

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	
COMMISSION ON PEACE OFFICER)	DECISION OF DISAPPROVAL
STANDARDS AND TRAINING)	OF REGULATORY ACTION
)	
)	(Gov. Code, sec. 11349.3)
REGULATORY ACTION:)	
Title 11, California Code of)	
Regulations)	OAL File No. 07-0727-02 SR
)	
AMEND SECTIONS 1005, 1007, 1008,)	
AND 1052)	
_____)	

SUMMARY OF REGULATORY ACTION

This proposed regulatory action submitted by the Commission on Peace Officer Standards and Training (POST) seeks to adopt regulations requiring each presenter of POST-certified courses involving POST-mandated and supplied tests to implement a formal written policy regarding test administration and security. This regulatory action was originally submitted to the Office of Administrative Law (OAL) on September 26, 2006 but was subsequently withdrawn by POST to remedy some identified APA defects in the regulations. POST resubmitted this regulatory action to OAL on July 27, 2007.

DECISION

On September 10, 2007, the Office of Administrative Law disapproved the above referenced regulatory action for failure to comply with all the procedures of the Administrative Procedure Act (APA) as required by Government Code section 11349.1. Specifically, the regulations contained changes that had not been adopted by the Commission at POST as required by Government Code section 11346.8.

DISCUSSION

The adoption of regulations by POST must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any rule or regulation adopted 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.)

Before any rule or regulation subject to the APA may become effective, the rule or regulation is reviewed by the Office of Administrative Law for compliance with the procedural requirements

of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. In this review OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to 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 rules and regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on rules and regulations before they become effective. (Gov. Code, sec 11349.1.)

Government Code section 11346.8 provides in subsection (c):

“No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days **before the agency adopts, amends, or repeals the resulting regulation....**” (Emphasis added.)

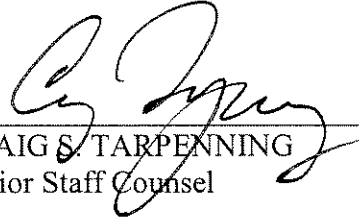
At a public meeting held on April 27, 2006, the Commission at POST adopted regulations requiring each presenter of POST-certified courses involving POST-mandated and supplied tests to implement a formal written policy regarding test administration and security. These regulations were then submitted to OAL for review on September 26, 2006 but were subsequently withdrawn by POST staff on October 25, 2006 to remedy APA defects identified in the regulations.

Following the withdrawal, POST staff made a number of sufficiently related changes to the regulations which had originally been adopted by the Commission at POST at the April 27, 2006 public meeting. In July of 2007, POST staff made the text of the regulations, with the changes highlighted, available to the public for 15 days as required by Government Code section 11346.8(c). POST staff then submitted these regulations with the changes to OAL for review on July 27, 2007. However, the Commission at POST has neither considered, nor adopted, the sufficiently related changes made to the regulations by POST staff as required by Government Code section 11346.8(c).

CONCLUSION

For the reasons set forth above, OAL disapproved this regulatory action.

Date: September 11, 2007



CRAIG S. TARPENNING
Senior Staff Counsel

for: SUSAN LAPSLEY
Director

Original: Hal Snow, Interim Executive Director
cc: Patricia Cassidy