State of California
Office of Administrative Law

In re:
Department of Transportation

Regulatory Action:
Title 21, California Code of Regulations

Adopt sections: **1475, 1476, 1477, 1477.1, 1477.2, 1477.3, 1477.4, 1478, 1479, 1480, 1481, 1481.1, 1481.2, 1481.3, 1481.4, 1482, 1483, 1483.1, 1484, 1484.1, 1484.2, 1485, 1485.1, 1486, 1487, 1488, 1489, 1490, 1490.2, 1491**
Amend sections: **1478.2 (renumbered to 1484.2)**
Repeal sections: **1475, 1476, 1477, 1478, 1478.1, 1479, 1480, 1481, 1482, 1483, 1484, 1484.3, 1485, 1486, 1487, 1488, 1489, 1490, 1491**

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2025-0218-02

OAL Matter Type: Certificate of Compliance (C)

SUMMARY OF REGULATORY ACTION

This certificate of compliance action by the Department of Transportation (Department) sought to make permanent OAL File Nos. 2021-1201-01ER, 2022-0328-02E, and 2023-0622-01E, which amended the regulations governing the sales process for properties covered by the State Route 710 Sales Program in the City of Los Angeles, City of Pasadena, and City of South Pasadena, and updated general sales requirements applicable to the State Route 710 Sales Program.

On February 18, 2025, the Department submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On April 2, 2025, OAL notified the Department that OAL disapproved the proposed regulatory action pursuant to the Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reason for OAL's action.

DECISION

OAL disapproved the above-referenced regulatory action for failure to comply with required APA procedures.

DISCUSSION

The Department's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.) No exemption applies to the present regulatory action under review.

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency regarding the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

FAILURE TO COMPLY WITH APA PROCEDURE

Government Code section 11347.3, subdivision (b)(5), requires that a rulemaking file include the estimate, together with the supporting data and calculations,

required by Government Code section 11346.5, subdivision (a)(6). Government Code section 11346.5, subdivision (a)(6), requires:

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

Government Code section 11357 requires that the Department of Finance (Finance) adopt instructions for inclusion in the State Administrative Manual prescribing the methods that an agency shall use in making the estimate required by Government Code section 11346.5, subdivision (a)(6). These instructions are found in State Administrative Manual (SAM), sections 6600 through 6616, and the STD. Form 399 Economic and Fiscal Impact Statement.

SAM, section 6614 provides in relevant part:

> A Finance Program Budget Manager (PBM) or designee signature is required when the Fiscal Impact Statement on the STD. 399 reflects either costs or savings, whether budgeted or not. The estimate in a STD. 399 that is signed by the agency must reflect the actual language of the proposed regulation adopted by the agency.

SAM, section 6615 further provides:

> A state agency is not required in all instances to obtain the concurrence of the DOF in its estimate of the fiscal impact of its proposed regulation on governmental agencies. Such concurrence is required when the adoption, amendment, or repeal of a regulation results in local agency costs or savings, in state agency costs or savings, or in other nondiscretionary instances such as local/state revenue increases or decreases which must be depicted on the STD. 399 as follows:

A.1 - Reimbursable Local Costs	B.1 - State Costs
A.2 - Non-Reimbursable Local Costs	B.2 - State Savings
A.3 - Local Savings	B.4 - Other
A.6 - Other	

In this rulemaking action, the STD. Form 399 submitted by the Department depicted a fiscal impact as follows: B.4 – Other. The Department included the following explanation: "The Department anticipates minor costs to administer the SR710 Sales Program, which can be absorbed in the Department's existing budget." Pursuant to SAM, sections 6614 and 6615, the Department was required to obtain Finance concurrence on the Form 399, but such concurrence was not obtained.

CONCLUSION

For the foregoing reason, OAL disapproved the above-referenced regulatory action. Pursuant to Government Code section 11349.4, subdivision (a), the Department may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval of Regulatory Action. A copy of this Decision will be emailed to the Department on the date indicated below.

The Department must resolve the issue raised in this Decision of Disapproval of Regulatory Action prior to the resubmittal of this regulatory action.

Date: April 9, 2025

_____/s/_____
Anna Thomas
Attorney

For: Kenneth J. Pogue
Director

Original: Anthony Tavares, Director
Copy: Carolyn Dabney

cc: Department of Finance (Gov. Code, sec. 11349.1(e))