STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

In re: DEPARTMENT OF CORRECTIONS AND REHABILITATION REGULATORY ACTION: Title 15, California Code of Regulations AMEND SECTIONS 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, AND 3147	)	DECISION OF DISAPPROVAL OF REGULATORY ACTION (Gov. Code, sec. 11349.3) OAL File No. 08-0305-01S

SUMMARY OF REGULATORY ACTION

The Department of Corrections and Rehabilitation (Department) by this regulatory action sought to amend title 15, California Code of Regulations, dealing with the regulation of inmate mail.

DECISION

On April 17, 2008, the Office of Administrative Law (OAL) disapproved the above referenced regulatory action for the following reasons: failure to adequately make changes to the regulations available to the public as required by Government Code sections 11346.2 and 11346.8; failure to comply with the requirements for incorporation by reference set forth in section 20 of title 1 of the California Code of Regulations; failure to comply with the clarity, necessity, authority and reference standards of Government Code section 11349.1; failure to include an adequate response to all public comments in accordance with Government Code section 11346.9; and for failure to demonstrate good cause as required by Government Code section 11343.4 for a requested immediate effective date.

DISCUSSION

The adoption of regulations by the Department must satisfy requirements established by the part of the California Administrative Procedure Act (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 OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code Section 11349.1. Generally, to satisfy the standards a rule or 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 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.

1. THE PROPOSED REGULATIONS CONTAIN CHANGES THAT WERE NOT ADEQUATELY MADE AVAILABLE TO THE PUBLIC

Subsection (a) of Government Code section 11346.2 requires that the adopting agency make available to the public upon request during the 45 day comment period the express terms of the proposed regulation. Subsection (a)(3) of Government Code section 11346.2 provides:

> The agency shall use **underline or italics** to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. (Emphasis added.)

In this way a member of the public reading the initial text of the regulation made available to the public would understand what changes are being proposed by this rulemaking. The following changes were not adequately made available.

Subsection (c)(8) of section 3141 of title 15 is amended by this rulemaking to add the following language to describe what is meant by the term "legitimate legal service organization":

> ...that consists of an established group of attorneys involved in the representation of offenders in judicial proceedings that includes, but is not limited to:...

Subsection (b) of section 3145 of title 15 is amended by this rulemaking to add the following language prescribing what is to occur to an envelope of confidential mail when the inmate does not consent to examination of the enclosures by a staff member:

> ...at the inmate's choosing, be returned to the sender with the mailing cost charged to the inmates [sic] trust account, or disposed of pursuant to section 3191(c)....

This new language added to existing subsection (c)(8) of section 3141 and subsection (b) of section 3145 was neither underlined nor italicized in the initial regulation text that was made available to the public during the 45 day comment period. For this reason, a member of the public reading the initial text made available during the 45 day comment period would not have easily understood that this language was being added and was subject to public comment.

Subsection (c) of Government Code section 11346.8 requires that substantial changes to the initial text be made available to the public for comment before the changes are adopted.

> 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 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.* Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9. (Emphasis added.)

The text of section 3146 of title 15 was amended by a 15 day availability period to add the following sentence:

> ...If staff are unable to translate the letter and its contents within 20 business days of notice to the inmate, then the letter shall be delivered to the inmate untranslated.

This new sentence in section 3146 was not shown in underline, italics, or any other method of highlighting in the text included in the rulemaking file as having been made available for 15 days to the public for comment. A member of the public reading the text made available by the Department for 15 days would not have easily understood that this language was being added and was subject to public comment.

For this reason, the changes described above must now be shown in underline or italics and be made available for comment pursuant to Government Code section 11346.8 (c) and section 44 of title 1 of the California Code of Regulations.

2. INCORPORATION BY REFERENCE

OAL adopted section 20 of title 1 of the California Code of Regulations to assure that material incorporated by reference in regulations conforms to the requirements of the APA. Subsection (b) of this section provides in pertinent part:

> Material proposed for "incorporation by reference" shall be **reviewed in accordance with procedures and standards for a regulation** published in the California Code of Regulations.... (Emphasis added.)

In order to be reviewed by OAL, a document incorporated by reference **must be included** along with the regulation text submitted to OAL with the rulemaking file.

Subsection (c) of section 20 provides other requirements for a state agency that wishes to incorporate a document as part of a regulation by reference to that document. Subsection (c) of section 20 provides:

> An agency may "incorporate by reference" only if the following conditions are met:
> . . .
>
> (4) The regulation text states that the document is incorporated by reference and identifies the document by **title and date of publication or issuance**. Where an authorizing California statute or other applicable law requires the adoption or enforcement of the incorporated provisions of the document as well as any subsequent amendments thereto, no specific date is required.... (Emphasis added.)

The provisions listed below refer to documents that have not properly been incorporated by reference as required by section 20 of title 1 of the California Code of Regulations. The incorporated documents described below must be added to the rulemaking record for review by OAL and must be made available to the public for comment for 15 days pursuant to sections 11346.8(d) and 11347.1 of the Government Code.

a. Section 3130 of title 15 as revised by this rulemaking provides in part:

> ...The Department shall provide **guidelines** for orderly processing of inmate mail.... (Emphasis added.)

These "guidelines" have not been included in the rulemaking file, nor are they identified by title and date.

b. Section 3132 of title 15 as revised by this rulemaking provides in part:

> ...All persons corresponding with inmates must comply with existing laws, regulations, and **policies**.... (Emphasis added.)

These "policies" have not been included in the rulemaking file, nor are they identified by title and date.

c. Subsection (c) of section 3133 of title 15 as revised by this rulemaking provides in part:

> ...Inmate confidential mail submitted with a **CDC Form 193, Inmate Trust Withdrawal,** to pay for filing fees .... (Emphasis added.)

This form has not been included in the rulemaking file, nor is it identified by date. In addition to violating subsection (c)(4) of section 20 of title 1 of the California Code of Regulations, failure to specify the date of publication or issuance of the particular version incorporated by reference makes the provision difficult to understand. One cannot understand from the text of the regulatory provision which particular revision of the document has been incorporated by reference.

d. Subsection (c)(5) of section 3134 of title 15 as revised by this rulemaking provides in part:

> Packages shall be inspected pursuant to **institutional policy**.... (Emphasis added.)

This "institutional policy" has not been included in the rulemaking file, nor is it identified by title and date.

e. Subsection (h) of section 3134 of title 15 as revised by this rulemaking provides in part:

> ...If the inmate chooses to accept the book, staff shall insure the book does not violate any other **departmental policy**.... (Emphasis added.)

This "departmental policy" has not been included in the rulemaking file, nor is it identified by title and date.

f. Subsection (i) of section 3134 of title 15 as revised by this rulemaking provides in part:

> ...the inmate shall be informed via **CDC Form 1819, Notification of Disapproval/Packages/Publications (Rev. 6/98)**.... (Emphasis added.)

This form has not been included in the rulemaking file, nor does it appear to have been incorporated by reference elsewhere in the California Code of Regulations. This form is also referred to in subsections (a) and (b) of section 3136 as revised by this rulemaking.

g. Subsection (e) of section 3135 of title 15 as revised by this rulemaking provides in part:

> ...Complaints...will be fully documented on a **CDC Form 128B (rev. 4-74)....** (Emphasis added.)

This form has not been included in the rulemaking file.

h. Subsection (b) of section 3139 of title 15 as revised by this rulemaking provides in part:

> Inmates may initiate requests...by sending...an **Inmate Request for Interview form**.... (Emphasis added.)

This form has not been included in the rulemaking file, nor is it identified by date. This form is also referred to in subsection (c) of this section.

i. Subsection (c) of section 3139 of title 15 as revised by this rulemaking provides in part:

> ...obtain the information required to process an inmate's **Request for Correspondence Approval, CDC Form 1074 (Rev. 08/97)**.... (Emphasis added.)

This form has not been included in the rulemaking file, nor does it appear to have been incorporated by reference elsewhere in the California Code of Regulations. This form is repeatedly referred to elsewhere in section 3139.

j. Subsection (c)(2) of section 3139 of title 15 as revised by this rulemaking provides in part:

> When an initiating inmate's request to correspond to another inmate meets the **criteria for approval**.... (Emphasis added.)

This "criteria for approval" has not been included in the rulemaking file, nor is it identified by title and date. It is also referred to in subsection (c)(10).

k. Subsection (a) (4) of section 3140 of title 15 as revised by this rulemaking provides in part:

> ...Mailroom staff shall complete a **memorandum for Disallowed Cash Money**.... (Emphasis added.)

This form has not been included in the rulemaking file, nor is it identified by date, nor does it appear to have been incorporated by reference elsewhere in the California Code of Regulations.

l. Subsection (a) (4) of section 3140 of title 15 as revised by this rulemaking continues in part:

> ...The envelope...will be forwarded to the Inmate Trust Office, who will process the cash and mail per ***current*** **departmental policy**. (Emphasis added.)

This "departmental policy" has not been included in the rulemaking file, nor is it identified by title and date. Further, such a prospective incorporation by reference by use of the word "current" (one that automatically incorporates future changes to an incorporated document) is of questionable validity. While prospective incorporation by reference could cut down on periodic rulemaking to incorporate future changes made by the body who originally issued the incorporated document, it also eliminates the opportunity for public participation in the decision to give regulatory effect to those changes. This problem has been described as follows:

> ...Prospective incorporation entirely removes from the usual rule-making process individual consideration, by the public and the agency, of each future change to the matter incorporated by reference, thereby effectively denying the many benefits of that process to those who may object to the legality or merits of the new amendments or editions. This is not an inconsiderable loss. It is equivalent to a declaration by the agency that it will not hold rule-making proceedings of any kind on the specific contents even though such changes will become effective law of the agency, and even if many of them turn out to be very controversial and of

doubtful legality. Furthermore, it should be obvious that no one could effectively object to such later changes at the time the initial rule was adopted prospectively incorporating them by reference; at the time of the original rule-making proceeding in which the wholesale incorporation by reference of future changes was adopted, the specific content of those future changes would be unknown and unknowable.

> In addition, allowing agencies to incorporate by reference, as rules, future amendments to or editions of the matter already incorporated in their rules involves an inappropriate delegation of power by the state legislature and the agencies involved to the body subsequently altering the incorporated matter. That is, in addition to being deprived of the benefits of the rule-making process for such future amendments or editions, the state legislature and the agencies issuing the rules containing the incorporated matter lose control over the content of the law involved. It is true, of course, that they can disapprove after the fact any specific amendment to or edition of the matter prospectively incorporated by reference. But it should be stressed that such action may be taken only after that new matter has become law. This is also why, in many states, prospective adoption of future amendments to or editions of the materials incorporated in rules by reference would be an unconstitutional delegation of authority to the body initially making those new amendments or editions, or would at least present serious questions of that nature. (Footnote omitted. Bonfield, State Administrative Rulemaking (1986) pp. 325-326.)

The validity of prospective incorporation by reference has been questioned by the Court of Appeal in a case involving a Department of Health Care Services regulation incorporating by reference standards issued by the Department of Finance.

> There is no procedural barrier prohibiting the enacting agency from adopting by reference a set of standards issued by another agency if supporting evidence is made available at a public hearing, opportunity for refutation is given, the pro and con evidence considered and the evidentiary material assembled in an identifiable record. On the other hand, an attempt to embody by reference future modifications of the incorporated material without additional hearings would have dubious validity. (See Olive Proration etc. Com. V. Agric. Tec. Com., (1941) 17 Cal.2d at P. 209, 109 P.2d 918.) [California Ass'n of Nursing Homes, Etc. v. Williams (1970) 4 Cal.App.3d 800, 814, 84 Cal.Rptr. 590.]

In this regard, subsection (c)(4) of section 20 of title 1 of the California Code of Regulations requires regulation text to identify a document that it incorporates by reference by "title and date of publication or issuance," unless "an authorizing California statute or other applicable law requires the adoption or enforcement of the incorporated provisions of the document as well as any subsequent amendments thereto,…" The Department has cited no such California statute or other applicable law which would allow the prospective incorporation present in subsection (a)(4) of section 3140.

3. CLARITY

The Legislature in establishing OAL, found that regulations, once adopted, were frequently unclear and confusing to the persons who must comply with them. (Gov. Code, sec. 11340(b).) For this reason, OAL is mandated to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the "clarity" standard. (Gov. Code, sec. 11349.1(a)(3).) "Clarity" as defined by Government Code section 11349(c) means "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

The following provisions fail to comply with the "clarity" standard.

a. A person directly affected by subsection (a) of section 3133 of title 15 as revised by this rulemaking would not easily understand this provision. Subsection (a) of section 3133 of title 15 as revised by this rulemaking provides in part:

> ...All First Class Mail shall be **issued** as soon as possible, but not later than seven calendar days from receipt of the mail **from** the facility mailroom.... (Emphasis added.)

The Department has indicated that "issued" here means delivered to the inmate. Also, in responding to a comment, the Department has indicated that the time period runs from receipt of the mail "at" the facility mailroom and that the regulation would be revised accordingly. It was not.

b. Subsection (a)(3) of section 3133 of title 15 as revised by this rulemaking provides in part:

> Periodicals are a class of mail... that are published at least four times a year at regular, specified intervals from a **known office of publication**. (Emphasis added.)

A person directly affected by this regulation would not easily understand when a source would be considered a "known office of publication."

c. Subsection (a)(5) of section 3133 of title 15 as revised by this rulemaking provides in part:

> **For purposes of this section**, the definition of **indigent inmate** is.... (Emphasis added.)

The term "indigent inmate" is not used anywhere else in that section. The term is used elsewhere within the same article.

d. Subsections (b)(3) and (b)(5) of section 3133 of title 15 as revised by this rulemaking appear to conflict. Subsection (b)(3) of section 3133 of title 15 as revised by this rulemaking provides in part:

> ...All nonconfidential mail...is **subject to being read** in its entirety by designated staff.... (Emphasis added.)

Subsection (b)(5) of section 3133 of title 15 as revised by this rulemaking provides in part:

> All nonconfidentail mail **shall be** inspected and **read** by staff. (Emphasis added.)

A person directly affected by this regulation would not easily understand whether all nonconfidential mail is being read or just subject to being read.

e. Subsection (c)(2) of section 3134 of title 15 as revised by this rulemaking provides in part:

> Facilities will make available...via **departmentally-approved vendors**.... (Emphasis added).

The term "departmentally approved vendors" is not defined here but is defined in section 3133(b)(4) to mean any publisher, book store, or book distributor. That definition appears to be too narrow for purposes of section 3134(c)(2) so a person directly affected by this regulation would not easily understand what vendors are departmentally approved for purposes of 3134(c)(2).

f. Subsection (c)(4) of section 3134 of title 15 as revised by this rulemaking provides in part:

> Delivery by staff of packages...shall be completed as soon as possible but not later than 15 calendar [sic], except during **the holiday season**.... (Emphasis added).

In response to a comment asking what was meant by "the holiday season", the final statement of reasons indicated that "...Typically these holidays have been what are commonly referred to as Thanksgiving, Christmas, and Easter...." (See FSOR, p. 25.) A person directly affected by this regulation would not easily understand that this is what is meant by "the holiday season." Also, the word "day" should be added after the word "calendar."

g. Subsection (e) of section 3134 of title 15 as revised by this rulemaking provides in part:

> ...Manuscripts include, **but are limited to**.... (Emphasis added).

The Department has indicated that the list that follows in section 3134(e) was not intended to be an exclusive list and that the word "not" was inadvertently omitted.

h. Subsection (g) of section 3134 of title 15 as revised by this rulemaking provides in part:

> ...Attached free CD's and packaged samples of perfume, lotion, moisturizers, or stickers from magazines shall be removed.... **No other items shall be removed from a magazine or other publication in order to issue it to an inmate**. (Emphasis added).

However, the Department has indicated that this provision was not intended to be an exclusive list and was not intended to limit the ability to remove other magazine samples that, for example, might be used to fashion a weapon. This needs to be clarified in the text of the regulation.

i. Subsection (f) of section 3138 of title 15 as revised by this rulemaking provides:

> Any inmate attempting to use a State issued envelope intended for an indigent inmate or found altering envelopes that were not issued to **them**, shall receive progressive discipline. (Emphasis added).

Since "inmate" and "indigent inmate" are referred to in the singular, it is unclear who is being referred to in this provision from the use plural pronoun "them." Also the term "progressive discipline" may need to be more specific.

j. Subsection (h)(1) of section 3138 of title 15 as revised by this rulemaking provides:

> Upon request, institutions shall also provide indigent inmates free copying of the legal documents limited to the number of copies of a document required by the court, plus one copy for the opposing party and one copy for the inmate's records. **The indigent inmate is entitled to free copying of the exact number of the documents needed by the court**. (Emphasis added).

It is unclear what the second sentence adds to what is already stated in the first sentence of the subsection. If it is intended to eliminate the copies for opposing counsel and the inmate's records as described in the first sentence, then the two sentences conflict with one another.

k. Subsection (e) of section 3139 of title 15 as revised by this rulemaking provides in part:

> Wardens at institutions where there are segregated housing units...shall outline in their local procedure any further restrictions on correspondence due to safety and security concerns.

In response to a comment asserting that this provision does not limit the imposition of further restrictions by such wardens on those not in the segregated housing units, the

final statement of reasons indicated that the regulation would be changed to make it clear that the further restrictions can only apply to the segregated housing units. Subsection (e) of section 3139 still does not restrict the warden's power to institute further restrictions to the segregated units, nor is this provision limited to inmate-to-inmate mail.

l. Subsection (f) of section 3139 of title 15 as revised by this rulemaking provides that a facility may restrict inmate mail to immediate family members, co-litigants, and natural parents and then concludes with:

> ...A facility may not restrict mail privileges between an inmate and any of the above three types of correspondents.

However, the Department has indicated that this provision was not intended to be an absolute ban on the restriction of mail privileges between an inmate and these correspondents and that, for example, mail to a family member containing directions to commit a crime would be subject to restriction. This needs to be clarified in the text of the regulation.

m. Subsections (a) and (j) of section 3139 of title 15 as revised by this rulemaking appear to cover the same subject with a slight variation. The last sentence in subsection (j) of section 3139 of title 15 as revised by this rulemaking provides:

> ...Prior approval of the warden, superintendent, or person in charge of the facility and approval of the person's case supervisor is required if the person is currently under parole, probation or outpatient supervision.

This language appears to repeat and slightly differ from requirements already stated in subsections (a)(3) and (a)(4) of section 3139.

n. Subsection (b) of section 3144 of title 15 as revised by this rulemaking is not clear as to the grounds for suspension of confidential mail privileges, nor the scope of these suspensions. Subsection (b) of section 3144 of title 15 as revised by this rulemaking provides:

> Administrative action may be taken to restrict, for **cause**, the confidential mail privileges afforded an attorney based upon **information contained in this Article**. The confidential mail privilege may be a **statewide suspension for any offense that could be prosecuted as a felony**....
> (1) A first offense of a **non-serious mail rule violation** of the department's mail regulations shall result in ...up to a six-month suspension of the attorney's confidential mail privileges.
> (2) A second offense of a **non-serious mail rule violation** of the department's mail regulations shall result in ...suspension of the confidential mail privileges for a period of up to twelve months.

> (3) A third offense of a similar nature and/or a first offense that could be charged as a felony...shall result in confidential mail privileges being suspended from one year to an indefinite period of time. (Emphasis added).

A person directly affected by this regulation would not know what action could result in restrictions on confidential mail privileges because the terms "cause", "information contained in this article", and "non-serious mail rule violation" are not defined nor otherwise made clear in the regulation. Further, if the restrictions described in subsections (b)(1), (b)(2), and for third non-serious offenses in (b)(3) are not statewide, what is their scope?

o. Subsection (b) of section 3145 of title 15 as revised by this rulemaking provides:

> The inmate may decline to consent to examination of enclosures in confidential mail by any staff.... The **outside of the envelope** will, at the inmates choosing, be returned to the sender.... (Emphasis added).

The Department has indicated that their intent is that the envelope, along with its contents be returned to the sender. This should be made clear.

p. Subsection (c) of section 3145 of title 15 as revised by this rulemaking provides:

> ...No original, copy, excerpt, or summary of personal correspondence ...shall be ...placed in an inmate's C-file unless such correspondence is or has been the subject of:...
> (3) If an inmate requests that a copy of personal correspondence be placed in their C-file and the inmate's caseworker **deems it appropriate** to do so. (Emphasis added).

If there are any standards the caseworker is to use in order to determine whether the personal correspondence be placed in the inmate's C-file, these standards should be stated in the regulation. If there are no set standards and the determination is made on a case-by-case basis, this should be explained in the statement of reasons. Also, the lead in language in subsection (c), although fine for subsection (c)(1), does not seem to mesh with subsections (c)(2) and (c)(3).

4. NECESSITY

Government Code section 11349.1(a)(1) requires that OAL review all regulations for compliance with the "necessity" standard. Government Code section 11349(a) defines "necessity" to mean ". . . 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 purpose of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion."

To further explain the meaning of substantial evidence in the context of the "necessity" standard, subdivision (b) of section 10 of the title 1 of the California Code of Regulations provides:

> In order to meet the "necessity" standard of Government Code section 11349.1, the record of the rulemaking proceeding shall include:
>
> (1) a statement of the specific purpose of each adoption, amendment, or repeal; and
>
> (2) information explaining why each provision of the adopted regulations is required to carry out the described purpose of the provision. Such information shall include, but is not limited to, facts, studies, or expert opinion. When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information. An "expert" within the meaning of this section is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question.

In order to provide the public with an opportunity to review and comment upon an agency's perceived need for a regulation, the APA requires that the agency describe the need for the regulation in the initial statement of reasons. (Gov. Code, sec. 11346.2(b).) The initial statement of reasons must include a statement of the specific purpose for each adoption, amendment, or repeal, and the rationale for the determination by the agency that each regulation is reasonably necessary to carry out the purpose for which it is proposed or, simply restated, "why" a regulation is needed and "how" this regulation fills that need. (Gov. Code, sec. 11346.2(b)(1).) The initial statement of reasons must be submitted to OAL with the initial notice of the proposed action and made available to the public during the public comment period, along with all the information upon which the proposal is based. (Gov. Code, secs. 11346.2(b) and 11346.5(a)(16) and (b).) In this way the public is informed of the basis of the regulatory action and may comment knowledgeably. The initial statement of reasons and all data and other factual information, studies or reports upon which the agency is relying in the regulatory action must also be included in the rulemaking file. (Gov. Code, sec. 11347.3(b)(2) and (7).)

The initial statement of reasons provided with this regulatory action describes the effect of the proposed regulations but fails to provide information explaining the need for each of the changes proposed in the initial text made available to the public in this rulemaking. This information should now be added to the rulemaking file and be made available to the public for 15 days pursuant to Government Code sections 11346.8(d) and 11347.1.

5. THE FINAL STATEMENT OF REASONS DOES NOT CONTAIN A RESPONSE TO ALL COMMENTS SUBMITTED DURING THE PUBLIC COMMENT PERIOD

Since its inception in 1947, the APA has afforded interested persons the opportunity to participate in quasi-legislative proceedings conducted by state agencies. By requiring the state agency to summarize and respond in the record to comments received during the comment