

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 20. CALIFORNIA LAW ENFORCEMENT ACCOUNTABILITY REFORM ACT

UPDATED INFORMATIVE DIGEST

The following revisions have been made as compared to the proposed regulations noticed on January 24, 2025. A fuller explanation of the revisions and their purpose is included in the Final Statement of Reasons. Minor, non-substantive edits are also identified in the attached proposed regulation text and Final Statement of Reasons.

Renumbering: The Chapter and Section numbers of the regulations were changed to Chapter 20, sections 999.300 to 999.314.

Section 999.300, subd. (c): The definition of “Appropriate Oversight Agency” has removed a provision that had previously explained that a federal agency could fulfill the role of the Appropriate Oversight Agency.

Section 999.300, subd. (i): The definition of “Findings” has been revised to clarify that a finding may include a conclusion that an element of an offense “has not been established following an investigation.”

Section 999.300, subd. (p): The term “one or more” has been replaced with the term “at least one” in the phrase “‘Organization’ means a group of two or more people that bears one or more of the following traits.”

Section 999.301, subd. (a): This provision has been revised to clarify that responsibility for investigations or adjudications may be assigned only with the consent of involved agencies.

Section 999.301, subd. (b): The word “may” has been replaced with “shall” in the sentence beginning “Responsibility for the investigation and adjudication of Covered Complaints may be assigned to one agency or allocated among multiple agencies.”

Section 999.301, subd. (e): A new section has been added to affirm that “[t]he assignment of an Adjudicating Agency shall not affect any rights to administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code.”

Section 999.302: This section has been revised to remove the role of “intake coordinator” throughout.

Section 999.302, subd. (f): This section has been expanded to specify the minimum information that must be provided by Investigating Agencies and Employing Agencies to explain the relevant public complaint process to the public.

Section 999.303, subd. (a): A clause has been added to this section to clarify that this section should be read as consistent with Section 999.301, subd. (a), and Section 999.306, subd. (a).

Section 999.303, subd. (c): A provision requiring that agencies implement a policy requiring internal reporting of Covered Misconduct has been removed.

Section 999.304: This section has been revised throughout to remove adjudicative authority from certain Appropriate Oversight Agencies not designated as Investigating or Adjudicating Agencies.

Section 999.304, subd. (a): The word “may” has been replaced with “shall” in the phrase “the oversight agency may investigate the complaint itself or refer it to another Appropriate Oversight Agency.”

Section 999.304, subd. (b): For clarity, the phrase “prior to the completion of the investigation” has been replaced with “during the pendency of the investigation.”

Section 999.304, subd. (b): This provision has been revised to clarify when certain agencies are permitted to withhold information about the investigation of a Peace Officer from the Employing Agency or designated Investigating Agency.

Section 999.304, subd. (c): This provision has been revised to require that, when certain agencies not designated as Investigating Agencies conduct investigations of Peace Officers pursuant to the statute, they must transmit Findings and additional information to the Department of Justice where they identify concerns that the designated Adjudicating Agency “has a conflict of interest or is otherwise incapable of conducting an unbiased adjudication.”

Section 999.304, subd. (d): For clarity, a reference to the six-month time period provided in Section 999.306, subd. (i), has been added, and the phrase “the agency initially receiving the complaint shall serve as the Investigating Agency” has been replaced with “receipt of a Covered Complaint by an agency conducting an investigation pursuant to this Section is equivalent to receipt of a Covered Complaint by an Investigating Agency.”

Section 999.304, subd. (e): To avoid redundancy, the phrase “and shall be authorized to depart from existing policy, agreement, or other source of law where necessary to comply with these regulations” has been removed.

Section 999.306, subd. (a): A provision has been added requiring that officials conducting investigations pursuant to the statute have undergone an appropriate background check.

Section 999.306, subd. (b): For clarity, the word “reason” has been replaced with “impediment to investigation” in describing circumstances under which a matter must be referred to an alternate Investigating Agency.

Section 999.306, subd. (b): A deadline of “within five days of referral to the Investigative Unit” has been added to this provision.

Section 999.306, subd. (b)(1): The word “may” has been replaced by “shall” in the phrase “the Investigating Agency may request that the California Department of Justice accept a referral of the matter.”

Section 999.306, subd. (b)(2): For clarity, the phrase “have discretion over the handling of the investigation and adjudication of the matter, including by referral to another agency” has been replaced by “be bound by these regulations, except that it shall have discretion to refer the matter to an Appropriate Oversight Agency.”

Section 999.306, subd. (b)(2): For clarity, the phrase “outside of the policies and procedures” has been replaced by “not covered by the polices.”

Section 999.306, subd. (b)(3): A requirement has been added that certain inter-agency referrals be made with the consent of the referee agency.

Section 999.306, subd. (h): For clarity, the phrase “Notwithstanding any other state or local law, regulation, or memorandum of understanding, including Section 19635 of the Government Code, and California Code of Regulations, title 15, section 3417, subdivision (a)” has been replaced with a reference to section 13682, subd. (a), of the Penal Code.

Section 999.306, subd. (i): For clarity, examples have been added of factors warranting an extension of time to complete an investigation under these regulations, and the length of extension available has been fixed at three-month increments.

Section 999.306, subd. (i): For clarity, the phrase “Notwithstanding Government Code section 3304, subdivision (d), or any other state or local law, regulation, or memorandum of understanding” has been replaced with a reference to section 13682, subs. (a)-(b), of the Penal Code.

Section 999.306, subd. (l): For clarity, the phrase “No statute, regulation, policy, contract, or general directive shall be interpreted to bind or restrict” has been replaced with a reference to section 13682, subd. (a), of the Penal Code.

Section 999.306, subd. (l): For emphasis, the implied phrase “except as required by the United States or California Constitution” has been made explicit.

Section 999.306, subd. (l)(3): This provision has been revised to clarify that restrictions on the number of questioners or participants in an interrogation or investigation are not binding

specifically “where the investigator determines that it is necessary to include subject-matter experts.”

Section 999.306, subd. (l)(5): This provision has been revised to clarify that an investigator’s discretion to not provide evidence to an investigation Subject or witness while that investigation is ongoing extends to preventing the Subject or witness from making transcripts or recordings.

Section 999.306, subd. (m): This provision has been added to clarify that the suspension of certain rules in connection with an investigation of Covered Misconduct does not apply to investigative activities that do not involve Covered Misconduct.

Section 999.306, subd. (n): To avoid redundancy, the phrase “and without being bound by any other policy” has been removed from a provision discussing the determination of whether an investigation pursuant to these regulations should be conducted in parallel with a related criminal investigation. Factors to consider in making this determination have also been added.

Section 999.306, subd. (o)(3): This new provision permits an investigation to be deemed complete where “[t]he investigator has been unable to identify evidence sufficient to establish any applicable element in Section 999.308.”

Section 999.307, subd. (b): The word “may” has been replaced by “shall” in the phrase “the agency may return the case to the Investigating Agency or Investigative Unit for this purpose.”

Section 999.307, subd. (c): A sentence has been added requiring that the relevant investigative file be shared with a Subject at the time “the Adjudicating Agency or Employing Agency communicates to the Subject the agency’s intent to discipline the Subject.”

Section 999.307, subd. (f): The provision has been revised to clarify that an Adjudicating Agency’s determination that a Subject engaged in Covered Misconduct is “subject to all applicable administrative appeals” rather than “following all applicable administrative appeals.”

Section 999.308: The evidentiary burden to establish each element of an incident of Covered Misconduct has been changed from “preponderance of the evidence” to “clear and convincing evidence.”

Section 999.309: For clarity, the prohibition on entering into an agreement to “adjudicate an alternate charge of misconduct for the purpose of administering discipline that does not include removal from appointment as a Peace Officer” has been rephrased to prohibit an agreement to “withdraw the Charge of Covered Misconduct, including where such withdrawal is made in exchange for the Subject accepting discipline other than removal from appointment as a Peace Officer.”

Section 999.310: The section titled “Serious Misconduct” has been removed in full. A new section titled “Reporting to the Commission on Peace Officer Standards and Training” has been added that requires reporting of all events involving Covered Misconduct according to the requirements of Section 13510.9 of the Penal Code.

Section 999.311: The word “may” has been replaced by “shall” in the sentence beginning “All records retained pursuant to this provision may be maintained.”

Section 999.313: This section has been revised to remove the role of “intake coordinator.”

Section 999.314: A new section titled “No Abrogation of Rights” has been added to affirm that the CLEAR Act and its implementing regulations “shall not be interpreted to abrogate the right of any party to seek relief in a court of competent jurisdiction.”