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The Reporter summarizes below the activities of those entities within state government which regularly review, monitor, investigate, intervene or oversee the regulatory boards, commissions and departments of California.

OFFICE OF ADMINISTRATIVE LAW
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The Office of Administrative Law (OAL) was established on July 1, 1980, during major and unprecedented amendments to the Administrative Procedure Act (AB 1111, McCarthy, Chapter 567, Statutes of 1979). OAL is charged with the orderly and systematic review of all existing and proposed regulations against six statutory standards—necessity, authority, consistency, clarity, reference and nonduplication. The goal of OAL’s review is to “reduce the number of administrative regulations and to improve the quality of those regulations which are adopted. . .” OAL has the authority to disapprove or repeal any regulation that, in its determination, does not meet all six standards. The regulations of most California agencies are published in the California Code of Regulations (CCR), which OAL is responsible for preparing and distributing.

OAL also has the authority to review all emergency regulations and disapprove those which are not necessary for the immediate preservation of the public peace, health and safety or general welfare.

Under Government Code section 11347.5, OAL is authorized to issue determinations as to whether state agency “underground” rules which have not been adopted in accordance with the Administrative Procedure Act (APA) are regulatory in nature and legally enforceable only if adopted pursuant to APA requirements. These non-binding OAL opinions are commonly known as “AB 1013 determinations,” in reference to the legislation authorizing their issuance.

On August 8, Governor Pete Wilson announced his appointment of Marz Garcia as Director of OAL. Garcia is a legal adviser and financial consultant who founded a financial and investment advisory service in 1983. Prior to that, the 54-year-old Republican served in the state Senate for four years and chaired the Senate Revenue and Taxation Commit-tee. He also served as a vice-president of Bank of America from 1969 to 1978. Garcia is a graduate of Hastings College of the Law with a master’s degree in taxation from New York University. As OAL Director, Garcia will be paid $92,052 a year.

MAJOR PROJECTS:
AB 1013 Determinations. The following determination was issued and published in the California Regulatory Notice Register in recent months:

- June 14, 1991, OAL Determination No. 5, Docket No. 90-007. OAL was asked to determine whether sections 6203(j)-(m), 6204, 6206, 6207, 6208, 6209(a)-(c), and 6212(h) of the Department of Corrections’ (DOC) Administrative Manual, concerning procedures to follow in the event of a prisoner’s death, are regulations and without legal effect unless adopted in compliance with the APA. OAL determined that sections 6209(a) and (b) are merely restatements of existing law, and that sections 6206 and 6207(a) are exempt from APA rulemaking requirements under the internal management exception. However, all other challenged provisions were determined to be regulations which must be adopted pursuant to APA procedures.

OAL Disapproves Department of Insurance Emergency Regulations for Proposition 103 Rebates. On August 23, the Department of Insurance submitted to OAL proposed emergency regulations to implement the rate rollback provisions of Proposition 103, the insurance reform initiative which was successful on the November 1988 ballot. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 74-75 for background information.) According to the Department, the implementation of the emergency regulations would permit the quick commencement of company-specific hearings to determine insurers’ rollback liabilities under Proposition 103.

In a decision which generated heated controversy, OAL disapproved the emergency regulatory action on September 3. Earlier, OAL had approved the emergency regulations without the approval of newly-appointed OAL Director Marz Garcia. When the Department submitted a second set of proposed regulations containing the numbers to be applied to the initial proposal’s formulas, Garcia rejected them on grounds that the Department failed to demonstrate that the proposed emergency regulations are “necessary for the immediate preservation of the public peace, health and safety or general welfare,” as required by Government Code section 11346.1. In its disapproval decision, OAL expressed particular concern about whether the Insurance Commissioner has the rulemaking authority to adopt regulations that implement and interpret the provisions of Proposition 103 dealing with the rollback of insurance rates and the review and approval of rates.

Insurance Commissioner John Garamendi immediately appealed OAL’s ruling to Governor Wilson. Garamendi contends that the insurance industry owes more than $2.5 billion in rebates, and that if the OAL decision is allowed to stand, issuance of rebate checks to about ten million California customers—who have been waiting since 1988 for the implementation of Proposition 103—will be delayed by at least four more months. Garamendi further contends that Calfarm v. Deukmejian, 48 Cal. 3d 805 (1989), the California Supreme Court’s decision upholding Proposition 103, clearly authorizes the Insurance Commissioner to promulgate the regulations in question. The Governor was scheduled to rule on the Department’s appeal by October 7.

(See infra agency report on DOI for related discussion.)

Revised Official California Code of Regulations. OAL’s six-year project to revise the CCR ended in late 1989 but continues to generate controversy among state depository librarians. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 39 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 47 for background information.) In April 1990, the State Printer decided to discontinue publishing the CCR. In response, OAL contracted with Barclays Law Publishers for private publication and distribution of the revised CCR. Whereas the State Printer had always provided a free subscription to the CCR to all 153 depository libraries in California, no such requirement was included in OAL’s contract with Barclays. After a lobbying effort led by David McFadden, Government Documents/Reference Librarian at Southwestern University School of Law and other state depository librarians (which eventually involved the California State Library, the Governor’s office, and the legislature), OAL decided to satisfy its statutory obligation under the Library Distribution Act, Government...
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Code section 14900 et seq., by distributing 100 copies of the CCR free of charge to state depository libraries. Libraries which do not receive one of the 100 free subscriptions must pay a one-time cost of $1,850, plus an annual update charge of $1,985. This compares to the former cost of $1,640 for annual updates for the state-printed CCR.

Barclays contends that private publication and distribution of the CCR will benefit the regulated public by providing more accurate and timely information in a variety of easy-to-use formats. However, according to Nancy Carol Carter, Director of the Legal Research Center at the University of San Diego School of Law, in a July 24 article in the San Diego Daily Transcript, the general response from state depository librarians is one of concern that privatization of the CCR has not furthered the public policy ideal of broad access to legal information, but has directly constrained it.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at page 46:

**SB 310 (Dills)** was substantially amended on July 11 and is no longer relevant to OAL.

**AB 1395 (Speier),** as amended September 9, provides that all rules and regulations of the State Board of Control shall be adopted in accordance with the APA. This bill was signed by the Governor on October 14 (Chapter 899, Statutes of 1991).

**AB 2060 (Polanco),** as amended May 21, would exempt from the APA the Water Resources Control Board's (WRCB) adoption or revision of state policy for water quality control and water quality control plans and guidelines; the issuance of waste discharge requirements, permits, and waivers; and the issuance or waiver of water quality certifications. The bill would require WRCB and its regional boards to provide notice to specified persons and organizations, to prepare written responses to comments from the public, and to maintain an administrative record in connection with the adoption or revision of state policy for water quality control and water quality control plans and guidelines. This two-year bill is pending in the Senate Agriculture and Water Resources Committee.

**AB 1736 (Campbell),** as amended May 1, would specify that no exemption to any provision of the State Contract Act, whether by statute, regulation, or in the State Administrative Manual, shall apply to any action taken by OAL to have the CCR or updates to the CCR compiled, printed, or published by anyone other than a state agency. This bill is pending in the Assembly Ways and Means Committee.

**AB 2061 (Polanco),** as amended September 5, requires state agencies proposing to adopt or amend any regulation to assess the potential for adverse economic impact on California small business enterprises and individuals. This bill also authorizes a court to declare a regulation invalid if a declaration by the adopting state agency that the regulation will not have a significant adverse economic impact on small business is in conflict with substantial evidence in the record. This bill was signed by the Governor on October 9 (Chapter 794, Statutes of 1991).

LITIGATION:

OAL's appeal of the trial court's March 5 judgment in *Fair Political Practices Commission (FPPC) v. Office of Administrative Law, et al.*, No. 512795 (Sacramento County Superior Court), is still pending. The lower court held that FPPC regulatory actions are subject to review under the APA only as it existed at the time of the electorate's 1974 approval of the Political Reform Act which, *inter alia*, created the FPPC. OAL, its authority to review agency regulations, and the six criteria upon which its review is based were not created until 1980. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 44; Vol. 11, No. 1 (Winter 1991) p. 38; and Vol. 10, No. 4 (Fall 1990) p. 39 for background information.)

Following the filing of the appeal, the FPPC submitted sections 18951, 18736, and 18736.1, Title 2 of the CCR, to OAL for review under the 1974 APA. Section 18951 describes, for purposes of Government Code sections 89516(e) and 89517(c), when the use of any real property, appliance, equipment, or vehicle is incidental to its use for political, legislative, or governmental purposes. The other two sections require every state agency and local government agency to submit biennial reports on the status of its conflict of interest codes, and describe the required contents of these reports. On July 19, OAL disapproved the proposed regulations, because FPPC failed to submit a corresponding rulemaking file as required under the current APA. Although the 1974 version of the APA does not require the submission of a rulemaking file, OAL contends that its filing of the appeal has automatically stayed enforcement of the judgment compelling OAL to follow the 1974 version of the APA when reviewing regulations submitted by FPPC.

OFFICE OF THE AUDITOR GENERAL

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The Office of the Auditor General (OAG) is the nonpartisan auditing and investigating arm of the California legis-