before
16 the emergency regulation was adopted or within the
17 180-day period.

18 (f) In the event an emergency amendment or order of
19 repeal is filed and the adopting agency fails to comply
20 with subdivision (e), the regulation as it existed prior to
21 the emergency amendment or order of repeal shall
22 thereupon become effective and after notice to the
23 adopting agency by the office shall be reprinted in the
24 California Code of Regulations.

25 (g) In the event a regulation is originally adopted and
26 filed as an emergency and the adopting agency fails to
27 comply with subdivision (e), this failure shall constitute
28 a repeal thereof and after notice to the adopting agency
29 by the office, shall be deleted.

30 ~~(h) Except with the express prior approval of the~~
31 ~~director, an agency shall not adopt an emergency~~
32 ~~regulation that is substantially equivalent to an~~
33 ~~emergency regulation previously adopted by that~~
34 ~~agency. If the agency proposes the adoption of an~~
35 ~~emergency regulation that is substantially equivalent to~~
36 ~~a previously adopted emergency regulation and the~~
37 ~~director does not expressly approve adoption of the~~
38 ~~emergency regulation, the office shall not file the~~
39 ~~emergency regulation with the Secretary of State.~~

1 (h) *The office shall not file an emergency regulation*
2 *with the Secretary of State if the emergency regulation*
3 *is the same as or substantially equivalent to an emergency*
4 *regulation previously adopted by that agency, unless the*
5 *director expressly approves the agency's readoption of*
6 *the emergency regulation.*

7 SEC. 22. Section 11346.2 of the Government Code is
8 amended to read:

9 11346.2. Every agency subject to this chapter shall
10 prepare, submit to the office with the notice of the
11 proposed action as described in Section 11346.5, and make
12 available to the public upon request, all of the following:

13 (a) A copy of the express terms of the proposed
14 regulation.

15 (1) The agency shall draft the regulation in plain,
16 straightforward language, avoiding technical terms as
17 much as possible, and using a coherent and easily
18 readable style. The agency shall draft the regulation in
19 plain English.

20 (2) The agency shall include a notation following the
21 express terms of each regulation listing the specific
22 statutes or other provisions of law authorizing the
23 adoption of the regulation and listing the specific statutes
24 or other provisions of law being implemented,
25 interpreted, or made specific by the regulation.

26 (3) The agency shall use underline or italics to indicate
27 additions to, and strikeout to indicate deletions from, the
28 California Code of Regulations.

29 (b) An initial statement of reasons for proposing the
30 adoption, amendment, or repeal of a regulation. This
31 statement of reasons shall include, but not be limited to,
32 all of the following:

33 (1) A statement of the specific purpose of each
34 adoption, amendment, or repeal and the rationale for the
35 determination by the agency that each adoption,
36 amendment, or repeal is reasonably necessary to carry
37 out the purpose for which it is proposed. Where the
38 adoption or amendment of a regulation would mandate
39 the use of specific technologies or equipment, a statement

1 of the reasons why the agency believes these mandates or
2 prescriptive standards are required.

3 (2) An identification of each technical, theoretical,
4 and empirical study, report, or similar document, if any,
5 upon which the agency relies in proposing the adoption,
6 amendment, or repeal of a regulation.

7 (3) (A) A description of the alternatives to the
8 regulation considered by the agency and the agency's
9 reasons for rejecting those alternatives. In the case of a
10 regulation that would mandate the use of specific
11 technologies or equipment or prescribe specific actions
12 or procedures, the imposition of performance standards
13 shall be considered as an alternative.

14 (B) A description of any alternatives the agency has
15 identified that would lessen any adverse impact on small
16 business. It is not the intent of this paragraph to require
17 the agency to artificially construct alternatives or to
18 justify why it has not identified alternatives.

19 (4) Facts, evidence, documents, testimony, or other
20 ~~evidence that the agency believes may support a finding~~
21 *evidence on which the agency relies to support an initial*
22 *determination* that the action will not have a significant
23 adverse economic impact on business.

24 (5) A department, board, or commission within the
25 Environmental Protection Agency, the Resources
26 Agency, or the Office of the State Fire Marshal shall
27 describe its efforts, in connection with a proposed
28 rulemaking action, to avoid unnecessary duplication or
29 conflicts with federal regulations contained in the Code
30 of Federal Regulations addressing the same issues. These
31 agencies may adopt regulations different from federal
32 regulations contained in the Code of Federal Regulations
33 addressing the same issues upon a finding of one or more
34 of the following justifications:

35 (A) The differing state regulations are authorized by
36 law.

37 (B) The cost of differing state regulations is justified by
38 the benefit to human health, public safety, public welfare,
39 or the environment.

1 (c) A state agency that adopts or amends a regulation
2 mandated by federal law or regulations, the provisions of
3 which are identical to a previously adopted or amended
4 federal regulation, shall be deemed to have complied
5 with subdivision (b) if a statement to the effect that a
6 federally mandated regulation or amendment to a
7 regulation is being proposed, together with a citation to
8 where an explanation of the provisions of the regulation
9 can be found, is included in the notice of proposed
10 adoption or amendment prepared pursuant to Section
11 11346.5. However, the agency shall comply fully with this
12 chapter with respect to any provisions in the regulation
13 that the agency proposes to adopt or amend that are
14 different from the corresponding provisions of the
15 federal regulation.

16 SEC. 23. Section 11346.3 of the Government Code is
17 amended to read:

18 11346.3. (a) State agencies proposing to adopt,
19 amend, or repeal any administrative regulation shall
20 assess the potential for adverse economic impact on
21 California business enterprises and individuals, avoiding
22 the imposition of unnecessary or unreasonable
23 regulations or reporting, recordkeeping, or compliance
24 requirements. For purposes of this subdivision, assessing
25 the potential for adverse economic impact shall require
26 agencies, when proposing to adopt, amend, or repeal a
27 regulation, to adhere to the following requirements, to
28 the extent that these requirements do not conflict with
29 other state or federal laws:

30 (1) The proposed adoption, amendment, or repeal of
31 a regulation shall be based on adequate information
32 concerning the need for, and consequences of, proposed
33 governmental action.

34 (2) The state agency, prior to submitting a proposal to
35 adopt, amend, or repeal a regulation to the office, shall
36 consider the proposal's impact on business, with
37 consideration of industries affected including the ability
38 of California businesses to compete with businesses in
39 other states. For purposes of evaluating the impact on the
40 ability of California businesses to compete with businesses

1 in other states, an agency shall consider, but not be
2 limited to, information supplied by interested parties.

3 It is not the intent of this section to impose additional
4 criteria on agencies, above that which exists in current
5 law, in assessing adverse economic impact on California
6 business enterprises, but only to assure that the
7 assessment is made early in the process of initiation and
8 development of a proposed adoption, amendment, or
9 repeal of a regulation.

10 (b) (1) All state agencies proposing to adopt, amend,
11 or repeal any administrative regulations shall assess
12 whether and to what extent it will affect the following:

13 (A) The creation or elimination of jobs within the
14 State of California.

15 (B) The creation of new businesses or the elimination
16 of existing businesses within the State of California.

17 (C) The expansion of businesses currently doing
18 business within the State of California.

19 (2) This subdivision does not apply to the University of
20 California, the Hastings College of the Law, or the Fair
21 Political Practices Commission.

22 (3) Information required from state agencies for the
23 purpose of completing the assessment may come from
24 existing state publications.

25 (c) No administrative regulation adopted on or after
26 January 1, 1993, that requires a report shall apply to
27 businesses, unless the state agency adopting the
28 regulation makes a finding that it is necessary for the
29 health, safety, or welfare of the people of the state that the
30 regulation apply to businesses.

31 SEC. 24. Section 11346.5 of the Government Code is
32 amended to read:

33 11346.5. (a) The notice of proposed adoption,
34 amendment, or repeal of a regulation shall include the
35 following:

36 (1) A statement of the time, place, and nature of
37 proceedings for adoption, amendment, or repeal of the
38 regulation.

39 (2) Reference to the authority under which the
40 regulation is proposed and a reference to the particular

1 code sections or other provisions of law that are being
2 implemented, interpreted, or made specific.

3 (3) An informative digest drafted in plain English in a
4 format similar to the Legislative Counsel's digest on
5 legislative bills. The informative digest shall include the
6 following:

7 (A) A concise and clear summary of existing laws and
8 regulations, if any, related directly to the proposed action
9 and of the effect of the proposed action.

10 (B) If the proposed action differs substantially from an
11 existing comparable federal regulation or statute, a brief
12 description of the significant differences and the full
13 citation of the federal regulations or statutes.

14 (C) A policy statement overview explaining the broad
15 objectives of the regulation and, if appropriate, the
16 specific objectives.

17 (4) Any other matters as are prescribed by statute
18 applicable to the specific state agency or to any specific
19 regulation or class of regulations.

20 (5) A determination as to whether the regulation
21 imposes a mandate on local agencies or school districts
22 and, if so, whether the mandate requires state
23 reimbursement pursuant to Part 7 (commencing with
24 Section 17500) of Division 4.

25 (6) An estimate, prepared in accordance with
26 instructions adopted by the Department of Finance, of
27 the cost or savings to any state agency, the cost to any local
28 agency or school district that is required to be reimbursed
29 under Part 7 (commencing with Section 17500) of
30 Division 4, other nondiscretionary cost or savings
31 imposed on local agencies, and the cost or savings in
32 federal funding to the state.

33 For purposes of this paragraph, "cost or savings" means
34 additional costs or savings, both direct and indirect, that
35 a public agency necessarily incurs in reasonable
36 compliance with regulations.

37 (7) If a state agency, in proposing to adopt, amend, or
38 repeal any administrative regulation, ~~believes~~ *makes an*
39 *initial determination* that the action may have a
40 significant adverse economic impact on business,

1 including the ability of California businesses to compete
2 with businesses in other states, it shall include the
3 following information in the notice of proposed action:

4 (A) Identification of the types of businesses that would
5 be affected.

6 (B) A description of the projected reporting,
7 recordkeeping, and other compliance requirements that
8 would result from the proposed action.

9 (C) The following statement: “The (name of agency)
10 believes that the (adoption/amendment) of this
11 regulation may have a significant adverse economic
12 impact on businesses, including the ability of California
13 businesses to compete with businesses in other states. The
14 (name of agency) (has/has not) considered proposed
15 alternatives that would lessen any adverse economic
16 impact on business and invites you to submit proposals.
17 Submissions may include the following considerations:

18 (i) The establishment of differing compliance or
19 reporting requirements or timetables that take into
20 account the resources available to businesses.

21 (ii) Consolidation or simplification of compliance and
22 reporting requirements for businesses.

23 (iii) The use of performance standards rather than
24 prescriptive standards.

25 (iv) Exemption or partial exemption from the
26 regulatory requirements for businesses.”

27 (8) If a state agency, in adopting, amending, or
28 repealing any administrative regulation, ~~believes~~ *makes*
29 *an initial determination* that the action will not have a
30 significant adverse economic impact on business,
31 including the ability of California businesses to compete
32 with businesses in other states, it shall make a declaration
33 to that effect in the notice of proposed action. In making
34 this declaration, the agency shall provide in the record
35 facts, evidence, documents, testimony, or other evidence
36 upon which the agency relies to support that belief.

37 An agency’s belief and declaration that a proposed
38 adoption, amendment, or repeal of a regulation may have
39 or will not have a significant, adverse impact on
40 businesses, including the ability of California businesses to

1 compete with businesses in other states, shall not be
2 grounds for the office to refuse to publish the notice of
3 proposed action.

4 (9) A statement of the potential cost impact of the
5 proposed action on private persons or businesses directly
6 affected, as considered by the agency during the
7 regulatory development process.

8 For purposes of this paragraph, “cost impact” means
9 the reasonable range of costs, or a description of the type
10 and extent of costs, direct or indirect, that a
11 representative private person or business necessarily
12 incurs in reasonable compliance with the proposed
13 action.

14 (10) A statement of the results of the assessment
15 required by subdivision (b) of Section 11346.3.

16 (11) The finding prescribed by subdivision (c) of
17 Section 11346.3, if required.

18 (12) A statement that the action would have a
19 significant effect on housing costs, if a state agency, in
20 adopting, amending, or repealing any administrative
21 regulation, *believes makes an initial determination* that
22 the action would have that effect. In addition, the agency
23 officer designated in paragraph (14), shall make available
24 to the public, upon request, the agency’s evaluation, if
25 any, of the effect of the proposed regulatory action on
26 housing costs.

27 (13) A statement that the adopting agency must
28 determine that no alternative considered by the agency
29 would be more effective in carrying out the purpose for
30 which the action is proposed or would be as effective and
31 less burdensome to affected private persons than the
32 proposed action.

33 (14) The name and telephone number of the agency
34 officer to whom inquiries concerning the proposed
35 administrative action may be directed.

36 (15) The date by which comments submitted in
37 writing must be received to present statements,
38 arguments, or contentions in writing relating to the
39 proposed action in order for them to be considered by the

1 state agency before it adopts, amends, or repeals a
2 regulation.

3 (16) Reference to the fact that the agency proposing
4 the action has prepared a statement of the reasons for the
5 proposed action, has available all the information upon
6 which its proposal is based, and has available the express
7 terms of the proposed action, pursuant to subdivision (b).

8 (17) A statement that if a public hearing is not
9 scheduled, any interested person or his or her duly
10 authorized representative may request, no later than 15
11 days prior to the close of the written comment period, a
12 public hearing pursuant to Section 11346.8.

13 (18) A statement indicating that the full text of a
14 regulation changed pursuant to Section 11346.8 will be
15 available for at least 15 days prior to the date on which the
16 agency adopts, amends, or repeals the resulting
17 regulation.

18 (19) A statement explaining how to obtain a copy of
19 the final statement of reasons once it has been prepared
20 pursuant to subdivision (a) of Section 11346.9.

21 (20) If the agency maintains an Internet website or
22 other similar forum for the electronic publication or
23 distribution of written material, a statement explaining
24 how materials published or distributed through that
25 forum can be accessed.

26 (b) The agency officer designated in paragraph (14)
27 of subdivision (a) shall make available to the public upon
28 request the express terms of the proposed action. The
29 officer shall also make available to the public upon
30 request the location of public records, including reports,
31 documentation, and other materials, related to the
32 proposed action.

33 (c) This section shall not be construed in any manner
34 that results in the invalidation of a regulation because of
35 the alleged inadequacy of the notice content or the
36 summary or cost estimates, or the alleged inadequacy or
37 inaccuracy of the housing cost estimates, if there has been
38 substantial compliance with those requirements.

39 SEC. 25. Section 11346.54 of the Government Code is
40 repealed.

1 SEC. 26. Section 11346.8 of the Government Code is
2 amended to read:

3 11346.8. (a) If a public hearing is held, both oral and
4 written statements, arguments, or contentions, shall be
5 permitted. The agency may impose reasonable
6 limitations on oral presentations. If a public hearing is not
7 scheduled, the state agency shall, consistent with Section
8 11346.4, afford any interested person or his or her duly
9 authorized representative, the opportunity to present
10 statements, arguments or contentions in writing. In
11 addition, a public hearing shall be held if, no later than 15
12 days prior to the close of the written comment period, an
13 interested person or his or her duly authorized
14 representative submits in writing to the state agency, a
15 request to hold a public hearing. The state agency shall,
16 to the extent practicable, provide notice of the time, date,
17 and place of the hearing by mailing the notice to every
18 person who has filed a request for notice thereby with the
19 state agency. The state agency shall consider all relevant
20 matter presented to it before adopting, amending, or
21 repealing any regulation.

22 (b) In any hearing under this section, the state agency
23 or its duly authorized representative shall have authority
24 to administer oaths or affirmations. An agency may
25 continue or postpone a hearing from time to time to the
26 time and at the place as it determines. If a hearing is
27 continued or postponed, the state agency shall provide
28 notice to the public as to when it will be resumed or
29 rescheduled.

30 (c) No state agency may adopt, amend, or repeal a
31 regulation which has been changed from that which was
32 originally made available to the public pursuant to
33 Section 11346.5, unless the change is (1) nonsubstantial or
34 solely grammatical in nature, or (2) sufficiently related to
35 the original text that the public was adequately placed on
36 notice that the change could result from the originally
37 proposed regulatory action. If a sufficiently related
38 change is made, the full text of the resulting adoption,
39 amendment, or repeal, with the change clearly indicated,
40 shall be made available to the public for at least 15 days

1 before the agency adopts, amends, or repeals the
2 resulting regulation. Any written comments received
3 regarding the change must be responded to in the final
4 statement of reasons required by Section 11346.9.

5 (d) No state agency shall add any material to the
6 record of the rulemaking proceeding after the close of the
7 public hearing or comment period, unless the agency
8 complies with Section 11347.1. This subdivision does not
9 apply to material prepared pursuant to Section 11346.9.

10 SEC. 27. Section 11346.9 of the Government Code is
11 amended to read:

12 11346.9. Every agency subject to this chapter shall do
13 the following:

14 (a) Prepare and submit to the office with the adopted
15 regulation a final statement of reasons that shall include
16 all of the following:

17 (1) An update of the information contained in the
18 initial statement of reasons. If the update identifies any
19 data or any technical, theoretical or empirical study,
20 report, or similar document on which the agency is
21 relying in proposing the adoption, amendment, or repeal
22 of a regulation that was not identified in the initial
23 statement of reasons, or which was otherwise not
24 identified or made available for public review prior to the
25 close of the public comment period, the agency shall
26 comply with Section 11347.1.

27 (2) A determination as to whether adoption,
28 amendment, or repeal of the regulation imposes a
29 mandate on local agencies or school districts. If the
30 determination is that adoption, amendment, or repeal of
31 the regulation would impose a local mandate, the agency
32 shall state whether the mandate is reimbursable pursuant
33 to Part 7 (commencing with Section 17500) of Division 4.
34 If the agency finds that the mandate is not reimbursable,
35 it shall state the reasons for that finding.

36 (3) A summary of each objection or recommendation
37 made regarding the specific adoption, amendment, or
38 repeal proposed, together with an explanation of how the
39 proposed action has been changed to accommodate each
40 objection or recommendation, or the reasons for making

1 no change. This requirement applies only to objections or
2 recommendations specifically directed at the agency's
3 proposed action or to the procedures followed by the
4 agency in proposing or adopting the action. The agency
5 may aggregate and summarize repetitive or irrelevant
6 comments as a group, and may respond to repetitive
7 comments or summarily dismiss irrelevant comments as
8 a group. *For the purposes of this paragraph, a comment*
9 *is "irrelevant" if it is not specifically directed at the*
10 *agency's proposed action or to the procedures followed*
11 *by the agency in proposing or adopting the action.*

12 (4) A determination with supporting information that
13 no alternative considered by the agency would be more
14 effective in carrying out the purpose for which the
15 regulation is proposed or would be as effective and less
16 burdensome to affected private persons than the adopted
17 regulation.

18 (5) An explanation setting forth the reasons for
19 rejecting any proposed alternatives that would lessen the
20 adverse economic impact on small businesses.

21 (b) Prepare and submit to the office with the adopted
22 regulation an updated informative digest containing a
23 clear and concise summary of the immediately preceding
24 laws and regulations, if any, relating directly to the
25 adopted, amended, or repealed regulation and the effect
26 of the adopted, amended, or repealed regulation. The
27 informative digest shall be drafted in a format similar to
28 the Legislative Counsel's Digest on legislative bills.

29 (c) A state agency that adopts or amends a regulation
30 mandated by federal law or regulations, the provisions of
31 which are identical to a previously adopted or amended
32 federal regulation, shall be deemed to have complied
33 with this section if a statement to the effect that a
34 federally mandated regulation or amendment to a
35 regulation is being proposed, together with a citation to
36 where an explanation of the provisions of the regulation
37 can be found, is included in the notice of proposed
38 adoption or amendment prepared pursuant to Section
39 11346.5. However, the agency shall comply fully with this
40 chapter with respect to any provisions in the regulation

1 which the agency proposes to adopt or amend that are
2 different from the corresponding provisions of the
3 federal regulation.

4 (d) If an agency determines that a requirement of this
5 section can be satisfied by reference to an agency
6 statement made pursuant to Sections 11346.2 to 11346.5,
7 inclusive, the agency may satisfy the requirement by
8 incorporating the relevant statement by reference.

9 SEC. 28. Section 11347 is added to the Government
10 Code, to read:

11 11347. (a) If, after publication of a notice of proposed
12 action pursuant to Section 11346.4, but before the notice
13 of proposed action becomes ineffective pursuant to
14 subdivision (b) of ~~Section 11346.4~~ *that section*, an agency
15 decides not to proceed with the proposed action, it shall
16 deliver notice of its decision to the office for publication
17 in the California Regulatory Notice Register.

18 (b) Publication of a notice under this section
19 terminates the effect of the notice of proposed action
20 referred to in the notice. Nothing in this section precludes
21 an agency from proposing a new regulatory action that is
22 similar or identical to a regulatory action that was
23 previously the subject of a notice published under this
24 section.

25 SEC. 29. Section 11347.1 is added to the Government
26 Code, to read:

27 11347.1. (a) An agency that adds any technical,
28 theoretical, or empirical study, report, or similar
29 document to the rulemaking file after publication of the
30 notice of proposed action and relies on the document in
31 proposing the action shall make the document available
32 as required by this section.

33 (b) At least 15 calendar days before the proposed
34 action is submitted to the office for review and filing with
35 the Secretary of State, the agency shall mail to all of the
36 following persons a notice identifying the added
37 document and stating the place and business hours that
38 the document is available for public inspection:

39 (1) Persons who testified at the public hearing.

1 (2) Persons who submitted written comments at the
2 public hearing.

3 (3) Persons whose comments were received by the
4 agency during the public comment period.

5 (4) Persons who requested notification from the
6 agency of the availability of changes to the text of the
7 proposed regulation.

8 (c) The document shall be available for public
9 inspection at the location described in the notice for at
10 least 15 calendar days before the proposed action is
11 submitted to the office for review and filing with the
12 Secretary of State.

13 (d) Written comments on the document or
14 information received by the agency during the
15 availability period shall be summarized and responded to
16 in the final statement of reasons as provided in Section
17 11346.9.

18 (e) The rulemaking file shall contain a statement
19 confirming that the agency complied with the
20 requirements of this section and stating the date on which
21 the notice was mailed.

22 (f) If there are no persons in categories listed in
23 subdivision (b), then the rulemaking file shall contain a
24 confirming statement to that effect.

25 SEC. 30. Section 11347.3 of the Government Code is
26 amended to read:

27 11347.3. (a) Every agency shall maintain a file of
28 each rulemaking that shall be deemed to be the record for
29 that rulemaking proceeding. Commencing no later than
30 the date that the notice of the proposed action is
31 published in the California Regulatory Notice Register,
32 and during all subsequent periods of time that the file is
33 in the agency's possession, the agency shall make the file
34 available to the public for inspection and copying during
35 regular business hours.

36 (b) The rulemaking file shall include:

37 (1) Copies of any petitions received from interested
38 persons proposing the adoption, amendment, or repeal of
39 the regulation, and a copy of any decision provided for by

1 subdivision (d) of Section 11340.7, which grants a petition
2 in whole or in part.

3 (2) All published notices of proposed adoption,
4 amendment, or repeal of the regulation, and an updated
5 informative digest, the initial statement of reasons, and
6 the final statement of reasons.

7 (3) The determination, together with the supporting
8 data required by paragraph (5) of subdivision (a) of
9 Section 11346.5.

10 (4) The determination, together with the supporting
11 data required by paragraph (8) of subdivision (a) of
12 Section 11346.5.

13 (5) The estimate, together with the supporting data
14 and calculations, required by paragraph (6) of
15 subdivision (a) of Section 11346.5.

16 (6) All data and other factual information, any studies
17 or reports, and written comments submitted to the
18 agency in connection with the adoption, amendment, or
19 repeal of the regulation.

20 (7) All data and other factual information, technical,
21 theoretical, and empirical studies or reports, if any, on
22 which the agency is relying in the adoption, amendment,
23 or repeal of a regulation, including any cost impact
24 estimates as required by Section 11346.3.

25 (8) A transcript, recording, or minutes of any public
26 hearing connected with the adoption, amendment, or
27 repeal of the regulation.

28 (9) The date on which the agency made the full text
29 of the proposed regulation available to the public for 15
30 days prior to the adoption, amendment, or repeal of the
31 regulation, if required to do so by subdivision (c) of
32 Section 11346.8.

33 (10) The text of regulations as originally proposed and
34 the modified text of regulations, if any, that were made
35 available to the public prior to adoption.

36 (11) Any other information, statement, report, or data
37 that the agency is required by law to consider or prepare
38 in connection with the adoption, amendment, or repeal
39 of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(c) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(d) The rulemaking file shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

(e) Upon filing a regulation with the Secretary of State pursuant to Section 11349.3, the office shall return the related rulemaking file to the agency, after which no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of. The agency shall maintain the file unless it elects to transmit the file to the State Archives pursuant to subdivision (f).

(f) The agency may transmit the rulemaking file to the State Archives. The file shall include instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. Pursuant to Section 12223.5, the Secretary of State may designate a time for the delivery of the rulemaking file to the State Archives in consideration of document processing or storage limitations.

SEC. 31. Section 11349 of the Government Code is amended to read:

11349. The following definitions govern the interpretation of this chapter:

(a) “Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For the purposes of this subdivision, “evidence” includes

1 ~~rationales, facts, studies, and expert opinion. Where the~~
2 ~~need for a regulation is based on policy judgments and~~
3 ~~cannot, as a practical matter, be demonstrated by facts or~~
4 ~~expert opinion, a statement of the adopting agency's~~
5 ~~rationale for the necessity of the regulation shall be~~
6 ~~considered substantial evidence. An agency that relies~~
7 ~~solely on a statement of its rationale for the necessity of~~
8 ~~the regulation under this subdivision shall explain why~~
9 ~~the necessity of the regulation cannot, as a practical~~
10 ~~matter, be demonstrated by facts or expert opinion.~~
11 *purposes of this standard, evidence includes, but is not*
12 *limited to, facts, studies, and expert opinion.*

13 (b) "Authority" means the provision of law which
14 permits or obligates the agency to adopt, amend, or
15 repeal a regulation.

16 (c) "Clarity" means written or displayed so that the
17 meaning of regulations will be easily understood by those
18 persons directly affected by them.

19 (d) "Consistency" means being in harmony with, and
20 not in conflict with or contradictory to, existing statutes,
21 court decisions, or other provisions of law.

22 (e) "Reference" means the statute, court decision, or
23 other provision of law which the agency implements,
24 interprets, or makes specific by adopting, amending, or
25 repealing a regulation.

26 (f) "Nonduplication" means that a regulation does not
27 serve the same purpose as a state or federal statute or
28 another regulation. This standard requires that an agency
29 proposing to amend or adopt a regulation must identify
30 any state or federal statute or regulation which is
31 overlapped or duplicated by the proposed regulation and
32 justify any overlap or duplication. This standard is not
33 intended to prohibit state agencies from printing
34 relevant portions of enabling legislation in regulations
35 when the duplication is necessary to satisfy the clarity
36 standard in paragraph (3) of subdivision (a) of Section
37 11349.1. This standard is intended to prevent the
38 indiscriminate incorporation of statutory language in a
39 regulation.

1 SEC. 32. Section 11349.1 of the Government Code is
2 amended to read:

3 11349.1. (a) The office shall review all regulations
4 adopted, amended, or repealed pursuant to the
5 procedure specified in Article 5 (commencing with
6 Section 11346) and submitted to it for publication in the
7 California Code of Regulations Supplement and for
8 transmittal to the Secretary of State and make
9 determinations using all of the following standards:

- 10 (1) Necessity.
- 11 (2) Authority.
- 12 (3) Clarity.
- 13 (4) Consistency.
- 14 (5) Reference.
- 15 (6) Nonduplication.

16 In reviewing regulations pursuant to this section, the
17 office shall restrict its review to the regulation and the
18 record of the rulemaking proceeding. The office shall
19 approve the regulation or order of repeal if it complies
20 with the standards set forth in this section and with this
21 chapter.

22 (b) In reviewing proposed regulations for the criteria
23 in subdivision (a), the office may consider the clarity of
24 the proposed regulation in the context of related
25 regulations already in existence.

26 (c) The office shall adopt regulations governing the
27 procedures it uses in reviewing regulations submitted to
28 it. The regulations shall provide for an orderly review and
29 shall specify the methods, standards, presumptions, and
30 principles the office uses, and the limitations it observes,
31 in reviewing regulations to establish compliance with the
32 standards specified in subdivision (a). The regulations
33 adopted by the office shall ensure that it does not
34 substitute its judgment for that of the rulemaking agency
35 as expressed in the substantive content of adopted
36 regulations.

37 (d) The office shall return any regulation subject to
38 this chapter to the adopting agency if any of the following
39 occur:



1 (1) The adopting agency has not prepared the
2 estimate required by paragraph (6) of subdivision (a) of
3 Section 11346.5 and has not included the data used and
4 calculations made and the summary report of the
5 estimate in the file of the rulemaking.

6 (2) The agency has not complied with Section 11346.3.

7 (3) The adopting agency has prepared the estimate
8 required by paragraph (6) of subdivision (a) of Section
9 11346.5, the estimate indicates that the regulation will
10 result in a cost to local agencies or school districts that is
11 required to be reimbursed under Part 7 (commencing
12 with Section 17500) of Division 4, and the adopting
13 agency fails to do any of the following:

14 (A) Cite an item in the Budget Act for the fiscal year
15 in which the regulation will go into effect as the source
16 from which the Controller may pay the claims of local
17 agencies or school districts.

18 (B) Cite an accompanying bill appropriating funds as
19 the source from which the Controller may pay the claims
20 of local agencies or school districts.

21 (C) Attach a letter or other documentation from the
22 Department of Finance which states that the
23 Department of Finance has approved a request by the
24 agency that funds be included in the Budget Bill for the
25 next following fiscal year to reimburse local agencies or
26 school districts for the costs mandated by the regulation.

27 (D) Attach a letter or other documentation from the
28 Department of Finance which states that the
29 Department of Finance has authorized the augmentation
30 of the amount available for expenditure under the
31 agency's appropriation in the Budget Act which is for
32 reimbursement pursuant to Part 7 (commencing with
33 Section 17500) of Division 4 to local agencies or school
34 districts from the unencumbered balances of other
35 appropriations in the Budget Act and that this
36 augmentation is sufficient to reimburse local agencies or
37 school districts for their costs mandated by the regulation.

38 (e) The office shall notify the Department of Finance
39 of all regulations returned pursuant to subdivision (d).

1 (f) The office shall return a rulemaking file to the
2 submitting agency if the file does not comply with
3 subdivisions (a) and (b) of Section 11347.3. Within three
4 state working days of the receipt of a rulemaking file, the
5 office shall notify the submitting agency of any deficiency
6 identified. If no notice of deficiency is mailed to the
7 adopting agency within that time, a rulemaking file shall
8 be deemed submitted as of the date of its original receipt
9 by the office. A rulemaking file shall not be deemed
10 submitted until each deficiency identified under this
11 subdivision has been corrected.

12 This subdivision shall not limit the review of regulations
13 under this article, including, but not limited to, the
14 conformity of rulemaking files to subdivisions (a) and (b)
15 of Section 11347.3.

16 SEC. 33. Section 11349.2 is added to the Government
17 Code, to read:

18 11349.2. An agency may add material to a rulemaking
19 file that has been submitted to the office for review
20 pursuant to this article if addition of the material does not
21 violate other requirements of this chapter.

22 SEC. 34. Section 11349.6 of the Government Code is
23 amended to read:

24 11349.6. (a) In the event the adopting agency has
25 complied with Sections 11346.2 to 11347.3, inclusive, prior
26 to the adoption of the regulation as an emergency, the
27 office shall approve or disapprove the regulation in
28 accordance with this article.

29 (b) Emergency regulations adopted pursuant to
30 subdivision (b) of Section 11346.1 shall be reviewed by
31 the office within 10 calendar days after their submittal to
32 the office. The office shall not file the emergency
33 regulations with the Secretary of State if it determines
34 that the regulation is not necessary for the immediate
35 preservation of the public peace, health and safety, or
36 general welfare, or if it determines that the regulation
37 fails to meet the standards set forth in Section 11349.1, or
38 if it determines the agency failed to comply with
39 subdivisions (b) and (c) of Section 11346.1.

1 (c) If the office considers any information not
2 submitted to it by the rulemaking agency when
3 determining whether to file emergency regulations, the
4 office shall provide the rulemaking agency with an
5 opportunity to rebut or comment upon that information.

6 (d) Within 30 working days of the filing of a certificate
7 of compliance, the office shall review the regulation and
8 hearing record and approve or order the repeal of an
9 emergency regulation if it determines that the regulation
10 fails to meet the standards set forth in Section 11349.1, or
11 if it determines that the agency failed to comply with this
12 chapter.

13 SEC. 35. Section 11350 of the Government Code is
14 amended to read:

15 11350. (a) Any interested person may obtain a
16 judicial declaration as to the validity of any regulation or
17 order or repeal by bringing an action for declaratory
18 relief in the superior court in accordance with the Code
19 of Civil Procedure. The right to judicial determination
20 shall not be affected by the failure either to petition or to
21 seek reconsideration of a petition filed pursuant to
22 Section 11340.7 before the agency promulgating the
23 regulation or order of repeal. The regulation or order of
24 repeal may be declared to be invalid for a substantial
25 failure to comply with this chapter, or, in the case of an
26 emergency regulation or order ~~to~~ of repeal, upon the
27 ground that the facts recited in the statement prepared
28 pursuant to subdivision (b) of Section 11346.1 do not
29 constitute an emergency within the provisions of Section
30 11346.1.

31 (b) In addition to any other ground that may exist, a
32 regulation or order of repeal may be declared invalid if
33 either of the following exists:

34 (1) The agency's determination that the regulation is
35 reasonably necessary to effectuate the purpose of the
36 statute, court decision, or other provision of law that is
37 being implemented, interpreted, or made specific by the
38 regulation is not supported by substantial evidence.

1 (2) The agency declaration pursuant to paragraph (8)
2 of subdivision (a) of Section 11346.5 is in conflict with
3 substantial evidence in the record.

4 (c) The approval of a regulation or order of repeal by
5 the office or the Governor's overruling of a decision of the
6 office disapproving a regulation or order of repeal shall
7 not be considered by a court in any action for declaratory
8 relief brought with respect to a regulation or order of
9 repeal.

10 (d) In a proceeding under this section, a court may
11 only consider the following evidence:

12 (1) The rulemaking file prepared under Section
13 11347.3.

14 (2) The written statement prepared pursuant to
15 subdivision (b) of Section 11346.1.

16 (3) An item that is required to be included in the
17 rulemaking file but is not included in the rulemaking file,
18 for the sole purpose of proving its omission.

19 (4) Any evidence relevant to whether a regulation
20 used by an agency ~~should have been~~ *is required to be*
21 adopted under this chapter.

22 SEC. 36. Section 11350.3 of the Government Code is
23 amended to read:

24 11350.3. Any interested person may obtain a judicial
25 declaration as to the validity of a regulation or order of
26 repeal which the office has disapproved pursuant to
27 Section 11349.3, or 11349.6, or of a regulation that has been
28 ordered repealed pursuant to Section 11349.7 by bringing
29 an action for declaratory relief in the superior court in
30 accordance with the Code of Civil Procedure. The court
31 may declare the regulation valid if it determines that the
32 regulation meets the standards set forth in Section 11349.1
33 and that the agency has complied with this chapter. If the
34 court so determines, it may order the office to
35 immediately file the regulation with the Secretary of
36 State.

37 SEC. 37. Section 11353 of the Government Code is
38 amended to read:

39 11353. (a) Except as provided in subdivision (b), this
40 chapter does not apply to the adoption or revision of state

1 policy for water quality control and the adoption or
2 revision of water quality control plans and guidelines
3 pursuant to Division 7 (commencing with Section 13000)
4 of the Water Code.

5 (b) (1) Any policy, plan, or guideline, or any revision
6 thereof, that the State Water Resources Control Board
7 has adopted or that a court determines is subject to this
8 part, after June 1, 1992, shall be submitted to the office.

9 (2) The State Water Resources Control Board shall
10 include in its submittal to the office all of the following:

11 (A) A clear and concise summary of any regulatory
12 provisions adopted or approved as part of that action, for
13 publication in the California Code of Regulations.

14 (B) The administrative record for the proceeding.
15 Proposed additions to a policy, plan, or guideline shall be
16 indicated by underlined text and proposed deletions shall
17 be indicated by strike-through text in documents
18 submitted as part of the administrative record for the
19 proceeding.

20 (C) A summary of the necessity for the regulatory
21 provision.

22 (D) A certification by the chief legal officer of the
23 State Water Resources Control Board that the action was
24 taken in compliance with all applicable procedural
25 requirements of Division 7 (commencing with Section
26 13000) of the Water Code.

27 (3) Paragraph (2) does not limit the authority of the
28 office to review any regulatory provision which is part of
29 the policy, plan, or guideline submitted by the State
30 Water Resources Control Board.

31 (4) The office shall review the regulatory provisions to
32 determine compliance with the standards of necessity,
33 authority, clarity, consistency, reference, and
34 nonduplication set forth in subdivision (a) of Section
35 11349.1. The office shall also review the responses to
36 public comments prepared by the State Water Resources
37 Control Board or the appropriate regional water quality
38 control board to determine compliance with the public
39 participation requirements of the Federal Water
40 Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The

1 office shall restrict its review to the regulatory provisions
2 and the administrative record of the proceeding. Sections
3 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the
4 review by the office to the extent that those sections are
5 consistent with this section.

6 (5) The policy, plan, guideline, or revision shall not
7 become effective unless and until the regulatory
8 provisions are approved by the office in accordance with
9 subdivision (a) of Section 11349.3.

10 (6) Upon approval of the regulatory provisions, the
11 office shall transmit to the Secretary of State for filing the
12 clear and concise summary of the regulatory provisions
13 submitted by the State Water Resources Control Board.

14 (7) Any proceedings before the State Water Resources
15 Control Board or a California regional water quality
16 control board to take any action subject to this subdivision
17 shall be conducted in accordance with the procedural
18 requirements of Division 7 (commencing with Section
19 13000) of the Water Code, together with any applicable
20 requirements of the Federal Water Pollution Control Act
21 (33 U.S.C. Sec. 1251 et seq.), and the requirements of this
22 chapter, other than the requirement for review by the
23 office in accordance with this subdivision, shall not apply.

24 (8) This subdivision shall not provide a basis for review
25 by the office under this subdivision or Article 6
26 (commencing with Section 11349) of any such policy,
27 plan, or guideline adopted or revised prior to June 1, 1992.

28 (c) Subdivision (a) does not apply to a provision of any
29 policy, plan, guideline, or revision, as applied to any
30 person who, as of June 1, 1992, was a party to a civil action
31 challenging that provision on the grounds that it has not
32 been adopted as a regulation pursuant to this chapter.

33 (d) Copies of the policies, plans, and guidelines to
34 which subdivision (a) applies shall be maintained at
35 central locations for inspection by the public. The State
36 Water Resources Control Board shall maintain, at its
37 headquarters in Sacramento, a current copy of each
38 policy, plan, or guideline in effect. Each regional water
39 quality control board shall maintain at its headquarters a
40 current copy of each policy, plan, or guideline in effect in

1 its respective region. Any revision of a policy, plan, or
2 guideline shall be made available for inspection by the
3 public within 30 days of its effective date.

4 SEC. 38. Section 11356 of the Government Code is
5 amended to read:

6 11356. (a) Article 6 (commencing with Section
7 11349) is not applicable to a building standard.

8 (b) Article 5 (commencing with Section 11346) is
9 applicable to those building standards, except that the
10 office shall not disapprove those building standards nor
11 refuse to publish any notice of proposed building
12 standards if either has been approved by, and submitted
13 to, the office by the California Building Standards
14 Commission pursuant to Section 18935 of the Health and
15 Safety Code.

16 SEC. 39. Section 27491.41 of the Government Code is
17 amended to read:

18 27491.41. (a) For purposes of this section, “sudden
19 infant death syndrome” means the sudden death of any
20 infant that is unexpected by the history of the infant and
21 where a thorough postmortem examination fails to
22 demonstrate an adequate cause of death.

23 (b) The Legislature finds and declares that sudden
24 infant death syndrome (SIDS) is the leading cause of
25 death for children under age one, striking one out of
26 every 500 children. The Legislature finds and declares
27 that sudden infant death syndrome is a serious problem
28 within the State of California, and that public interest is
29 served by research and study of sudden infant death
30 syndrome, and its potential causes and indications.

31 (c) (1) To facilitate these purposes, the coroner shall,
32 within 24 hours, or as soon thereafter as feasible, perform
33 an autopsy in any case where an infant has died suddenly
34 and unexpectedly.

35 (2) However, if the attending physician desires to
36 certify that the cause of death is sudden infant death
37 syndrome, an autopsy may be performed at the discretion
38 of the coroner. If the coroner performs an autopsy
39 pursuant to this section, he or she shall also certify the
40 cause of death.

1 (d) The autopsy shall be conducted pursuant to a
2 standardized protocol developed by the State
3 Department of Health Services. The protocol is exempt
4 from the procedural requirements pertaining to the
5 adoption of administrative rules and regulations pursuant
6 to Article 5 (commencing with Section 11346) of Chapter
7 3.5 of Part 1 of Division 3 of Title 2 of the Government
8 Code. The protocol shall be developed and approved by
9 July 1, 1990.

10 (e) The protocol shall be followed by all coroners
11 throughout the state when conducting the autopsies
12 required by this section. The coroner shall state on the
13 certificate of death that sudden infant death syndrome
14 was the cause of death when the coroner's findings are
15 consistent with the definition of sudden infant death
16 syndrome specified in the standardized autopsy protocol.
17 The protocol may include requirements and standards for
18 scene investigations, requirements for specific data,
19 criteria for ascertaining cause of death based on the
20 autopsy, and criteria for any specific tissue sampling, and
21 any other requirements. The protocol may also require
22 that specific tissue samples must be provided to a central
23 tissue repository designated by the State Department of
24 Health Services.

25 (f) The State Department of Health Services shall
26 establish procedures and protocols for access by
27 researchers to any tissues, or other materials or data
28 authorized by this section. Research may be conducted
29 by any individual with a valid scientific interest and prior
30 approval from the State Committee for the Protection of
31 Human Subjects. The tissue samples, the materials, and
32 all data shall be subject to the confidentiality
33 requirements of Section 103850 of the Health and Safety
34 Code.

35 (g) The coroner may take tissue samples for research
36 purposes from infants who have died suddenly and
37 unexpectedly without consent of the responsible adult if
38 the tissue removal is not likely to result in any visible
39 disfigurement.



1 (h) A coroner shall not be liable for damages in a civil
2 action for any act or omission done in compliance with
3 this section.

4 (i) No consent of any person is required prior to
5 undertaking the autopsy required by this section.

6 SEC. 40. Section 57004 of the Health and Safety Code
7 is amended to read:

8 57004. (a) For purposes of this section, the following
9 terms have the following meanings:

10 (1) “Rule” means either of the following:

11 (A) A regulation, as defined in Section 11342.600 of the
12 Government Code.

13 (B) A policy adopted by the State Water Resources
14 Control Board pursuant to the Porter-Cologne Water
15 Quality Control Act (Division 7 (commencing with
16 Section 13000) of the Water Code) that has the effect of
17 a regulation and that is adopted in order to implement or
18 make effective a statute.

19 (2) “Scientific basis” and “scientific portions” mean
20 those foundations of a rule that are premised upon, or
21 derived from, empirical data or other scientific findings,
22 conclusions, or assumptions establishing a regulatory
23 level, standard, or other requirement for the protection
24 of public health or the environment.

25 (b) The agency, or a board, department, or office
26 within the agency, shall enter into an agreement with the
27 National Academy of Sciences, the University of
28 California, the California State University, or any similar
29 scientific institution of higher learning, any combination
30 of those entities, or with a scientist or group of scientists
31 of comparable stature and qualifications that is
32 recommended by the President of the University of
33 California, to conduct an external scientific peer review
34 of the scientific basis for any rule proposed for adoption
35 by any board, department, or office within the agency.
36 The scientific basis or scientific portion of a rule adopted
37 pursuant to Chapter 6.6 (commencing with Section
38 25249.5) of Division 20 or Chapter 3.5 (commencing with
39 Section 39650) of Division 26 shall be deemed to have

1 complied with this section if it complies with the peer
2 review processes established pursuant to these statutes.

3 (c) No person may serve as an external scientific peer
4 reviewer for the scientific portion of a rule if that person
5 participated in the development of the scientific basis or
6 scientific portion of the rule.

7 (d) No board, department, or office within the agency
8 shall take any action to adopt the final version of a rule
9 unless all of the following conditions are met:

10 (1) The board, department, or office submits the
11 scientific portions of the proposed rule, along with a
12 statement of the scientific findings, conclusions, and
13 assumptions on which the scientific portions of the
14 proposed rule are based and the supporting scientific
15 data, studies, and other appropriate materials, to the
16 external scientific peer review entity for its evaluation.

17 (2) The external scientific peer review entity, within
18 the timeframe agreed upon by the board, department, or
19 office and the external scientific peer review entity,
20 prepares a written report that contains an evaluation of
21 the scientific basis of the proposed rule. If the external
22 scientific peer review entity finds that the board,
23 department, or office has failed to demonstrate that the
24 scientific portion of the proposed rule is based upon sound
25 scientific knowledge, methods, and practices, the report
26 shall state that finding, and the reasons explaining the
27 finding, within the agreed-upon timeframe. The board,
28 department, or office may accept the finding of the
29 external scientific peer review entity, in whole, or in part,
30 and may revise the scientific portions of the proposed rule
31 accordingly. If the board, department, or office disagrees
32 with any aspect of the finding of the external scientific
33 peer review entity, it shall explain, and include as part of
34 the rulemaking record, its basis for arriving at such a
35 determination in the adoption of the final rule, including
36 the reasons why it has determined that the scientific
37 portions of the proposed rule are based on sound scientific
38 knowledge, methods, and practices.

39 (e) The requirements of this section do not apply to
40 any emergency regulation adopted pursuant to

1 subdivision (b) of Section 11346.1 of the Government
2 Code.

3 (f) Nothing in this section shall be interpreted to, in
4 any way, limit the authority of a board, department, or
5 office within the agency to adopt a rule pursuant to the
6 requirements of the statute that authorizes or requires
7 the adoption of the rule.

8 SEC. 41. Section 5058 of the Penal Code is amended
9 to read:

10 5058. (a) The director may prescribe and amend
11 rules and regulations for the administration of the prisons
12 and for the administration of the parole of persons
13 sentenced under Section 1170 except those persons who
14 meet the criteria set forth in Section 2962. The rules and
15 regulations shall be promulgated and filed pursuant to
16 Chapter 3.5 (commencing with Section 11340) of Part 1
17 of Division 3 of Title 2 of the Government Code, except
18 as otherwise provided in this section. All rules and
19 regulations shall, to the extent practical, be stated in
20 language that is easily understood by the general public.

21 For any rule or regulation filed as regular rulemaking
22 as defined in paragraph (5) of subdivision (a) of Section
23 1 of Title 1 of the California Code of Regulations, copies
24 of the rule or regulation shall be posted in conspicuous
25 places throughout each institution and shall be mailed to
26 all persons or organizations who request them no less than
27 20 days prior to its effective date.

28 (b) The director shall maintain, publish and make
29 available to the general public, a compendium of the rules
30 and regulations promulgated by the director or director's
31 designee pursuant to this section.

32 (c) The following are deemed not to be "regulations"
33 as defined in Section 11342.600 of the Government Code:

34 (1) Rules issued by the director or by the director's
35 designee applying solely to a particular prison or other
36 correctional facility, provided that the following
37 conditions are met:

38 (A) All rules that apply to prisons or other correctional
39 facilities throughout the state are adopted by the director
40 pursuant to Chapter 3.5 (commencing with Section

1 11340) of Part 1 of Division 3 of Title 2 of the Government
2 Code.

3 (B) All rules except those that are excluded from
4 disclosure to the public pursuant to subdivision (f) of
5 Section 6254 of the Government Code are made available
6 to all inmates confined in the particular prison or other
7 correctional facility to which the rules apply and to all
8 members of the general public.

9 (2) Short-term criteria for the placement of inmates in
10 a new prison or other correctional facility, or subunit
11 thereof, during its first six months of operation, or in a
12 prison or other correctional facility, or subunit thereof,
13 planned for closing during its last six months of operation,
14 provided that the criteria are made available to the public
15 and that an estimate of fiscal impact is completed
16 pursuant to Section 6055, and following, of the State
17 Administrative Manual dated July 1986.

18 (3) Rules issued by the director or director's designee
19 that are excluded from disclosure to the public pursuant
20 to subdivision (f) of Section 6254 of the Government
21 Code.

22 (d) The following regulations are exempt from
23 Chapter 3.5 (commencing with Section 11340) of Part 1
24 of Division 3 of Title 2 of the Government Code under the
25 conditions specified:

26 (1) Regulations adopted by the director or the
27 director's designee applying to any legislatively
28 mandated or authorized pilot program or a
29 departmentally authorized pilot program, provided that
30 an estimate of fiscal impact is completed pursuant to
31 Section 6055, and following, of the State Administrative
32 Manual dated July 1986, and that the following conditions
33 are met:

34 (A) A pilot program affecting male inmates only shall
35 affect no more than 10 percent of the total state male
36 inmate population; a pilot program affecting female
37 inmates only shall affect no more than 10 percent of the
38 total state female inmate population; and a pilot program
39 affecting male and female inmates shall affect no more
40 than 10 percent of the total state inmate population.



1 (B) The director certifies in writing that the
2 regulations apply to a pilot program that qualifies for
3 exemption under this subdivision.

4 (C) The certification and regulations are filed with the
5 Office of Administrative Law and the regulations are
6 made available to the public by publication pursuant to
7 subparagraph (F) of paragraph (2) of subdivision (b) of
8 Section 6 of Title 1 of the California Code of Regulations.

9 The regulations shall become effective immediately
10 upon filing with the Secretary of State and shall lapse by
11 operation of law two years after the date of the director's
12 certification unless formally adopted by the director
13 pursuant to Chapter 3.5 (commencing with Section
14 11340) of Part 1 of Division 3 of Title 2 of the Government
15 Code.

16 (2) Action or actions, or policies implementing them,
17 taken by the department and based upon a
18 determination of imminent danger by the director or the
19 director's designee that there is a compelling need for
20 immediate action, and that unless that action is taken,
21 serious injury, illness, or death is likely to result. The
22 action or actions, or policies implementing them, may be
23 taken provided that the following conditions shall
24 subsequently be met:

25 (A) A written determination of imminent danger shall
26 be issued describing the compelling need and why the
27 specific action or actions must be taken to address the
28 compelling need.

29 (B) The written determination of imminent danger
30 shall be mailed within 10 working days to every person
31 who has filed a request for notice of regulatory actions
32 with the department and to the Chief Clerk of the
33 Assembly and the Secretary of the Senate for referral to
34 the appropriate policy committees.

35 Any policy in effect pursuant to a determination of
36 imminent danger shall lapse by operation of law 15
37 calendar days after the date of the written determination
38 of imminent danger unless an emergency regulation is
39 filed with the Office of Administrative Law pursuant to
40 subdivision (e). This section shall in no way exempt the

1 department from compliance with other provisions of
2 law related to fiscal matters of the state.

3 (e) Emergency regulations shall be adopted pursuant
4 to Chapter 3.5 (commencing with Section 11340) of Part
5 1 of Division 3 of Title 2 of the Government Code, except
6 that:

7 (1) Notwithstanding subdivision (e) of Section 11346.1
8 of the Government Code, the initial effective period for
9 emergency regulations shall be 160 days.

10 (2) No showing of emergency is necessary in order to
11 adopt emergency regulations other than a written
12 statement by the director or the director's designee, to be
13 filed with the Office of Administrative Law, certifying
14 that operational needs of the department require
15 adoption of the regulations on an emergency basis.

16 (3) This subdivision shall apply only to the adoption
17 and one readoption of any emergency regulation.

18 It is the intent of the Legislature, in authorizing the
19 deviations in this subdivision from the requirements and
20 procedures of Chapter 3.5 (commencing with Section
21 11340) of Part 1 of Division 3 of Title 2 of the Government
22 Code, to authorize the department to expedite the
23 exercise of its power to implement regulations as its
24 unique operational circumstances require.

25 SEC. 42. Section 25620.2 of the Public Resources Code
26 is amended to read:

27 25620.2. (a) The commission shall administer the
28 program in a manner that is consistent with the purposes
29 of Chapter 854 of the Statutes of 1996, and shall ensure
30 that the program meets all of the following criteria:

31 (1) Demonstrates a balance of benefits to all sectors
32 that contribute to the funding under Section 381 of the
33 Public Utilities Code.

34 (2) Addresses key technical and scientific barriers.

35 (3) Demonstrates a balance between short-term,
36 mid-term, and long-term potential.

37 (4) Ensures that research currently, previously, or
38 about to be undertaken by research organizations is not
39 unnecessarily duplicated.



(b) To ensure the efficient implementation and administration of the program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(c) To ensure the success of electric industry restructuring in the transition to a new market structure and to implement the program, the commission shall adopt regulations, as defined in Section 11342.600 of the Government Code, in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with the procedures set forth in Section 11346.8 of the Government Code.

(D) A deadline for the submission of written comments.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written

1 reports and copies of any transcripts or minutes in
2 connection with any public hearings on the adoption of
3 the regulation. The record shall be open to public
4 inspection and available to the courts.

5 (6) Provide public notice of any substantial revision of
6 the proposed regulation at least 15 days prior to the
7 expiration of the deadline for public comments and
8 comment period using the procedures provided in
9 paragraph (2).

10 (7) Conduct public hearings, if a hearing is requested
11 by an interested party, that shall be conducted in
12 accordance with the procedures set forth in Section
13 11346.8 of the Government Code.

14 (8) Adopt any proposed regulation at a regularly
15 scheduled and noticed meeting of the commission. The
16 regulation shall become effective immediately unless
17 otherwise provided by the commission.

18 (9) Publish any adopted regulation in a manner that
19 makes copies of the regulation easily available to the
20 public. Any adopted regulation shall also be made
21 available on the Internet. The commission shall transmit
22 a copy of an adopted regulation to the Office of
23 Administrative Law for publication, or, if the commission
24 determines that printing the regulation is impractical, an
25 appropriate reference as to where a copy of the
26 regulation may be obtained.

27 (10) Notwithstanding any other provision of law, this
28 subdivision provides an interim exception from the
29 requirements of Chapter 3.5 (commencing with Section
30 11340) of Part 1 of Division 3 of Title 2 of the Government
31 Code for regulations required to implement Sections
32 25621 and 25622 that are adopted under the procedures
33 specified in this subdivision.

34 (11) This subdivision shall become inoperative on
35 January 1, 2000, unless a later enacted statute deletes or
36 extends that date. However, after January 1, 2000, the
37 commission shall not be required to repeat any
38 procedural step in adopting a regulation that has been
39 completed before January 1, 2000, using the procedures
40 specified in this subdivision.

1 SEC. 43. Section 11462.4 of the Welfare and
2 Institutions Code is amended to read:
3 11462.4. Notwithstanding Section 11342.610 of the
4 Government Code, group homes and foster family
5 agencies shall be deemed small businesses and the
6 department shall project the impact on group homes and
7 foster family agencies of any new regulations which will
8 affect those community care facilities.

O

