

AMENDED IN SENATE JUNE 7, 2000
AMENDED IN ASSEMBLY APRIL 25, 2000
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 initial determination.

(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" 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)~~

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

~~(17)~~

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

~~(18)~~

(17) 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)~~

(18) 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:



1 3373. (a) Notwithstanding any other provisions of
2 this article, whenever Section 215.2, 215.3, 215.4, 215.5,
3 215.7, or 215.8 is changed by the Board of Governors of the
4 Federal Reserve System, the commissioner may by
5 regulation adopt that same change. Any regulation
6 adopted under this section shall expire at 12 p.m. on
7 December 31 of the year following the calendar year in
8 which it becomes effective.

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

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

21 (3) A regulation adopted under subdivision (a) shall
22 become effective on the date it is filed with the Secretary
23 of State unless the commissioner prescribed a later date
24 in the regulation or in a written instrument filed with the
25 regulation.

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

33 SEC. 2. Section 8546 of the Government Code is
34 amended to read:

35 8546. It is the intent of the Legislature that the Bureau
36 of State Audits have the independence necessary to
37 conduct all of its audits in conformity with “Government
38 Auditing Standards” published by the Comptroller
39 General of the United States and the standards published
40 by the American Institute of Certified Public



1 Accountants, free from influence of existing state control
2 agencies that could be the subject of audits conducted by
3 the bureau. Therefore, all of the following exclusions
4 apply to the office:

5 (a) Notwithstanding Section 19790, the State Auditor
6 shall establish an affirmative action program that shall
7 meet the criteria and objectives established by the State
8 Personnel Board and shall report annually to the State
9 Personnel Board and the commission.

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

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

24 (d) Notwithstanding Section 11032, the State Auditor
25 may approve actual and necessary traveling expenses for
26 travel outside the state for officers and employees of the
27 bureau.

28 (e) Notwithstanding Section 11033, the State Auditor
29 or officers and employees of the bureau may be absent
30 from the state on business of the state upon approval of
31 the State Auditor or Chief Deputy State Auditor.

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

37 (g) The provisions and definitions of Article 2
38 (commencing with Section 11342.510) of Chapter 3.5 of
39 Division 3 shall not be construed to include the Bureau of
40 State Audits. The State Auditor may adopt regulations



1 necessary for the operation of the bureau pursuant to the
2 provisions of the Administrative Procedure Act (Chapter
3 3.5 (commencing with Section 11340) of Division 3), but
4 these regulations shall not be subject to the review or
5 approval of the Office of Administrative Law.

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

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

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

35 SEC. 3. Section 11340.5 of the Government Code is
36 amended to read:

37 11340.5. (a) No state agency shall issue, utilize,
38 enforce, or attempt to enforce any guideline, criterion,
39 bulletin, manual, instruction, order, standard of general
40 application, or other rule, which is a regulation as defined



1 in Section 11342.600, unless the guideline, criterion,
2 bulletin, manual, instruction, order, standard of general
3 application, or other rule has been adopted as a regulation
4 and filed with the Secretary of State pursuant to this
5 chapter.

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

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

17 (1) File its determination upon issuance with the
18 Secretary of State.

19 (2) Make its determination known to the agency, the
20 Governor, and the Legislature.

21 (3) Publish its determination in the California
22 Regulatory Notice Register within 15 days of the date of
23 issuance.

24 (4) Make its determination available to the public and
25 the courts.

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

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

36 (1) The court or administrative agency proceeding
37 involves the party that sought the determination from the
38 office.

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



1 (3) At issue in the proceeding is the question of
2 whether the guideline, criterion, bulletin, manual,
3 instruction, order, standard of general application, or
4 other rule that is the legal basis for the adjudicatory action
5 is a regulation as defined in Section 11342.600.

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

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

13 (b) Notwithstanding any other provision of this
14 chapter that refers to mailing or to oral or written
15 communication:

16 (1) An agency may permit and encourage use of
17 electronic communication, but may not require use of
18 electronic communication.

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

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

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

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

39 (1) Any public notice required by this chapter or by a
40 regulation implementing this chapter. For the purposes



1 of this paragraph, “public notice” means a notice that is
2 required to be given by an agency to persons who have
3 requested notice of the agency’s regulatory actions.

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

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

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

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

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

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

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

26 11340.9. This chapter does not apply to any of the
27 following:

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

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

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

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



1 (e) A regulation that establishes criteria or guidelines
2 to be used by the staff of an agency in performing an
3 audit, investigation, examination, or inspection, settling a
4 commercial dispute, negotiating a commercial
5 arrangement, or in the defense, prosecution, or
6 settlement of a case, if disclosure of the criteria or
7 guidelines would do any of the following:

- 8 (1) Enable a law violator to avoid detection.
- 9 (2) Facilitate disregard of requirements imposed by
10 law.
- 11 (3) Give clearly improper advantage to a person who
12 is in an adverse position to the state.

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

15 (g) A regulation that establishes or fixes rates, prices,
16 or tariffs.

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

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

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

29 SEC. 7. Section 11342 of the Government Code is
30 repealed.

31 SEC. 8. Article 2 (commencing with Section
32 11342.510) is added to Chapter 3.5 of Part 1 of Division 3
33 of Title 2 of the Government Code, to read:

34
35 Article 2. Definitions
36

37 11342.510. Unless the provision or context otherwise
38 requires, the definitions in this article govern the
39 construction of this chapter.

40 11342.520. “Agency” means state agency.



1 11342.530. “Building standard” has the same meaning
2 provided in Section 18909 of the Health and Safety Code.

3 11342.540. “Director” means the director of the
4 office.

5 11342.550. “Office” means the Office of
6 Administrative Law.

7 11342.560. “Order of repeal” means any resolution,
8 order, or other official act of a state agency that expressly
9 repeals a regulation in whole or in part.

10 11342.570. “Performance standard” means a
11 regulation that describes an objective with the criteria
12 stated for achieving the objective.

13 11342.580. “Plain English” means language that
14 satisfies the standard of clarity provided in Section 11349.

15 11342.590. “Prescriptive standard” means a
16 regulation that specifies the sole means of compliance
17 with a performance standard by specific actions,
18 measurements, or other quantifiable means.

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

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

33 (1) Independently owned and operated.

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

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

37 (1) A financial institution including a bank, a trust, a
38 savings and loan association, a thrift institution, a
39 consumer finance company, a commercial finance
40 company, an industrial finance company, a credit union,



- 1 a mortgage and investment banker, a securities
- 2 broker-dealer, or an investment adviser.
- 3 (2) An insurance company, either stock or mutual.
- 4 (3) A mineral, oil, or gas broker.
- 5 (4) A subdivider or developer.
- 6 (5) A landscape architect, an architect, or a building
- 7 designer.
- 8 (6) An entity organized as a nonprofit institution.
- 9 (7) An entertainment activity or production,
- 10 including a motion picture, a stage performance, a
- 11 television or radio station, or a production company.
- 12 (8) A utility, a water company, or a power transmission
- 13 company generating and transmitting more than 4.5
- 14 million kilowatt hours annually.
- 15 (9) A petroleum producer, a natural gas producer, a
- 16 refiner, or a pipeline.
- 17 (10) A manufacturing enterprise exceeding 250
- 18 employees.
- 19 (11) A health care facility exceeding 150 beds or one
- 20 million five hundred thousand dollars (\$1,500,000) in
- 21 annual gross receipts.
- 22 (c) "Small business" does not include the following
- 23 business activities:
- 24 (1) Agriculture, where the annual gross receipts
- 25 exceed one million dollars (\$1,000,000).
- 26 (2) General construction, where the annual gross
- 27 receipts exceed nine million five hundred thousand
- 28 dollars (\$9,500,000).
- 29 (3) Special trade construction, where the annual gross
- 30 receipts exceed five million dollars (\$5,000,000).
- 31 (4) Retail trade, where the annual gross receipts
- 32 exceed two million dollars (\$2,000,000).
- 33 (5) Wholesale trade, where the annual gross receipts
- 34 exceed nine million five hundred thousand dollars
- 35 (\$9,500,000).
- 36 (6) Services, where the annual gross receipts exceed
- 37 two million dollars (\$2,000,000).
- 38 (7) Transportation and warehousing, where the
- 39 annual gross receipts exceed one million five hundred
- 40 thousand dollars (\$1,500,000).



1 SEC. 9. Section 11343 of the Government Code is
2 amended to read:

3 11343. Every state agency shall:

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

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

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

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

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

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

32 SEC. 10. Section 11343.4 of the Government Code is
33 amended to read:

34 11343.4. A regulation or an order of repeal required to
35 be filed with the Secretary of State shall become effective
36 on the 30th day after the date of filing unless:

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



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

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

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

9 11343.5. Within 10 days from the receipt of printed
10 copies of the California Code of Regulations or of the
11 California Code of Regulations Supplement from the
12 State Printing Office, the office shall file one copy of the
13 particular issue of the code or supplement in the office of
14 the county clerk of each county in this state, or if the
15 authority to accept filings on his or her behalf has been
16 delegated by the county clerk of any county pursuant to
17 Section 26803.5, in the office of the person to whom that
18 authority has been delegated.

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

22

23 Article 4. The California Code of Regulations, the
24 California Code of Regulations Supplement, and the
25 California Regulatory Notice Register
26

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

29 11344. The office shall do all of the following:

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

38 (b) Provide for the compilation, printing, and
39 publication of weekly updates of the California Code of
40 Regulations. This publication shall be known as the



1 California Code of Regulations Supplement and shall
2 contain amendments to the code.

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

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

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

15 11344.1. The office shall do all of the following:

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

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

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

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

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

33 (5) Determinations issued pursuant to Section 11340.5.

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



1 SEC. 15. Section 11344.2 of the Government Code is
2 amended to read:

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

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

13 (b) The California Code of Regulations and California
14 Code of Regulations Supplement are not otherwise
15 reasonably available to the public in the community
16 where the county clerk or the delegatee of the county
17 clerk pursuant to Section 26803.5 would normally
18 maintain the code and supplements by distribution to
19 libraries pursuant to Article 6 (commencing with Section
20 14900) of Chapter 7 of Part 5.5.

21 SEC. 16. Section 11344.4 of the Government Code is
22 amended to read:

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

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

35 SEC. 17. Section 11344.6 of the Government Code is
36 amended to read:

37 11344.6. The publication of a regulation in the
38 California Code of Regulations or California Code of
39 Regulations Supplement raises a rebuttable presumption



1 that the text of the regulation as so published is the text
2 of the regulation adopted.

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

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

10 SEC. 18. Section 11344.7 of the Government Code is
11 amended to read:

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

22 SEC. 19. Section 11344.9 of the Government Code is
23 amended to read:

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

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

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

37 SEC. 20. Section 11346 of the Government Code is
38 amended to read:

39 11346. (a) It is the purpose of this chapter to establish
40 basic minimum procedural requirements for the



1 adoption, amendment, or repeal of administrative
2 regulations. Except as provided in Section 11346.1, the
3 provisions of this chapter are applicable to the exercise of
4 any quasi-legislative power conferred by any statute
5 heretofore or hereafter enacted, but nothing in this
6 chapter repeals or diminishes additional requirements
7 imposed by any statute. This chapter shall not be
8 superseded or modified by any subsequent legislation
9 except to the extent that the legislation shall do so
10 expressly.

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

15 SEC. 21. Section 11346.1 of the Government Code is
16 amended to read:

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

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

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

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

35 (c) Notwithstanding any other provision of law, no
36 emergency regulation that is a building standard shall be
37 filed, nor shall the building standard be effective, unless
38 the building standard is submitted to the California
39 Building Standards Commission, and is approved and



1 filed pursuant to Sections 18937 and 18938 of the Health
2 and Safety Code.

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

7 (e) No regulation, amendment, or order of repeal
8 adopted as an emergency regulatory action shall remain
9 in effect more than ~~180~~ 120 days unless the adopting
10 agency has complied with Sections 11346.2 to 11347.3,
11 inclusive, either before adopting an emergency
12 regulation or within the ~~180-day~~ 120-day period. The
13 adopting agency, prior to the expiration of the ~~180-day~~
14 120-day period, shall transmit to the office for filing with
15 the Secretary of State the adopted regulation,
16 amendment, or order of repeal, the rulemaking file, and
17 a certification that Sections 11346.2 to 11347.3, inclusive,
18 were complied with either before the emergency
19 regulation was adopted or within the ~~180-day~~ 120-day
20 period.

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

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

33 (h) The office shall not file an emergency regulation
34 with the Secretary of State if the emergency regulation
35 is the same as or substantially equivalent to an emergency
36 regulation previously adopted by that agency, unless the
37 director expressly approves the agency's readoption of
38 the emergency regulation.

39 SEC. 22. Section 11346.2 of the Government Code is
40 amended to read:



1 11346.2. Every agency subject to this chapter shall
2 prepare, submit to the office with the notice of the
3 proposed action as described in Section 11346.5, and make
4 available to the public upon request, all of the following:

5 (a) A copy of the express terms of the proposed
6 regulation.

7 (1) The agency shall draft the regulation in plain,
8 straightforward language, avoiding technical terms as
9 much as possible, and using a coherent and easily
10 readable style. The agency shall draft the regulation in
11 plain English.

12 (2) The agency shall include a notation following the
13 express terms of each regulation listing the specific
14 statutes or other provisions of law authorizing the
15 adoption of the regulation and listing the specific statutes
16 or other provisions of law being implemented,
17 interpreted, or made specific by the regulation.

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

21 (b) An initial statement of reasons for proposing the
22 adoption, amendment, or repeal of a regulation. This
23 statement of reasons shall include, but not be limited to,
24 all of the following:

25 (1) A statement of the specific purpose of each
26 adoption, amendment, or repeal and the rationale for the
27 determination by the agency that each adoption,
28 amendment, or repeal is reasonably necessary to carry
29 out the purpose for which it is proposed. Where the
30 adoption or amendment of a regulation would mandate
31 the use of specific technologies or equipment, a statement
32 of the reasons why the agency believes these mandates or
33 prescriptive standards are required.

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

38 (3) (A) A description of the alternatives to the
39 regulation considered by the agency and the agency's
40 reasons for rejecting those alternatives. In the case of a



1 regulation that would mandate the use of specific
2 technologies or equipment or prescribe specific actions
3 or procedures, the imposition of performance standards
4 shall be considered as an alternative.

5 (B) A description of any alternatives the agency has
6 identified that would lessen any adverse impact on small
7 business. It is not the intent of this paragraph to require
8 the agency to artificially construct alternatives or to
9 justify why it has not identified alternatives.

10 (4) Facts, evidence, documents, testimony, or other
11 evidence on which the agency relies to support an initial
12 determination that the action will not have a significant
13 adverse economic impact on business.

14 (5) A department, board, or commission within the
15 Environmental Protection Agency, the Resources
16 Agency, or the Office of the State Fire Marshal shall
17 describe its efforts, in connection with a proposed
18 rulemaking action, to avoid unnecessary duplication or
19 conflicts with federal regulations contained in the Code
20 of Federal Regulations addressing the same issues. These
21 agencies may adopt regulations different from federal
22 regulations contained in the Code of Federal Regulations
23 addressing the same issues upon a finding of one or more
24 of the following justifications:

25 (A) The differing state regulations are authorized by
26 law.

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

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



1 chapter with respect to any provisions in the regulation
2 that the agency proposes to adopt or amend that are
3 different from the corresponding provisions of the
4 federal regulation.

5 SEC. 23. Section 11346.3 of the Government Code is
6 amended to read:

7 11346.3. (a) State agencies proposing to adopt,
8 amend, or repeal any administrative regulation shall
9 assess the potential for adverse economic impact on
10 California business enterprises and individuals, avoiding
11 the imposition of unnecessary or unreasonable
12 regulations or reporting, recordkeeping, or compliance
13 requirements. For purposes of this subdivision, assessing
14 the potential for adverse economic impact shall require
15 agencies, when proposing to adopt, amend, or repeal a
16 regulation, to adhere to the following requirements, to
17 the extent that these requirements do not conflict with
18 other state or federal laws:

19 (1) The proposed adoption, amendment, or repeal of
20 a regulation shall be based on adequate information
21 concerning the need for, and consequences of, proposed
22 governmental action.

23 (2) The state agency, prior to submitting a proposal to
24 adopt, amend, or repeal a regulation to the office, shall
25 consider the proposal's impact on business, with
26 consideration of industries affected including the ability
27 of California businesses to compete with businesses in
28 other states. For purposes of evaluating the impact on the
29 ability of California businesses to compete with businesses
30 in other states, an agency shall consider, but not be
31 limited to, information supplied by interested parties.

32 It is not the intent of this section to impose additional
33 criteria on agencies, above that which exists in current
34 law, in assessing adverse economic impact on California
35 business enterprises, but only to assure that the
36 assessment is made early in the process of initiation and
37 development of a proposed adoption, amendment, or
38 repeal of a regulation.



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

4 (A) The creation or elimination of jobs within the
5 State of California.

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

8 (C) The expansion of businesses currently doing
9 business within the State of California.

10 (2) This subdivision does not apply to the University of
11 California, the Hastings College of the Law, or the Fair
12 Political Practices Commission.

13 (3) Information required from state agencies for the
14 purpose of completing the assessment may come from
15 existing state publications.

16 (c) No administrative regulation adopted on or after
17 January 1, 1993, that requires a report shall apply to
18 businesses, unless the state agency adopting the
19 regulation makes a finding that it is necessary for the
20 health, safety, or welfare of the people of the state that the
21 regulation apply to businesses.

22 SEC. 24. Section 11346.5 of the Government Code is
23 amended to read:

24 11346.5. (a) The notice of proposed adoption,
25 amendment, or repeal of a regulation shall include the
26 following:

27 (1) A statement of the time, place, and nature of
28 proceedings for adoption, amendment, or repeal of the
29 regulation.

30 (2) Reference to the authority under which the
31 regulation is proposed and a reference to the particular
32 code sections or other provisions of law that are being
33 implemented, interpreted, or made specific.

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

38 (A) A concise and clear summary of existing laws and
39 regulations, if any, related directly to the proposed action
40 and of the effect of the proposed action.



1 (B) If the proposed action differs substantially from an
2 existing comparable federal regulation or statute, a brief
3 description of the significant differences and the full
4 citation of the federal regulations or statutes.

5 (C) A policy statement overview explaining the broad
6 objectives of the regulation and, if appropriate, the
7 specific objectives.

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

11 (5) A determination as to whether the regulation
12 imposes a mandate on local agencies or school districts
13 and, if so, whether the mandate requires state
14 reimbursement pursuant to Part 7 (commencing with
15 Section 17500) of Division 4.

16 (6) An estimate, prepared in accordance with
17 instructions adopted by the Department of Finance, of
18 the cost or savings to any state agency, the cost to any local
19 agency or school district that is required to be reimbursed
20 under Part 7 (commencing with Section 17500) of
21 Division 4, other nondiscretionary cost or savings
22 imposed on local agencies, and the cost or savings in
23 federal funding to the state.

24 For purposes of this paragraph, “cost or savings” means
25 additional costs or savings, both direct and indirect, that
26 a public agency necessarily incurs in reasonable
27 compliance with regulations.

28 (7) If a state agency, in proposing to adopt, amend, or
29 repeal any administrative regulation, makes an initial
30 determination that the action may have a significant
31 adverse economic impact on business, including the
32 ability of California businesses to compete with businesses
33 in other states, it shall include the following information
34 in the notice of proposed action:

35 (A) Identification of the types of businesses that would
36 be affected.

37 (B) A description of the projected reporting,
38 recordkeeping, and other compliance requirements that
39 would result from the proposed action.



1 (C) The following statement: “The (name of agency)
2 has made an initial determination that the
3 ~~(adoption/amendment)~~
4 *(adoption/amendment/repeal)* of this regulation may
5 have a significant adverse economic impact on
6 businesses, including the ability of California businesses to
7 compete with businesses in other states. The (name of
8 agency) (has/has not) considered proposed alternatives
9 that would lessen any adverse economic impact on
10 business and invites you to submit proposals. Submissions
11 may include the following considerations:

12 (i) The establishment of differing compliance or
13 reporting requirements or timetables that take into
14 account the resources available to businesses.

15 (ii) Consolidation or simplification of compliance and
16 reporting requirements for businesses.

17 (iii) The use of performance standards rather than
18 prescriptive standards.

19 (iv) Exemption or partial exemption from the
20 regulatory requirements for businesses.”

21 (8) If a state agency, in adopting, amending, or
22 repealing any administrative regulation, makes an initial
23 determination that the action will not have a significant
24 adverse economic impact on business, including the
25 ability of California businesses to compete with businesses
26 in other states, it shall make a declaration to that effect in
27 the notice of proposed action. In making this declaration,
28 the agency shall provide in the record facts, evidence,
29 documents, testimony, or other evidence upon which the
30 agency relies to support its initial determination.

31 An agency’s initial determination and declaration that
32 a proposed adoption, amendment, or repeal of a
33 regulation may have or will not have a significant, adverse
34 impact on businesses, including the ability of California
35 businesses to compete with businesses in other states,
36 shall not be grounds for the office to refuse to publish the
37 notice of proposed action.

38 (9) A statement of the potential cost impact of the
39 proposed action on private persons or businesses directly



1 affected, as considered by the agency during the
2 regulatory development process.

3 For purposes of this paragraph, “cost impact” means
4 the reasonable range of costs, or a description of the type
5 and extent of costs, direct or indirect, that a
6 representative private person or business necessarily
7 incurs in reasonable compliance with the proposed
8 action.

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

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

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

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

28 (14) The name and telephone number of the agency
29 officer to whom inquiries concerning the proposed
30 administrative action may be directed.

31 (15) The date by which comments submitted in
32 writing must be received to present statements,
33 arguments, or contentions in writing relating to the
34 proposed action in order for them to be considered by the
35 state agency before it adopts, amends, or repeals a
36 regulation.

37 (16) Reference to the fact that the agency proposing
38 the action has prepared a statement of the reasons for the
39 proposed action, has available all the information upon



1 which its proposal is based, and has available the express
2 terms of the proposed action, pursuant to subdivision (b).

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

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

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

16 (20) If the agency maintains an Internet website or
17 other similar forum for the electronic publication or
18 distribution of written material, a statement explaining
19 how materials published or distributed through that
20 forum can be accessed.

21 (b) The agency officer designated in paragraph (14)
22 of subdivision (a) shall make available to the public upon
23 request the express terms of the proposed action. The
24 officer shall also make available to the public upon
25 request the location of public records, including reports,
26 documentation, and other materials, related to the
27 proposed action.

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

34 SEC. 25. Section 11346.54 of the Government Code is
35 repealed.

36 SEC. 26. Section 11346.8 of the Government Code is
37 amended to read:

38 11346.8. (a) If a public hearing is held, both oral and
39 written statements, arguments, or contentions, shall be
40 permitted. The agency may impose reasonable



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

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

25 (c) No state agency may adopt, amend, or repeal a
26 regulation which has been changed from that which was
27 originally made available to the public pursuant to
28 Section 11346.5, unless the change is (1) nonsubstantial or
29 solely grammatical in nature, or (2) sufficiently related to
30 the original text that the public was adequately placed on
31 notice that the change could result from the originally
32 proposed regulatory action. If a sufficiently related
33 change is made, the full text of the resulting adoption,
34 amendment, or repeal, with the change clearly indicated,
35 shall be made available to the public for at least 15 days
36 before the agency adopts, amends, or repeals the
37 resulting regulation. Any written comments received
38 regarding the change must be responded to in the final
39 statement of reasons required by Section 11346.9.



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

6 SEC. 27. Section 11346.9 of the Government Code is
7 amended to read:

8 11346.9. Every agency subject to this chapter shall do
9 the following:

10 (a) Prepare and submit to the office with the adopted
11 regulation a final statement of reasons that shall include
12 all of the following:

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

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

32 (3) A summary of each objection or recommendation
33 made regarding the specific adoption, amendment, or
34 repeal proposed, together with an explanation of how the
35 proposed action has been changed to accommodate each
36 objection or recommendation, or the reasons for making
37 no change. This requirement applies only to objections or
38 recommendations specifically directed at the agency's
39 proposed action or to the procedures followed by the
40 agency in proposing or adopting the action. The agency



1 may aggregate and summarize repetitive or irrelevant
2 comments as a group, and may respond to repetitive
3 comments or summarily dismiss irrelevant comments as
4 a group. For the purposes of this paragraph, a comment
5 is “irrelevant” if it is not specifically directed at the
6 agency’s proposed action or to the procedures followed
7 by the agency in proposing or adopting the action.

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

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

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

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



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

6 SEC. 28. Section 11347 is added to the Government
7 Code, to read:

8 11347. (a) If, after publication of a notice of proposed
9 action pursuant to Section 11346.4, but before the notice
10 of proposed action becomes ineffective pursuant to
11 subdivision (b) of that section, an agency decides not to
12 proceed with the proposed action, it shall deliver notice
13 of its decision to the office for publication in the California
14 Regulatory Notice Register.

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

22 SEC. 29. Section 11347.1 is added to the Government
23 Code, to read:

24 11347.1. (a) An agency that adds any technical,
25 theoretical, or empirical study, report, or similar
26 document to the rulemaking file after publication of the
27 notice of proposed action and relies on the document in
28 proposing the action shall make the document available
29 as required by this section.

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

- 37 (1) Persons who testified at the public hearing.
38 (2) Persons who submitted written comments at the
39 public hearing.



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

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

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

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

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

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

23 SEC. 30. Section 11347.3 of the Government Code is
24 amended to read:

25 11347.3. (a) Every agency shall maintain a file of
26 each rulemaking that shall be deemed to be the record for
27 that rulemaking proceeding. Commencing no later than
28 the date that the notice of the proposed action is
29 published in the California Regulatory Notice Register,
30 and during all subsequent periods of time that the file is
31 in the agency's possession, the agency shall make the file
32 available to the public for inspection and copying during
33 regular business hours.

34 (b) The rulemaking file shall include:

35 (1) Copies of any petitions received from interested
36 persons proposing the adoption, amendment, or repeal of
37 the regulation, and a copy of any decision provided for by
38 subdivision (d) of Section 11340.7, which grants a petition
39 in whole or in part.



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

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

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

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

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

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

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

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

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

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

38 (12) An index or table of contents that identifies each
39 item contained in the rulemaking file. The index or table
40 of contents shall include an affidavit or a declaration



1 under penalty of perjury in the form specified by Section
2 2015.5 of the Code of Civil Procedure by the agency
3 official who has compiled the rulemaking file, specifying
4 the date upon which the record was closed, and that the
5 file or the copy, if submitted, is complete.

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

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

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

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

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

29 11349. The following definitions govern the
30 interpretation of this chapter:

31 (a) "Necessity" means the record of the rulemaking
32 proceeding demonstrates by substantial evidence the
33 need for a regulation to effectuate the purpose of the
34 statute, court decision, or other provision of law that the
35 regulation implements, interprets, or makes specific,
36 taking into account the totality of the record. For
37 purposes of this standard, evidence includes, but is not
38 limited to, facts, studies, and expert opinion.



1 (b) “Authority” means the provision of law which
2 permits or obligates the agency to adopt, amend, or
3 repeal a regulation.

4 (c) “Clarity” means written or displayed so that the
5 meaning of regulations will be easily understood by those
6 persons directly affected by them.

7 (d) “Consistency” means being in harmony with, and
8 not in conflict with or contradictory to, existing statutes,
9 court decisions, or other provisions of law.

10 (e) “Reference” means the statute, court decision, or
11 other provision of law which the agency implements,
12 interprets, or makes specific by adopting, amending, or
13 repealing a regulation.

14 (f) “Nonduplication” means that a regulation does not
15 serve the same purpose as a state or federal statute or
16 another regulation. This standard requires that an agency
17 proposing to amend or adopt a regulation must identify
18 any state or federal statute or regulation which is
19 overlapped or duplicated by the proposed regulation and
20 justify any overlap or duplication. This standard is not
21 intended to prohibit state agencies from printing
22 relevant portions of enabling legislation in regulations
23 when the duplication is necessary to satisfy the clarity
24 standard in paragraph (3) of subdivision (a) of Section
25 11349.1. This standard is intended to prevent the
26 indiscriminate incorporation of statutory language in a
27 regulation.

28 SEC. 32. Section 11349.1 of the Government Code is
29 amended to read:

30 11349.1. (a) The office shall review all regulations
31 adopted, amended, or repealed pursuant to the
32 procedure specified in Article 5 (commencing with
33 Section 11346) and submitted to it for publication in the
34 California Code of Regulations Supplement and for
35 transmittal to the Secretary of State and make
36 determinations using all of the following standards:

- 37 (1) Necessity.
- 38 (2) Authority.
- 39 (3) Clarity.
- 40 (4) Consistency.



1 (5) Reference.

2 (6) Nonduplication.

3 In reviewing regulations pursuant to this section, the
4 office shall restrict its review to the regulation and the
5 record of the rulemaking proceeding. The office shall
6 approve the regulation or order of repeal if it complies
7 with the standards set forth in this section and with this
8 chapter.

9 (b) In reviewing proposed regulations for the criteria
10 in subdivision (a), the office may consider the clarity of
11 the proposed regulation in the context of related
12 regulations already in existence.

13 (c) The office shall adopt regulations governing the
14 procedures it uses in reviewing regulations submitted to
15 it. The regulations shall provide for an orderly review and
16 shall specify the methods, standards, presumptions, and
17 principles the office uses, and the limitations it observes,
18 in reviewing regulations to establish compliance with the
19 standards specified in subdivision (a). The regulations
20 adopted by the office shall ensure that it does not
21 substitute its judgment for that of the rulemaking agency
22 as expressed in the substantive content of adopted
23 regulations.

24 (d) The office shall return any regulation subject to
25 this chapter to the adopting agency if any of the following
26 occur:

27 (1) The adopting agency has not prepared the
28 estimate required by paragraph (6) of subdivision (a) of
29 Section 11346.5 and has not included the data used and
30 calculations made and the summary report of the
31 estimate in the file of the rulemaking.

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

33 (3) The adopting agency has prepared the estimate
34 required by paragraph (6) of subdivision (a) of Section
35 11346.5, the estimate indicates that the regulation will
36 result in a cost to local agencies or school districts that is
37 required to be reimbursed under Part 7 (commencing
38 with Section 17500) of Division 4, and the adopting
39 agency fails to do any of the following:



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

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

8 (C) Attach a letter or other documentation from the
9 Department of Finance which states that the
10 Department of Finance has approved a request by the
11 agency that funds be included in the Budget Bill for the
12 next following fiscal year to reimburse local agencies or
13 school districts for the costs mandated by the regulation.

14 (D) Attach a letter or other documentation from the
15 Department of Finance which states that the
16 Department of Finance has authorized the augmentation
17 of the amount available for expenditure under the
18 agency's appropriation in the Budget Act which is for
19 reimbursement pursuant to Part 7 (commencing with
20 Section 17500) of Division 4 to local agencies or school
21 districts from the unencumbered balances of other
22 appropriations in the Budget Act and that this
23 augmentation is sufficient to reimburse local agencies or
24 school districts for their costs mandated by the regulation.

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

27 (f) The office shall return a rulemaking file to the
28 submitting agency if the file does not comply with
29 subdivisions (a) and (b) of Section 11347.3. Within three
30 state working days of the receipt of a rulemaking file, the
31 office shall notify the submitting agency of any deficiency
32 identified. If no notice of deficiency is mailed to the
33 adopting agency within that time, a rulemaking file shall
34 be deemed submitted as of the date of its original receipt
35 by the office. A rulemaking file shall not be deemed
36 submitted until each deficiency identified under this
37 subdivision has been corrected.

38 This subdivision shall not limit the review of regulations
39 under this article, including, but not limited to, the



1 conformity of rulemaking files to subdivisions (a) and (b)
2 of Section 11347.3.

3 SEC. 33. Section 11349.2 is added to the Government
4 Code, to read:

5 11349.2. An agency may add material to a rulemaking
6 file that has been submitted to the office for review
7 pursuant to this article if addition of the material does not
8 violate other requirements of this chapter.

9 SEC. 34. Section 11349.6 of the Government Code is
10 amended to read:

11 11349.6. (a) In the event the adopting agency has
12 complied with Sections 11346.2 to 11347.3, inclusive, prior
13 to the adoption of the regulation as an emergency, the
14 office shall approve or disapprove the regulation in
15 accordance with this article.

16 (b) Emergency regulations adopted pursuant to
17 subdivision (b) of Section 11346.1 shall be reviewed by
18 the office within 10 calendar days after their submittal to
19 the office. The office shall not file the emergency
20 regulations with the Secretary of State if it determines
21 that the regulation is not necessary for the immediate
22 preservation of the public peace, health and safety, or
23 general welfare, or if it determines that the regulation
24 fails to meet the standards set forth in Section 11349.1, or
25 if it determines the agency failed to comply with
26 subdivisions (b) and (c) of Section 11346.1.

27 (c) If the office considers any information not
28 submitted to it by the rulemaking agency when
29 determining whether to file emergency regulations, the
30 office shall provide the rulemaking agency with an
31 opportunity to rebut or comment upon that information.

32 (d) Within 30 working days of the filing of a certificate
33 of compliance, the office shall review the regulation and
34 hearing record and approve or order the repeal of an
35 emergency regulation if it determines that the regulation
36 fails to meet the standards set forth in Section 11349.1, or
37 if it determines that the agency failed to comply with this
38 chapter.

39 SEC. 35. Section 11350 of the Government Code is
40 amended to read:



1 11350. (a) Any interested person may obtain a
2 judicial declaration as to the validity of any regulation or
3 order or repeal by bringing an action for declaratory
4 relief in the superior court in accordance with the Code
5 of Civil Procedure. The right to judicial determination
6 shall not be affected by the failure either to petition or to
7 seek reconsideration of a petition filed pursuant to
8 Section 11340.7 before the agency promulgating the
9 regulation or order of repeal. The regulation or order of
10 repeal may be declared to be invalid for a substantial
11 failure to comply with this chapter, or, in the case of an
12 emergency regulation or order of repeal, upon the
13 ground that the facts recited in the statement prepared
14 pursuant to subdivision (b) of Section 11346.1 do not
15 constitute an emergency within the provisions of Section
16 11346.1.

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

20 (1) The agency's determination that the regulation is
21 reasonably necessary to effectuate the purpose of the
22 statute, court decision, or other provision of law that is
23 being implemented, interpreted, or made specific by the
24 regulation is not supported by substantial evidence.

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

28 (c) The approval of a regulation or order of repeal by
29 the office or the Governor's overruling of a decision of the
30 office disapproving a regulation or order of repeal shall
31 not be considered by a court in any action for declaratory
32 relief brought with respect to a regulation or order of
33 repeal.

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

36 (1) The rulemaking file prepared under Section
37 11347.3.

38 (2) The written statement prepared pursuant to
39 subdivision (b) of Section 11346.1.



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

4 (4) Any evidence relevant to whether a regulation
5 used by an agency is required to be adopted under this
6 chapter.

7 SEC. 36. Section 11350.3 of the Government Code is
8 amended to read:

9 11350.3. Any interested person may obtain a judicial
10 declaration as to the validity of a regulation or order of
11 repeal which the office has disapproved pursuant to
12 Section 11349.3, or 11349.6, or of a regulation that has been
13 ordered repealed pursuant to Section 11349.7 by bringing
14 an action for declaratory relief in the superior court in
15 accordance with the Code of Civil Procedure. The court
16 may declare the regulation valid if it determines that the
17 regulation meets the standards set forth in Section 11349.1
18 and that the agency has complied with this chapter. If the
19 court so determines, it may order the office to
20 immediately file the regulation with the Secretary of
21 State.

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

24 11353. (a) Except as provided in subdivision (b), this
25 chapter does not apply to the adoption or revision of state
26 policy for water quality control and the adoption or
27 revision of water quality control plans and guidelines
28 pursuant to Division 7 (commencing with Section 13000)
29 of the Water Code.

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

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

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

39 (B) The administrative record for the proceeding.
40 Proposed additions to a policy, plan, or guideline shall be



1 indicated by underlined text and proposed deletions shall
2 be indicated by strike-through text in documents
3 submitted as part of the administrative record for the
4 proceeding.

5 (C) A summary of the necessity for the regulatory
6 provision.

7 (D) A certification by the chief legal officer of the
8 State Water Resources Control Board that the action was
9 taken in compliance with all applicable procedural
10 requirements of Division 7 (commencing with Section
11 13000) of the Water Code.

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

16 (4) The office shall review the regulatory provisions to
17 determine compliance with the standards of necessity,
18 authority, clarity, consistency, reference, and
19 nonduplication set forth in subdivision (a) of Section
20 11349.1. The office shall also review the responses to
21 public comments prepared by the State Water Resources
22 Control Board or the appropriate regional water quality
23 control board to determine compliance with the public
24 participation requirements of the Federal Water
25 Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The
26 office shall restrict its review to the regulatory provisions
27 and the administrative record of the proceeding. Sections
28 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the
29 review by the office to the extent that those sections are
30 consistent with this section.

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

35 (6) Upon approval of the regulatory provisions, the
36 office shall transmit to the Secretary of State for filing the
37 clear and concise summary of the regulatory provisions
38 submitted by the State Water Resources Control Board.

39 (7) Any proceedings before the State Water Resources
40 Control Board or a California regional water quality



1 control board to take any action subject to this subdivision
2 shall be conducted in accordance with the procedural
3 requirements of Division 7 (commencing with Section
4 13000) of the Water Code, together with any applicable
5 requirements of the Federal Water Pollution Control Act
6 (33 U.S.C. Sec. 1251 et seq.), and the requirements of this
7 chapter, other than the requirement for review by the
8 office in accordance with this subdivision, shall not apply.

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

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

18 (d) Copies of the policies, plans, and guidelines to
19 which subdivision (a) applies shall be maintained at
20 central locations for inspection by the public. The State
21 Water Resources Control Board shall maintain, at its
22 headquarters in Sacramento, a current copy of each
23 policy, plan, or guideline in effect. Each regional water
24 quality control board shall maintain at its headquarters a
25 current copy of each policy, plan, or guideline in effect in
26 its respective region. Any revision of a policy, plan, or
27 guideline shall be made available for inspection by the
28 public within 30 days of its effective date.

29 SEC. 38. Section 11356 of the Government Code is
30 amended to read:

31 11356. (a) Article 6 (commencing with Section
32 11349) is not applicable to a building standard.

33 (b) Article 5 (commencing with Section 11346) is
34 applicable to those building standards, except that the
35 office shall not disapprove those building standards nor
36 refuse to publish any notice of proposed building
37 standards if either has been approved by, and submitted
38 to, the office by the California Building Standards
39 Commission pursuant to Section 18935 of the Health and
40 Safety Code.



1 SEC. 39. Section 27491.41 of the Government Code is
2 amended to read:

3 27491.41. (a) For purposes of this section, “sudden
4 infant death syndrome” means the sudden death of any
5 infant that is unexpected by the history of the infant and
6 where a thorough postmortem examination fails to
7 demonstrate an adequate cause of death.

8 (b) The Legislature finds and declares that sudden
9 infant death syndrome (SIDS) is the leading cause of
10 death for children under age one, striking one out of
11 every 500 children. The Legislature finds and declares
12 that sudden infant death syndrome is a serious problem
13 within the State of California, and that public interest is
14 served by research and study of sudden infant death
15 syndrome, and its potential causes and indications.

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

20 (2) However, if the attending physician desires to
21 certify that the cause of death is sudden infant death
22 syndrome, an autopsy may be performed at the discretion
23 of the coroner. If the coroner performs an autopsy
24 pursuant to this section, he or she shall also certify the
25 cause of death.

26 (d) The autopsy shall be conducted pursuant to a
27 standardized protocol developed by the State
28 Department of Health Services. The protocol is exempt
29 from the procedural requirements pertaining to the
30 adoption of administrative rules and regulations pursuant
31 to Article 5 (commencing with Section 11346) of Chapter
32 3.5 of Part 1 of Division 3 of Title 2 of the Government
33 Code. The protocol shall be developed and approved by
34 July 1, 1990.

35 (e) The protocol shall be followed by all coroners
36 throughout the state when conducting the autopsies
37 required by this section. The coroner shall state on the
38 certificate of death that sudden infant death syndrome
39 was the cause of death when the coroner’s findings are
40 consistent with the definition of sudden infant death



1 syndrome specified in the standardized autopsy protocol.
2 The protocol may include requirements and standards for
3 scene investigations, requirements for specific data,
4 criteria for ascertaining cause of death based on the
5 autopsy, and criteria for any specific tissue sampling, and
6 any other requirements. The protocol may also require
7 that specific tissue samples must be provided to a central
8 tissue repository designated by the State Department of
9 Health Services.

10 (f) The State Department of Health Services shall
11 establish procedures and protocols for access by
12 researchers to any tissues, or other materials or data
13 authorized by this section. Research may be conducted
14 by any individual with a valid scientific interest and prior
15 approval from the State Committee for the Protection of
16 Human Subjects. The tissue samples, the materials, and
17 all data shall be subject to the confidentiality
18 requirements of Section 103850 of the Health and Safety
19 Code.

20 (g) The coroner may take tissue samples for research
21 purposes from infants who have died suddenly and
22 unexpectedly without consent of the responsible adult if
23 the tissue removal is not likely to result in any visible
24 disfigurement.

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

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

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

32 57004. (a) For purposes of this section, the following
33 terms have the following meanings:

34 (1) "Rule" means either of the following:

35 (A) A regulation, as defined in Section 11342.600 of the
36 Government Code.

37 (B) A policy adopted by the State Water Resources
38 Control Board pursuant to the Porter-Cologne Water
39 Quality Control Act (Division 7 (commencing with
40 Section 13000) of the Water Code) that has the effect of



1 a regulation and that is adopted in order to implement or
2 make effective a statute.

3 (2) “Scientific basis” and “scientific portions” mean
4 those foundations of a rule that are premised upon, or
5 derived from, empirical data or other scientific findings,
6 conclusions, or assumptions establishing a regulatory
7 level, standard, or other requirement for the protection
8 of public health or the environment.

9 (b) The agency, or a board, department, or office
10 within the agency, shall enter into an agreement with the
11 National Academy of Sciences, the University of
12 California, the California State University, or any similar
13 scientific institution of higher learning, any combination
14 of those entities, or with a scientist or group of scientists
15 of comparable stature and qualifications that is
16 recommended by the President of the University of
17 California, to conduct an external scientific peer review
18 of the scientific basis for any rule proposed for adoption
19 by any board, department, or office within the agency.
20 The scientific basis or scientific portion of a rule adopted
21 pursuant to Chapter 6.6 (commencing with Section
22 25249.5) of Division 20 or Chapter 3.5 (commencing with
23 Section 39650) of Division 26 shall be deemed to have
24 complied with this section if it complies with the peer
25 review processes established pursuant to these statutes.

26 (c) No person may serve as an external scientific peer
27 reviewer for the scientific portion of a rule if that person
28 participated in the development of the scientific basis or
29 scientific portion of the rule.

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

33 (1) The board, department, or office submits the
34 scientific portions of the proposed rule, along with a
35 statement of the scientific findings, conclusions, and
36 assumptions on which the scientific portions of the
37 proposed rule are based and the supporting scientific
38 data, studies, and other appropriate materials, to the
39 external scientific peer review entity for its evaluation.



1 (2) The external scientific peer review entity, within
2 the timeframe agreed upon by the board, department, or
3 office and the external scientific peer review entity,
4 prepares a written report that contains an evaluation of
5 the scientific basis of the proposed rule. If the external
6 scientific peer review entity finds that the board,
7 department, or office has failed to demonstrate that the
8 scientific portion of the proposed rule is based upon sound
9 scientific knowledge, methods, and practices, the report
10 shall state that finding, and the reasons explaining the
11 finding, within the agreed-upon timeframe. The board,
12 department, or office may accept the finding of the
13 external scientific peer review entity, in whole, or in part,
14 and may revise the scientific portions of the proposed rule
15 accordingly. If the board, department, or office disagrees
16 with any aspect of the finding of the external scientific
17 peer review entity, it shall explain, and include as part of
18 the rulemaking record, its basis for arriving at such a
19 determination in the adoption of the final rule, including
20 the reasons why it has determined that the scientific
21 portions of the proposed rule are based on sound scientific
22 knowledge, methods, and practices.

23 (e) The requirements of this section do not apply to
24 any emergency regulation adopted pursuant to
25 subdivision (b) of Section 11346.1 of the Government
26 Code.

27 (f) Nothing in this section shall be interpreted to, in
28 any way, limit the authority of a board, department, or
29 office within the agency to adopt a rule pursuant to the
30 requirements of the statute that authorizes or requires
31 the adoption of the rule.

32 SEC. 41. Section 5058 of the Penal Code is amended
33 to read:

34 5058. (a) The director may prescribe and amend
35 rules and regulations for the administration of the prisons
36 and for the administration of the parole of persons
37 sentenced under Section 1170 except those persons who
38 meet the criteria set forth in Section 2962. The rules and
39 regulations shall be promulgated and filed pursuant to
40 Chapter 3.5 (commencing with Section 11340) of Part 1



1 of Division 3 of Title 2 of the Government Code, except
2 as otherwise provided in this section. All rules and
3 regulations shall, to the extent practical, be stated in
4 language that is easily understood by the general public.

5 For any rule or regulation filed as regular rulemaking
6 as defined in paragraph (5) of subdivision (a) of Section
7 1 of Title 1 of the California Code of Regulations, copies
8 of the rule or regulation shall be posted in conspicuous
9 places throughout each institution and shall be mailed to
10 all persons or organizations who request them no less than
11 20 days prior to its effective date.

12 (b) The director shall maintain, publish and make
13 available to the general public, a compendium of the rules
14 and regulations promulgated by the director or director's
15 designee pursuant to this section.

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

18 (1) Rules issued by the director or by the director's
19 designee applying solely to a particular prison or other
20 correctional facility, provided that the following
21 conditions are met:

22 (A) All rules that apply to prisons or other correctional
23 facilities throughout the state are adopted by the director
24 pursuant to Chapter 3.5 (commencing with Section
25 11340) of Part 1 of Division 3 of Title 2 of the Government
26 Code.

27 (B) All rules except those that are excluded from
28 disclosure to the public pursuant to subdivision (f) of
29 Section 6254 of the Government Code are made available
30 to all inmates confined in the particular prison or other
31 correctional facility to which the rules apply and to all
32 members of the general public.

33 (2) Short-term criteria for the placement of inmates in
34 a new prison or other correctional facility, or subunit
35 thereof, during its first six months of operation, or in a
36 prison or other correctional facility, or subunit thereof,
37 planned for closing during its last six months of operation,
38 provided that the criteria are made available to the public
39 and that an estimate of fiscal impact is completed



1 pursuant to Section 6055, and following, of the State
2 Administrative Manual dated July 1986.

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

7 (d) The following regulations are exempt from
8 Chapter 3.5 (commencing with Section 11340) of Part 1
9 of Division 3 of Title 2 of the Government Code under the
10 conditions specified:

11 (1) Regulations adopted by the director or the
12 director's designee applying to any legislatively
13 mandated or authorized pilot program or a
14 departmentally authorized pilot program, provided that
15 an estimate of fiscal impact is completed pursuant to
16 Section 6055, and following, of the State Administrative
17 Manual dated July 1986, and that the following conditions
18 are met:

19 (A) A pilot program affecting male inmates only shall
20 affect no more than 10 percent of the total state male
21 inmate population; a pilot program affecting female
22 inmates only shall affect no more than 10 percent of the
23 total state female inmate population; and a pilot program
24 affecting male and female inmates shall affect no more
25 than 10 percent of the total state inmate population.

26 (B) The director certifies in writing that the
27 regulations apply to a pilot program that qualifies for
28 exemption under this subdivision.

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

34 The regulations shall become effective immediately
35 upon filing with the Secretary of State and shall lapse by
36 operation of law two years after the date of the director's
37 certification unless formally adopted by the director
38 pursuant to Chapter 3.5 (commencing with Section
39 11340) of Part 1 of Division 3 of Title 2 of the Government
40 Code.



1 (2) Action or actions, or policies implementing them,
2 taken by the department and based upon a
3 determination of imminent danger by the director or the
4 director's designee that there is a compelling need for
5 immediate action, and that unless that action is taken,
6 serious injury, illness, or death is likely to result. The
7 action or actions, or policies implementing them, may be
8 taken provided that the following conditions shall
9 subsequently be met:

10 (A) A written determination of imminent danger shall
11 be issued describing the compelling need and why the
12 specific action or actions must be taken to address the
13 compelling need.

14 (B) The written determination of imminent danger
15 shall be mailed within 10 working days to every person
16 who has filed a request for notice of regulatory actions
17 with the department and to the Chief Clerk of the
18 Assembly and the Secretary of the Senate for referral to
19 the appropriate policy committees.

20 Any policy in effect pursuant to a determination of
21 imminent danger shall lapse by operation of law 15
22 calendar days after the date of the written determination
23 of imminent danger unless an emergency regulation is
24 filed with the Office of Administrative Law pursuant to
25 subdivision (e). This section shall in no way exempt the
26 department from compliance with other provisions of
27 law related to fiscal matters of the state.

28 (e) Emergency regulations shall be adopted pursuant
29 to Chapter 3.5 (commencing with Section 11340) of Part
30 1 of Division 3 of Title 2 of the Government Code, except
31 that:

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

35 (2) No showing of emergency is necessary in order to
36 adopt emergency regulations other than a written
37 statement by the director or the director's designee, to be
38 filed with the Office of Administrative Law, certifying
39 that operational needs of the department require
40 adoption of the regulations on an emergency basis.



1 (3) This subdivision shall apply only to the adoption
2 and one reoption of any emergency regulation.

3 It is the intent of the Legislature, in authorizing the
4 deviations in this subdivision from the requirements and
5 procedures of Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government
7 Code, to authorize the department to expedite the
8 exercise of its power to implement regulations as its
9 unique operational circumstances require.

10 SEC. 42. Section 25620.2 of the Public Resources Code
11 is amended to read:

12 25620.2. (a) The commission shall administer the
13 program in a manner that is consistent with the purposes
14 of Chapter 854 of the Statutes of 1996, and shall ensure
15 that the program meets all of the following criteria:

16 (1) Demonstrates a balance of benefits to all sectors
17 that contribute to the funding under Section 381 of the
18 Public Utilities Code.

19 (2) Addresses key technical and scientific barriers.

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

22 (4) Ensures that research currently, previously, or
23 about to be undertaken by research organizations is not
24 unnecessarily duplicated.

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

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

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

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



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

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

8 (A) A clear overview explaining the proposed
9 regulation.

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

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

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

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

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

24 (5) Place all written comments in a record that
25 includes copies of any written factual support used in
26 developing the proposed regulation, including written
27 reports and copies of any transcripts or minutes in
28 connection with any public hearings on the adoption of
29 the regulation. The record shall be open to public
30 inspection and available to the courts.

31 (6) Provide public notice of any substantial revision of
32 the proposed regulation at least 15 days prior to the
33 expiration of the deadline for public comments and
34 comment period using the procedures provided in
35 paragraph (2).

36 (7) Conduct public hearings, if a hearing is requested
37 by an interested party, that shall be conducted in
38 accordance with the procedures set forth in Section
39 11346.8 of the Government Code.



1 (8) Adopt any proposed regulation at a regularly
2 scheduled and noticed meeting of the commission. The
3 regulation shall become effective immediately unless
4 otherwise provided by the commission.

5 (9) Publish any adopted regulation in a manner that
6 makes copies of the regulation easily available to the
7 public. Any adopted regulation shall also be made
8 available on the Internet. The commission shall transmit
9 a copy of an adopted regulation to the Office of
10 Administrative Law for publication, or, if the commission
11 determines that printing the regulation is impractical, an
12 appropriate reference as to where a copy of the
13 regulation may be obtained.

14 (10) Notwithstanding any other provision of law, this
15 subdivision provides an interim exception from the
16 requirements of Chapter 3.5 (commencing with Section
17 11340) of Part 1 of Division 3 of Title 2 of the Government
18 Code for regulations required to implement Sections
19 25621 and 25622 that are adopted under the procedures
20 specified in this subdivision.

21 (11) This subdivision shall become inoperative on
22 January 1, 2000, unless a later enacted statute deletes or
23 extends that date. However, after January 1, 2000, the
24 commission shall not be required to repeat any
25 procedural step in adopting a regulation that has been
26 completed before January 1, 2000, using the procedures
27 specified in this subdivision.

28 SEC. 43. Section 11462.4 of the Welfare and
29 Institutions Code is amended to read:

30 11462.4. Notwithstanding Section 11342.610 of the
31 Government Code, group homes and foster family
32 agencies shall be deemed small businesses and the
33 department shall project the impact on group homes and
34 foster family agencies of any new regulations which will
35 affect those community care facilities.

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