

DIVISION 3--DEPARTMENT OF FINANCE
Chapter 1. Standardized Regulatory Impact Assessment
For Major Regulations

Proposed Regulations to Implement S.B. 617 Re Major Regulations

Modified Text

Changes to the originally proposed language are shown by double underline for new text and underline with strikeout for deleted text.

Adopt regulations in Title 1, Division 3, Chapter 1 of the California Code of Regulations, to read as follows:

Chapter 1. Standardized Regulatory Impact Assessment for Major Regulations.

2000. Definitions.

For purposes of this chapter:

(a) "Agency" has the meaning given to that term in Section 11342.520 of the code.

(b) "As estimated by the agency" means the agency has estimated the economic impact of a proposed action in the manner prescribed by section 2003.

(c) "Code" means the Government Code.

(d) "Department" means the Department of Finance.

(e) "Economic impact" means all costs or all benefits, (both direct, indirect and induced,) of the proposed major regulation on California business enterprises and individuals located in or doing business in California.

(f) "GO-Biz" means the Governor's Office of Business and Economic Development.

(g) "Major regulation" means any proposed rulemaking action adopting, amending or repealing a regulation subject to review by OAL that will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) in any single year or 12-month period between the date the major regulation is estimated to be filed with the Secretary of State and the date that through 12 months after the major regulation is estimated to be fully implemented (as estimated by the agency), computed without regard to any offsetting benefits or savings costs that might result directly or indirectly from that adoption, amendment or repeal.

(h) "Notice of proposed action" means the notice required by Section 11346.5 of the code.

(i) "OAL" means the Office of Administrative Law.

(j) "SRIA" means the standardized regulatory impact assessment required by Section 11346.3(c) of the code.

NOTE: Authority cited: Section 11346.36, Government Code. Reference: Sections 11342.548 and 11346.36, Government Code.

2001. Notification; Public Input.

(a) (1) An agency that anticipates promulgating a major regulation shall provide the department, not later than February 1 of each calendar year, with a list and a detailed summary of each all major regulations that it anticipates proposing during the following calendar year. The information shall be provided on a form prescribed by the department. The list shall specifically identify the following for each major regulation that

the agency proposes to adopt, amend or repeal: by name, and subject matter, title and section of the California Code of Regulations that will be affected, statute or court decision being implemented, interpreted or made specific, each major regulation that the agency proposes to adopt, amend, or repeal. The summary shall describe in detail the problem intended to be addressed by each proposed regulation, the estimated economic impact of each proposed major regulation, and the anticipated date on which the agency proposes to publish the notice of proposed action for each major regulation. The list and detailed summary shall also contain the name of the agency, the responsible unit within the agency, and the name, telephone number, email, and mailing address of a contact person.

(2) In the event an agency determines after February 1 that it anticipates promulgating a major regulation, the agency shall submit to the department the information required in subdivision (a) as soon as possible but in no event later than 60 days prior to filing a notice of proposed action with OAL or, if the agency files an emergency regulation with OAL, contemporaneous with the filing of the notice of proposed action pursuant to Section 11346.1(e) of the code for that emergency regulation.

(b) Within 15 days of receipt of a list and summary of a proposed major regulations, the department shall provide a copy of that list and summary to GO-Biz and to any other agency that has requested a copy.

(c) Within 15 days of receipt of a list and summary of proposed major regulations, the department shall post that list and summary on its Internet web site.

(d) The agency shall also seek public input regarding alternatives from those who would be subject to or affected by the regulations (including other state agencies and local agencies, where appropriate) prior to filing a notice of proposed action with OAL unless the agency is required to implement federal law and regulations which the agency has little or no discretion to vary. An agency shall document and include in the SRIA the methods by which it sought public input.

NOTE: Authority cited: Sections 11346.3(f), and 11346.36, Government Code. Reference: Sections 11342.548, 11346.3(f), 11346.36, and 113949.1.5, Government Code.

2002. Standardized Regulatory Impact Assessment.

(a) An agency that anticipates promulgating a major regulation as defined in section 2000 shall, pursuant to Section 11346.3(f) of the code, submit its completed SRIA to the department within the following time frame:

(1) Not less than 60 days prior to filing a notice of proposed action with OAL if the agency has notified the department of the proposed regulation within the time prescribed by 2001(a); or

(2) Not less than 90 days prior to filing a notice of proposed action with OAL if the agency has not notified the department of the proposed major regulation within the time prescribed by section 2001(a);

(b) (1) The SRIA shall contain all of the information required by Section 11346.3(c) of the code, which shall have been prepared in compliance with section 2003.

(2) The SRIA shall also include a description and explanation of each of the following:

(A) The economic impact method and approach, including the underlying assumptions the agency used and the rationale and basis for those assumptions;

(B) The specific types of business enterprises and individuals who would be affected by the proposed major regulation;

(C) The inputs into the economic impact assessment;

(D) The outputs from the economic impact assessment;

(E) The agency's interpretation of the results.

(3) The SRIA shall also include documentation sufficient to substantiate compliance with the requirements of this section and of sections 2002 and 2003.

(c) The SRIA shall be accompanied by a form prescribed by the department that includes all of the following:

(1) Name of the agency.

(2) The name, telephone number, email and mailing address of the contact person.

(3) Statement of the need for the proposed major regulation.

(4) A summary of the business enterprises and individuals who will be impacted by the proposed major regulation and the amount of the economic impact on each.

(5) An identification and description of the total economic impact of changes due to the proposed regulatory change, calculated on an annual basis from estimated date of filing with the Secretary of State ~~until~~ through 12 months after the estimated date the proposed major regulation will be fully implemented.

(6) Description of the ~~single year~~ or 12-month period in which the agency estimates the economic impact of the proposed major regulation will exceed \$50 million.

(7) Description of the baseline that the agency used to compare proposed regulatory alternatives.

(8) Identification of the regulatory alternatives for addressing the stated need for the proposed major regulation that were provided by the public or another governmental agency or that the agency considered; the ~~consequences~~ economic impact of each regulatory alternative considered; and the reasons for rejecting each alternative.

(9) Description of the methods by which the agency sought public input as required by section 2001, accompanied by documentation of that public outreach.

(10) A description of the economic impact method and approach, including the underlying assumptions the agency used and the rationale and basis for those assumptions.

(11) ~~Signature Date, printed name, and date signature~~ of the head of the agency secretary under whose jurisdiction the agency resides.

(d) Within 10 days of receiving an SRIA, the department shall post a copy of the form required by subdivision (c) on its Internet web site.

(e) Within 10 days of receiving an SRIA, the department shall provide a copy of the form required by subdivision (c) to Go-Biz and any other agency that requests it. GO-Biz and any other agency may provide comment to the department within 10 days thereafter.

NOTE: Authority cited: Section 11346.36, Government Code. Reference: Sections 11342.548, and 11346.36, Government Code.

2003. Methodology for Making Estimates.

(a) In conducting the SRIA required by Section 11346.3(c) of the code, an agency shall use an economic impact method and approach that has all of the following capabilities:

(1) Can estimate the total economic effects of changes due to regulatory policies over a multi-year time period.

(2) Can generate California economic variable estimates such as personal income, employment by economic sector, exports and imports, and gross state product, based on inter-industry relationships that are equivalent in structure to the Regional Industry Modeling System published by the Bureau of Economic Analysis.

(3) Can produce (to the extent possible) quantitative estimates of economic variables that address or facilitate the quantitative or qualitative estimation of the following:

(A) The creation or elimination of jobs within the state;

(B) The creation of new businesses or the elimination of existing businesses within the state;

(C) The competitive advantages or disadvantages for businesses currently doing business within the state;

(D) The increase or decrease of investment in the state;

(E) The incentives for innovation in products, materials, or processes; and

(F) The benefits of the regulations, including but not limited to benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

(b) The department's most current publicly available economic and demographic projections, which may be found on the department's website, shall be used unless the department approves the agency's written request to use a different projection for a specific proposed major regulation. Such approval shall be made on a case-by-case basis. An agency that anticipates that it will take more than one year to develop a major regulation is encouraged to work with the department in determining the most appropriate projections to use.

(c) Costs and benefits shall be separately identified for different groups of agencies, businesses and individuals if the impact of the regulation will differ significantly between identifiable groups.

(d) The agency shall compare its proposed regulatory alternatives with a baseline that reflects the anticipated behavior of individuals and businesses in the absence of the proposed major regulations and shall identify the baseline it used.

(e) In comparing proposed regulatory alternatives with an established baseline, an agency should consider including the following in its analysis:

(1) A description of feasible alternatives to the proposed alternative and the rationale for choosing the proposed alternative over the others considered. This description should also include:

(A) An explanation of how the requirement for the proposed major regulation affects the selection of regulatory alternatives;

(B) An evaluation of the legal and statutory constraints that limit the selection of regulatory alternatives.

(2) Whenever possible, at least two alternatives should be compared to the proposed alternative, including:

(A) An alternative that could achieve additional benefits beyond those associated with the proposed alternative; and

(B) A next-best alternative that would not yield the same level of benefits associated with the proposed alternatives, or is less likely to yield the same level of benefits.

(3) A comparison of the cost-effectiveness of different alternatives.

(A) Both total and incremental benefits and costs should be estimated.

Incremental benefits and costs are the differences between the estimates associated with the alternatives considered.

(B) Whenever possible, final rather than intermediate outcomes should be used as measures of effectiveness.

(C) In cases where the proposed major regulation addresses more than one measure of effectiveness, weights should be applied to different categories of effects.

(D) The uncertainties associated with the estimates should be discussed.

(4) If there are significant differences between the incidence or timing of costs and benefits of a regulation, distributional effects should be addressed, including how the effects of the regulation are distributed, for example, by industry, income, race, sex, or geography, and how the effects are distributed over time.

(5) The assumptions, analytical methods, and data used in the analysis should be documented.

(A) To the extent possible, the analysis should rely on peer-reviewed literature.

(B) The source for all original information should be documented.

(f) An analysis of estimated changes in behavior by businesses and/or individuals in response to the proposed major regulation shall be conducted and, if feasible, an estimate made of the extent to which costs or benefits are retained within the business or passed on to others, including customers, employees, suppliers and owners.

(g) For each assessment of the value of benefits of the proposed major regulation required by section 11346.3(c)(1)(F) of the code, the agency shall describe the applied analytical methods and data sources used and the results of that analysis.

(1) The agency's assessment may rely on current and (if applicable) projected market transaction data where a market exists that can directly reveal the quantity or monetary value of a projected benefit of the proposed major regulation.

(2) The agency may use an indirect approach (e.g., use values derived from related markets) in cases where the value of the benefits can be inferred from actual choices made by individuals in related markets. The assessment should rely on current and (if applicable) projected market transaction data.

(3) The agency may use a direct approach (e.g. use values from surveys), estimating the value of the benefits based on hypothetical choices made by individuals responding to a survey.

(4) The agency may estimate the value of the benefits based upon an existing study of another regulatory policy with similar subject or physical characteristics. This

estimate should describe how the agency took into account the differences in the characteristics (such as time span, specific benefits to value, population, and other socio-economic factors) between the study and the proposed major regulations.

(h) In assessing the effects of a regulatory proposal on the General Fund and special funds of the state and affected local government agencies attributable to the proposed major regulation, including the cost of enforcement and compliance to the agency, an agency ~~shall~~ should follow the Department of Finance instructions in the State Administrative Manual sections 6601 through 6616.

NOTE: Authority cited: Section 11346.36, Government Code. Reference: Sections 11342.548, and 11346.36, Government Code.

2004. Failure to Comply with Requirements of this Chapter.

When an agency fails to comply in whole or in part with this chapter, the department shall identify in its comments the area(s) where the agency is out of compliance.

NOTE: Authority cited: Section 11346.36, Government Code. Reference: Sections 11342.548, and 11346.36, Government Code.