OAL REVIEW FOR COMPLIANCE WITH THE SIX SUBSTANTIVE STANDARDS OF THE ADMINISTRATIVE PROCEDURE ACT

Part 1: OAL Review for Compliance with the Authority and Reference Standards of the APA

1.01. Introduction

"Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation. (Gov. Code, sec. 11349, subd. (b).)

"Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation. (Gov. Code, sec. 11349, subd. (e).)

The Authority and Reference standards of the Administrative Procedure Act (APA) require a rulemaking agency to satisfy two requirements:

- Choose appropriate Authority and Reference citations for the note that follows each regulation section to be printed in the California Code of Regulations (CCR), and

- Adopt a regulation that is within the scope of the rulemaking power conferred on the agency.

1.02. Choosing Appropriate Authority and Reference Citations

Every regulation in the CCR must have a citation to the statutory authority under which it was enacted and a citation to the specific statute or other provision of law that the regulation is implementing, interpreting, or making specific. Thus, an agency must select and cite in the Authority note the specific statutes that authorize the adoption of the regulation, and select and cite in the Reference note the specific statutes (or other provisions of law) being implemented, interpreted, or made specific by the regulation. Also, an agency may include in

the rulemaking record supporting documents relevant to its interpretation of its rulemaking power to adopt a particular regulation. (Cal. Code Regs., tit. 1, sec. 14, sub. (c)(1).)

The statutes and other provisions of law cited in the Authority and Reference notes are the agency's interpretation of its regulatory power to adopt that particular regulation. (Cal. Code Regs., tit. 1, sec. 14, sub. (c)(1).)
The agency initially selects these citations when it is drafting the express terms of the proposed regulation text to be made available for public comment, but agencies often revise and refine the Authority and Reference citations during the course of a rulemaking proceeding.

OAL has a duty to ensure that each regulation is printed in the CCR with specific Authority and Reference citations. (Gov. Code, sec. 11344, subd. (e).) If an OAL reviewer has a problem with a particular citation, the problem is usually resolved by providing the agency with an opportunity to add, delete, or refine the citation to correct the problem. The goal of this citation activity is to have accurate, precise, and complete Authority and Reference citations printed in the CCR with each regulation.

1.03. Express and Implied Rulemaking Authority

A statutory delegation of rulemaking authority may be either express or implied. In an express delegation, the statute expressly states that the agency may or shall "adopt rules and regulations necessary to carry out this chapter" or some variation on that phrase. Thus, an express delegation *expressly* specifies that "regulations" shall or may be adopted by the agency.

In contrast, in an implied delegation of rulemaking authority, the applicable statutes do not expressly state that the agency may or shall adopt rules or regulations. Instead, a statute expressly gives a duty or power to a specified agency, *but makes no express mention* of the authority to adopt rules or regulations. In these circumstances, courts tell us that agencies that have expressly been given a duty or power by statute have implicitly been delegated the authority to adopt those rules and regulations necessary for the efficient exercise of a duty or power expressly granted unless it is clear that the Legislature did not intend to grant rulemaking power to the agency.

The APA expressly acknowledges the concept of implied rulemaking authority in Government Code section 11342.2, which states, in part: "Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute…."

1.04. OAL Review

OAL reviews regulations to ensure that they are authorized under controlling statutes. (Gov. Code, secs. 11340, subd. (e) and 11349.1, subd. (a).) The statutes (and other provisions of law) the agency cites as Authority identify the sources of the rulemaking power from which the agency is drawing in promulgating a particular regulation. A regulation that is not within the scope of an agency's express or implied rulemaking authority cannot be approved by OAL.

> **Each regulation adopted, to be effective, shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (Gov. Code, sec. 11342.1.)**

OAL's review of regulations for compliance with the Authority and Reference standards begins with the presumptions established by section 14 of title 1 of the CCR. OAL presumes that the Authority standard is satisfied if the agency cites in the Authority note a California statute or a constitutional provision that expressly or impliedly permits or obligates the agency to adopt the regulation. (Cal. Code. Regs., tit. 1, sec. 14, sub. (a).)

Similarly, OAL presumes that the Reference standard is satisfied if the agency cites in the Reference note a California statute, constitutional provision, federal statute or regulation, or a court decision or order that the agency is empowered to implement, interpret, or make specific. (Cal. Code Regs., tit. 1, sec. 14, sub. (b).)

Pursuant to subsection (c)(1) of section 14 of title 1 of the CCR, these presumptions are conclusive unless:

- The agency's interpretation alters, amends, or enlarges the scope of the power conferred upon it,

- A public comment challenges the agency's "Authority", or

- A judicial interpretation of a provision of law cited as "Authority" or "Reference" contradicts the agency's interpretation.

In reviewing the statutes, other provisions of law, and cases cited in the Authority and Reference notes to determine whether the agency is empowered to adopt a particular regulation, OAL applies the same analytical approach employed by the California Supreme Court and the California Court of Appeal, as evidenced in published opinions of those courts. (Cal. Code Regs, tit. 1, sec. 14, sub. (c).)

1.05. Judicial Review

A court must determine whether the agency exercised its authority within the bounds established by statute. "[W]hen reviewing a quasi-legislative regulation, courts consider whether the regulation is within the scope of the authority conferred, essentially a question of the validity of an agency's statutory interpretation, guided by the independent judgment/great weight standard."[1]

> **Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Gov. Code, sec. 11342.2.)**

Regulations that alter or amend a statute or enlarge or impair its scope are void.[2] A court applies the aforementioned standard to determine whether an agency has exercised its authority within the bounds established by statute.

1.06. Judicial Interpretation of the Meaning of a Statute

In deciding whether a regulation alters, amends, enlarges, or restricts a statute, or merely implements, interprets, makes specific, or otherwise gives effect to a statute, a court must interpret the meaning of the statute. In so doing, the court applies principles of statutory interpretation developed primarily in case law. It examines the language of the statute, and may consider appropriate legislative

history materials to ascertain the will of the Legislature so as to effectuate the purpose of the statute.

1.07. Deference to an Agency's Interpretation of a Controlling Statute

In determining whether a regulation has the effect of altering, amending, enlarging, or restricting a statute, a court may consider, but is not bound by, the agency's interpretation of the statute at issue. The courts have for many years described this approach as the "independent judgment/great weight" standard.

1.08. Independent Judgment/Great Weight

"Independent judgment" means that the court makes an independent determination regarding the meaning of a statute. In other words, the court has the final say regarding the meaning of a statute. "Great weight" means that the court will not disturb the agency's interpretation unless the court finds that the agency's interpretation is "clearly erroneous" or "unauthorized."

Courts have frequently upheld a contemporaneous administrative construction of a statute by an agency charged with its enforcement, or a longstanding, consistent administrative construction of a statute by those charged with its administration, particularly where interested parties have acquiesced in the interpretation, unless the court has found the agency's interpretation to be clearly wrong or unauthorized.[3] As Professor Michael Asimow suggests, "When this sort of deference is given, and the interpretive question is close, the scales are likely to tip in the agency's direction."[4]

1.09. Respectful Nondeference

A number of courts have explained that no deference is due when a challenged regulation interprets a controlling statute that the agency has not been given specific quasi- legislative authority to interpret. This standard of review has been described as "respectful nondeference."[5] A key factor in "respectful nondeference" is that the meaning of the applicable statutory language and legislative history is accessible, and hence intelligible to judges.[6]

1.10. Deference Appropriate to the Circumstances

The California Supreme Court explained in *Yamaha Corp. v. State Bd. of Equalization*, "Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent-the 'weight' it should be given is ... fundamentally situational."[7] The court identified factors that a court must consider in assessing the value of an agency's interpretation that relate (1) to the possible interpretive advantage of the agency, and (2) to the likelihood that the agency is correct. "The deference due an agency interpretation ... 'will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'"[8]

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[1] *Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 20 [78 Cal.Rptr.2d 1] (conc. opn. of Mosk, J., joined by George, C.J., and Werdegar, J.)

[2] See, e.g., *Cal. Ass'n of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11 [270 Cal.Rptr. 796]; *Dyna-Med, Inc. v. Fair Employment & Housing* Commission (1987) 43 Cal.3d 1379, 1388-1389 [241 Cal.Rptr. 67]; and *Ass'n for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 390-391 [211 Cal.Rptr. 758] (citing *Morris v. Williams* (1967) 67 Cal.2d 733, 748 which cites *Whitcomb Hotel v. Cal. Emp. Commission* (1944) 24 Cal.2d 753, 756-767; *Hodge v. McCall* (1921) 185 Cal. 330, 334; *Boone v. Kingsbury* (1928) 206 Cal. 148, 161-162; *First Industrial Loan Co. of California v. Daugherty* (1945) 26 Cal.2d 545, 550; and *Brock v. Superior Court* (1938) 11 Cal.2d 682, 688.)

[3] See, e.g., discussion and cases cited in *Yamaha Corp. v. State Bd. of Equalization, supra,* 19 Cal.4th 1, 21-26 (conc. opn. of Mosk, J., joined by George, C.J., and Werdegar, J.)

[4] Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies* (1995) 48 UCLA L.Rev. 1157, 1195.

[5] For example, the court in *Environmental Protection Information Center v. Dept. of Forestry and Fire Protection* explains that while the basic rule is that "'[t]he contemporaneous administrative construction of a statute by an administrative agency charged with the statute's enforcement and interpretation is entitled to great weight unless it is clearly erroneous or unauthorized'" citing to *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 140, "... the applicable principle changes a great deal when what is involved is a challenge to the very authority of the agency to even issue the challenged regulation … This difference in the applicable rule is manifested by decisions such as *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968 [8 Cal.Rptr.2d 565], where the court summarized the competing rule to be: '[T]he rulemaking authority of an agency is circumscribed by the substantive provisions of the law governing the agency. [Citation.] Thus, the first task of the reviewing court is to decide that the agency reasonably interpreted its legislative mandate as regulations that alter or amend the statute or enlarge or impair its scope are void. [Citation.] This standard of review is one of respectful nondeference. [Citation.]' (*Id.* at p. 982; see also *Henning v. Division of Occupational Saf. & Health* (1990) 219 Cal.App.3d 747, 757-758 [268 Cal.Rptr. 476]; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-391 [211 Cal.Rptr. 758, 696 P.2d 150]." *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022 [50 Cal.Rptr. 892].

[6] "[W]e are not bound by an administrative agency's construction of its controlling statutes. What

is at issue here is an interpretation of the governing statutes for occupational safety and health. That comes within our respectful but nondeferential standard of review. '[W]hen the agency is not exercising a discretionary rule-making power, but [is instead] merely construing a controlling statute[,] [t]he appropriate mode of review ... is one in which the judiciary ... tak[es] ultimate responsibility for the construction of the statute, [although] accord[ing] great weight and respect to the administrative construction.' (*International Business Machines, supra*, 26 Cal.3d at p. 931, fn. 7.) As we further explained in *California Beer & Wine Wholesalers Assn. v. Department of Alcoholic Beverage Control* (1988) 201 Cal.App.3d 100, [201 Cal.App.3d 100, 247 Cal.Rptr. 60], '[w]hat deference should be accorded an administrative construction of a statute itself requires a judicial construction of the limits of the claimed source of rulemaking authority, whether that be the substantive provisions of an applicable statute or the statutory boundaries of a delegated power. … Where the language of the governing statute is intelligible to judges their task is simply to apply it, whether that be language of substantive limitation or the boundaries of a delegation of rulemaking authority. Where the intelligibility of the statutory language depends upon the employment of administrative expertise, which it is the purpose of a statutory scheme to invoke, the judicial role 'is limited to determining whether the [agency] has reasonably interpreted the power which the Legislature granted it.' (Id. at p. 107.)." *Henning v. Division of Occupational Safety & Health* (1990) 219 Cal.App.3d 747,759.

[7] "Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning … whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. [Citation.] Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, 'The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency appropriate to the circumstances of the agency action.' (Judicial Review of Agency Action (Feb.1997) 27 Cal. Law Revision Com. Rep. (1997) p. 81, italics added.)" *Yamaha Corp. v. State Bd. of Equalization*, *supra,* 19 Cal.4th 1, 8-9.

[8] *Id.* at pp. 14-15, quoting *Skidmore v. Swift & Co.* (1944) 323 U.S. 134.

Part 2: OAL Review for Compliance with the Consistency Standard of the APA

Each regulation must satisfy the Consistency standard of the APA. (Gov. Code, sec. 11349.1, subd. (a).) In reviewing for compliance with the Consistency standard, OAL uses the same analytical approach used in judicial review of a regulation.[9] This approach includes the principles discussed in Part 20 regarding statutory interpretation and deference to an agency's interpretation of a statute.

> **"Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, sec. 11349, subd. (d).)**

Agencies often receive the comment that a proposed regulation is inconsistent with a statute because it specifies requirements not specifically set out in the statute. In fact, this situation does not present a Consistency problem so long as the requirements specified in the regulation are reasonably designed to aid a statutory objective and do not conflict with or contradict any statutory provision.[10] In other words, no conflict is present if the statute says "Perform task A" and the regulation says "Perform task B," if one can perform both A and B, and B is reasonably necessary to effectuate the purpose of A.

A common Consistency problem identified by OAL occurs when an agency overlooks or is unaware of an applicable statute, usually one that the agency does not administer. Examples include:

- Public Records Act (Gov. Code, sec. 6250 et seq.)
- Information Practices Act of 1977 (Civ. Code, sec. 1798 et seq.)
- Bagley-Keene Open Meeting Act (Gov. Code, sec. 11120 et seq.)

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[9] In *Pulaski v. Cal. Occupational Safety & Health Standards Bd.* (1999) 75 Cal.App.4th 1315, 1338-1342 [90 Cal.Rptr.2d 54], the Court found a regulation exempting businesses with nine or fewer employees to be inconsistent with the controlling statute.

[10] See, e.g., *Californians v. State Bd. of Pharmacy* (1993) 19 Cal.App.4th 1136, 1149-1150 [23 Cal. Rptr.2d 755].

Part 3: OAL Review for Compliance with the Clarity Standard of the APA

3.01. Introduction

According to the California Legislature, "The language of many regulations is frequently unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. The language is often confusing to the persons who must comply with the regulations." (Gov. Code, sec. 11340, subd. (b).)

To resolve this problem, the Legislature established a performance goal for drafting a regulation. "The [rulemaking] agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style." (Gov. Code, sec. 11346.2, subd. (a)(1).)

The measure of an agency's compliance with this performance goal is the Clarity standard of the APA:

> **"Clarity" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them. (Gov. Code, sec. 11349, subd. (c).)**

3.02. "Directly Affected"

What did the Legislature mean by "those persons directly affected by [the regulations]"?

Pursuant to subsection (b) of section 16 of title 1 of the CCR, persons are presumed to be "directly affected" by a regulation if:

- They are legally required to comply with the regulation,
- They are legally required to enforce the regulation,
- They derive from the enforcement of the regulation a benefit that is not common to the public in general, or

- They incur from the enforcement of the regulation a detriment that is not common to the public in general.

3.03. OAL Review for Clarity

Pursuant to subsection (a) of section 16 of title 1 of the CCR, OAL shall presume a regulation unclear if any of the following conditions exist:

- The regulation can, on its face, be reasonably and logically interpreted to have more than one meaning.

- The language of the regulation conflicts with the agency's description of the effect of the regulation.

- The regulation uses terms that do not have meanings generally familiar to those who are "directly affected," and those terms are defined neither in the regulation nor in the governing statute.

- The regulation uses language improperly, including incorrect spelling, grammar, or punctuation.

- The regulation presents information in a format that is not readily understandable by those who are "directly affected."

- The regulation does not use citations that clearly identify published material cited in the regulation.

Part 4: OAL Review for Compliance with the Nonduplication Standard of the APA

4.01. Introduction

"Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. (Gov. Code, sec. 11349, subd. (f).)

A regulation that repeats or rephrases a state or federal statute or regulation, in whole or in part, serves the same purpose as that statute or regulation. (Cal. Code Regs., tit. 1, sec. 12, sub. (a).) Any overlapped or duplicated statute or regulation must be identified and the overlap or duplication must be justified. (Gov. Code, sec. 11349, subd. (f).) "This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation." (Gov. Code, sec. 11349, subd. (f).)

4.02. General Rule

Citing the overlapped or duplicated statute or regulation in the Authority or Reference note satisfies the identification requirement. Overlap or duplication is justified if information in the rulemaking record establishes that the overlap or duplication is necessary to satisfy the Clarity standard of the APA. (Gov. Code, sec. 11349, subd. (f); Cal. Code Regs., tit. 1, sec. 12, sub. (b)(1).)

4.03. Duplication of Federally Mandated Regulations

The Nonduplication standard is satisfied for federally mandated regulations if the Notice of Proposed Action states that a federally mandated regulation is being proposed and cites where an explanation of the provisions of the regulation can be found. (Cal. Code Regs., tit. 1, sec. 12, sub. (b)(2).)

4.04. Duplication Mandated or Authorized by Law

The Nonduplication standard is satisfied for duplication mandated or authorized by law if a statement in the rulemaking record identifies the statute or regulation overlapped or duplicated and identifies the provision of law mandating or

permitting the overlap or duplication. (Cal. Code Regs., tit. 1, sec. 12, sub. (b)(3).)

Part 5: OAL Review for Compliance with the Necessity Standard of the APA

5.01. Introduction

> **"Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion. (Gov. Code, sec. 11349, subd. (a).)**

An agency conducting a rulemaking action under the APA must compile a complete record of a rulemaking proceeding including all of the evidence and other material upon which a regulation is based.

In the record of the rulemaking proceeding, the agency must state the specific purpose of each regulatory provision and explain why the provision is reasonably necessary to accomplish that purpose. The agency must also identify and include in the record any materials it relies upon in proposing the provision and any other information, statement, report, or data the agency is required by law to consider or prepare in connection with the rulemaking action.

The agency does this preliminarily in the Initial Statement of Reasons and may add new material relied upon during the rulemaking proceeding through a 15-day public comment period. The agency then explains in the Final Statement of Reasons what material has been added to the rulemaking record.

In addition, during the rulemaking proceeding, the public may submit recommendations or objections to the proposed regulation and submit material, including studies, reports, or data, for consideration by the agency and inclusion in the record. In the Final Statement of Reasons, the agency must respond to all relevant input and provide a reason for rejecting each recommendation or objection directed at the proposed action, or explain how the proposal has been amended to accommodate the input. All of these materials are part of the rulemaking record.

Ultimately the rulemaking record must demonstrate that each regulation is reasonably necessary to effectuate the purpose of the statute that it implements, interprets, or makes specific. (Gov. Code, secs. 11342.2 and 11349, subd. (a).) At the end of a rulemaking proceeding, the agency must certify under penalty of perjury that the rulemaking record is complete and closed.

The agency then submits the complete record to OAL for review. Like a court, OAL is limited to applicable provisions of law and the record of the rulemaking proceeding when reviewing for compliance with the Necessity standard.[11] (Gov. Code, sec. 11349.1, subd. (a).)

OAL reviews the rulemaking record to ensure that the Necessity standard is satisfied for each regulatory change made in the rulemaking action. Once OAL review is complete and the record is returned to the agency, the file becomes the agency's permanent record of the rulemaking proceeding and no item in the file may be removed, altered, or destroyed. (Gov. Code, sec. 11347.3, subd. (e).)

5.02. "Substantial Evidence"

The "substantial evidence" standard used by OAL is the same standard used in judicial review of regulations.[12] The following is a definition of "substantial evidence" taken from the legislative history of the Necessity standard:

> **Such evidence as a reasonable person reasoning from the evidence would accept as adequate to support a conclusion.**

A number of principles and limitations are involved in the application of this standard. Clearly, "substantial evidence" is more than "any evidence," but is nowhere near "proof beyond a reasonable doubt." A key characteristic of the standard is its deferential nature.

The "substantial evidence" test was added to the Necessity standard by Assembly Bill 2820 (Stats. 1982, ch. 1573).[13] Assemblymember Leo McCarthy summarized the "substantial evidence" test as used in the Necessity standard for Speaker Willie Brown in a 1982 letter.[14]

The letter reads, in relevant part:

> The principal addition AB 2820 makes to what we approved in AB 1111 in 1979 is a specific level of evidence that an agency must meet to demonstrate the need for a particular regulation. The standard is substantial evidence taking the record as a whole into account. […]
>
> That standard is a familiar one in the law and has been given a definite interpretation by the courts in the past. Our intent is that an agency must include in the record facts, studies or testimony that are specific, relevant, reasonable, credible and of solid value, that together with those inferences that can rationally be drawn from such facts, studies or testimony, would lead a reasonable mind to accept as sufficient support for the conclusion that the particular regulation is necessary. Suspicion, surmises, speculation, feelings, or incredible evidence is not substantial. […]
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> Such a standard permits necessity to be demonstrated even if another decision could also be reached. This standard does not mean that the particular regulation necessarily be "right" or the best decision given the evidence in the record, but that it be a reasonable and rational choice. It does not mean that the only decision permitted is one that OAL or a court would make if they were making the initial decision. It does not negate the function of an agency to choose between two conflicting, supportable views. […]
>
> The proposed standard requires the assessment to determine necessity to be made taking into account the totality of the record. That means the standard is not satisfied simply by isolating those facts that support the conclusion of the agency. Whatever in the record that refutes the supporting evidence or that fairly detracts from the agency's conclusion must also be taken into account. In other words, the supporting evidence must still be substantial when viewed in light of the entire record.

5.03. Judicial Review for Necessity

If a regulation should ever be challenged in court, a court will review the closed record of the rulemaking proceeding to determine whether the regulation is "arbitrary, capricious, or lacking in evidentiary support,"[15] or is not supported by "substantial evidence."[16]

Judicial review of a regulation for abuse of discretion is limited to the record that was before the agency when it adopted the regulation.[17] In this review, a court may not substitute its independent policy judgment for that of the agency.

A court reviews the adequacy of the evidence[18] and "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purpose of the enabling statute."[19] While judicial review for abuse of discretion is clearly quite deferential, it is not perfunctory.

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[11] *Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559 [38 Cal.Rptr.2d 139].
[12] The standard used by courts to review quasi-legislative decisions is akin to the standard used by appellate courts to review the factual determinations of trial courts. "[W]e are persuaded that the factual bases of quasi-legislative administrative decisions are entitled to the same deference as the factual determinations of trial courts, that the substantiality of the evidence supporting such administrative decisions is a question of law, and that both types of substantial evidence review are governed by similar evidentiary rules. [Fn.]" *Western States Petroleum Ass'n v. Superior Court, supra,* 9 Cal.4th 559, 573.
[13] Assembly Bill 111 (Stats. 1979, ch. 567) added the Necessity standard to the APA to read: "'Necessity' means the need for a regulation as demonstrated in the record of the rulemaking proceeding." Assembly Bill 2820 (Stats. 1982, ch. 1573) added the "substantial evidence" test. Assembly Bill 2531 (Stats. 1994, ch. 1039) revised the Necessity standard to read: "'Necessity' means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to facts, studies, and expert opinion."
[14] Legislature of California, Assembly Daily Journal, (1981-1982 Reg. Sess.) p. 663-34.
[15] *Brock v. Superior Court* (1952) 109 Cal.App.2d 594, 605 [241 P.2d 283]; *Pitts v. Perluss* (1962) 58 Cal.2d 824, 833 [377 P.2d 83]; *California Ass'n of Nursing Homes etc., Inc. v. Williams* (1970) 4 Cal.App.3d 800, 810 [84 Cal.Rptr. 590]; *Cal. Hotel & Motel Assn. v. Industrial Welfare Commission* (1979) 25 Cal.3d 200, 212; *Industrial Welfare Commission v. Superior Court* (1980) 27 Cal.3d 690, 702 [166 Cal.Rptr. 331]; *Western Oil & Gas Ass'n v. Air Resources Bd.* (1984) 37 Cal.3d 502, 509 [208 Cal.Rptr. 850].
[16] *Agricultural Labor Relations Bd. v. Exeter Packers, Inc.* (1986) 184 Cal.App.3d 483, 491-494 (citing Gov. Code, sec. 11350, subd. (b).)
[17] *Western States Petroleum Ass'n v. Superior Court, supra,* 9 Cal.4th 559.
[18] *Cal. Hotel & Motel Ass'n v. Industrial Welfare Commission, supra*, 25 Cal.3d 200, 212; *Guidotti v. County of Yolo* (1989) 214 Cal.App.3d 1552, 1561-63.
[19] *Cal. Hotel & Motel Ass'n v. Industrial Welfare Commission, supra*, 25 Cal.3d 200, 212.