



April 28, 2026

VIA EMAIL

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Re: Written Objections to Commissioner’s Addendum to the Rulemaking Record—California Department of Insurance, REG-2025-00006 (Intervenor and Administrative Hearing Bureau Fairness and Accountability)—Violation of Government Code §§ 11346.8(d), 11346.9(a)(1), and 11347.1

Dear Office of Administrative Law:

Consumer Watchdog objects to Insurance Commissioner Ricardo Lara’s improper insertion of new information in the record of this rulemaking proceeding, which is currently pending before the Office of Administrative Law (“OAL”). Disapproval is required by law.

Consumer Watchdog participated at every stage of this rulemaking—submitting written comments during both the 45-day and 15-day comment periods and appearing at the November 20, 2025 public hearing—and has a direct and substantial interest in the procedural integrity of this proceeding and the public’s right to meaningful participation under the California Administrative Procedure Act (“APA”), Government Code section 11340 et seq.

On April 17, 2026, the Department submitted its Final Statement of Reasons (“FSOR”) to OAL. Submitted the same day, as part of the same rulemaking file, was a three-page personal letter from Commissioner Ricardo Lara addressed to the approximately thirty non-profit consumer protection and public interest organizations that had opposed the proposed regulations in their current form (the “Lara Letter”). The Lara Letter is not the FSOR, nor is it referenced by the FSOR. It was not prepared pursuant to Government Code section 11346.9. It is a freestanding advocacy document transmitted to the opposing public after the rulemaking record had closed—without prior notice and without any opportunity for response.

The Lara Letter is independently defective on two grounds, either of which requires disapproval.

First, because the Lara Letter presents new information and materials not previously discussed by or relied upon by the Commissioner, it supplements and extends the California Department of Insurance’s (“Department”) necessity showing; indeed, the letter states that it is an “addendum” to the FSOR. Therefore, it was required to identify its relied-upon material and comply with the public notice requirements of §§ 11346.9(a)(1) and 11347.1. It did neither.

Second, even if the Lara Letter is not treated as a component of the FSOR, it is post-comment period material added to the rulemaking record in violation of Government Code § 11346.8(d)—as the Commissioner’s own words confirm. The first sentence of the Commissioner’s letter notified the recipients that the record was closed and that the rulemaking file had already been submitted to OAL. In a single sentence, the Commissioner simultaneously delivered new material that he had relied upon to the opposing members of the public and announced that the record was already closed. That is not inadvertent noncompliance. It is a deliberate structure: transmit the evidence, foreclose the response, submit to OAL. The APA does not permit that maneuver.

The submission of the Lara Letter to OAL violates Government Code §§ 11346.8(d), 11346.9(a)(1), and 11347.1. This rulemaking should be disapproved and returned to the Department.

I. BACKGROUND

On October 3, 2025, the Department published a Notice of Proposed Rulemaking Action (REG-2025-00006) in the California Regulatory Notice Register, initiating a rulemaking to amend regulations governing the intervenor compensation system and Administrative Hearing Bureau procedures under Proposition 103, Insurance Code section 1861.10. The 45-day comment period closed November 20, 2025. A public hearing was held that day, and Consumer Watchdog provided extensive oral and written comments.

On February 13, 2026, the Department proposed further amendments to the proposed regulations and issued the required 15-day notice for public comment. The comment period closed March 2, 2026. Consumer Watchdog, Consumer Federation of California Education Foundation, and a coalition of consumer organizations each submitted written comments.

On April 17, 2026, the Department submitted the rulemaking file to OAL. The file included the FSOR, dated the same day. Also submitted as part of the rulemaking file was the Lara Letter—three pages on Department letterhead, signed by Commissioner Lara, addressed “To the Undersigned Organizations” that had opposed and urged he withdraw the proposed regulations. The subject line reads: “Re: Your letter opposing transparency and accountability reforms.”

The letter opens by stating that by the time the recipients receive it, the Department will have already submitted the final regulatory package to OAL for approval. It defends the proposed regulations on the merits, and responds to arguments raised by the opposing organizations. And it invokes two categories of material not previously identified in the Initial Statement of Reasons (“ISOR”) and not made available for public comment: first, the Department’s August 2, 2024 ruling on Consumer Watchdog’s eligibility to seek compensation for its work in Department proceedings under Proposition 103. The proposed regulations before OAL amend the eligibility process (see proposed 10 CCR § 2662.2.) The second is a blog post or article on Capitol Weekly, an online publication, discussing Consumer Watchdog’s activities as an intervenor in Proposition 103 matters, and the views of its founder.

Critically, both are deployed by Lara as affirmative evidence that the proposed regulations are necessary. (Lara Letter at pp. 1–2.) Neither was identified in the ISOR as a document upon which the Department relies. Neither was made available for public comment during either comment period. Neither was the subject of any notice of addition to the rulemaking file. The FSOR’s own “Update of Material Relied Upon” section does not reference either document. (FSOR at p. 1.)

II. LEGAL FRAMEWORK

A. Government Code § 11346.8(d): No Material May Be Added to the Record After the Close of the Comment Period Without Compliance with § 11347.1

Government Code § 11346.8(d) provides:

No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless the agency complies with Section 11347.1. This subdivision does not apply to material prepared pursuant to Section 11346.9.

Government Code § 11347.1 implements this requirement. When an agency adds any technical, theoretical, or empirical study, report, or similar document to the rulemaking file after publication of the notice of proposed action and relies on that document in the rulemaking, the agency must: (a) mail notice identifying the added document to all persons who testified at the public hearing, submitted written comments, had comments received during the comment period, or requested notification; and (b) make the document available for public inspection at least 15 calendar days before the regulation is adopted. Written comments received during that availability period must be summarized and responded to in the FSOR. (Gov. Code § 11347.1(b)–(d).) Government Code § 11346.9(a)(1) confirms the scope of this obligation: whenever the FSOR update identifies relied-upon material not previously made available for public review, the agency must comply with § 11347.1.

B. Government Code § 11346.9(a)(1): FSOR Updates Identifying New Relied-Upon Documents Independently Trigger § 11347.1

Government Code § 11346.9(a)(1) requires the FSOR to include an update of the information in the ISOR. If that update identifies “any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying . . . that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with Section 11347.1.” The obligation is triggered by the agency’s reliance on the new information—not by the form in which the relied-upon material is presented. (See also 2000 Law Revision Commission Comments on Gov. Code § 11346.8, subd. (d) [“if the final statement of reasons refers to documents not previously included in the rulemaking file, an opportunity for additional public comment regarding those documents must be provided”].)

C. The § 11346.8(d) Exception Does Not Apply—and the Department Cannot Escape Through Form

Section 11346.8(d) provides a single exception: material “prepared pursuant to Section 11346.9”—i.e., the FSOR itself—may be added to the record after the close of the comment period. This exception presents the Department with no exit. If the Lara Letter is treated as part of the FSOR—an addendum explaining the Department’s necessity showing—then it was required to comply with § 11346.9(a)(1), which obligates the FSOR to identify all relied-upon material not previously made available for public comment and to trigger a § 11347.1 notice-and-comment period. It did not. If the Lara Letter is not part of the FSOR, then it violated § 11346.8(d). Either way, the Department failed to proceed in the manner required by law.

The Department may also argue that the Lara Letter qualifies as material “prepared pursuant to Section 11346.9” because § 11346.9(a)(3) requires the FSOR to 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.” That argument fails. The Lara Letter does not summarize specific objections or recommendations and explain how the proposed regulations accommodate them or why they do not. It defends the regulations on the merits, responds to general arguments in the aggregate, and—critically—introduces new, relied-upon evidence that was never disclosed during the comment periods.

The test under § 11346.9(a)(1) is reliance, not form. The Department cannot escape this conclusion by pointing to the letter’s informal character: the Lara Letter is in the rulemaking file, and the Commissioner invokes it as evidence of necessity. A document cannot be placed in the record and simultaneously disclaimed. The Commissioner’s own words—characterizing the Capitol Weekly article and the 2024 eligibility ruling as justification for these regulations—answer the only question that matters. (Lara Letter at pp. 1–2.) The public was entitled to respond. It was not permitted to.

III. THE LARA LETTER VIOLATES § 11346.8(d) AND INDEPENDENTLY TRIGGERS §§ 11346.9(a)(1) AND 11347.1

A. The Lara Letter Is Post-Comment Period Material Whose Own Terms Confirm That Compliance Was Foreclosed by Design

The Lara Letter was submitted to OAL on April 17, 2026—more than six weeks after the last comment period closed on March 2, 2026. It was not the subject of any public notice. It was not made available for public inspection prior to submission. No 15-day comment period was provided.

What distinguishes this from inadvertent noncompliance is the Commissioner’s opening line: “By the time you receive this response, the Department will have already submitted the final regulatory package to the Office of Administrative Law for approval.” He did not merely fail to provide a comment period. He transmitted new relied-upon material to the opposing non-profit and public interest organizations along with the same communication in which he

announced the final regulations and FSOR were already before OAL—foreclosing any opportunity to respond. The Department cannot both rely on new evidence against a commenter and deny that commenter any chance to respond. The APA’s public-participation requirements exist precisely to prevent that result. (Gov. Code § 11346.45, subd. (a).)

Section 11346.8(d) prohibits exactly this. This rulemaking should be disapproved on that basis alone.

B. The Lara Letter Relies on the Commissioner’s Statements in a 2024 Ruling—New Material That Was Not Subject to Public Notice and Comment in This Proceeding.

In support of the proposed regulations, the Lara Letter invokes the Department’s August 2, 2024 ruling on Consumer Watchdog’s request for eligibility to seek compensation for its participation in agency matters under Ins. Code section 1861.10(b) enacted by Proposition 103. The determination of a consumer representative’s eligibility to obtain compensation is the subject of a substantial amendment proposed by the regulations before OAL. (See proposed 10 CCR § 2662.2.)

The Lara Letter restates assertions made by the Commissioner and by insurance companies at that time—as affirmative evidence that the current public participation system is broken and the proposed regulations are needed. “These are not theoretical concerns,” the Lara Letter states. “They are documented in the public record.” (Lara Letter at p. 1.) But the standard is not whether evidence somewhere in the “public record” supports proposed regulatory action; the standard is whether the evidence documented *in the rulemaking file* supports the action. (Gov. Code § 11349.1, subd. (a) [“In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding”].) Commenters are not required to anticipate and proactively respond to anything in the public record that an agency *might* rely on—the agency must affirmatively identify the information it is relying on.

The August 2024 eligibility ruling was not identified in the ISOR as a document upon which the Department relies. It was not made available for public review during either comment period. It was not the subject of any notice of addition to the rulemaking file. Its first appearance as relied-upon support for the necessity of these regulations is in the Lara Letter—delivered to its recipients simultaneously with the announcement that the record was already at OAL. This independently triggers §§ 11346.9(a)(1) and 11347.1.

C. The Lara Letter Relies on Statements in a Web Publication—New Material That Was Not Subject to Public Notice and Comment in This Proceeding.

The Lara Letter also invokes, and provides a link to, a blog published by an online source on the very same day, September 19, 2025, that Commissioner Lara announced the rulemaking now before OAL.

The publication, on the website of “Capitol Weekly” (which has acknowledged receiving insurance industry donations) reported on Lara’s announcement; it described the regulations as targeting Consumer Watchdog’s work as a consumer representative under Proposition 103. It described the insurance industry’s longtime criticism of Consumer Watchdog and its founder, Harvey Rosenfield. The Lara Letter relies heavily on the Commissioner’s characterization of the blog post, and Mr. Rosenfield’s comments in particular, as proof that the proposal Lara is asking OAL to review is necessary. (Lara Letter at p. 2.) That post was not identified in the ISOR (nor the FSOR) as a document upon which the Department relied. It was not made available during either comment period. The Lara Letter is the first instance in the rulemaking record where the Department has disclosed its heavy reliance on this article.

The Capitol Weekly post constitutes either “data” or a “technical, theoretical, or empirical study, report, or similar document” within the meaning of § 11346.9(a)(1)—it is a published account of purportedly factual statements upon which the Department expressly relies as evidence of necessity. That is sufficient: once § 11346.9(a)(1) is triggered, the agency must comply with § 11347.1. The Capitol Weekly article is, in any event, a “report” within the plain meaning of that term as used in both provisions—a published account of purportedly factual information upon which the Department relies as a factual basis for the regulation. The Law Revision Commission Comment to § 11346.8 confirms this reading. (See *People v. Williams* (1976) 16 Cal.3d 663, 667–68.) That Comment states that “if the final statement of reasons refers to documents not previously included in the rulemaking file, an opportunity for additional public comment regarding those documents must be provided,” citing § 11346.9(a)(1). (2000 Law Rev. Comm. Comment to Gov. Code § 11346.8.) Critically, that statement does not distinguish among the categories listed in § 11346.9(a)(1)—it reaches any document not previously included in the rulemaking file that the FSOR relies upon.

Therefore, the Department was required to notice the Capitol Weekly post, make it available for public inspection, and allow 15 days for comment. It did none of those things—and by the time the recipients learned of the Department’s reliance on it, the Commissioner had already announced the file was closed.

D. The Prejudice to Consumer Watchdog and the Public Is Not Abstract

Consumer Watchdog is named throughout the Lara Letter. The Commissioner invokes his own 2024 comments on Consumer Watchdog’s status as a consumer representative, and an online post discussing the intervenor process and Consumer Watchdog’s founder, as affirmative evidence justifying these regulations. Consumer Watchdog submitted written comments at every stage of this proceeding, appeared at the public hearing, and has shown that the Department had failed to demonstrate necessity.

The Commissioner’s response was to marshal new “evidence” against Consumer Watchdog specifically—the Commissioner’s previous statements about Consumer Watchdog, the blog quoting industry lobbyists criticizing the organization’s founder, and his responses—and to deliver it in a letter whose opening line informed Consumer Watchdog, along with the other non-profit and consumer protection organizations that participated in this rulemaking, that the record had already closed. Consumer Watchdog had no opportunity to respond to the

Commissioner's reliance on his own statements in connection with his August 2024 eligibility ruling, to contest the Commissioner's characterization of the Capitol Weekly blog, or to provide context for its founder's statements. That is the precise harm the APA's notice-and-comment requirements are designed to prevent.

Consumer Watchdog's inability to respond, within the bounds of the rulemaking record, was not a mere denial of process—it was the loss of a substantive rebuttal on which the integrity of the record depends. Consumer Watchdog has a developed response to both the Capitol Weekly publication and the August 2024 eligibility ruling, including addressing the context in which the statements were made and the Commissioner's mischaracterization of both as support for the proposed regulations. That response would show that neither document, properly understood, supports the Department's necessity showing and, in critical respects, undermines it. Consumer Watchdog does not present that rebuttal here—not for lack of one, but because the APA requires that such responses be made in the rulemaking record, where they can be tested and answered. Other public-interest organizations identified in the Commissioner's letter would likewise have submitted their own responses and competing evidence had they been provided the opportunity. By introducing these materials only after the close of the comment period—and simultaneously declaring that no response would be permitted—the Commissioner ensured that none of those rebuttals would become part of the rulemaking record before OAL. That is not harmless error. It is the precise prejudice the APA is designed to prevent.

IV. REQUIRED CORRECTIVE ACTION

These violations require disapproval and corrective action. Consumer Watchdog respectfully requests that OAL:

- (1) Disapprove this rulemaking action pursuant to Government Code § 11349.3 on the grounds that the Department failed to proceed in the manner required by law when it inserted the Lara Letter in the rulemaking file without complying with Government Code §§ 11346.8(d) and 11347.1, and by relying in that letter on the Capitol Weekly post and the August 2024 intervenor eligibility ruling without making those documents available for public comment as required by Government Code §§ 11346.9(a)(1) and 11347.1;
- (2) Direct the Department to either remove the Lara Letter from the rulemaking file or, if the Department contends the letter properly belongs in the record, to comply with the requirements of Government Code §§ 11346.8(d), 11346.9(a)(1), and 11347.1, and 1 CCR § 44, by: (a) providing formal notice of the Lara Letter and all documents relied upon therein, including the Capitol Weekly article and the August 2024 intervenor eligibility ruling; (b) making all such material available for public inspection for at least 15 calendar days; and (c) affording the public a 15-day opportunity to submit written comments;
- (3) Direct the Department to mail notice of the 15-day availability period to all persons who testified at the November 20, 2025 public hearing, submitted written comments during either comment period, and/or requested notification from the Department, as required by

Government Code § 11347.1(b) and Title 1, California Code of Regulations, section 44;
and

- (4) Direct the Department to summarize and respond to all timely public comments received during the required 15-day period in its revised FSOR, as required by Government Code §§ 11347.1(d) and 11346.9.

V. CONCLUSION

The Commissioner submitted a personal advocacy letter to OAL as part of the rulemaking record—after every comment period had closed, without prior public notice, and without any opportunity for the public to respond. That letter relies on two categories of material never previously identified in the ISOR or made available for public comment and invokes both as affirmative evidence that the proposed regulations are necessary.

The Commissioner transmitted the new material and announced the foreclosure of any opportunity to respond in the same breath—leaving the opposing public to read, three pages later, arguments they would never have the opportunity to answer in the rulemaking record. Whether the Lara Letter is treated as a de facto addendum to the FSOR or as independent post-comment period material, the Department failed to proceed in the manner required by law.

OAL should disapprove this rulemaking action and direct the Department to provide the required notice and 15-day comment period on the Lara Letter and the documents it relies upon. Please do not hesitate to contact us with any questions.

Respectfully submitted,



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