

**State of California
Office of Administrative Law**

In re:
Emergency Medical Services Authority

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

**Regulatory Action: Title 22
California Code of Regulations**

Government Code section 11349.3

Adopt sections:
**Amend sections: 100058, 100060, 100063,
100066, 100074, 100075,
100078, 100079, 100080,
100081**

OAL File No. 2012-0711-02 S

Repeal sections:

SUMMARY OF REGULATORY ACTION

The Emergency Medical Services Authority (EMSA) proposed this action to amend ten title 22 regulations pertaining to emergency medical technicians (EMTs). The amendments would change the scope of practice and training requirements for EMTs, modify required course content for EMT training programs to align with national standards, and clarify the duration and expiration terms of valid EMT certificates.

DECISION

On August 22, 2012, the Office of Administrative Law (OAL) notified EMSA of the disapproval of this regulatory action. The reasons for the disapproval were the following: (1) failure to comply with the “Clarity” standard of Government Code section 11349.1, (2) failure to comply with the “Necessity” standard of Government Code section 11349.1, and (3) failure to comply with all required Administrative Procedure Act procedures (defective rulemaking file documents).

DISCUSSION

Regulations adopted by EMSA must generally be adopted pursuant to the rulemaking provisions of the California Administrative Procedure Act (APA), Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code (Gov. Code, secs. 11340 through 11361). Any regulatory action a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the requirements of the APA, unless a statute expressly exempts or excludes the regulation from compliance with the APA (Gov. Code, sec. 11346). No exemption or

exclusion applies to the regulatory action here under review. Consequently, before these regulations may become effective, the regulations and rulemaking record must be reviewed by OAL for compliance with the substantive standards and procedural requirements of the APA, in accordance with Government Code section 11349.1.

Due to the numerous issues in this decision, upon resubmission of this matter, OAL reserves the right to conduct a complete review for compliance with the procedural and substantive requirements of the APA. All APA issues must be resolved prior to OAL's approval.

A. NECESSITY

OAL must review regulations for compliance with the "Necessity" standard of Government Code section 11349.1. Government Code section 11349, subdivision (a), defines "Necessity" as meaning "...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."

To further explain the meaning of substantial evidence in the context of the "Necessity" standard, subdivision (b) of section 10 of Title 1 of the CCR 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 regulation 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 need for a regulation, the APA requires that a rulemaking agency describe the need for the regulation and identify documents relied upon in proposing the regulation in the Initial Statement of Reasons (ISOR), pursuant to Government Code section 11346.2, subdivision (b).

The Initial Statement of Reasons provided with this regulatory action is inadequate. For the most part, it describes "what" the regulations do, not "why" they are needed. The Initial Statement of Reasons fails to provide the public with the rationale for the determinations by EMSA as to why the specific regulatory changes are needed to carry out the purpose for which they are proposed. This vital information should have been made available to the public during the rulemaking

process so that the public is informed of the basis of the proposed action and can comment knowledgeably during the public comment period.

The following examples demonstrate the types of necessity issues to be addressed by EMSA prior to its resubmission of this regulatory action. However, all of the regulatory provisions in this action need to be supported by adequate necessity and will have to be resolved prior to approval by OAL.

1. Use of hemostatic dressings

EMSA provided the following rationale in the ISOR to explain all modifications to proposed section 100063: “This change was made as it is necessary for California mirror [sic] the National Education Standards and Instructional Guidelines, which are the basis for the NREMT certifying exam which is the certifying exam in California.” As amended by the rulemaking, section 100063, subdivision (a)(8)(A), expands the EMT scope of practice by adding: “Bleeding control through the application of tourniquets and LEMSA-approved hemostatic dressings.”

The “National Education Standards” cited above are the National Emergency Medical Services Education Standards (DOT HS 811 077A) published in 2009 by the United States Department of Transportation. Every other modification to section 100063 aligns the California EMT scope of practice with national standards; however, EMT use of hemostatic dressings is not specifically mentioned in the national standards. EMSA did not explain the reason for this expansion of the scope of practice in the ISOR.

Further, EMSA did not provide a reason for LEMSA (local emergency medical services authority) approval. By comparison, section 100063, subdivision (a)(9), authorizes EMTs to administer various over-the-counter medications when approved by the medical director of the LEMSA. The national standards specifically call for this medical oversight; therefore, subdivision (a)(9) mirrors national standards and necessity provided in the ISOR is sufficient. The national standards do not require this same oversight regarding application of hemostatic dressings, so expansion of the California scope of practice to include the LEMSA approval requirement must be explained in the ISOR.

OAL is mindful of the fact that subdivision (a)(8)(A) was amended after the close of the 45-day notice period to require approval by EMSA instead of LEMSA, and that the reason provided for the change was: “to maintain standardization across the state and the LEMSA will then have a choice from the approved list.” Notwithstanding that this change apparently still leaves hemostatic dressing approval up to each LEMSA, there is no reason provided for requiring medical approval in the first place.

2. 2010 CPR update

Section 100066, subdivision (b)(2), currently requires an EMT training provider seeking approval of a new training program to provide EMSA with “a statement verifying CPR training equivalent to the 2005 American Heart Association’s Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care at the Healthcare Provider level is a prerequisite for admission to an EMT basic course.” In this rulemaking action, EMSA proposed

a change from 2005 to 2010 guidelines. The purpose behind this change, provided in the ISOR, is “to amend the specified course content for EMT training programs.” The rationale for the change is: “This change was made as it is necessary for California mirror [sic] the National Education Standards and Instructional Guidelines, which are the basis for the NREMT certifying exam which is the certifying exam in California.”

Notwithstanding the inapplicability of EMSA’s statement of purpose, considering that CPR training is a prerequisite to admission to an EMT program rather than part of the program’s course content, the rationale provided for this update is inadequate. EMSA failed to explain why it is necessary to update the CPR requirement to align California standards with national standards, given that the national standards do not mention prerequisites to EMT training programs. EMSA must provide a valid explanation or reason for why this modification is necessary.

Again, OAL is aware of the fact that subdivision (b)(2) was later amended to change the 2010 guidelines to the “current” guidelines. However, the change from 2010 to “current” requires the same degree of justification as the previous change from 2005 to 2010.

3. EMT certificate effective and expiration dates

Sections 100079, 100080, and 100081 describe procedures for initial EMT certification, recertification, and recertification of an expired certificate, respectively. EMSA made numerous changes to these sections in this action, and provided identical statements of purpose and necessity for all three sections. According to the ISOR, the purpose for the changes is: “to amend the language pertaining to issue and expiration dates for an EMT certificate.” The justification provided by EMSA for the changes is: “because the language required clarification to better specify the intent of the regulations.”

The following paragraphs describe substantive changes made to EMT certificate issue and/or effective dates and the issues that arose from a lack of specific necessity for the changes. After review of the rulemaking record, OAL cannot determine what EMSA’s regulatory intent was (or is). The ISOR offers no further explanation, and the 45-day Notice is silent on the subject of EMT certificate issue and effective dates. The rulemaking does not demonstrate the need for the changes to carry out the described purpose of the regulation. In other words, EMSA needs to demonstrate how the current language was unclear, and how the new language fixes the problem. The following examples illustrate how EMSA’s general statements of purpose and necessity do not satisfy the “Necessity” standard.

- a. Section 100079, subdivision (g), currently sets the effective date of certification as “the date the individual has applied for and satisfactorily completes all certification requirements.” The proposed amendment changes that date to “the day the certificate is issued.” Unless the issuance date is always the day the applicant completes all requirements, this new language changes the rule. EMSA provided no evidence or explanation as to why the old language was unclear and needed revision.

Further amendments to subdivision (g) change the expiration date of certification from “a maximum of two (2) years from the date that the individual passes the National Registry EMT-Basic certifying exam,” to “two (2) years from the last day of the month in which it was issued.” The amendments materially alter the regulations in two distinct ways. First, two years is no longer the maximum time period. For example, on January 1, 2012, an applicant may be issued a certificate that will not expire until January 31, 2014, more than two years later. Second, the expiration no longer depends on when the applicant passed the NREMT-Basic exam. The reasons for these changes cannot be deduced from EMSA’s statement of necessity.

- b. Section 100080, subdivision (k), provides an exception to the general certificate expiration date for EMTs in the United States Armed Forces whose certificates expired while on active duty or shortly after deactivation. Existing language is discretionary, providing that an eligible EMT “may be given an extension of the expiration date of the individual’s EMT certificate for up to six (6) months...” Proposed language (now 100080(e)) is mandatory, specifying that this same EMT “has an additional six (6) months...” The ISOR does not provide any evidence of necessity for the change.
- c. Section 100081, subdivision (c), sets expiration dates for certificates renewed after a lapse in certification. The rules vary depending on the length of the lapse; for 1-24 months, the expiration date is the final day of the month two years from the effective date, which is: “the date the individual satisfactorily completes all certification requirements and has applied for certification.” Additionally, certificates issued after a lapse of more than 24 months expire “the last day of the final month of the two (2) year period following the date of passing the certifying written examination.” Based on this language, it appears that EMSA intended to create two distinct expiration dates for these two classes of EMTs.

EMSA proposed the following language to cover both classes: “The certification expiration date shall be the last day of the month the certificate was issued of the two (2) year period.” How this new language clarifies and better specifies the intent of the regulation, as the ISOR indicates, is not readily apparent. Further, it appears that EMSA’s intent has changed since the last amendment of section 100081, so the statement in the ISOR does not even apply to this particular situation. Nothing else in the ISOR or rulemaking record provides evidence for the need for this modification.

In order to meet the “Necessity” standard, the rulemaking record needs to include rationale demonstrating why EMSA needed to modify the text in the ways described above and the rationale then needs to be made available to the public pursuant to Government Code section 11347.1.

B. CLARITY

OAL must review regulations for compliance with the “Clarity” standard of the APA, as required by Government Code section 11349.1. Government Code section 11349, subdivision (c), defines “Clarity” as meaning “...written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

The “Clarity” standard is further defined in section 16 of title 1 of the California Code of Regulations (CCR), OAL’s regulation on “Clarity,” which provides the following:

In examining a regulation for compliance with the “clarity” requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

- (a) A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exists:
 - (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
 - (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or
 - (3) the regulation uses terms which do not have meanings generally familiar to those “directly affected” by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or
 - (4) the regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation; or
 - (5) the regulation presents information in a format that is not readily understandable by persons “directly affected;” or
 - (6) the regulation does not use citation styles which clearly identify published material cited in the regulation.

- (b) Persons shall be presumed to be “directly affected” if they:
 - (1) are legally required to comply with the regulation; or
 - (2) are legally required to enforce the regulation; or
 - (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
 - (4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

In this “Emergency Medical Technician” rulemaking, a number of provisions of the proposed regulations fail to comply with the “Clarity” standard. Two “Clarity” problems are discussed below. Additional “Clarity” concerns (such as minor grammatical problems) will also need to be corrected in any resubmission of this rulemaking.

1. Two Clarity issues within regulation section 100080

Proposed regulation section 100080, subdivision (e), provides, in part:

“A California certified EMT who is a member of the Armed Forces of the United States and expires while deployed on active duty, or who expire less than six (6) months from the date they return from active duty deployment, with the Armed Forces of the United States shall have six (6) months from the date they return from active duty deployment to complete the requirements of Section 100080(a).” [Emphasis added; highlighted changes from existing CCR text omitted.]

The proposed text identifies the EMT as the object that must expire for the provision to apply, rather than the EMT's California certificate. EMSA received a comment during the first 15-day public notice period that not only identified the problem, but suggested language to clarify the issue. EMSA inexplicably ignored the suggestion and responded: "No change. The language clearly expresses the intent of the regulation." OAL disagrees. EMSA must revise subdivision (e) to eliminate the incorrect use of language.

Another clarity problem arises from language in the provision that gives the eligible EMTs six months to complete the requirements of section 100080(a). Section 100080, subdivision (a)(1), provides that in order to recertify, an EMT shall: "Possess a current EMT Certification issued in California." For those EMTs whose California EMT certificates expired while on active duty, recertification under the proposed rule will be impossible.

This internal inconsistency appears to have resulted between the 45-day and first 15-day text revisions. During this time, language in subdivision (e) (then subdivision (k)) that described the six-month grace period as "an extension of the expiration date of the individual's EMT certificate" was deleted. Because EMSA did not explain the redrafting of the provision, OAL can only surmise that the deleted language kept the EMT's certificate from expiring while on active duty. A careful reading of the new language does not reveal this same type of extension.

EMSA can fix this problem by either rewriting the text to specify whether the extension keeps the EMT certificate from expiring while the EMT is on active duty, or simply alter the new language so that eligible EMTs are exempt from subdivision (a)(1) of section 100080 and must only comply with the remaining parts of subdivision (a).

C. INCORRECT PROCEDURES; DEFECTIVE AND MISSING DOCUMENTS

1. Incorporation by Reference

EMSA proposed the incorporation by reference of the U.S. Department of Transportation (DOT) National EMS Education Standards (DOT HS 811 077A, rev. January 2009). OAL's regulation on "Incorporation by Reference," CCR, title 1, section 20, sets forth a number of requirements which apply when a rulemaking agency proposes to incorporate documents by reference in its regulations. When an agency incorporates a document by reference, the Final Statement of Reasons (FSOR) for the rulemaking action must include specific statements in support of the incorporation by reference under CCR, title 1, sections 20(c)(1) and 20(c)(2). These required statements were not included in EMSA's FSOR.

Further, the regulation text must clearly and accurately identify the document being incorporated by reference by title and date of publication or issuance, pursuant to CCR, title 1, section 20(c)(4). The regulation text submitted with this rulemaking, section 100063, subdivision (b)(4)(A), shows form EMSA-0391 incorporated by reference with a revision date of March 18, 2003. However, existing section 100063 incorporates this form with a revision date of January 1994. EMSA did not illustrate the text change from "January 1994" to "March 18, 2003" using underline and strikeout. Research conducted by OAL indicates that the 2003 version of the form

was incorporated by reference in other chapters of title 22, but the form was never incorporated into chapter 2, where all of the sections included in this action are located. EMSA must either change the revision date of form EMSA-0391 back to January 1994 (and maintain use of that older form), or highlight the revised date in accordance with CCR, title 1, section 8, make the revised form and regulation text available for public comment pursuant to Government Code section 11346.8 and CCR, title 1, section 44, and update the FSOR to satisfy CCR, title 1, section 20.

Finally, copies of documents (including forms) incorporated by reference are to be attached to each copy of the Form 400 and regulation text submitted to OAL for filing with the Secretary of State, as the documents are considered part of the regulations. See CCR, title 1, section 20, subdivision (d) for exceptions to this procedure.

2. Final Statement of Reasons – Inadequate update to Initial Statement of Reasons

Pursuant to Government Code section 11346.9(a)(1), the Final Statement of Reasons (FSOR) in a rulemaking file must update the information contained in the Initial Statement of Reasons (ISOR). In this rulemaking file, the ISOR contained a discussion of the purpose and necessity of various amendments to eight sections within title 22 of the California Code of Regulations. EMSA made these eight sections available for public comments for 15 days pursuant to Government Code section 11346.8(c), and added two more title 22 sections to the rulemaking at this time. Later, EMSA made additional changes to six sections and made them available for a second 15-day comment period.

The FSOR provided by EMSA is identical to the ISOR; therefore, the FSOR does not update the information contained in the ISOR regarding changes made during either 15-day availability period. The rationale behind many 15-day changes can be inferred from EMSA's summary and response to public comment, but a handful of substantive changes were not obviously made in response to comment nor explained anywhere else in the record. The following list describes these changes:

- a. EMSA deleted a provision in section 100079, subdivision (c), pertaining to EMT certification of paramedics, AEMTs, and EMT-IIs with suspended licenses or certifications, respectively. The provision directed these individuals to apply directly to a LEMSA for certification. This language was not reorganized or added to another section, and no new rule concerning suspension was created in this rulemaking action. No explanation for this deletion was provided.
- b. Subdivision (k) of section 100080 was renumbered to subdivision (e) and substantially revised in response to public comments received during the 45-day availability period. While the old rule specifically applied to "an individual who is a member of the reserves [of the U.S. Armed Forces]," the revised rule pertains to "a California certified EMT who is a member of the Armed Forces of the United States..." No explanation was given for this apparent expansion of eligibility.
- c. Subdivision (k)(3) of section 100080 required an EMT seeking an extension pursuant to subdivision (k) to: "Provide documentation showing that the CE activities submitted for the

certification renewal period were taken not earlier than thirty (30) calendar days prior to the effective date of the individual's EMT certificate that was valid when the individual was activated for duty and not later than six (6) months from the date of deactivation/release from duty." This specific continuing education requirement was deleted when subdivision (k) was renumbered to subdivision (e). No explanation for the deletion was provided.

d. During the 15-day comment period that closed on January 12, 2012, the Riverside County EMS Agency commented that AEMTs and AEMT training programs should be added to the list of approved skills competency verifiers in section 100080, subdivision (a)(5). EMSA responded, "Comment acknowledged. Change will be made." EMSA subsequently added AEMT training programs to the list of EMS-approved training programs and included AEMTs as verifiers, but also deleted EMT-IIs from the list. No explanation for the deletion was made and justification for the change cannot be determined from the comment alone, since the comment made no mention of EMT-IIs. EMT-IIs are referenced many times in title 22, chapter 2, so if AEMT supersedes EMT-II, the latter must be changed throughout the regulations.

e. After the close of the first 15-day notice period, EMSA added subdivision (b) to section 100075. Consisting of six parts, this subdivision adds training in the use of hemostatic dressings as required EMT course content. In response to three distinct comments basically describing subdivision (b) as superfluous and calling for its removal, EMSA stated that the provision was included because: "The use of hemostatic dressings are [sic] not included in the National Scope Model and was added to the California scope of practice, thus section [sic] is necessary to specify the required training in their use."

This explanation is inadequate in a number of ways. First, the "National Scope Model" referred to is the National EMS Scope of Practice Model, a companion document to the National EMS Education Standards incorporated in CCR, title 22, chapter 2. The National Scope Model is not incorporated by reference by EMSA, and there is no indication in the rulemaking record that EMSA relied upon this document in expanding the existing scope of practice in California. Further, the ISOR states that hemostatic dressing use was added in section 100063, subdivision (a)(8)(A) (described supra at A.1.), to align the scope of practice with National EMS Education Standards, not the National EMS Scope of Practice Model. EMSA must clarify its explanation, as well as determine whether the National Scope Model must be incorporated by reference pursuant to CCR, title 1, section 20, or made available for 15 days as a document relied upon in accordance with Government Code section 11347.1.

3. Final Statement of Reasons – Inadequate Summary and Response to Comments

One of the required contents of the FSOR is a summary and response to public comments. Specifically, Government Code section 11346.9, subdivision (a)(3), requires that the FSOR include:

"A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically

directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action"

Furthermore, where an agency makes substantial but sufficiently-related changes to its original regulatory proposal and provides notice of the changes pursuant to Government Code section 11346.8, subdivision (c), that statutory provision specifically includes the requirement: "Any written comments received regarding the change must be responded to in the final statement of reasons required by [Government Code] section 11346.9."

In this rulemaking, EMSA received several dozen written public comments. EMSA adequately summarized and responded to most of these comments. However, a limited number of the public comments did not receive adequate summaries and responses, which are identified below:

a. The San Mateo County EMS Agency, in a letter dated September 2, 2011, cited general confusion about the National Registry EMT-Basic registration certificate and the California EMT-1 Certificate. The Agency suggested that the term "California EMT Certificate" be added in place of "EMT Certificate" in various places within section 100079. EMSA responded, "Comment acknowledged. Addition of "California" made to appropriate definition in this Chapter." EMSA did add "California" to definitions and terms in sections 100058 and 100060, but none of these additions are relevant to the issue presented in the comment. EMSA's modified definitions pertain only to public safety agencies (section 100058) and persons (section 100060) and do not distinguish between California-issued and National Registry-issued EMT certificates.

b. EMSA received six distinct comments pertaining to EMT certificate effective and expiration dates within sections 100079-100081. Though the comments varied, EMSA's response to each of them was, "Comment acknowledged. This section has been rewritten to improve the clarity." While these three sections were, in fact, heavily redrafted, a few of the resulting changes from the 45-day text require more explanation than was offered in EMSA's response. For example, the effective and expiration dates in subdivision (b) of section 100081 were amended after the close of the first 15-day comment period in such a way that the resulting effect differs from the earlier 45-day version, which itself was slightly different from the existing CCR text. Therefore, EMSA modified the dates in this subdivision twice without providing adequate rationale. EMSA must explain the need to alter these sections from the 45-day proposed text in the FSOR.

c. Subdivision (h) of 45-day proposed regulation section 100080 states:

"(h) If the EMT recertification requirements are met within six (6) months prior to the expiration date, the EMT Certifying entity shall make the effective date of certification the date immediately following the expiration date of the current certificate. The certification expiration date will be the ~~final~~last day of the ~~final~~month the certificate was issued of the two (2) year period."

Simply plugging in an effective date leads to the discovery of an unintended consequence: renewal within 6 months of expiration every two years results in advancing the expiration date each time. For example, if an EMT with a certificate that expires on July 15, 2012, renews under

subdivision (h), the EMT's new certificate will be effective July 16, 2012, and will expire July 31, 2014. The next time the EMT renews under subdivision (h), the new effective date will be August 1, 2014, and the expiration date will be August 31, 2016. This one-month shift will occur every time the EMT renews.

Presumably, EMSA did not intend this result when the rule was first adopted, although the amended text shown above does nothing to alleviate the problem. However, even if EMSA was not aware of the problem, two comments received during the 45-day public notice period very clearly indicated the issue. EMSA responded to the comments, stating: "This section has been rewritten to improve the clarity." [Emphasis added.] The text was revised as follows:

“(c)h) If the EMT recertification requirements are met within six (6) months prior to the current certification expiration date, the EMT Certifying entity shall make the effective date of certification the date immediately following the expiration date of the current certificate. The certification expiration date will be the last day of the month two (2) years from the effective date the final last day of the final month the certificate was issued of the two (2) year period.”

It does not appear that EMSA corrected, or even clarified, the shifting date problem with this new language. Renewal certificates are still effective the day after the old certificate expires, and they still expire the last day of the month two years from the effective date. Nothing seems to have changed from the old rule. Perhaps EMSA does not see the shifting date as an issue and rewrote the provision to solve another clarity problem, but EMSA did not elaborate any further on the amended text. EMSA must address the shifting date issue in the FSOR and either revise the text again to solve the problem, or explain why the shifting date is not a problem and how the revised text “improve[s] the clarity” of the provision in some other way.

4. Final Statement of Reasons – Required Statements

Pursuant to Government Code section 11346.9(a)(3), the FSOR of the rulemaking file must contain a summary of each objection or recommendation made regarding the proposed amendment of a regulation and an explanation of how the proposed action has been changed to accommodate each objection or recommendation. The rulemaking file in this action contains a separate summary and response to public comments matrix, but the matrix is not contained in the FSOR or incorporated by reference or cross-referenced by the FSOR. EMSA must tie the matrix and FSOR together.

Pursuant to Government Code section 11346.9(a)(2), the FSOR of the rulemaking file must contain a determination as to whether amendment of a regulation imposes a mandate on local agencies or school districts. Further, Government Code section 11346.9(a)(4) mandates that the FSOR include a determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. The FSOR in this file does not contain either determination. EMSA must amend the FSOR to satisfy these Government Code requirements.

5. Rulemaking Record - Missing Comments

Government Code section 11347.3(b) describes the determinations, notices, and other documents that must be included in the adopting agency's rulemaking file. Subdivision (b)(6) requires the inclusion of "[a]ll data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation." The summary and response to public comments matrix described above includes comments from a number of agencies; however, copies of the written counterparts to these comments are not in the rulemaking file. The following list catalogs the missing comments (OAL did not attempt to decipher the acronyms provided in EMSA's matrix):

- a. 45-day availability period
 - i. San Diego EMS
 - ii. UCLA CPC
 - iii. SLO EMSA
- b. 15-day availability period #1
 - i. Riverside
 - ii. Santa Rosa
- c. 15-day availability period #2
 - i. San Diego Co.

6. Inadequate Statements of Mailing

EMSA included two 15-day mailing statements. The requirements for conducting a 15-day availability period and the confirming mailing statement are described in CCR, title 1, section 44; however, EMSA modeled the statements after the 45-day mailing statement described in CCR, title 1, section 86. Both of EMSA's 15-day statements are therefore inadequate. EMSA must revise the statements to conform to the requirements of section 44.

7. Final Regulation Text Underline and Strikeout

OAL's regulation pertaining to "Final Text: Underline and Strikeout," as set forth in CCR, title 1, section 8, describes the required format for the rulemaking agency-certified final regulation text submitted to OAL for filing with the Secretary of State. Subdivision (b) of section 8 provides:

"The final text of the regulation shall use underline or italic to accurately indicate additions to, and strikeout to accurately indicate deletions from, the California Code of Regulations. Underline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations."

In connection with the final regulation text submitted to OAL for review and filing with the Secretary of State in this emergency medical technician rulemaking, EMSA generally did properly utilize a single underline and strikeout format to show additions to and deletions from the existing CCR text. However, a relatively small number of errors were made in showing the

existing regulation text and in showing the underline and strikeout of the changes being made in the final regulation text. OAL will discuss these minor inaccuracies with EMSA staff.

CONCLUSION

For the reasons set forth above, OAL has disapproved this regulatory action. If you have any questions, please contact me at (916) 322-3761.

Date: August 29, 2012



Eric Partington
Staff Counsel

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