

TEXT OF COMMENTS TO SECTIONS AFFECTED BY
2000 COMMISSION RECOMMENDATIONS

CLRC Staff Note. This document sets out the text of Official Comments to all Commission-sponsored bills enacted in the 2000 legislative session — 2000 Cal. Stat. chs. 17, 167, 688, 808, 890, 948, and 1060. The source for each Comment is given in the accompanying Table of “Sections Affected by 2000 Commission Legislation.”

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CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 683.130 (amended). Time for filing application for renewal of judgment

Comment. Subdivision (c) of Section 683.130 is deleted as unnecessary because it duplicates rules in the Family Code. See Fam. Code § 4502. This is not a substantive change. The exemption from renewal requirements for support orders in subdivision (c)(1) is unnecessary because Section 683.310 makes clear that this chapter does not apply to judgments or orders made or entered under the Family Code. Reimbursement for child support under Family Code Section 17402 is treated in the same fashion, as provided in Family Code Section 4502(a). The second sentence of subdivision (c)(1) is misplaced in this section pertaining to the time for filing an application for renewal. The period of enforceability of support orders is governed by Family Code Section 4502(a). The optional renewal procedure in Family Code Section 4502(b) continues the substance of subdivision (c)(2) of this section. See also Fam. Code § 290 (methods of enforcement).

Code Civ. Proc. § 683.310 (amended). Judgments under Family Code

Comment. Section 683.310 is amended to accommodate other exceptions in the Family Code concerning enforcement of judgments and the likelihood of future revisions in the Family Code. This is a technical, nonsubstantive change. Family Code Section 4502 provides an important exception, making the ministerial renewal scheme under the Enforcement of Judgments Law available as an option for support judgments. Moreover, Family Code Section 291 makes this chapter applicable to enforceability and renewal of judgments for possession or sale entered under the Family Code.

Code Civ. Proc. § 699.510 (amended). Issuance of writ of execution

Comment. The references to specific Family Code sections in subdivision (b) of Section 699.510 are deleted as unnecessary. If the court has made an order under Family Code Section 290 that affects the right to enforce support obligations by writ of execution, the order would have to be complied with. The reference to former Section 291 is obsolete; the new Section 291 does not apply to money judgments, and so is outside the scope of this section. References to Family Code Sections 2026 (reconciliation as amelioration of contempt) and 3556 (duty of support unaffected by failure or refusal of custody or visitation) are not relevant to issuance of a writ of execution under this section. The reference to Family Code Section 5100 *et seq.* is no longer relevant because the time limits on enforceability by writ have been removed from those sections. See former Fam. Code §§ 5100-5101, as amended by 1993 Cal. Stat. ch. 876, §§ 21-22. The general reference to compliance with any additional rules in the Family Code is retained to draw attention to the possibility that special rules may exist or may be enacted in the future.

The references to Family Code Sections 2026 (reconciliation of parties to be considered as ameliorating factor in considering contempt of existing order) and 3556 (duty of support not affected by failure or refusal of custodial parent to implement custody or visitation rights of noncustodial parent) are unrelated to the purpose of this section. Issuance of a writ of execution to enforce a money judgment does not have anything to do with enforcement by contempt. Use of the contempt power to enforce payment of support is distinct from enforcement by a writ of execution. Reference to Section 3556 seems irrelevant since that section provides that there is no excuse. The original intent of subdivision (b) was to recognize the court's authority to control enforcement by writ for amounts that were more than 10 years overdue, including the diligence rule in what became Family Code Section 291.

While the general authority of the court under Family Code Section 290 still exists, there are no limitations on writ issuance stated in the listed sections. Family Code Section 5100 provides that a writ may be used without prior court approval.

Code Civ. Proc. § 871.3 (amended). Good faith improver

Comment. Section 871.3 is amended to clarify the jurisdictional classification of a good faith improver claim. This is declarative of existing law.

If a good faith improver claim is asserted by way of complaint, the case is an unlimited civil case regardless of the amount in controversy. This treatment is consistent with the equitable nature of such a claim. See *Southern Pac. Transp. Co. v. Superior Court*, 58 Cal. App. 3d 433, 129 Cal. Rptr. 912 (1976) (no right to jury trial under good faith improver statute); *Okuda v. Superior Court*, 144 Cal. App. 3d 135, 139-41, 192 Cal. Rptr. 388 (1983) (court has “broad equitable jurisdiction” under good faith improver statute). If a defendant in the case cross-complains for relief under this chapter, the case remains an unlimited civil case.

If, however, a good faith improver claim is asserted by way of cross-complaint, and the complaint does not include a good faith improver claim, the proper treatment depends on whether the cross-complaint is defensive and whether the case satisfies the amount in controversy and other requirements for a limited civil case. A case may be transferred from municipal court to superior court if it includes a good faith improver cross-complaint that is not defensive. See Section 396 (court without jurisdiction); see also Cal. Const. art. VI, § 10 (original jurisdiction of trial courts); Sections 85 (limited civil cases) & 85.1 (original jurisdiction in limited civil case) & Comments. Likewise, a limited civil case in a unified superior court may be reclassified if it includes a good faith improver cross-complaint that is not defensive. See Section 403.030 (reclassification of limited civil case by cross-complaint); see also Section 403.040 (motion for reclassification). For guidance on whether a cross-complaint is defensive, see *Jacobson v. Superior Court*, 5 Cal. 2d 170, 173, 53 P.2d 756 (1936) (in an action on an insurance policy, cross-complaint seeking cancellation of the policy merely showed plaintiff was in default and not entitled to recover); 2 B. Witkin, *California Procedure Courts* § 255, at 330 (4th ed. 1996); see also Section 86(b)(2). For authority to sever a cross-complaint, see Section 1048.

See Section 88 (unlimited civil case). See also Section 32.5 (jurisdictional classification).

EVIDENCE CODE

Evid. Code § 822 (amended). Matter inadmissible as evidence

Comment. Subdivision (a)(1) of Section 822 is amended to delete the special exception relating to property appropriated to public use, in reliance on general evidentiary principles. See, e.g., Section 823 (“Notwithstanding any other provision of this article, the value of property for which there is no relevant, comparable market may be determined by any method of valuation that is just and equitable.”); see also Code Civ. Proc. § 1263.320(b) (fair market value). Thus, evidence of an acquisition that is otherwise inadmissible under subdivision (a)(1) may, in an appropriate case, be admissible under Section 823 if a private market is lacking, e.g., the acquisition involves a special purpose property such as a school, church, cemetery, park, utility corridor, or similar property.

The new exception added to subdivision (a)(1) is intended to apply in an eminent domain or inverse condemnation proceeding that relates to a public agency’s acquisition or taking of all or any part of a water system owned by a water company.

Subdivision (c) is deleted as obsolete.

FAMILY CODE

Fam. Code § 113 (added). Property

Comment. Section 113 is a new provision added for drafting convenience. It is the same as Code of Civil Procedure Section 680.310. The context of a particular section may require that a word or phrase in that section be given a meaning different from the definition in this section. See

Section 50. Special definitions used for a particular portion of this code would override the general definition in this section. *Id.*

Fam. Code § 290 (amended). Methods and time of enforcement

Comment. Section 290 provides the general rule on enforcement of judgments under the Family Code. The introductory clause is added to recognize the exception in Section 291, which makes the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law applicable to judgments for the possession or sale of property under the Family Code. Thus, for example, a judgment for sale would be unenforceable if it is not renewed within the 10-year period of Code of Civil Procedure Section 683.020. However, an action on the judgment may still be possible subject to the statute of limitations in Code of Civil Procedure Section 337.5. See Code Civ. Proc. § 683.020 & Comment. This amendment does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502, 5100 *et seq.*

Fam. Code § 291 (repealed). Effect of lack of diligence in seeking enforcement

Comment. Section 291 is repealed because it is surplus. There is no longer any limitation on the period of enforceability of support. See Section 4502(a) (exception to general renewal requirement). The incorporated time limitations formerly in Section 5100 *et seq.* were removed in 1993. See 1993 Cal. Stat. ch. 876, §§ 21-22. The repeal of this section is not intended to affect the court's authority to make appropriate orders in the exercise of its discretion under Section 290 (methods of enforcement) nor to affect any other equitable powers the court may have. See, e.g., *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 259-62, 69 Cal. Rptr. 2d 120, 124-26 (1997) (doctrine of laches available, even though diligence under Section 291 no longer applicable to spousal support enforcement following elimination of 10-year rule in Section 5101).

Fam. Code § 291 (added). Time of enforcement of judgment for possession or sale

Comment. Section 291 applies the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the possession or sale of property under the Family Code. This provision does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502 (period of support enforceability not limited; optional renewal of support judgments), 5100 (enforcement of support by execution without prior court approval).

See also Section 113 ("property" includes real and personal property).

Fam. Code § 4502 (amended). Enforceability of support, optional renewal

Comment. Subdivision (a) of Section 4502 is amended to add clarifying language concerning the scope of the enforceability rule from former subdivision (c)(1) of Code of Civil Procedure Section 683.130. The erroneous reference to former Welfare and Institutions Code Section 11350 (repealed by 1999 Cal. Stat. ch. 478, § 8) has also been corrected. The substance of the second sentence is combined with the first sentence for clarity and to avoid needing to repeat the scope of the rule.

Subdivision (b) is added to Section 4502 to continue the substance of the optional renewal procedure formerly in Code of Civil Procedure Section 683.130(c)(2). As the introductory clause of subdivision (b) makes clear, the ministerial renewal procedure is optional. The availability of renewal is intended to provide a simple and orderly manner for obtaining a currently accurate statement of the amount owing, taking into account past payments, unpaid accruals, and costs and interest added to the judgment. The option of renewing pursuant to the general procedure in the Code of Civil Procedure has no effect on the enforceability of the amount due, as is clear from subdivision (a). The limitation on the frequency of optional renewals in subdivision (b)(2) is consistent with the policy of Code of Civil Procedure Section 683.110(b) and is intended to limit

the opportunity to compound interest on the principal amount owing. See Code Civ. Proc. § 683.110(b) Comment.

See also Code Civ. Proc. § 683.310 (except as provided in Family Code, Code of Civil Procedure provisions on enforceability and renewal of judgments are inapplicable to judgment made or entered under Family Code); Fam. Code § 291 (enforceability and renewal of judgments for possession or sale).

Fam. Code § 5100 (amended). Enforcement of child, family, or spousal support without prior court approval

Comment. Section 5100 is amended to change the introductory “notwithstanding” clause to refer to Section 290 instead of Section 291. Section 290 provides the general rule concerning judicial discretion in enforcing judgments under the Family Code to which this section is an exception. Additionally, former Section 291 has been repealed and replaced by a new Section 291 that is not relevant to this section.

The scope of this section has been expanded to cover enforcement of spousal support, formerly governed by Section 5101. This is not a substantive change. Separate treatment of spousal support became unnecessary when the rules governing support enforcement were unified. See Sections 290, 290, 4502.

The erroneous reference to former Welfare and Institutions Code Section 11350.7 (repealed by 1999 Cal. Stat. ch. 478, § 15) has been corrected.

Fam. Code § 5101 (repealed). Enforcement of spousal support without prior court approval

Comment. The substance of former Section 5101 is continued in Section 5100 (enforcement of child, family, or spousal support without prior court approval). Separate treatment of spousal support became unnecessary when the rules governing support enforcement were unified. See Sections 290, 4502, 5100.

Fam. Code § 5102 (repealed). Period for enforcement of installment payments

Comment. Section 5102 is repealed because it is surplus. There is no longer any limitation on the period of enforceability of support. See Section 4502(a).

FINANCIAL CODE

Fin. Code § 3373 (amended). Changes to federal regulations

Comment. Section 3373 is amended to provide a rule governing the effective date of regulations adopted under subdivision (a). This rule is consistent with the rule that applied before regulations adopted under this section were exempted from Government Code Section 11343.4.

FISH AND GAME CODE

Fish & Game Code § 2357 (repealed). Trout affidavit

Comment. Section 2357 is repealed because it is unused and contrary to common expectations, and because a notary is not a proper repository of an affidavit. See Gov’t Code § 8205 (duties of notary public).

GOVERNMENT CODE

Gov't Code § 8546 (amended). Legislative intent regarding Bureau of State Audits

Comment. Section 8546 is amended to correct the reference to former Section 11342, which has been continued without substantive change in Article 2 (commencing with Section 11342.510) of Chapter 3.5 of Part 1 of Division 3 and in Section 11340.9(b)-(d).

Gov't Code § 11340.5 (amended). Use of regulations

Comment. Section 11340.5 is amended to correct references to the definition of “regulation” in former Section 11342(g), which is continued in Section 11342.600. Amendment of this section is not intended to ratify or abrogate the opinion in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 927 P.2d 296, 59 Cal. Rptr. 2d 186 (1996).

Gov't Code § 11340.85 (added). Electronic communication

Comment. Section 11340.85 is new. Subdivision (b) authorizes the use of electronic communications in adopting a regulation under this chapter.

Subdivision (c) requires electronic publication of certain rulemaking documents by an agency that maintains a website or similar electronic communication forum. Provisions requiring a “public notice” as defined in paragraph (1) include Sections 11346.4 (notice of proposed action), 11346.8(a) (notice of hearing), and 11346.8(b) (notice of continuance or postponement of hearing), and Section 44 of Title 1 of the California Code of Regulations (notice of changes to proposed regulation).

Use of electronic communications pursuant to this section supplements other required forms of publication or distribution. See subdivisions (b)(2) & (d). See also Section 11342(b) (“office” means Office of Administrative Law).

Gov't Code § 11340.9 (added). Exceptions

Comment. Section 11340.9 is new. It collects various exemptions from the requirements of this chapter.

Subdivision (a) continues former Section 11342(a) without substantive change.

Subdivisions (b)-(d) continue provisions of former Section 11342(g) without substantive change.

Subdivision (e) establishes a new exception for agency rules that should not be disclosed to the public. It is drawn from 1981 Model State APA § 3-116(2). Note that “examination” includes both an inspection and a test administered to determine a person’s knowledge or ability. See, e.g., Corp. Code § 25217 (passage of examination administered by Department of Corporations may be required for licensing of securities agent); Fin. Code § 17405 (Department of Corporations may examine business, accounts, and records of escrow agent). Subdivision (e) is intended to create an exception for data that relates to an examination only where disclosure of that data would give a clearly improper advantage to a person taking the examination.

Subdivision (f) establishes a new exception for an agency rule embodying the only legally tenable interpretation of a provision of law. This principle has been recognized by the courts. See, e.g., *Engelmann v. State Bd. of Educ.*, 2 Cal. App. 4th 47, 62, 3 Cal. Rptr. 2d 264, 274-75 (1991) (statement of policy or procedure that simply reiterates statutory law, without departing from or embellishing it, need not be adopted as regulation). Cf. *Grier v. Kizer*, 219 Cal. App. 3d 422, 438-39, 268 Cal. Rptr. 244, 255 (1990) (agency policy was not “only legally tenable interpretation” of law and should have been adopted as regulation). The rule is also consistent with the current practice of the Office of Administrative Law. See, e.g., 1988 OAL Determination No. 10, Cal. Regulatory Notice Reg. 88, No. 28-Z, July 8, 1988, p. 2313 (agency rule reflecting only legally tenable interpretation of statute was not regulation). Cf. 1989 OAL Determination No. 15, Cal. Regulatory Notice Reg. 89, No. 44-Z, Nov. 3 1989, p. 3122 (law interpreted by agency regulation

was subject to more than one legally tenable interpretation). The addition of this exception does not expand the definition of “regulation.” See Section 11342.600 (“regulation” defined). For a similar exception, see Section 18212(a).

Subdivisions (g)-(i) continue without substantive change former Section 11343(a)(1)-(3) and part of the former first sentence of Section 11346.1(a) (“This article does not apply to any regulation not required to be filed with the Secretary of State under this chapter....”). Enactment of subdivision (i) is not intended to ratify or abrogate the opinion in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 927 P.2d 296, 59 Cal. Rptr. 2d 186 (1996).

Gov’t Code § 11342 (repealed). Definitions

Comment. Subdivision (a) of former Section 11342 is continued in Section 11340.9(a) (requirements of chapter do not apply to agency in the judicial or legislative branch of state government) without substantive change. See also Sections 11000 (“state agency” defined), 11342.520 (“agency” defined).

Subdivision (b) is continued in Section 11342.550 without change.

Subdivision (c) is continued in Section 11342.560 without change.

Subdivision (d) is continued in Section 11342.570 without change.

Subdivision (e) is continued in Section 11342.580. The definition of “plain English” has been changed so that it refers to the “clarity” standard provided in Section 11349(c) (a regulation must be written or displayed so that its meaning is easily understood by persons directly affected by it).

Subdivision (f) is continued in Section 11342.590 without change.

Subdivision (g) is continued without substantive change in Sections 11340.9(b) (legal ruling of counsel of the Franchise Tax Board or State Board of Equalization exempt from requirements of chapter), 11340.9(c) (state form and instructions for use of form exempt from requirements of chapter), 11340.9(d) (internal management rules exempt from requirements of chapter), 11342.600 (“regulation” defined).

Subdivision (h) is continued in Section 11342.610 without substantive change.

Gov’t Code § 11342.510 (added). Application of definitions

Comment. Section 11342.510 continues the introductory paragraph of former Section 11342 without substantive change.

Gov’t Code § 11342.520 (added). Agency

Comment. Section 11342.520 is new. It clarifies part of the substance of former Section 11342(a). See also Section 11000 (“state agency” defined for purposes of this title).

Gov’t Code § 11342.530 (added). Building standard

Comment. Section 11342.530 is new. It is added for drafting convenience.

Gov’t Code § 11342.540 (added). Director

Comment. Section 11342.540 is new. It is added for drafting convenience.

Gov’t Code § 11342.550 (added). Office

Comment. Section 11342.550 continues former Section 11342(b) without change.

Gov’t Code § 11342.560 (added). Order of repeal

Comment. Section 11342.560 continues former Section 11342(c) without change.

Gov't Code § 11342.570 (added). Performance standard

Comment. Section 11342.570 continues former Section 11342(d) without change.

Gov't Code § 11342.580 (added). Plain English

Comment. Section 11342.580 is drawn from former Section 11342(e). This section differs from former Section 11342(e) in that it refers to the “clarity” standard provided in Section 11349(c) (regulations must be written or displayed so that their meaning will be easily understood by persons directly affected by them). Plain English requirements may be found in Sections 11346.2 and 11346.5.

Gov't Code § 11342.590 (added). Prescriptive standard

Comment. Section 11342.590 continues former Section 11342(f) without change.

Gov't Code § 11342.600 (added). Regulation

Comment. Section 11342.600 continues part of former Section 11342(g) without substantive change. The parts of former Section 11342(g) that are not continued in this section are continued without substantive change in Section 11340.9(b)-(d).

Gov't Code § 11342.610 (added). Small business

Comment. Section 11342.610 continues former Section 11342(h) without substantive change.

Gov't Code § 11343 (amended). Transmittal of certified copies of regulations

Comment. Section 11343 is amended to make technical improvements. Former subdivision (a)(1)-(3) is continued without substantive change in Section 11340.9(g)-(i).

Subdivision (e) is amended to reflect the change in the name of the California Building Standards Commission. See also Section 11342.530 (“building standard” defined).

Gov't Code § 11343.4 (amended). Effective date of regulation

Comment. Subdivision (a) of Section 11343.4 is amended to eliminate an ambiguity. Former subdivision (b) is deleted as redundant. See Fin. Code §§ 3373(b)(3) (effective date of regulation adopted pursuant to that section), 8054(c) (regulation adopted pursuant to that section subject to Gov't Code § 11346.1); Gov't Code § 11346.1(d) (effective date of regulation adopted pursuant to that section).

Gov't Code § 11343.5 (amended). Filing of regulatory code or supplement

Comment. Section 11343.5 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Gov't Code § 11344 (amended). Code of Regulations

Comment. Section 11344 is amended to change the name of the California Regulatory Code Supplement to conform to the name of the California Code of Regulations, which it supplements.

Gov't Code § 11344.1 (amended). California Regulatory Notice Register

Comment. Subdivision (a)(3) of Section 11344.1 is amended to ratify the existing practice of publishing detailed summaries of regulation decisions, rather than the decisions themselves. The complete decisions are public documents and can be obtained from the Office of Administrative Law.

Subdivision (a)(4) is amended to improve its clarity. This change is technical and is not intended to affect the meaning of the section.

This section also contains language from 2000 Cal. Stat. ch. 1059, § 7, which was chaptered out by the bill amending this section. See 2000 Cal. Stat. ch. 1060, §§ 14.5 & 44.

Gov't Code § 11344.2 (amended). Supplying sets to county clerks or delegated persons

Comment. Section 11344.2 is amended to reflect existing practice and to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Gov't Code § 11344.4 (amended). Sale of publications

Comment. Section 11344.4 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Gov't Code § 11344.6 (amended). Presumption from publication in Code or Supplement

Comment. Section 11344.6 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Gov't Code § 11344.7 (amended). Purchase of publications

Comment. Section 11344.7 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Gov't Code § 11344.9 (amended). Obsolete references

Comment. Section 11344.9 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Gov't Code § 11346 (amended). Purpose and application

Comment. Subdivision (b) of Section 11346 is added to clarify the legality of an existing agency practice — consultation with interested persons in developing a proposed regulation. For example, an agency that is considering the adoption of a regulation may hold a workshop in which interested persons can share their views on the proposal. Informal communication of this type provides useful information to the agency and may reduce opposition to the proposed regulation from persons who participated in its development.

Gov't Code § 11346.1 (amended). Emergency regulations

Comment. Subdivision (a) of Section 11346.1 is amended to make three technical changes:

(1) The provision establishing an exception to the requirements of this article for “any regulation not required to be filed with the Secretary of State under this chapter” is deleted. The substance of this exception is continued in Section 11340.9(g)-(i). This change also resolves an inconsistency between Section 11356(b), which expressly requires building standards to be adopted under this article, and the deleted language, which exempted building standards from the requirements of this article.

(2) An inconsistency between this section and Financial Code Section 3373 is eliminated.

(3) A redundant reference to Financial Code Section 8054 is eliminated.

Subdivision (c) is amended to use the defined term “building standard,” to correct a grammatical error, and to reflect the change in the name of the California Building Standards Commission. See Section 11342.530 (“building standard” defined).

Subdivision (e) is amended to correct an underinclusive reference.

Subdivision (h) is amended to improve its clarity, without affecting its substance.

Gov't Code § 11346.2 (amended). Notification of Office of Administrative Law

Comment. Subdivision (a)(1) of Section 11346.2 is a specific application of Section 6215(a) (state agency “shall write each document which it produces in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style”). The requirement that a regulation be written in plain English has been expanded to include all regulations and not just those that affect small business. Plain English means language that satisfies the clarity standard expressed in Section 11349. See Section 11342.580 (“plain English” defined). Note that the former provision requiring the preparation of a plain English summary of a proposed regulation affecting small businesses, where the regulation cannot be drafted in plain English, has been broadened to apply to all regulations and continued in Section 11346.5(a)(3)(B). See Sections 11342.580 (“plain English” defined), 11349(c) (clarity standard).

Former subdivision (b)(1) (description of problem addressed) is deleted as unnecessary; the same information is required by former subdivision (b)(2) (statement of purpose for proposed action).

Former subdivision (b)(5) is revised to eliminate the implication that a final finding is required before the agency has received comment on a proposed action.

This section also contains language from 2000 Cal. Stat. ch. 1059, § 9, which was chaptered out by the bill amending this section. See 2000 Cal. Stat. ch. 1060, §§ 22.5 & 44.

Gov't Code § 11346.3 (amended). Potential economic effect

Comment. Subdivision (a) of Section 11346.3 is amended to provide that it applies to the repeal of a regulation as well as the adoption or amendment of a regulation.

Subdivision (b)(2) is amended to recast the definition provision as a substantive limitation. This change is technical and does not affect the meaning of the section. See Sections 11000 (“state agency” defined), 11340.9(a) (requirements of chapter do not apply to agency in judicial or legislative branch).

Gov't Code § 11346.5 (amended). Notice contents

Comment. Subdivision (a)(3)(B) of Section 11346.5 is amended to broaden the plain English policy statement requirement to apply to all proposed actions, and not just those affecting small business. The informative digest is also expanded to include a plain English summary of the regulation. See Sections 11342.580 (“plain English” defined), 11349(c) (clarity standard).

Paragraphs (7)-(8) and former paragraph (11) of subdivision (a) are amended to make clear that final findings are not required before the agency has received comment on a proposed action. Paragraphs (7)-(8) are also amended to provide that those provisions apply to the repeal of a regulation, as well as the adoption, or amendment of a regulation.

Paragraph (11) is added to subdivision (a) to include a finding that it is necessary for the health, safety, or welfare of the people of the state that a regulation requiring a report apply to businesses. This implements Section 11346.3(c).

Paragraphs (18)-(19) are added to subdivision (a) to provide that the notice of proposed action must include statements explaining how to obtain the final statement of reasons and any electronically published documents. See also Sections 11340.85(c) (electronic publication of rulemaking materials),

This section also contains language from 2000 Cal. Stat. ch. 1059, § 13, which was chaptered out by the bill amending this section. See 2000 Cal. Stat. ch. 1060, §§ 24.5 & 44.

Gov't Code § 11346.54 (repealed). Assessment of economic effect

Comment. Former Section 11346.54 has been repealed as redundant. See Sections 11346.3(b) (assessment of economic effect), 11346.5(a)(10) (inclusion of assessment in notice of proposed action).

Gov't Code § 11346.8 (amended). Public hearing

Comment. Subdivision (a) of Section 11346.8 is amended to make clear that oral testimony must be allowed at a public hearing, subject to reasonable time, repetition, or other limitations by the agency.

Subdivision (d) is amended to refer to Section 11347.1, which codifies the existing procedure for providing an additional opportunity for public comment in response to material added to the rulemaking file. See 1 Cal. Code Regs. § 45. Section 11347.1 requires additional public comment on certain material that is added to the rulemaking file after publication of the notice of proposed action. This is a broader requirement than that provided in subdivision (d), which only requires an opportunity for additional comment regarding material that is added to the rulemaking file after the close of the public hearing or comment period. The broader requirement is consistent with existing practice. Subdivision (d) is also amended to exempt material that is required to be added to the rulemaking file after the close of the public hearing or comment period. See Section 11346.9 (final statement of reasons and updated informative digest). However, if the final statement of reasons refers to documents not previously included in the rulemaking file, an opportunity for additional public comment regarding those documents must be provided. See Section 11346.9(a)(1).

This section also contains language from 2000 Cal. Stat. ch. 1059, § 16, which was chaptered out by the bill amending this section. See 2000 Cal. Stat. ch. 1060, §§ 26.5 & 44.

Gov't Code § 11346.9 (amended). Final statement of reasons and updated informative digest

Comment. Subdivision (a)(1) of Section 11346.9 is amended to refer to Section 11347.1, which codifies the existing procedure for providing an additional opportunity for public comment in response to material added to the rulemaking file. See 1 Cal. Code Regs. § 45. Subdivision (a) requires additional public comment on certain material that is added to the rulemaking file after publication of the notice of proposed action. This is a broader requirement than that provided in Section 11346.8(d), which only requires an opportunity for additional comment regarding material that is added to the rulemaking file after the close of the public hearing or comment period. The broader requirement is consistent with existing practice.

Subdivision (a)(1)-(2) is also amended to make clear that those provisions apply to the repeal of a regulation as well as the adoption or amendment of a regulation.

Subdivision (a)(3) is amended to codify the existing practice of grouping repetitive comments and summarily dismissing irrelevant comments for purposes of this section. The Office of Administrative Law may disapprove a proposed regulation if an agency improperly aggregates dissimilar comments or summarily dismisses a relevant comment. See Section 11349.3 (office may disapprove regulation for failure to comply with this chapter).

Subdivision (d) is added to authorize incorporation of a prior statement by reference. This reflects the fact that no purpose is served by requiring an agency to reiterate a statement that was made earlier in the rulemaking process. For example, where an agency determines pursuant to Section 11346.5(a)(6) that a proposed rule would not impose a cost on a local agency or school district and, at the time of preparing the final statement of reasons, determines that its prior determination is correct and complete, the agency may incorporate the statement made pursuant to Section 11346.5(a)(6) in complying with Section 11346.9(a)(2).

Gov't Code § 11347 (added). Notice of decision not to proceed

Comment. Section 11347 is new. The purpose of this section is to require notice where an agency decides to completely abandon a proposed regulatory action. A decision not to proceed with part of a proposed regulatory action, while proceeding with the remainder, would not require notice under this section. See also Section 11342(b) ("office" means Office of Administrative Law).

Gov't Code § 11347.1 (added). Documents added to rulemaking file

Comment. Section 11347.1 is drawn from 1 Cal. Code Regs. § 45. It codifies the existing procedure for providing an additional opportunity for public comment in response to material added to the rulemaking file pursuant to Sections 11346.8(d) and 11346.9(a)(1). Section 11347.1 requires additional public comment on certain material that is added to the rulemaking file after publication of the notice of proposed action. This is a broader requirement than that provided in Section 11346.8(d), which only requires an opportunity for additional comment regarding material that is added to the rulemaking file after the close of the public hearing or comment period. The broader requirement is consistent with existing practice. This section does not require an additional opportunity for comment in response to a written public comment that is added to the rulemaking file, unless the public comment includes a technical, theoretical, or empirical study, report, or similar document on which the agency chooses to rely in proposing the rulemaking action.

Gov't Code § 11347.3 (amended). File of rulemaking proceeding

Comment. Subdivision (a) of Section 11347.3 is amended to make clear that the rulemaking file is available to the public throughout the rulemaking process. The amendment is not intended to affect agency practice regarding where the agency makes the record available to the public. If an agency properly limits the locations at which the rulemaking file may be inspected, it may continue to do so.

Subdivision (b)(9) is amended to improve its clarity, without affecting its substance.

Gov't Code § 11349 (amended). Standards

Comment. Subdivision (a) of Section 11349 is amended to clarify the meaning of “necessity,” by placing it in the context of the purpose of the regulation. This is consistent with other provisions that relate to the necessity of a regulation. See Gov't Code §§ 11342.2 (regulation not valid unless “reasonably necessary to effectuate the purpose of statute” authorizing the regulation), 11350 (court may find regulation invalid if agency determination that the regulation “is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation” is not supported by substantial evidence). This is a nonsubstantive change.

Gov't Code § 11349.1 (amended). Review of regulations

Comment. Section 11349.1 is amended (1) to make clear that it requires review of the repeal of a regulation, as well as the adoption or amendment of a regulation, and (2) to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Gov't Code § 11349.2 (added). Adding to rulemaking file during review

Comment. Section 11349.2 is new. It allows an agency to add inadvertently omitted material to a rulemaking file that has been submitted for review by the Office of Administrative Law. See Sections 11346.8(d) (limitation on addition of material to rulemaking file after close of public comment), 11346.9(a)(1) (limitation on use of new data in final statement of reasons), 11347.1 (procedure for additional public comment on material added to rulemaking file).

Gov't Code § 11349.6 (amended). Emergency regulations

Comment. Subdivision (a) of Section 11349.6 is amended to correct an underinclusive reference.

Subdivision (d) is amended to conform the period for review of an emergency regulation under that subdivision to the period for review of nonemergency regulations under Section 11343.3.

Gov't Code § 11350 (amended). Judicial review of validity of regulation

Comment. Section 11350 is amended to provide for judicial review of an order of repeal, as well as a regulation. This is consistent with the provision authorizing review of an emergency order of repeal.

Subdivision (a) is also amended to eliminate an ambiguity regarding the statement an agency prepares on proposing an emergency regulation. This change is technical and is not intended to affect the meaning of the section.

Subdivision (d) is added to correct inadequacies in the former provision limiting the record of review to the rulemaking file. Subdivision (d)(1) restates part of the substance of the former second paragraph of Section 11350(b)(2), limiting the record of review to the rulemaking file prepared under Section 11347.3. Subdivision (d)(2) permits consideration of an agency statement prepared under Section 11346.1(b) (justifying emergency regulation). Such a statement is not part of a rulemaking file prepared under Section 11347.3. See Section 11346.1(a). Subdivision (d)(3) permits consideration of a document that should have been included in the rulemaking file but was not, in order to prove its omission. Such evidence may be necessary to prove a substantial failure to follow required procedures. For example, an agency's failure to include a public comment in the rulemaking file may constitute a substantial failure to follow required procedures. See Section 11347.3(b)(6) (written public comments must be included in rulemaking file). Proof of such an omission requires consideration of the omitted item. Subdivision (d)(4) permits consideration of any relevant evidence for the purpose of determining whether a regulation used by an agency is required to be adopted under this chapter — i.e., whether it is an invalid "underground regulation." See Section 11340.5 (issuance or use of regulation that has not been adopted is prohibited). Note that evidence offered to prove that an agency has used a regulation that is required to be adopted under the rulemaking procedure will typically be documentary evidence, but a court may consider oral testimony in appropriate circumstances (e.g., to judge the credibility of an affiant or declarant).

Gov't Code § 11350.3 (amended). Review of regulation disapproved by Office of Administrative Law

Comment. Section 11350.3 is amended to provide for judicial review of an order of repeal that is disapproved by the Office of Administrative Law.

Gov't Code § 11353 (amended). State water quality control policies, plans, and guidelines

Comment. Subdivision (b)(2)(B) of Section 11353 is amended to require that amendments and deletions be clearly indicated in material submitted to the Office of Administrative Law for review. For a similar provision, see Section 11354.1(d)(2)(B) (underscore and strike-through required to indicate changes in plans of San Francisco Bay Conservation and Development Commission).

Gov't Code § 11356 (amended). Building standards or regulations

Comment. Subdivision (a) of Section 11356 is amended to eliminate the implication that the exemption of building standards from review by the Office of Administrative Law is conditioned on approval of the California Building Standards Commission. Note, however, that building standards are subject to review by the California Building Standards Commission under Health and Safety Code Section 18930. Subdivision (a) is also amended to use the defined term "building standard." See Section 11342.530 ("building standard" defined).

Subdivision (b) is amended to reflect the change in the name of the California Building Standards Commission.

Gov't Code § 27491.41 (technical amendment). Sudden infant death syndrome

Comment. Section 27491.41 is amended to correct an erroneous reference to former Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2.

HEALTH AND SAFETY CODE

Health & Safety Code § 39016.5 (repealed). Bureau

Comment. Section 39016.5 is repealed. The section was subject to an uncodified operation contingency that has not been satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Bd., California Envntl. Protection Agency, California Air Pollution Control Laws 4 (1998). However, the definition of “bureau” provided by the former section is useful — the term is used in this division. In order to clarify the meaning of “bureau,” as used in this division, the substance of former Health and Safety Code Section 39016.5 is continued in the new Section 39016..5.

Health & Safety Code § 39016.5 (added). Bureau

Comment. Section 39016.5 replaces former Section 39016.5 (added by 1994 Cal. Stat. ch. 1192, § 3), which never became operative and is repealed. It continues the substance of former Section 39016.5 without change.

Health & Safety Code § 39510 (amended). Composition of board

Comment. Section 39510 is amended to replace an obsolete reference to Section 41101, which was repealed, with a reference to an equivalent provision in the act that repealed it. See 1994 Cal. Stat. ch. 915, §§ 4 (Section 41101 repealed), 5 (San Joaquin Valley Air Quality Management District created if San Joaquin Valley Unified Air Pollution Control District ceases to exist).

Health & Safety Code § 39512.5 (amended). Reimbursement for expenses

Comment. Section 39512.5 is amended to correct an obsolete reference to former Section 39510(c)(2). In 1993, Section 39510 was amended to eliminate the enumeration of separate paragraphs within subdivision (c). See 1993 Cal. Stat. ch. 1062, § 1. Before that change, Section 39510(c)(2) provided for the appointment of a State Air Resources Board member from a district other than the districts named in Section 39510(c)(1). Pursuant to Section 39512.5(b), the board member representing the district that was not specifically named was to be reimbursed by the state board. That general policy is continued in the amendment to Section 39512.5(b).

Health & Safety Code § 39513 (amended). Meetings

Comment. Section 39513 is amended for gender neutrality and to correct an obsolete reference.

Health & Safety Code § 39515 (amended). Executive officer

Comment. Section 39515 is amended to eliminate obsolete references to former Health and Safety Code Sections 41507, 41602, and 41603, which have been repealed. See 1988 Cal. Stat. ch. 1568, §§ 23 & 24, and the act that amended this section.

Health & Safety Code § 39604 (amended). Report

Comment. Section 39604 is amended to eliminate an obsolete reference to a report required by Section 39909, which was repealed by operation of former Section 39911 on January 1, 1994. See 1988 Cal. Stat. ch. 1518, § 2.

Health & Safety Code § 39671 (amended). Staggered terms

Comment. Section 39671 is amended to eliminate obsolete provisions regarding the staggering of the terms of the panel members.

Health & Safety Code § 39807 (amended). Reduction of subventions equal to federal aid

Comment. Section 39807 is amended to eliminate an obsolete reference to Section 41603, which was repealed. See 1988 Cal. Stat. ch. 1568, § 24.

Health & Safety Code § 40162 (amended). San Joaquin Valley district

Comment. Section 40162 is amended to replace an obsolete reference to Section 41101, which was repealed, with a reference to an equivalent provision in the act that repealed it. See 1994 Cal. Stat. ch. 915, §§ 4 (Section 41101 repealed), 5 (San Joaquin Valley Air Quality Management District created if San Joaquin Valley Unified Air Pollution Control District ceases to exist).

Health & Safety Code § 40416 (repealed). Commencement of district operation

Comment. Section 40416 is repealed as obsolete.

Health & Safety Code § 40450 (amended). Restrictions on county orders, rules or regulations

Comment. Section 40450 is amended to eliminate an obsolete reference to the date after which the authority of a county board of supervisors is limited by the section (February 1, 1977).

Health & Safety Code § 40452 (amended). Report on regulatory activities

Comment. Section 40452 is amended to eliminate obsolete references. The introductory paragraph is amended to eliminate the reference to the date when the annual reporting requirement began (April 1, 1991). Subdivisions (d) and (f) are amended to eliminate references to Section 42311.1, which was repealed by its own terms. See 1993 Cal. Stat. ch. 1028, § 8.

Health & Safety Code § 40454 (amended). Trip reduction plans

Comment. Section 40454 is amended to eliminate an obsolete reference to former Section 40457, which was repealed. See 1996 Cal. Stat. ch. 777, § 1.

Health & Safety Code § 40484 (repealed). District staff

Comment. Section 40484 is repealed as obsolete.

Health & Safety Code § 40500.1 (amended). Stationary source fee limitation

Comment. Section 40500.1 is amended to eliminate an obsolete reference to former Section 42311.1, which was repealed by its own terms. See 1993 Cal. Stat. ch. 1028, § 8.

Health & Safety Code § 40503 (amended). Grant of variance

Comment. Section 40503 is amended to correct an erroneous reference to subdivision (b) of Section 42352.

Health & Safety Code § 40515 (amended). Public utility owned by municipal corporation

Comment. Section 40515 is amended to eliminate an obsolete provision.

Health & Safety Code § 40521 (amended). Limitations on increases

Comment. Section 40521 is amended to eliminate an obsolete limitation applicable to the 1977-78 fiscal year.

Health & Safety Code § 40524 (repealed). Interests in real property

Comment. Section 40524 is repealed as obsolete.

Health & Safety Code § 40709.7 (amended). Military base closure or realignment

Comment. Section 40709.7 is amended to eliminate an obsolete provision. The definition of “base reuse authority” was contingent on enactment of Government Code Section 65050, listing base reuse entities. That section was enacted as specified in the contingency. See 1994 Cal. Stat. ch. 1261, § 6. Consequently, the alternative definition, which would have applied if the contingency had failed, is obsolete.

Health & Safety Code § 40717.5 (amended). Indirect sources

Comment. Section 40717.5 is amended to eliminate an obsolete reference to former Section 40927, which was repealed by its own terms. See 1993 Cal. Stat. ch. 563, § 2.

Health & Safety Code § 40962 (repealed). Commencement of operation

Comment. Section 40962 is repealed as obsolete.

Health & Safety Code § 41212 (repealed). Commencement of operation

Comment. Section 41212 is repealed as obsolete.

Health & Safety Code § 41242 (repealed). Transfer of funds, property, and obligations of former district

Comment. Section 41242 is repealed as obsolete.

Health & Safety Code § 41261 (amended). Transfer of officers and employees from former district

Comment. Section 41261 is amended to eliminate obsolete provisions relating to the succession of the Mojave Desert District to the personnel of the former San Bernardino County Air Pollution Control District.

Health & Safety Code § 41263 (repealed). Employment of personnel of former district

Comment. Section 41263 is repealed as obsolete.

Health & Safety Code § 41500 (amended). Powers and duties

Comment. Section 41500 is amended to delete an erroneous reference to Section 40717.2, which does not exist.

Health & Safety Code § 41500.5 (amended). Environmental management

Comment. Section 41500.5 is amended to correct an erroneous reference to “this title.” The Health and Safety Code does not use titles as an organizational division. The reference has been replaced with a reference to “this division.”

Health & Safety Code § 41507 (repealed). Review of basinwide plan

Comment. Section 41507 is repealed as obsolete. The authority to conduct a review of the type that is the subject of this section was provided in Section 41602, which was repealed. See 1988 Cal. St. ch. 1568, § 23.

Health & Safety Code § 41518 (repealed). Cogeneration technology projects capable of construction before 1987

Comment. Section 41518 is repealed as obsolete.

Health & Safety Code § 41519 (repealed). Resource recovery projects planned or proposed to be constructed before 1987

Comment. Section 41519 is repealed as obsolete.

Health & Safety Code § 41520 (repealed). Preparation of inventories

Comment. Section 41520 is repealed as obsolete.

Health & Safety Code § 41600 (amended). Air quality impact of specified projects

Comment. Section 41600 is amended to eliminate an obsolete provision.

Health & Safety Code § 41704.5 (repealed). Vessels using steam boilers

Comment. Section 41704.5 is repealed as obsolete.

Health & Safety Code § 41865 (amended). Rice straw burning

Comment. Subdivision (i) of Section 41865 is amended to correct an erroneous cross-reference.

Health & Safety Code § 41900 (repealed). Sandblasting standards

Comment. Section 41900 is repealed as obsolete.

Health & Safety Code § 41981 (repealed). Study of emissions

Comment. Section 41981 is repealed as obsolete.

Health & Safety Code § 42301.5 (amended). Compliance schedules

Comment. Section 42301.5 is amended to eliminate obsolete provisions.

Health & Safety Code § 42301.9 (amended). Definitions

Comment. Section 42301.9 is amended to correct an erroneous reference to Section 42301.4, which does not exist.

Health & Safety Code § 42314 (amended). Prohibition of emissions offsets requirement for cogeneration technology projects

Comment. Section 42314 is amended to correct erroneous references to former Section 41604, which was renumbered as Section 41600. See 1998 Cal. Stat. ch. 1568, § 25.

Health & Safety Code § 42314.5 (amended). Organic waste utilization facility permits

Comment. Section 42314.5 is amended to correct an erroneous reference to former Section 41604, which was renumbered as Section 41600. See 1998 Cal. Stat. ch. 1568, § 25.

Health & Safety Code § 42405.1 (amended). Reward for information resulting in penalty

Comment. Subdivision (e) of Section 42405.1 is amended to correct an underinclusive reference.

Health & Safety Code § 57004 (technical amendment). External scientific peer review of proposed rules

Comment. Section 57004 is amended to substitute a reference to the provision that continues the definition of “regulation” in former Government Code Section 11342(g).

PENAL CODE

Penal Code § 5058 (technical amendment). Rulemaking

Comment. Section 5058 is amended to substitute a reference to the provision that continues the definition of “regulation” in former Government Code Section 11342(g) and to correct an erroneous reference in the final paragraph.

PROBATE CODE

Prob. Code § 11603 (amended). Order for distribution

Comment. Section 11603 is amended to add subdivision (c). In cases to which subdivision (c) applies, the personal representative may deposit the property with the county treasurer. Section 11850. For money, no court order is required for the deposit. For other personal property, a court order is required. Section 11851. A person may claim the money or other personal property on deposit in the county treasury by filing a petition with the court. Section 11854.

In a testate estate, the court determines the alternate distributees under the decedent’s will and applicable statutes. If the primary distributee is kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator, the antilapse statute applies (Section 21110), and the alternate distributees are the issue of the missing distributee. In an intestate estate, the court determines the alternate distributees under the laws of intestate succession. See Sections 6400-6414.

In the case of a devise for a charitable purpose without a designated trustee or identified beneficiary, the Attorney General should ensure that there is an appropriate alternate charitable distribution. *Cf.* Prob. Code §§ 8111 (notice to Attorney General of charitable devise), 11703 (Attorney General petition to determine persons entitled to distribution); Gov’t Code §§ 12580-12599.5 (Uniform Supervision of Trustees for Charitable Purposes Act).

If a primary distributee’s whereabouts is unknown, potential alternate distributees under subdivision (c) are entitled to notice pursuant to Section 11601 (known heir or devisee whose interest would be affected). Moreover, the personal representative, or a person claiming to be entitled as an alternate distributee under subdivision (c), may petition the court pursuant to Article 2 (commencing with Section 11700) for a determination of persons entitled to distribution.

PUBLIC RESOURCES CODE

Pub. Res. Code § 25620.2 (technical amendment). Administration of program

Comment. Section 25620.2 is amended to substitute a reference to the provision that continues the definition of “regulation” in former Government Code Section 11342(g).

WELFARE AND INSTITUTIONS CODE

Welf. & Inst. Code § 11462.4 (technical amendment). Community care facility deemed small business

Comment. Section 11462.4 is amended to substitute a reference to the provision that continues the definition of “small business” in former Government Code Section 11342(h).
