

1982

Office of Administrative Law Annual Report 1981-1982

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Office of
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**Annual
Report**
1981-1982

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1982

Reforming State Regulations



State of California

Edmund G. Brown Jr., *Governor*

SF
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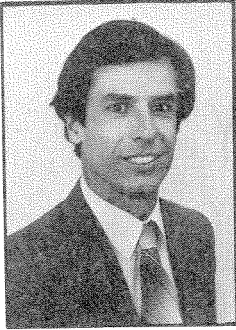
ANNUAL REPORT

1981-1982



OFFICE OF ADMINISTRATIVE LAW

Gene Livingston, *Director*



Director's Message

Gene Livingston

Director,

Office of Administrative Law

Regulatory reform in California continues to move forward. For the second straight year, new regulations were cut 50%. Thousands of regulations, on the books for years, are being eliminated. State Government is now more open and more responsive.

California has demonstrated that a government committed to regulatory reform can eliminate regulatory excesses. To reduce governmental burdens, several ingredients are essential:

- 1. A well-designed law containing meaningful and realistic standards and insuring opportunities for public involvement.*
- 2. An office to monitor agency compliance.*
- 3. Funding sufficient to permit a meaningful, rather than a superficial, evaluation of regulations.*
- 4. Active public participation.*
- 5. Support from the Governor.*
- 6. Legislative support that includes resisting agency requests for exceptions to procedural requirements, standards or review.*

The success of California's reform effort is also recognized elsewhere. Four states have introduced legislation modeled after the California law (AB 1111). Four other states, the Canadian province of Quebec, and Australia have studied the California program for use in their jurisdictions.

Be assured that the Office of Administrative Law remains committed to the goals of reducing unnecessary governmental controls and with your support we can look forward to continuing success.

HIGHLIGHTS

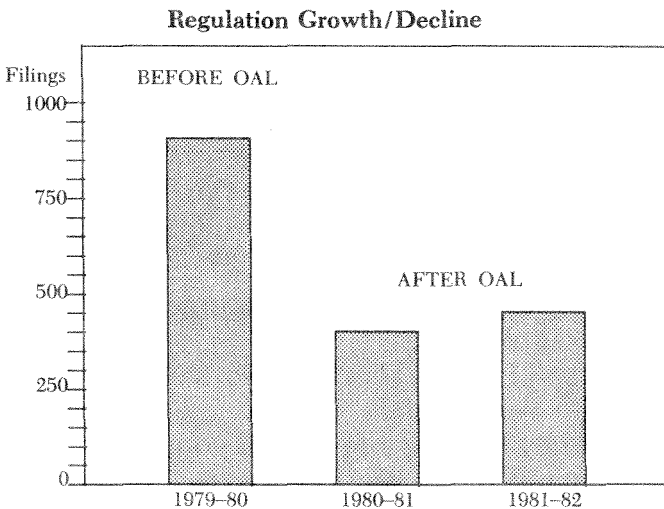
This report highlights the progress made by the Office of Administrative Law (OAL) during the second year of its mandate to achieve regulatory reform in California. The gains of the first year have continued in the second year. The number of new regulations were again cut in half. In addition, steady progress has been made to weed out unnecessary, unauthorized, inconsistent and unclear regulations from the almost 30,000 pages of regulations in existence when the law launching the reform effort was passed. The Legislature's goal—to reduce the number and improve the quality of regulations—is being met.

New Regulations

- 49% Reduction in the Growth Rate of New Regulations
- 63% Reduction in the Adoption of Emergency Regulations

Existing Regulations

- 86 State Agencies Have Reviewed 23,942 Regulations
- 5,690 of the Regulations Reviewed Will be Repealed by State Agencies and 7,907 Will be Amended to Comply With the New Statutory Standards
- 3,556 Additional Regulations are Being Challenged by OAL



BACKGROUND

The Legislature Acts to Stop Overregulation

In 1979 Governor Brown signed AB 1111, the bill authored by Assemblyman Leo McCarthy amending the Administrative Procedure Act.

The amendments:

1. Strengthened the procedural protections to provide the public with a more effective role in the rulemaking process.
2. Increased the accountability and responsiveness of state agencies adopting regulations.
3. Created the Office of Administrative Law to ensure that regulations are adopted in accordance with the new procedural protections and that all regulations meet fundamental standards.

OAL Goals

The overall goal of OAL is to bring state regulatory reform to California and thereby help restore public confidence and trust in state government. The specific goals of OAL are to:

1. Eliminate unnecessary, unclear and burdensome state regulations;
2. Improve the quality of regulations;
3. Ensure the participation of private individuals, groups and businesses in the rulemaking process;
4. Simplify and streamline the California Administrative Code.

OAL's Major Functions Are To:

1. Review all proposed regulations;
2. Oversee the orderly review of all existing regulations;
3. Disapprove regulations not meeting the following statutory standards:
 - Necessity—Has the agency documented the need for the regulation?
 - Authority—Is the agency authorized to adopt the particular regulation?
 - Consistency—Is the regulation consistent with existing laws and other regulations?

- Clarity—Is the regulation clearly written so that affected persons can easily understand it?
- Reference—Is there an accurate reference to a specific statute or court decision that the agency is implementing?

OAL also reviews regulations to ensure that agencies have identified any costs that regulations may create for local governments.

4. Review all emergency regulations and disapprove those that are not necessary for the immediate preservation of the public peace, health and safety or general welfare.

LEGISLATIVE MANDATE

“The Legislature therefore declares that it is in the public interest to establish an Office of Administrative Law which shall be charged with the orderly review of adopted regulations. It is the intent of the Legislature that the purpose of such review shall be to reduce the number of administrative regulations and to improve the quality of those regulations which are adopted.” (Chapter 567 of the Statutes of 1979)

NEW REGULATIONS CUT BY 49% IN 1981-82

The rate at which state agencies adopted new regulations declined by 49% compared to the year prior to OAL's creation. New regulations have been cut 50% during the two years of OAL's existence. The chart below compares the sets of regulations submitted for filing in the base year before OAL's existence (FY 1979-80) with the two subsequent years, and also shows the number and percentage of OAL disapprovals.

Decline of New Regulations

<i>Years</i>	<i>Sets of Regulations Submitted</i>	<i>Percent Decline</i>	<i>Reviewed by OAL</i>	<i>Disapproved by OAL</i>	<i>Percent Disapproved</i>	<i>Overall Decline Rate</i>
FY 1979-80 (Base)	923	N/A	N/A	N/A	N/A	N/A
FY 1980-81	631 ¹	32%	596 ²	159	27%	51%
FY 1981-82	717 ¹	22%	701 ²	248	35%	49%

¹ These numbers do not include resubmitted filings, following OAL rejection.

² These numbers do not include regulations exempted from OAL review by statute.

Corrective Actions Cause Slight Increase

The number of regulatory filings submitted by state agencies rose slightly in the second year of OAL's operation. The increase, however, was a direct result of filings containing corrective actions identified as necessary to bring regulations into conformity with statutory standards following an agency's review of existing regulations. Ninety-three of the 717 filings contained corrective actions resulting from the review process. Thus, the rate of decline for new submittals in 1981-82, absent corrective actions, was 32%, identical to the 1980-81 rate.

OAL Disapprovals Increase

The OAL disapproval rate rose from 27% in FY 1980-81 to 35% in FY 1981-82. Thus, for the two-year period of OAL

operations, 31% of the regulations reviewed were disapproved. The chart below depicts the two-year data for OAL review and disposition.

OAL Disposition of Proposed Regulations

<i>Period</i>	<i>Sets of Regulations Reviewed¹</i>	<i>Approved for Filing</i>	<i>Fully Disapproved</i>	<i>Partially Disapproved</i>	<i>Percent Disapproved</i>
FY 1980-81	596	437	142	17	27%
FY 1981-82	701	453	189	59	35%
TOTAL	1,297	890	331	76	31%

¹ These numbers do not include actions solely to repeal regulations nor Statutorily Mandated Emergency filings. Where a statute mandates the adoption of a regulation as an emergency, OAL does not review it to determine whether an emergency exists.

Reasons for OAL Disapproval Vary

A regulation is subject to OAL disapproval for failing to meet any of the five standards or for failing to meet one of the procedural requirements of AB 1111, such as giving public notice 45 days in advance of a regulatory hearing. The majority of disapproved regulations were rejected for a combination of reasons; for example, a regulation may be disapproved based on its failure to meet both the necessity and clarity standards.

Necessity is the Key Test

Failure to meet the “necessity” standard was by far the most frequent reason for OAL’s disapproval. Of 248 disapprovals during the 1981-82 period of OAL review, 127 (51%) were because the agency did not show the necessity of a proposed regulation. The statutory definition of necessity is “the need for a regulation as demonstrated in the record of the rulemaking proceeding and that a regulation does not serve the same purpose as another regulation.” (Government Code Section 11349(a))

The necessity standard which the Office utilizes is “substantial evidence contained in the record taken as a whole.” This standard is based on the Legislature’s intent that OAL ensure that all regulations be supported by a factual basis that is specific, relevant, reasonable and credible. Such a standard preserves intact the policy judgment of the adopting agency, but also places a responsibility on the

agency to provide sufficient evidence that would lead a reasonable person to conclude that the regulation is necessary.

In addition to the necessity standard, reasons for disapproving regulations during the 1981–82 period were:

- Procedural deficiencies (e.g., lack of adequate public notice) were cited in 122 disapproval actions;
- The “clarity” standard was not met in 71 disapprovals;
- The “authority” standard was not met in 43 disapprovals;
- The “consistency” standard was not met in 39 disapprovals.

Apart from the actual disapproval actions, OAL corrected many clarity, reference or procedural deficiencies through discussions with the adopting agencies. In 1981–82, 54 sets of regulations were corrected by mutual agreement, compared to 46 in 1980–81.

Emergency Regulations Have Been Cut by 63%

Eighty-five regulations became effective on an emergency basis in 1981–82, a 63% decline from the base year total of 232. Twenty of the eighty-five were required by the Legislature to be adopted as emergencies.

A regulation adopted as an emergency temporarily suspends the statutory requirements of public notice and hearing. Thus, an emergency regulation can be adopted and remain in effect for 120 days without any opportunity for the public or those affected by the regulation to object or comment about its necessity or desirability. Government Code Section 11346.1 requires that, before an agency may adopt a regulation as an emergency, it must make a finding that the regulation is “necessary for the immediate preservation of the public peace, health and safety or general welfare.” In addition, the agency is required to document in writing the specific facts that show the need for immediate action.

Prior to OAL’s existence, agencies tended to overuse the emergency process, invoking the procedure for administrative convenience without regard to whether a true

emergency existed. This fact and the strong legislative policy for ensuring public notice and participation led OAL to exact strict conformity to emergency criteria adopted by the Legislature.

OAL's rigorous application of the emergency standard has discouraged agencies from relying on this adoption method where no actual emergency is present. This deterrent effect has reduced the proposed emergency actions from 232 in the 1979-80 base year to 105 in FY 1981-82, a 55% reduction. OAL's disapproval data is set out in the chart below.

OAL Disposition of Emergency Regulations

<i>Year</i>	<i>Sets of Regulations Submitted</i>	<i>Percent Decline</i>	<i>Sets of Regulations Reviewed</i>	<i>Approved</i>	<i>Disapproved</i>	<i>Percent Disapproved</i>
FY 1979-80	232	N/A	N/A	232	N/A	N/A
FY 1980-81	120 ¹	48%	111 ²	70	41	37%
FY 1981-82	105 ¹	55%	91 ²	65	26	29%

¹ These numbers include Statutorily Mandated Emergency Regulations.

² These numbers do not include Statutorily Mandated Emergency Regulations.

REVIEW OF EXISTING REGULATIONS

The Legislature's concern over unwarranted government intervention was not limited to newly proposed regulations. Instead, major reform provisions of AB 1111 were extended to the almost 30,000 pages of regulations already in existence before the creation of OAL in July, 1980.

The Legislature devised a unique and comprehensive approach to eliminating unneeded regulations adopted before the creation of OAL. AB 1111 requires each state agency to evaluate all of its existing regulations by applying the same five standards that govern newly proposed regulations and gives OAL the responsibility to organize and oversee the process.

The purpose of the agency review is to repeal those regulations that do not meet the statutory criteria or to amend regulations to bring them into compliance with the standards.

Following the agency's review process, OAL conducts its independent review, which can result in the repeal of additional regulations.

86 Agencies Complete Review

As of June 30, 1982, 86 of the 124 agencies had completed their reviews and submitted statements to OAL indicating those regulations that they intend to repeal, amend and retain unchanged. By the end of June state agencies had reviewed approximately 11,100 pages or 23,942 individual regulatory sections, about 40% of the Administrative Code. While most agencies have kept close to their original review timetables, some have not. Several large agencies have made little progress in their review, some citing a lack of sufficient staff resources as the reason for the delay in implementing their review plans. One agency, far behind its original schedule, blamed changes in federal and state law during the last year as the primary reason for its delay. The fiscal crisis and spending freezes imposed on agencies in recent months have also reduced the ability of some agencies to keep on schedule.

Agencies Will Repeal or Correct 57% of Existing Regulations

Based on the 392 agency statements received by June 30, 1982, 5,690 individual regulations will be repealed by the agencies, 7,907 will be amended to meet the standards and 10,345 will be retained. Thus in the judgment of the regulatory agencies, 57% of their regulations reviewed will be repealed outright or amended to bring them into conformity with the statutory standards.

OAL's independent review will result in even more repeal actions. By June 30, OAL had issued 90 Orders to Show Cause why 3,556 additional individual regulations should not be repealed. Agencies are now responding to these orders and OAL is evaluating the responses. Final decisions on these challenged regulations will occur in the weeks immediately ahead. In addition, OAL has initiated its review of another 6,731 regulations.

Fiscal Restraints Hamper Review

The review process has not been an easy task for many agencies. Most have conducted the review and taken corrective action without any additional financial resources. Only twenty-three of the 124 agencies were allocated funds in 1981-82 earmarked for regulation review. Two agencies whose regulations comprise about 25% of the California Administrative Code will receive approximately \$400,000 in the current fiscal year.

Despite the growing pressures of scarce resources, most agencies made excellent progress in reviewing their regulations. The combined efforts of state agencies to conduct serious and conscientious reviews deserve recognition. The accomplishments of the last year are concrete examples of the ability and willingness of state government to look critically within itself and take corrective action in line with legislative policy.

NEW LEGISLATION STRENGTHENS REGULATORY REFORM

The Legislature has consistently supported OAL's efforts to make regulatory reform a reality in California. A major ingredient in OAL's successful two years has been the Legislature's strong support of the regulatory reform effort. Without this visible commitment, progress toward regulatory reform could easily have been stymied. Instead, state agencies have taken seriously the statutory mandate to eliminate unnecessary regulations and to improve the quality of those adopted.

The Legislature has held one major hearing and conducted several surveys over the last year to assess the performance of OAL and to seek improvements in the reform program originally enacted in 1979.

Several bills amending the Administrative Procedure Act have been passed and became effective in 1982 and several more are currently pending in the Legislature. These bills are summarized below.

The first year of the 1981-82 Legislative Session produced three bills which became law on January 1, 1982:

AB 1014 by Assemblyman Leo McCarthy strengthens the public notice and comment protections in the regulation adoption process.

SB 498 by Senator Robert Presley redefines the standard of "necessity" to preclude regulations from duplicating one another.

SB 216 by Senator Daniel Boatwright ensures that the public have access to the final language of proposed regulations if substantial changes are made to the version originally noticed.

Two other measures signed into law in 1982 thus far are:

AB 1013 by Assemblyman Leo McCarthy allows any person to request OAL to determine whether a rule that has not been formally adopted as a regulation should be so adopted before it can be legally enforced. AB 1013 becomes effective January 1, 1983.

AB 2165 by Assemblyman Jim Costa requires OAL to conduct a priority review of any regulation when requested by a legislative committee. AB 2165 took effect March 1, 1982.

Additional Bills Are Under Consideration

The Legislature's continuing commitment to achieving regulatory reform was further demonstrated in 1982 by the introduction of 15 bills to amend the Administrative Procedure Act. Some of the more significant bills pending are:

AB 2305 by Assemblyman Richard Katz would require a state agency to declare in its public notice whether a proposed regulation may have an adverse impact on small businesses and to consider less burdensome alternatives.

AB 3329 by Assemblyman Bill Leonard would require regulatory agencies to state in their public notice and statement of reasons whether the regulation imposes a mandate on local government or school districts and if not, their reasons why. It would establish a method for repealing or suspending enforcement of any regulation when there is no funding source to reimburse SB 90 costs. Portions of this bill were adopted in statutory changes to implement the Budget Act of 1982 and became immediately effective.

AB 2820 by Assemblyman Leo McCarthy specifies that OAL and the court's determination of the necessity for a regulation must be supported by substantial evidence in the record as a whole. This standard requires agencies to include facts, studies, or testimony that are specific, relevant, and credible so as to lead a reasonable person to conclude that the particular regulation is necessary.

AB 3337 by Assemblyman Leo McCarthy and **SB 1794** by Senator James Nielsen would require all rulemaking agencies to publish an annual calendar of regulations they intend to propose, including a schedule for each of the significant rulemaking phases.

SB 1499 by Senator Omer Rains would ensure the public has the opportunity to review and comment on any public use form prior to its becoming a requirement and would minimize reporting burdens on the regulated public.

PUBLIC PARTICIPATION EFFORTS

One of the most important aims of regulatory reform is to increase the public's participation in the regulatory process.

OAL continued in its second year to invest time and effort to guarantee effective participation of the general public and all interested parties concerned with government overregulation.

Public Information Outreach

OAL increased its public outreach efforts in the past year. The director, his deputies and office staff have accepted numerous speaking invitations to inform organizations of the new provisions of law. The director has been a frequent guest on radio and television programs to inform the public of how any interested person can become effectively involved in the rulemaking process.

Many businesses and professional associations, civic groups, local city and county government officials have requested and received presentations by OAL personnel. Special efforts were extended to small business organizations, recognizing that state regulations often place a disproportionate burden on such entities.

OAL Publications

The Office also developed a newsletter to inform interested persons of major developments in the regulatory area and to encourage public participation. Two issues of the newsletter, *The OAL Update*, were published in 1982 and mailed to a list of almost 8,000 persons interested in some aspect of regulatory activity.

OAL expanded coverage in its weekly published *Administrative Notice Register* to include day-to-day information relating to public hearings and regulation review notices of state agencies and decisions made by OAL and the Governor in disapproving regulations.

Public Accountability Stressed

OAL has stressed the importance of public awareness and participation to state agencies in training programs conducted to assist agencies in meeting the new regulatory requirements of AB 1111. Most of the 124 state agencies have made conscientious efforts to involve the affected public in all aspects of rulemaking.

Over the past two years, state agencies have shown a much greater sensitivity to ensuring that the public is adequately informed and given opportunities to comment on both proposed and existing regulations. AB 1111 has significantly increased state agency accountability for rulemaking decisions and has made state entities much more responsive to the expressed concerns of the public.

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