

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

**CHAPTER 11. CALIFORNIA LAW ENFORCEMENT ACCOUNTABILITY REFORM
ACT**

ADDENDUM TO INITIAL STATEMENT OF REASONS

On January 24, 2025, the Department of Justice (Department) published proposed regulations regarding the California Law Enforcement Accountability Reform Act, Assembly Bill 655 (2022), codified at Penal Code sections 13680-13683 (“AB 655”), which took effect on January 1, 2023, and was amended effective January 1, 2024. These and other rulemaking documents are available for review on the California Attorney General’s website at <https://oag.ca.gov/ab655/regulations>.

The Department received written public comments on the proposed regulations until March 14, 2025, and also held two public hearings, accessible virtually and in person, on March 12, 2025, in Los Angeles and March 14, 2025, in Oakland. Oral comments were accepted at these hearings, which were recorded and transcribed.

The Department reviewed all comments received during the public comment period. In response to these public comments, and to clarify the regulations as originally proposed, the Department has modified its proposed regulations, and has prepared this Addendum (Addendum) to the Initial Statement of Reasons (ISOR).

This Addendum explains the modifications and the reasons for these modifications in the “Purpose and Necessity of Modifications to Proposed Regulations” section below. This statement of necessity is intended to supplement and/or add additional reasons to the original statement of necessity set forth in the ISOR published on January 24, 2025. This Addendum is meant only to explain the reasons for these proposed modifications and does not supplant the original ISOR with respect to items that were not modified.

PURPOSE AND NECESSITY OF MODIFICATIONS TO PROPOSED REGULATIONS

Article 1. Definitions

§ 941, subd. (c): Definition of “Appropriate Oversight Agency”

The definition of “Appropriate Oversight Agency” has been amended to remove a provision that had previously explained that a federal agency (*e.g.*, the United States Department of Justice) could fulfill the role of the Appropriate Oversight Agency. This provision was removed in response to comments that suggested that including it introduced confusion, particularly where

the involved federal oversight agency likely could not or does not assert authority over law enforcement disciplinary proceedings covered by CLEAR Act.

§ 941, subd. (i): Definition of “Findings”

The definition of “Findings” has been amended to clarify that a finding may include a conclusion that an element of an offense “has not been established following an investigation,” and addresses situations in which the investigator cannot disprove an element but also has reached an appropriate end to the investigation without sufficient evidence.

§ 941, subd. (p): Definition of “Organization”

The definition of “Organization” has been amended nonsubstantively for clarity to state it refers to a group of two or more people that bear “at least one” – replacing “one or more” – of specified traits.

Article 2. Investigations

§ 942, subd. (a): Responsibility

In response to comments, this provision has been amended to clarify that responsibility for investigations or adjudications may be assigned only with the consent of involved agencies. While an oversight agency may be considered “appropriate” based on its competence and expertise as defined in Section 941, subd. (c), the agency cannot bear responsibility under the statute without affirmatively accepting it.

Former § 942, subd. (d): Responsibility

In response to comments, Section 942, subd. (d), of the previous version of the Proposed Regulations was removed based on a determination that it was unnecessary in light of existing authority held by state and local governments and Employing Agencies.

New Proposed § 942, subd. (d): Responsibility

Separately, and also in response to comments, a new Section 942, subd. (d), was added to clarify that the Proposed Regulations do not restrict the statute’s guarantee of “an opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code.” Pen. Code § 13680, subd. (h). Newly added Section 955 of the Proposed Regulations, *see below*, further clarifies that neither the statute nor the Proposed Regulations affect existing rights to appeal to a court of competent jurisdiction, including beyond guaranteed administrative appeals.

§ 943, subd. (a), (g), (h), (i); § 954, subd. (b): Public Complaints and Training

In response to comments, this provision, and several others, have been amended to remove the role of “intake coordinator.” The Department has determined that the duties relating to intake of complaints may be undertaken by appropriately trained personnel consistent with agency staffing needs.

§ 944, subd. (c): Internal Complaints

In response to comments, the Department has removed this provision, which required that agencies develop and implement a policy effecting a mandatory reporting duty for personnel when they become aware that a peace officer has engaged in misconduct prohibited under the CLEAR Act, as well as a corollary requirement that any such policy also provide that retaliation against personnel for submitting internal complaints is subject to punishment up to termination. The Department makes this change based on its determination that such policies should be and increasingly have been implemented by law enforcement agencies themselves on a scale broader than the scope of conduct covered by the statute.

§ 945: Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

In response to comments, subdivisions (b), (c), (d), and (e) of Section 945 have been amended to apply only to investigations, and not adjudications, of complaints brought pursuant to the CLEAR Act. Subdivision (a) provides that an Appropriate Oversight Agency that has not been designated pursuant to Section 942, which receives a Covered Complaint from any source regarding Peace Officers of an Employing Agency within its jurisdiction, may itself investigate the complaint or may refer it to another Appropriate Oversight Agency subject to the following conditions: (1) the agency receiving the complaint has oversight responsibility for the Employing Agency based on another source of law; and (2) the agency determines that disclosing the complaint to the investigating agency may compromise the investigation or put any person at risk of harm.

Certain subdivisions within this section relating to such complaints have been amended to limit the authority of such non-designated Appropriate Oversight Agencies to investigations but not to adjudications of complaints.

Subdivision (b) has been amended to clarify that an investigation conducted pursuant to Section 945 need not be disclosed to the subject's Employing Agency while the investigation is still pending. Subdivision (b) has also been amended to allow the agency receiving the complaint and any oversight agency to which the complaint is referred not to disclose the existence of the complaint and investigation to the Employing Agency or Investigating Agency, if the investigation results in Findings that the alleged misconduct has not been established.

Subdivision (c) has been amended to remove authority for an agency conducting an investigation under Section 945 to adjudicate a complaint. When an agency acting under Section 945 has reason to believe that the Adjudicating Agency designated pursuant to Section 942 has a conflict of interest or is otherwise incapable of conducting an unbiased adjudication, it must instead submit a copy of the Findings to the Department of Justice with all information forming the basis of the agency's concerns. The Department has discretion to take action as appropriate.

Subdivision (e) has been amended to remove references to adjudication conducted by agencies acting under Section 945.

In response to comments, subdivision (f), of the previous version of the Proposed Regulations has been deleted, based on a determination that it was unnecessary in light of existing authority held by state and local governments and Employing Agencies.

§ 947, subd. (a): Investigations

In response to a comment, this provision has been amended to include a requirement that investigators undergo a background check, which will help to reduce the risk of investigations being conducted by persons with conflicting interests or lacking the character appropriate to this work in circumstances where the investigator has not undergone a background check as a peace officer.

§ 947, subd. (l): Investigations

In response to comments, several subdivisions of this provision have been amended for clarity. Subdivision (l) sets forth specific requirements for certain aspects of an investigation that supersede any conflicting statute, regulation, policy, contract, or general directive. These aspects include the length of notice provided to a subject or witness, the duration of an interview or interrogation, the number of questioners or other participants, restrictions on the presence of a subject or witness' representative at an interview or interrogation, the provision of evidence to a subject or witness before an investigation is concluded, and an investigator or finder of fact's discretion to draw a negative inference if a subject refuses to answer questions or provide any other evidence requested for a legitimate investigative purpose. Of these, the following subdivisions have been amended:

Subdivision (l)(3) has been amended to clarify that an investigator's discretion to include in an interrogation the appropriate number of questioners or participants is based on the need to include subject-matter experts, which is anticipated to be a particularly acute need for investigations under this statute.

Subdivision (l)(5) has been amended to clarify that an investigator's discretion not to share evidence with a Subject or witness during the pendency of an investigation includes discretion to prohibit the Subject or witness from recording or transcribing interview proceedings.

§ 947, subd. (m): Investigations

New subdivision (m) clarifies that, when an investigation includes allegations of both CLEAR Act misconduct and other misconduct, the aspects of the investigation limited by Section 947, subdivision (l) (discussed above) apply only to investigative activities that involve allegations of CLEAR Act misconduct, and do not apply to investigative activities unrelated to allegations of misconduct under the statute.

§ 947, subd. (o) (previously subd. (n)): Investigations

Subdivision (o) (which was previously subdivision (n)), has been amended to clarify that an investigation may be deemed concluded where an investigation does not produce evidence sufficient to establish an element of the alleged offense. These specific elements are set forth in Section 949. This amendment recognizes that an adequate investigation may be unable to identify sufficient evidence to establish any of these elements, but that the investigation may be closed where it meets applicable standards for sufficiency. Subdivision (o)(2) was also amended nonsubstantively to clarify that this provision applies to applicable elements rather than to elements under Section 949 involved offenses not at issue in a particular investigation.

Article 3. Adjudication

§ 948, subd. (c): Adjudication

In response to comments, subdivision (c) of Section 948 has been revised to clarify that the subject of investigation is entitled to receive a copy of the investigative file with sufficient time to prepare a defense in subsequent administrative proceedings. The latest appropriate time is understood to be at or before such time as the Adjudicating Agency or Employing Agency communicates its intent to discipline the Subject based on the investigation.

In further response to comments, the subdivision has also been revised to state that the adjudicator must give a “sufficient basis” for any decision with respect to the Findings. What amounts to a sufficient basis will depend on the quality of evidence and reasoning supporting the Findings, and whether the adjudicating official is acting in accordance with or contrary to the weight of the evidence.

§ 949, subd. (a): Elements of Covered Misconduct

In response to comments, this subdivision has been amended to revise the burden of proof for all forms of Covered Misconduct from “preponderance of the evidence” to “clear and convincing evidence.” Although the common standard for administrative discipline is a preponderance of the evidence, this revision more closely aligns the burden of proof standard with the Commission on Peace Officer Standards and Training’s (POST) standard for decertification proceedings, which is clear and convincing evidence. This revision will avoid the potentially absurd consequence of a Peace Officer being removed from appointment under the CLEAR Act (under a “preponderance” standard), but not decertified by POST in subsequent proceedings under a “clear and convincing” standard.

§ 951: Reporting to the Commission on Peace Officer Standards and Training

In response to a comment, this provision, which was previously entitled “Serious Misconduct,” has been re-titled “Reporting to the Commission on Peace Officer Standards and Training,” and amended to clarify that certain incidents involving alleged or proven misconduct under the statute is reportable to POST pursuant to Section 13510.9 of the Penal Code.

Article 4. General Provisions

§ 954, subdivision (b): Training

Consistent with amendments to other provisions of the regulations removing reference to the role of “intake coordinator” role, this provision has been amended to delete reference to “intake coordinators” in subdivision (b), regarding training, and instead provides that training shall be provided to “personnel responsible for accepting complaints” regarding the performance of their duties.

§ 955: No Abrogation of Rights.

In response to comments, this section has been added to the regulations to make clear that Penal Code sections 13680-83 and its implementing regulations do not abrogate the right of any party to seek relief in a court of competent jurisdiction.