DEPARTMENT OF FINANCE
Chart A (Revised): Responses to 45-day comment period
Regulations to Implement S.B. 617 Re Major Regulations

Comments	Responses
Section 2000(a) - No comment was received.	
Section 2000(b) **1. Air Resources Board** ARB recommends that the proposed regulation mirror the statute's stipulation in § 11342.548 that the amount of a proposed regulation's economic impact, for purposes of making the determination described in §11342, shall be "as estimated by the agency." Section 2000 (b) would define "as estimated by the agency" to mean "in the manner prescribed by 2003." However, section 2003 of the proposed rule describes the methodology of estimating economic impact for the SRIA, which is statutorily separate and distinct from the estimation process described in 11342.548, (as defined by the Department's proposed rule at 2000(g)). The phrase "as estimated by the agency" applies specifically, per statute, to the determination made in § 11342.548. Therefore, ARB recommends rewriting section 2000(b) to highlight its statutory link to the estimation process defined in section 2000(g), and clarify the primacy of the Agency in that estimation process: *"As estimated by the agency" means the economic impact of a proposed action per section 11342.548 of the code has been estimated "in the manner determined by the agency."*	**Response:** This comment was rejected. Although the agency itself is the entity responsible for making the estimate, the method of estimation needs to be consistent across all agencies. Having a consistent methodology allows impacts to be comprehensive and informs the policy-making process in the future to assess tradeoffs that may be broader than those considered by the agency. The intent of SB 617 was to standardize the methods used to estimate economic impact of major regulations. This standardization needs to occur also with respect to the methodology used to determine whether a proposed regulation meets the threshold for a "major" regulation. Without this regulation, the term "as estimated by the agency" lacks clarity. If the estimate is made by the agency in a different manner than for the SRIA, the possibility exists that an agency would estimate inconsistent impacts at the threshold and the SRIA phases of the process. _____
Section 2000(c) - No comment was received.	

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Section 2000(d) - No comment was received.	
Section 2000(e) **1. Energy Commission/Gary Fernstrom, PG&E** The definition of "economic impact" includes costs or benefits, direct and induced. But the definition of "major regulation," which includes the "economic impact," is only limited to costs. These definitions conflict. Additionally, the definitions conflict with that of "cost impact" in Government Code section 11342.535, which refers only to a reasonable range of direct costs on a representative private person or business. Different phrases should be used, such as cost impact instead of economic impact, to refer to cost-only assessments rather than cost-benefit assessments. Moreover, there are three generally-accepted components of economic impacts: direct, indirect, and induced. The proposed regulations inconsistently refer to all three; this should be remedied if these terms are to be used. See proposed section 2000(e) and (g). _____	**Response:** This comment was accepted in part and rejected in part. The Department believes that the regulations are consistent with the statute in calling for an assessment of economic impact, which is more comprehensive than merely cost impact. Government Code §11342.548 is broader than Government Code §11342.535. The latter section defines only "cost impact," whereas the former references "economic impact." Economic impacts include both costs and benefits. None of the phrases should be narrowed to cost-impact or anything that precludes consideration of benefits, because that would be inconsistent with the statute. However, adding together costs and benefits would either understate the overall impact on individuals and businesses (if netted against each other), or would overstate the overall impact (if added together). We have changed section 2000(g) to clarify that benefits and costs should not be offset against each other. In the SRIA, both costs and benefits need to be considered. However, for the threshold, only costs or benefits should be considered so as not to double-count. For example, if the cost is small but the benefit is large enough to meet the threshold trigger, then a SRIA would be required and the agency would have to estimate both costs and benefits to ensure it was assessing the complete economic impact of the proposed regulation. Also, the definition has been changed to clarify that all costs or

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	all benefits should be considered, as a comprehensive assessment. The intent of the statute is clearly to consider as broadly as possible the potential economic impacts, including impacts on individual groups. Narrowing the definition by only considering direct impacts or netted impacts would contradict the intent. _____
2. Personal Income Federation of California The current version of the Proposed Regulations' definition of "Economic Impact" lacks clarity in that it could be misconstrued to limit application of the Proposed Regulations only to businesses domiciled in California, or having a principal place of business in California. The definition section states: (e) "Economic impact" means costs or benefits, both direct and induced, of the proposed major regulation on California business enterprises and individuals. PIFC suggests the Department add a definition for "California Business Enterprise," to affirm that it includes all entities conducting business in the state of California. To do otherwise, will result in the Proposed Regulations largely ignoring regulated industries that bring billions of dollars to California. For example, in California, the property/casualty insurance industry alone collected $56.2 billion in direct premiums and incurred $53.7 billion in claims losses and expenses in 2011. The majority of the industry, however, although directly contributing to California's economy, is not	**Response:** This comment was accepted. This section has been modified to include business enterprises and individuals doing business in California. This change reflects recent policy changes to define California businesses as those "…doing business in California." This change is also consistent with the impacts specified in Government Code §11346.3(c) which are required to be analyzed for purposes of the Standardized Regulatory Impact Assessment ("SRIA")—for example "creation or elimination of jobs within the state, the competitive advantages or disadvantages for businesses currently doing business within the state." _____

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domiciled in California. An Agency's regulation could very well be a major regulation due to its financial impact on an industry/business, but be missed by the Department if the regulating agency separates out only the impact on businesses domiciled in the state. Allowing such a loophole will defeat the purpose of SB 617 -- to improve California's business climate and put Californians back to work. _____ **3. Air Resources Board** ARB recommends writing 2000(e) as follows: *(e) "Economic impact" means the costs and benefits – direct, indirect and induced – of proposed major regulations for California business enterprises and individuals.* The Department's proposed definition includes "costs and benefits both direct and induced". There are three types of economic impacts: direct, indirect and induced impacts. Direct impacts are the impacts that directly affect business activity or development. Indirect impacts are caused by inter-industry exchanges, Induced impact are created by household spending of those directly and indirectly employed by the business activity or development. If the Department wished to include all three in its definition, then all three terms should be specified. "… Costs or benefits' should be changed to "… costs & benefits." The word "or" is open to interpretation as an exclusive conjunction, which would endorse economic impact assessments that consider either costs or benefits but not both. If the department wants to give agencies latitude to choose whether to include either benefits or costs when assessing	**Response:** This comment was accepted in part and rejected in part. See the response to commenter #1 (California Energy Commission) above. We have changed the regulation to include the words "all" and added in "indirect" for those who consider this type of cost as being distinct from "induced". This change is made to ensure that those affected by the regulation will understand the full range of what is included in the definition. The statute is clear that the intent is not a cost-benefit analysis, and economic impacts should be considered at a disaggregated level in terms of costs OR benefits. Giving agencies latitude to choose to net is inconsistent with the intent of the statute. In terms of what costs or benefits to include, all costs or all benefits should be considered, and these should be comprehensive.

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economic impacts, then retaining "or" makes sense. Otherwise, "and" would be less ambiguous and more accurate.	
Section 2000(f) - No comment was received.	No response needed.
Section 2000(g) **1. Franchise Tax Board** The proposed regulation does not address whether or not tax, as opposed to regulatory, impacts trigger the requirement for a full regulatory economic analysis for regulations implementing tax law changes. For example, legislation enacting the Financial Institutions Record Match (FIRM) program was, at the time the Legislature adopted FIRM, expected to generate significant additional state tax revenues. Since FIRM was not a self-implementing statute, it also required implementing regulations to govern a number of new administrative procedures. This proposed administrative FIRM regulation will not have a significant impact on the amounts of tax revenue to be collected under the FIRM program. However, under this proposed regulation, it remains unclear as to whether a full economic impact analysis would be required because the law change generated additional state income tax revenues, or is the full analysis not required because the regulation itself does not materially impact revenue? _____ **2. R.E.A.L. Coalition**	**Response:** This comment was rejected. Fiscal impacts are, by definition, a subset of economic impacts, as a fiscal impact will affect how much tax individuals and businesses pay. There is a methodology for estimating the economic impact, but determining how much of that economic impact comes from the statute and how much comes from the proposed regulation is part of the estimating process, and the agency is responsible for making the estimate in accordance with these regulations. An agency which has questions as to how to determine whether the economic impact results from the statute or the proposed regulation may consult with the Department and may also refer to guidance provided in the State Administrative Manual ("SAM"). _____ **Response:** This comment was accepted in part and rejected in

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Determining what meets the "major regulation" threshold of $50 million or more in economic impact. Under the draft regulations, the Department of Finance is interpreting SB 617's requirement that economic impact analyses be done on all [major] regulations that exceed $50 million in economic impact to mean those regulations that have an annual impact on the state economy of $50 million or more, versus cumulative impacts, and at any stage of implementation, versus at full implementation. This annual impact inference is especially striking considering there is nothing in the express text of the bill (SB 617) to support such a consequential interpretation. In fact, the final (chaptered) bill's text defines "major regulation" simply as: "…any proposed adoption, amendment, or repeal of a regulation...that will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000), as estimated by the agency." We have two issues with this unfounded, narrow interpretation. First, we are concerned that agencies can simply breakup regulations into smaller, bite-sized rulemaking events over two or more years in order to circumvent the $50 million threshold. And second, we are concerned that under this interpretation agencies can either ignore or intentionally skirt the cumulative impacts of a number of reasonably-connected regulations that flow from a single statutory scheme. Either scenario, we believe, offends the original intent, purpose and spirit of the law. To address the above concerns, we urge the Department of Finance to include the following guidelines in its rulemaking framework: - Proscribe regulation implementing agencies from	part. The economic impact analysis is not limited to any 12-month period, but there must be a consistent methodology for determining whether a regulation meets the major regulation threshold. The period for judging whether the regulation meets the major threshold has been modified to include the first 12 months of implementation. Allowing cumulative impacts would unreasonably complicate comparisons between regulations on this front. It would also have the effect of requiring a SRIA for almost all regulations, which clearly contravenes the intent of the statute. The comment on disaggregation of regulations was rejected because the Department lacks authority under the current statutory framework to require agencies to submit all regulations on a particular topic at one time. It is, however, aware that this is a potential problem. Should agencies begin to propose a large number of smaller regulations that seem to be part of a bigger whole, the Department may choose to call this to the Legislature's attention in the periodic review to be completed by 2015. The Department also will be monitoring the implementation of these regulations, and plans to be active during the public comment phase of the rulemaking process. The comment that the Department should require agencies to justify in the Initial Statement of Reasons their determination that a regulation does not meet the threshold for a major regulation was rejected because the Department lacks the authority under the current statutory framework to impose such a requirement. However, the Department plans to track regulations and to comment on those where it believes there is evidence that a regulation meets the major regulation threshold.

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unreasonably disaggregating regulations that implement functionally linked elements of a controlling statute into compound, isolated rulemaking actions over multiple years to avoid, contravene or invalidate the law's reach. - Prescribe formally that the "$50 million" threshold shall be determined by cumulative not annual impact. - Require agencies in their initial statement of reasons to include their methodology and explanations for determining that a regulation is *not* a major regulation. - Institute formal procedures for appealing/contesting agency determinations that a regulation is *not* a major regulation. - Ensure that the opinions of those who will be affected by regulations, e.g., businesses, as well as the views of those individuals and organizations who may not be affected but have special knowledge or insight into the regulatory issues, e.g., other agencies, are acknowledged, emphasized and responded to when designing, executing and writing regulatory analyses. After all, the dual goals of SB 617 are to provide transparency to regulated industries and to help decision makers effectively analyze and ultimately design regulations in the most efficient, least onerous and most cost-effective manner.	The comment that the Department should create a process to appeal an agency's determination that a regulation is not a major regulation was rejected because the Department lacks the authority under the current statutory framework to institute such an appeal process. The agency itself is responsible for making the required estimates and assessments. The Administrative Procedures Act ("APA") provides ample opportunities to contest an agency's determination that a regulation is not a "major" regulation during the rulemaking process (see Govt. Code §11346.45(a)) and by way of judicial action (Govt. Code §11350). The comment regarding ensuring the opinions of others, whether affected by the regulation or not, be acknowledged, emphasized and responded to when designing, executing and writing "regulatory analyses" was rejected. The APA already requires an agency to respond to each comment made during the rulemaking comment period. The proposal would impose too great a burden on agencies and could impact their ability to complete the rulemaking process in a timely manner. _____
3. Department of Insurance It's not clear whether this language allows for amortization and depreciation of long-term equipment or capital costs, but not savings to the same entity.	**Response:** This comment was rejected. The Department believes the Initial Statement of Reasons explains in detail the rationale behind and necessity for this regulation. The regulation is intended to cover all types of

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Single year impacts are good and helpful, but this new rule still does not allow netting of costs and benefits to the same entities. Accordingly, it would seem to promote a false and exaggerated statement of costs. Furthermore, timing issues of initial investment and later savings to the same entities would be discounted with this one-year approach that does not allow netting out. No adequate explanation as to why actual costs to businesses must be overstated in this way appears in the initial statement of reasons. _____	potential regulations that agencies may promulgate and it cannot be made more specific without creating the possibility of loopholes. The definition covers all economic impacts. The statute is clear that the intent is not a cost-benefit analysis, and economic impacts should be considered at a disaggregated level in terms of costs OR benefits. Giving agencies latitude to choose to net is inconsistent with the intent of the statute. In terms of what costs or benefits to include, all costs or all benefits should be considered, and these should be comprehensive. _____
4. Cal Chamber Definition of major regulation (2000(g)) The threshold determination of what is a "major" regulation is obviously critical, since this is what triggers the more extensive and useful economic analysis, in the first place. We suggest the following changes: (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~~ 12-month period from the date the major regulation is adopted until a year after it is fully implemented (as estimated by the agency), computed without regard to any benefits or savings that might result directly or indirectly from that adoption, amendment or repeal. "Fully implemented" means that all components and phases of regulatory implementation of the statute are substantially	**Response:** The comment to delete "single year" was accepted and the regulation has been modified accordingly. The comment that the Department should add a specified definition of "fully implemented" was accepted in part and rejected in part. The proposed language was not accepted as it was too vague. But a portion of the concept contained in that language was accepted and the Department has modified the text to capture economic impacts through 12 months after the date that the proposed major regulation is estimated to be fully implemented.

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complete. The $50 million threshold timeframe should apply to a year-long period that includes either (or both) the ramping-up period when industry may be spending considerably to prepare for the actual application of the regulation, and/or the period when the regulation may be fully operational and exposing the industry to the full extent of compliance or market effects. These different time frames may be relevant differently, depending on the regulation and on the industry. The definition of time frame needs to be sensitive to both; agencies should get some guidance as to what is meant by "fully implemented." We suggest using the term "12-month period" to clarify that the year-long time frame may be other than a fiscal or calendar year.	
Since this threshold determination is critical to the analytical path the regulation will follow – and since this threshold analysis is an untested concept with work-in-progress methodology, we strongly suggest that the Department enable public input on how the threshold economic impact is determined. This is important because there is otherwise no opportunity to independently validate this determination, or to challenge the determination before the Department, the proposing agency, or Office of Administrative Law. Our proposed language to address this issue is provided below, in our comments on Public input (2001(e)).	The comment that the Department should require public input on how the threshold economic impact is determined was rejected. The Administrative Procedures Act ("APA") provides ample opportunities to contest an agency's determination whether a regulation is a "major" regulation during the rulemaking process (see Govt. Code §11346.45(a)) and by way of judicial action (Govt. Code §11350). The Department plans to track regulations and to comment on those where it believes there is evidence that a regulation meets the major regulation threshold even though the agency has not identified it as such.
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5. Energy Commission/Gary Fernstrom, PG&E	**Response:** The comment that the reference should be limited to "any 12-month period" was accepted and the proposed regulations were changed accordingly.
The Energy Commission supports the clarification in the definition of "major regulations" to those with an	

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economic impact exceeding fifty million dollars in any single year or 12¬month period. But the phrase remains imprecise and ambiguous. When effective dates do not coincide with the beginning of a calendar year, different 12-month periods may cause varying economic impacts. The reference should be limited to "any 12-month period."	
More importantly, the definition should not limit calculation of the economic impact "without regard" to benefits. As made clear by the surrounding provisions of AB 617, and the proposed regulatory definition, "economic impact" includes both costs and benefits. This is a critical consideration for many regulatory programs. For example, the Energy Commission's appliance efficiency regulations (see tit. 20, Cal. Code Regs., § 1601 et seq.) require manufacturers to take steps to improve the efficiency of their products, at a certain cost. This cost is often passed on to the consumers, who also recover that cost through energy savings that exceed the increased initial up-front cost of the appliance. The definition of "major regulation" should not preclude considering these and other relevant factors, where the surrounding proposed regulations for conducting standardized regulatory impact analyses are replete with provisions regarding the benefits of proposed regulations, including proposed sections 2002(c)(5), 2003(a)(3), (c), (e)(3) and (4), (f), and (g).	The comment that the definition should not limit calculation of the economic impact “without regard to benefits” was accepted in part. The statutory wording of SB617 is very broad in that it references “economic impact” without any limitations. The proposed regulation has been modified to ensure that it is clear that both costs and benefits are to be included, but may not be offset against each other.
In addition, the regulations are required to provide guidance on how to estimate whether a proposed regulation is a "major regulation." (Gov. Code, § 11346.36, subd. (b)(6).) The definition of "major regulation" does not provide sufficient guidance, and the Department's other proposed regulations describing how to conduct the standardized regulatory impact analysis focus on other impacts of an	The comment that the regulations do not provide guidance on how to estimate whether a proposed regulation is a “major regulation” and the recommendation for a new section containing additional guidance is rejected. Sections 2002 and 2003 give agencies a framework and provide specific requirements to construct a Standardized Regulatory Impact Assessment (SRIA) and methodology for making estimates

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agency's proposed regulation, and on analyzing alternatives to a proposed regulation. (Compare proposed sections 2003(a)(1), (3)(C) [use of model with capability to estimate economic changes and business impacts but no guidance of how to do so]; and 2003(c) [requirement to identify impacts but no guidance how].) We recommend adding a new section that provides additional guidance on how to determine whether a proposed regulation is a "major regulation" or specify criteria for how the Department of Finance will evaluate an agency's determination that a proposed regulation is or is not a major regulation. Also, impacts of regulations are many times not either: 1) constant, or 2) ended, when a regulation is "fully implemented." But the proposed regulation does not clarify when that occurs. Is it upon the effective date? When there is evidence of compliance? This is a significant question for regulations like the Energy Commission's appliance efficiency standards, which may be tiered and become effective, or more stringent, over time. This should be clarified. Further, the definition improperly encompasses the entirety of a "rulemaking action." The Administrative Procedure Act in general and the statutory definition in particular refer to "a regulation" in the singular. The proposed regulations should be consistent with the statute, and the remainder of the proposed regulatory text. _____	needed for completing the SRIA. The Department's regulations essentially guide agencies through a process for conducting SRIAs by specifying that certain information be included in the economic assessments for major regulations. By defining a given process, the information required, the methodology for making estimates and commenting on such assessments, the Department has provided guidance in a format that is consistent with the rulemaking process specified in the APA. The responsibility for making that estimate rests with the agency, as specified in Government Code §11342.548. The Department will consider, after it has some experience with these regulations, whether further guidance or examples would be helpful. The recommendation to add a new section that specifies criteria "…for how the Department of Finance will evaluate an agency's determination that a proposed regulation is or is not a major regulation" is rejected. Pursuant to Government Code §11342.548, the estimate is the responsibility of the agency proposing the regulation. See also the response to the prior comment. The comments concerning the clarity of the timeframe in which the impacts are to be measured were accepted. The proposed regulations have been modified in an attempt to provide greater clarity in this area, but the Department cannot be overly prescriptive due to the wide range of possible regulations. In addition, both sections 2002 and 2003 provide significant guidance to agencies with respect to the questions raised. The comment concerning the "entirety of a 'rulemaking action" was rejected. The proposed regulation clearly refers to an action "adopting, amending or repealing *a* regulation" in the singular.

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6. Department of Fish and Wildlife Calculating the economic impact of a proposed regulation within a one-year time frame would fail to distinguish short term regulations from those in effect for an indefinite period of time. Economic impact analyses should recognize the life of the regulation and calculate total discounted cumulative impacts until a specified sunset of perpetuity.	**Response:** The comment regarding the one-year time frame was rejected for the reasons set forth in the response to commenter #3 (Department of Insurance).
Additionally, the one-year period of analysis encourages agencies divide their proposals into regulatory phases so as to remain below the $50 million regulation threshold. An extensive regulatory action with cumulative or total impact on the order of a major regulation could be hidden by parsing it through the regulatory process in one-year pieces, each of which would stay below the $50 million threshold. We suggest inserting the language "until the regulation is fully operational" to prevent agencies from taking advantage of this loophole.	The comment regarding disaggregation of regulations was rejected for the reasons set forth in the response to commenter #2 (R.E.A.L. Coalition). The concept contained in the comment recommending inserting "until the regulation is fully operational" was accepted; this subdivision was modified to include the time frame "through 12 months after the major regulation is estimated to be fully implemented."
In accordance with the intent of SB 617, we understand that only the gross costs "without regard to any benefits" figure into the determination of a major regulation. However , the regulations promulgated by the Department and the Fish and Game Commissions are most often motivated by the need to maintain sustainable fish and wildlife populations for the on-going benefit of the public as well as businesses that support fishing, hunting and other outdoor activities. The long term viability of fish and wildlife populations is not often	The comment regarding gross costs "without regard to any benefits" was rejected for the reasons set forth in the response to commenter #1 California Energy Commission and Gary Fernstrom (PG&E) in section 2000(e).

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achieved through market signals alone. In these instances, the Department and Commission regulations effectively increase the competitive nature of the industry and serve to maintain sustainable populations in the long-run.	
We would recommend that the reporting of monetary and non-monetary benefits in section (h) (1) of the Standard Regulatory Impact Assessment (SRIA) receive comparable attention in the overall evaluation of a regulation. Furthermore, the SRIA analyses should always include, among the alternatives considered, a "no change" alternative. This ensures that decision maker and the public are well informed about the potential consequences of taking no regulatory action.	The comment regarding reporting monetary and non-monetary benefits was accepted. The Department believes the statute requires consideration of benefits and that the regulations reflect that requirement. It is up to the agency to identify and evaluate both monetary and non-monetary benefits. The comment concerning the "no change" alternative was rejected because that is already an option. The agency selects the alternatives. The Department wants to know what alternatives the agency actually considered.
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7. Air Resources Board	**Response:** This comment was accepted in part and rejected in part for the reasons set forth in the response to commenter #3 (ARB) in section 2000(e) and the response to commenter #3 (Dept. of Insurance) in section 2000(g).
ARB recommends that the Department's proposed definition of a major regulation explicitly exclude induced or indirect compliance costs.	
Because of the way the Department (at 2000 (e)), would define "economic impact," 2000(g) could be interpreted as requiring agencies to include induced or indirect costs when making the determination in § 11342.548. The Department's understanding of "induced costs" per page 3 of its ISOR includes impacts that "affect the economy as a whole and show up as changes in statewide employment or gross domestic product."	
Section 2001(a)(1) of the Department's proposed regulation would require agencies to make the determination in § 11342.548 prior to February 1, for the inclusion in a list	The comments concerning Computable General Equilibrium (CGE) modeling of indirect or induced statewide economic impacts for purposes of making the threshold estimate are

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of major regulation to be proposed in the calendar year. To meet the Department's proposed deadline for the list, agencies would need to begin working on the § 11342.548 estimate well before February 1. Estimating "induced costs" in this context would require agencies to use CGE-style modeling to estimate statewide economic impacts (such as those listed in 11346.3(c)), 11 months or more before proposing regulations, and to do so without including direct and indirect regulatory benefits or savings in their calculations. This is impractical for three reasons: 1. Agencies will often not have data needed as inputs to model statewide economic impacts eleven months or more before a regulation is proposed. 2. Correct use of CGE modeling to estimate statewide impacts requires inputs of benefits as well as costs. 3. Including induced costs in the Agency's estimate of a proposed regulation's economic impact is inconsistent with the statute, (§ 11346.5(a)7)), which states that the agency's determination of a proposed regulation's economic impact shall assess any adverse economic impact "directly affecting business." ARB does not believe the Department intended to require CGE modeling of indirect or induced statewide economic impacts for purposes of making the § 11342.548 estimate. ARB therefor asks the department to clarify the language of 2000(g) to exclude indirect and induced costs, as suggested in the next comment (below). _____	rejected for the reasons set forth in the response to commenter #1 (Cal. Energy Commission and Gary Fernstrom, PG&E) and commenter #3 (ARB) in section 2000(e). The Department believes an analysis must be made of all costs or all benefits when making the threshold determination. In many cases, the precision and comprehensiveness of CGE modeling will likely not be necessary, as an initial estimate should likely make it clear whether a regulation meets the threshold for a major regulation. Where there is doubt however, there must be the same standard applied for the threshold and full SRIA calculations. The comment concerning consistency with Govt. Code §11346.5(a)(7) is rejected. Govt. Code §11346.36(b)(3) was enacted more recently and is more specific than the section upon which ARB relies. The Department therefore believes it is controlling. That section provides in pertinent part that the Department's regulations "at a minimum, shall assist the agencies in specifying the methodologies for: (3) Determining the impact of a regulatory proposal on the state economy, businesses, and the public welfare." . _____

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8. Air Resources Board ARB recommends that direct savings to regulated entities be included in the economic impact estimate made by agencies to determine whether a regulation is a "major regulation." To do otherwise would be inconsistent with: • Standard economic theory and practice which require that both cost and benefits be accounted for when estimating an economic impact. • The proposed regulation's definition of economic impact at 2000(e) which includes both benefits and costs. • The language of the statute as explained below: The statute (§11346.3)(a) states that assessing the potential for "adverse economic impact" of both minor and major regulations shall require agencies to assess the benefits of the regulations (§11346.3 (a) 3, §1136.3(b)(1)(D) & §11346.3(c)(1)(F) Per §11346.3(c)(1) the standardized regulatory impact statement shall address: regulatory benefits as well as costs; creation as well as elimination of jobs; creation as well as elimination of businesses; and the increase as well as the decrease in investment in the state. This pattern – of including both benefits and costs when assessing economic impacts – recurs throughout the statute. Per §11342.548, agencies must reduce the economic impact of proposed regulations to single dollar amount; above	**Response:** This comment was accepted in part and rejected in part for the reasons set forth in the response to commenter #3 (ARB) in section 2000(b) and in the response to commenter #3 (ARB) in 2000(e). Economic impacts include both costs and benefits. None of the phrases should be narrowed to cost-impact or anything that precludes consideration of benefits, because that would be inconsistent with the statute. We have changed section 2000(g) to clarify that benefits and costs relative to economic impact should not be offset against each other.

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or below $50 million. Given that the economic impact of regulations – per the statute and per 2000(e) – would include both costs and benefits, estimating any economic impact as a single amount requires combining (netting) costs and benefits. For example, estimating the economic impact of a regulation on employment as a single number requires netting estimated job gains against estimated job losses, the same principal apples to reporting any economic impact as a single amount. **To include only direct costs and savings, ARB recommends rewriting 2000(g) as follows:** *"Major regulation" means any proposed rulemaking action adopting, amending or repealing a regulation subject to review by OAL that will have a net, direct 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 the major regulation is estimated to be fully implemented, computed without regard to any indirect or induced benefits, savings or costs that might result from that adoption, amendment or repeal.* _____	The comment that the estimate should be limited to direct costs and savings was rejected. The statute is very broad and the regulation, in requiring an estimate of the economic impact, is consistent with the law. The regulations do not require that the threshold be determined based solely on the cost impact but contemplate use of either the costs or the benefits relative to the economic impact of the proposed major regulation. _____
9. Air Resources Board 2000(g) would require agencies – for purposes of §11342.548 – to include only costs when estimating a proposed regulation's "economic impact." Excluding benefits from estimation of a regulation's economic impact is inconsistent with the department's proposed definition of economic impact at 2000(e), which includes benefits and	**Response:** The comment regarding exclusion of benefits from an estimate was rejected. The statute is clear that the intent is not a cost-benefit analysis, and economic impacts should be considered at a disaggregated level in terms of costs or benefits. Giving agencies latitude to choose to net is inconsistent with the intent of the statute. In terms of what costs or benefits to include, all costs or all benefits should be considered, and these should be

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costs; it also violates standard economic theory and practice which require that both benefits and costs be considered when estimating economic impact. If contrary to ARB's recommendation (above), the Department wishes to retain a costs-only approach to 2000(g) while achieving constituency with 2000(e), ARB recommends substituting the term "direct costs" for "economic impact" as follows: *"(g) Major regulation" means any proposed rulemaking action adopting, amending or repealing a regulation subject to review by OAL that will impose direct costs on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000)…"* Such a change could result in a practical approach to gauging, well in advance, whether a proposed regulation's economic impact, as later estimated in the SRIA, will surpass the $50 million threshold for "major regulation" status.	comprehensive. We have changed section 2000(g) to clarify that benefits and costs relative to economic impact should not be offset against each other.
Section 2000(h) - No comment was received.	
Section 2000(i) - No comment was received.	
Section 2000(j) - No comment was received.	
Section 2001(a) **1. Personal Income Federation of California** PIFC commends the Department for providing for public input regarding alternatives from those who would be subject to or affected by major regulations. However,	Response: This comment was rejected. The Administrative Procedure Act ("APA") provides ample opportunities to contest an agency's determination that a regulation is not a "major" regulation during the rulemaking

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although the Proposed Regulations provide for public input in this regard, they miss a crucial juncture for providing public input at the beginning of the process when the initial determination is made as to whether a regulation qualifies as a "major regulation". This misses the boat, in that the potentially impacted businesses and individuals are in the best position to educate agencies and the Department on a proposed regulation's impact. Not having this important input could result in regulations that meet the definition of "major regulation" never coming to the Department's attention, and allow for agencies to avoid a process important to California's economy. PIFC strongly encourages the Department to include in its Proposed Regulations a mechanism for regulated businesses and individuals to provide input in the initial determination of whether a regulation is a major regulation. Agencies should have to consider input from potentially impacted parties to determine if their proposed regulations should be submitted to the Department as a major regulation. Additionally, a mechanism is needed to allow interested parties to request a Department of Finance analysis when a party believes an agency has failed to identify its proposed regulation as a "major regulation". Such public input and Department analysis is necessary to prevent circumvention of the process and to support the purpose of SB 617, to improve California's business climate. _____	process (see Govt. Code §11346.45(a)) and by way of judicial action (Govt. Code §11350). The proposal to permit an interested party to request a Department of Finance analysis related to whether an agency "…has failed to identify its proposed regulation as a "major regulation" was rejected as it conflicts with GC §11342.548, which specifies that agencies have the responsibility to conduct the estimate and determine if the proposed regulation has an economic impact that exceeds $50 million. _____

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2. Department of Insurance We are unaware of any provision of law that could serve as a basis for the requirement in the proposed regulations that rulemaking agencies inform DoF in advance of their submittal to DoF of a Standardized Regulatory Impact Analysis (SRIA) that they intend to promulgate a major regulation. Certainly no such statutory provision is cited in the reference or authority note to this section. Accordingly this language of the proposed regulations violates the authority and reference standards of the APA. Additionally, even if there were any basis in law for the requirement that an agency annually submit to DoF a list of the major regulations it anticipates promulgating that year, such a requirement could not apply to emergency regulations, which expressly are subject only to Government Code sections 11346.1, 11349.5 and 11349.6 (Gov. Code §11346.1, subd. (a).) Any such requirement would consequently fail of the consistency standard of the APA, as well. _____	Response: This comment was rejected. Govt. Code §11346.36(b) specifically sets a minimum standard for what must be included in the Department's regulations. The Department has express authority to adopt regulations necessary to implement SB 617 (Govt. Code §11346.36(a)). Given the responsibilities assigned to the Department under SB 617, the notification requirement is an important part of such implementation, as advance notice of potential major regulations permits the Department to engage in adequate planning and preparation so that it can ensure it has sufficient resources to evaluate proposed major regulations and to assist the agencies that are proposing them. The regulations are not inconsistent with the law regarding emergency regulations, as the notification is required only at the time of filing the notice of proposed action with OAL, which is one of the requirements under Govt. Code §11346.1(e) that must be met in order for the emergency regulation to remain in effect for more than 180 days. _____
3. California Energy Commission/Gary Fernstrom, PG&E Proposed section 2001 (a) should clarify that the "estimated economic impact" for the list of potential major regulations that must be submitted February 1st of each year be no more than necessary to provide the Department and the public with	Response: This comment was accepted and the proposed regulations have been modified to simplify and limit the contents of the notice. _____

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advance notice of anticipated proposals of major regulations. To achieve this, the preliminary notice need not provide either a detailed summary of proposed regulations that have not yet been developed, or a quantified estimate of economic impact. Preparing detailed information and conducting a complex assessment at the time of this preliminary notice creates several problems with little or no benefit. Often, insufficient information is available about proposed regulations so far in advance to conduct a complex assessment. Further, regulatory text is often inchoate and undergoes significant revision to consider numerous alternatives before being released to the public as proposed regulations. Providing detailed assessments and descriptions at such an early point would disseminate unreliable information, create false expectations, and encumber significant resources responding to inquiries. At most, the notice should contain: • the topic of the regulations; • the statute that the agency is implementing, interpreting, or making specific; • the anticipated date of the Notice of Proposed Action; and • a contact for further information. It is enough at this stage that the agency provides notice that the anticipated regulations are expected to have a major economic impact. And, this level of reporting would be consistent with the regulatory notice calendar required by Government Code section 11017.6. Further, proposed Section 2001 requires agencies to submit the notification to the Department on a form yet to be prescribed. We note that if a form will require any information that is different from or in addition to the	

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information required in the regulation, the form must be made available for public comment and either incorporated by reference or included as a form in the regulations themselves. (See Cal. Code Regs., tit. 2, § 20.)	
Subdivision (a)(2) requires an agency to notify the Department of a major regulation anticipated after February 1st at least 60 days before filing a Notice of Proposed Action with the Office of Administrative Law. But the standardized regulatory impact analysis itself is also due 60 days before filing the Notice of Proposed Action with the Office, so this requirement seems pointless. We recommend deleting this additional notice requirement, or clarify that if this occurs, agencies have additional time to submit the standardized regulatory impact analysis.	The comment recommending deletion of the requirement that an agency which has not met the February 1 notification period submit information to the Department no later than 60 days prior to filing a notice with OAL was rejected. This time period is not pointless or redundant. The regulation permits notification to be made at any time ("as soon as possible") and not just within 60 days prior to filing the notice.
_____	
4. Department of Fish and Wildlife	**Response:** This comment was accepted. The published text already requires notification by February 1 rather than November 1.
(a)(1) The requirement to provide a list and summary of each major regulation to DOF not later than November 1 should be changed to January 30 of each calendar year to coincide with the Office of Administrative Law (OAL) reporting due date so as to limit redundant effort on the part of agencies.	
(a)(2) The requirement that an agency anticipating a major regulation submit the specifics of a proposed major regulation to DOF at least 60 days prior to the filing a notice with OAL is again redundant and potentially incompatible with the availability of population monitoring data needed to set bag and possession limits designed to provide for sustainable harvest over the long term. For example, quotas and tag allocations for annual deer hunting regulations and some	The comment requesting deletion of the requirement that an agency which has not met the February 1 notification period submit information to the Department no later than 60 days prior to filing a notice with OAL was rejected. This time period is not redundant. The regulation permits notification to be made at any time ("as soon as possible") and not just within 60 days prior to filing the notice. Quotas and tag allocations for deer hunting and some commercial fisheries appear to be set

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commercial fisheries, such as herring, are based on herd composition counts and spawning biomass data that may not be available in time to include the 60-day notice to DOF and still have regulations in place for the hunting or fishing season. While the proposed rules make allowance for rulemakings that must conform to federal regulations, the Department recommends that they make a similar allowance for natural resource regulations that depend on biologically driven resource monitoring data.	annually through the normal rule-making process and therefore, it would be possible (indeed necessary) to have the requisite data in a timely fashion. The regulations are not inconsistent with the law regarding emergency regulations, as the notification is required only at the time of filing the notice of proposed action with OAL, which is one of the requirements under Govt. Code §11346.1(e) that must be met for the emergency regulation to remain in effect for more than 180 days.
Section 2001(b) **1. Air Resources Board** ARB suggests omitting 2002(e) and 2001(b). 2002(e) and 2001(b) would be rendered redundant by 2001(c) and 2002(d), respectively. Providing copies of documents to Go-Biz is redundant and superfluous if the same documents will be simultaneously published on the Department's internet website.	**Response:** This comment was rejected. Part of the Department's role in reviewing economic impact assessments should include sharing an agency's assessment of a proposed major regulation's economic impact with agencies such as GO-Biz, which is the office that serves as California's single point of contact for economic development and job creation efforts, and other state agencies that may be impacted by a proposed major regulation. This allows for efficient transfer of information to those agencies about a potential major regulation without the need for those agencies to continually monitor the Department's website.
Section 2001(c) – No comment was received.	No response needed.
Section 2001(d) **1. Department of Fish and Wildlife**	**Response:** This comment was rejected. Reading Govt. Code§§11346.36(a) and (b) together, an

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While the department regularly conducts outreach to affected parties prior to filing a notice of proposed action with OAL, we believe the requirement to complete an alternative analysis 60 days prior to notice is burdensome. Further, our reading of the statute does not support this requirement. _____	alternatives analysis is required to be included in a SRIA, which must be included in the Initial Statement of Reasons (ISOR). The ISOR must be filed with OAL at the same time as the notice of proposed action. See Govt. Code §11346.2(b)(2) and (5). Govt. Code §11346.3(e) clearly contemplates consideration of alternatives at an early stage in the process of crafting regulations. _____
2. Department of Insurance The requirement that, prior to notice filing with OAL, rulemaking agencies must request public input on the topic of alternatives to proposed regulations from parties who will be subject to or affected by the regulations is without basis in law, and violates the authority and consistency of the APA. SB 617 contains no grant of rulemaking authority or other basis to support any new requirement relating to rulemaking agencies' receiving input from interested parties or the public. The preceding sentence applies not only to Section 2001(d) but also to every other provision of the proposed regulations which seeks to impose any such requirement. DoF's statutory grant of rulemaking authority is limited by its own terms to permitting DoF to "adopt regulations for conducting the [SRIAs] required by subdivision (c) of Section 11346.3" of the Government Code. Government Code section 11346.3(c) specifies the matters that shall be addressed in SRIAs; it does not contain a provision requiring or suggesting that rulemaking agencies request information from interested parties in advance of notice filing. Nor does it contain a provision requiring that the SRIA contain documentation of the methods by which	**Response:** This comment was rejected. The Department's regulations are consistent with requirements specified in the APA and requirements specifically attributable to the expectations related to the SRIA. Indeed, as the commenter has noted, Govt. Code §11346.3 (c)(1) requires agencies to prepare a SRIA "…in the manner prescribed by the Department of Finance…". Public input on alternatives is part of the required assessment. In addition, Govt. Code § 11346.3 (e) specifies that "[a]nalyses conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices not reassess statutory policy." This section of the law puts great emphasis on public participation and input, and on the consideration of alternatives and "regulatory choices" in getting to the determination that the "…regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute……in the least burdensome manner."

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agencies sought input from interested parties or public input prior to submitting the SRIA to DoF. Any such documentation requirement would also illegitimately impose an additional lag time on notice filing, since in order to satisfy this requirement an agency would have to have sought the input from the public or interested parties not just prior to noticing regs but 30 days before that, so that the agency's efforts to seek the input could be documented in the SRIA. For these reasons Section 2001(d) of the proposed regulations fails of the authority and consistency standards of the APA. Section 2001(d) also runs amok of the consistency standard of the APA, because prior existing rulemaking provisions of the Government Code unaffected by SB 617 already delineate rulemaking agencies' opportunities and obligations with regard to prenotice consultations and discussions with interested parties, and the rule set forth in the Section 2001(d) of the proposed regulations directly conflicts with this body of controlling statutory law. Government Code section 11346(b), for instance, makes prenotice consultation by rulemaking agencies with interested parties optional, not mandatory: "An agency that is considering adopting, amending, or repealing a regulation *may* consult with interested persons before initiating regulatory action pursuant to this article." (Emphasis added.) Similarly, Government Code section 11346.45 requires rulemaking agencies to involve parties who would be subject to planned regulations in prenotice public discussions regarding the regulations, but only when "the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period." (Gov. Code § 11346.45, subd. (a).) And even in connection with regulations that do involve complex proposals or a large	Govt. Code §11346.36(b) specifically sets a <u>minimum</u> standard for what must be included in the Department's regulations. The Department has express authority to adopt regulations necessary to implement SB 617 (Govt. Code §11346.36(a)). Given the language of Govt. Code §§11346.3(e) and 11346.36(b), the Department believes the public input requirement is consistent with SB 617 in that permitting public review and evaluation of alternatives could result in the discovery of additional and perhaps more cost-effective alternatives to the proposed major regulation. The proposed regulation does not impose an additional outreach requirement on those agencies that currently solicit public input on alternatives prior to initiating the formal rulemaking process. The comment concerning consistency with Govt. Code §§11346(b) and 11346.45 is rejected. Govt. Code §11346.36(b)(3) was enacted more recently and is more specific than these two sections. The Department therefore believes it is controlling. That section provides in pertinent part that the Department's regulations "at a minimum, shall assist the agencies in specifying the methodologies for: (3) Determining the impact of a regulatory proposal on the state economy, businesses, and the public welfare." This pre-notice requirement is therefore independent of the two sections relied upon by the commenter. It is part of an agency's responsibilities when assessing the economic impact of a proposed major regulation. Involving the Department and affected parties early in the process could result in the discovery of additional and perhaps more cost-effective alternatives to the proposed major regulation, consistent with the intent of SB 617.

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number of proposals that cannot easily be reviewed during the comment period, rulemaking agencies are not actually required to involve interested parties in prenotice public discussions if they state "with reasonable specificity in the rulemaking record" the reasons why they did not conduct such discussions. (Gov. Code § 11346.45, subd (c).) Consequently, an absolute requirement that, prior to notice filing with OAL, rulemaking agencies must request information about alternatives from parties that will be subject to or affected by planned regulations would violate the consistency standard of the APA. _____ **3. Cal Chamber** (2001(e)). Public input (2001(d) and (e)) How will the Department enforce the excellent public input requirements regarding alternatives? (d) The agency shall also seek public input regarding alternatives from those who would be subject to or affected by the major 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, and include in the record any proposed alternatives received by the agency during the public input and comment process. Non- or under-compliance with the public input requirements should be noted by Finance in its comments.	**Response:** The comment that the Department should enforce the requirement for public input regarding alternatives by requiring the agency to include in the record any proposed alternatives received during the public input and comment period was rejected as unnecessary because section 2002(c)(8) already contains a similar requirement. In addition, the Department will be reviewing compliance with this requirement as part of its review of a SRIA and will be providing the agency with comments relative to its adherence to the Department's regulations governing the SRIA. Govt. Code §11346.3(f).

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Add a new subdivision (e) requiring agencies to seek and consider public input regarding threshold determinations of major regulations. (e) The agency shall also seek public input regarding the threshold determination for each new proposed regulation, whether or not the agency anticipates that the regulation would have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) in any 12-month period. An agency shall document and include in the SRIA the methods by which it sought public input.	The comment that an agency should be required to seek public input regarding the threshold determination was rejected. The Administrative Procedures Act ("APA") provides ample opportunities to contest an agency's determination whether a regulation is a "major" regulation during the rulemaking process (see Govt. Code §11346.45(a)) and by way of judicial action (Govt. Code §11350). The threshold determination is solely the agency's responsibility in making the estimate as to whether a proposed regulation is a major regulation. See Govt. Code § 11342.548.
_____	_____
4. Energy Commission/ Gary Fernstrom, PG&E Proposed section 2001(d) requires the agency to seek public input regarding alternatives from those who would be subject to or affected by the major regulation. Although the Energy Commission frequently engages the public and key stakeholders in discussions before proposing regulations, the Department of Finance's requirement goes significantly beyond what existing rulemaking law requires, and may therefore exceed the Department's authority. Existing law permits, but does not require, agencies to consult with interested persons before the Notice of Proposed Action. (Gov. Code, § 11346, subd. (b).) For "complex proposals or a large number of proposals that cannot easily be reviewed during the comment period," existing law requires state agencies to involve before the Notice of Proposed Action only those parties who would be subject to the proposed regulations. (Gov. Code, § 11346.45, subd. (a).) But the Department requires this for any major regulation, regardless	**Response:** The comment regarding public input on alternatives was rejected for the reasons set forth in the response to commenter #2 (Dept. of Insurance). The comment that the words "affected by" should be removed from the regulation was rejected because that language is consistent with the wording in Govt. Code §11346.5(a)(13).

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of its complexity, and expands the requirement to anyone (directly or indirectly) "affected by" the regulations. The section should be at most permissive, or at least remove the words "or affected by."	
5. Air Resources Board ARB questions whether SB617 gives the Department authority to require agencies to seek input on alternatives to proposed regulations more than 60-90 days before the 45-day notice. (§11346.5(a)(7)). Agencies would be required to submit a "completed" Standardized Regulatory Impact Assessment (SRIA) for major regulations 135-105 days before the scheduled date of adoption, (rather than the current 45), significantly increasing lead time needed to process regulations. Agencies would be expected to report, in the submittal, on their public input process. As a practical matter, this required early input may be superficial, and moot soon thereafter as alternatives become more refined and formally proposed per the APA. 2002(a)(1)&(2) would require agencies to submit completed SRIAs to the Department either 60 or 90 days before filing their 45-day Notice packages with OAL. 2001(d) requires agencies to document and include in their SRIA the methods by which agencies sought input regarding alternatives to the proposed major regulations. ARB does not believe the Department's proposed solution properly harmonizes the specific statutory APA timeline with the more general SB 617directive for some amount of additional Department review.	**Response:** This comment was rejected for the reasons set forth in the response to commenter #2 (Dept. of Insurance) and for the reasons set forth below. Govt. Code §11346.2(b)(2) and (5) currently require that a notice of proposed action filed with OAL be accompanied by the ISOR, and that the ISOR must include the SRIA (for major regulations) and "a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives." Therefore, consideration of alternatives is already part of the required analysis at the beginning of the rulemaking process. Indeed, if an agency is that close to filing a notice of proposed action with OAL, it will already be fully aware of many possible alternatives. The comment regarding the timeframe for submitting a completed SRIA prior to adoption of a major regulation is rejected. The Department has a specific time frame within which to respond. The Department also retains the right to comment, as any other person can, during the 45-day comment period and this recommendation would appear to foreclose that option. The key is what is required <u>at the beginning of the rulemaking process.</u> The law clearly contemplates that an agency will have considered alternatives prior to filing a notice of proposed action with OAL. The comment regarding consistency with the APA timeline is rejected as the Department believes its regulation is in fact

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	consistent with the APA timeline. The Department's timelines are intended to provide clarity as to when the SRIA (which must be included in the ISOR) must be filed with the Department as the agency must include the Department's comments in the SRIA.
6. Gary Fernstrom, PG&E "It is our [PG&E] experience, in the past ten or 15 years in advocating for energy efficiency improvements with the California Energy Commission those opponents to these improvements in the regulations wait until the last minute to make their contribution in an endeavor to perhaps delay the process. So I believe it's admirable to request alternatives and suggestions in the beginning of the process, but you may find that you'll be getting these recommendations anyway." _____	**Response:** The comment that it is admirable to request alternatives and suggestions in the beginning of the process was accepted. _____
Section 2002(a) **1. Department of Insurance** The requirement that rulemaking agencies wait at least 60 days or, if an agency has not complied with Section 2001(a) of the proposed regulations, 90 days after submitting the SRIA to DoF before they may deliver the corresponding notice filing to the Office of Administrative Law (OAL) is without basis in law. Moreover, this requirement is violative of the authority, reference, consistency and necessity standards of the APA. DoF's statutory grant of rulemaking authority is	**Response:** This comment was rejected. The Department's regulations are consistent with requirements specified in the APA and requirements specifically attributable to the expectations related to the SRIA. Govt. Code §111346.36(a) directs the Department to ". . . adopt regulations for conducting the standardized regulatory impact analyses required by subdivision (c) of §11346.3." Govt. Code §11346.3 (c)(1) requires agencies to prepare a SRIA "…in the manner prescribed by the Department of Finance…". Further, Govt. Code § 11346.3 (e) specifies that "[a]nalyses conducted pursuant to this section are intended to provide agencies and the

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limited by its own terms to permitting DoF to "adopt regulations for conducting the [SRIAs] required by subdivision (c) of Section 11346.3" of the Government Code. Government Code section 11346.3(c) specifies the matters that shall be addressed in SRIAs; it does not contain a provision imposing a lag time, or suggesting that a lag time should be imposed, on agencies seeking to deliver a notice filing to OAL. For this reason this section of the proposed regulations violates the authority standard of the APA. The language also runs afoul of the consistency standard of the APA, because SB 617 specifies 30 days, not 60 or 90 days, as the maximum amount of time that may pass from the time a rulemaking agency submits its SRIA to DoF until the time DoF must provide its comments to the rulemaking agency on the extent to which the SRIA adheres to the subject DoF regulations. (Gov. Code § 11346.3, subd. (f).) As a practical matter, rulemaking agencies will likely be unable to deliver a notice filing to OAL until at least 30 days have passed since the agency submitted the corresponding SRIA to DoF, because SB 617 requires the agency to include in its notice a summary of and response to DoF comments on the SRIA, and the agency cannot include this information in its notice before receiving DoF's comments on the SRIA. (Id.) (However, it is a least theoretically possible that DoF could provide its comments to the rulemaking agency before the end DoF's statutory comment period, so that a rulemaking agency could conceivably insert the required information into the notice and deliver the notice filing to OAL on an earlier date than the date that is 30 days after the rulemaking agency's submission of the SRIA to DoF.) At any rate, Government Code section 11346.3 indicates that the maximum lag time (after the submittal to DoF of a SRIA and	public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices not reassess statutory policy." This section places great emphasis on public participation and input, emphasizes the consideration of alternatives and "regulatory choices" in reaching a determination that the "…regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute……in the least burdensome manner." The comment regarding consistency was rejected as SB 617 limits only the time given to the Department within which to comment on a SRIA. It does not address or limit the operational necessity for the time limitations imposed by this regulation. The regulation does not give the Department any greater time within which to comment on a SRIA. Rather, it builds in time both for the Department to comment and for the agency to respond. (See pages 8 & 9 of the ISOR for these regulations for further support of the Department's position.) In light of the enormous responsibility to review and comment on a proposed major regulation within 30 days of receiving a SRIA, the Department's regulations reflect a process which it believes is necessary for it to perform its statutorily prescribed duties. In addition, an agency must consider the Department's comments and summarize those comments and any changes it made as a result of the Department's comments. To suggest that an agency would merely "…insert the required information into the notice…" seems to devalue the importance of the SRIA

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before the rulemaking agency may deliver the corresponding notice filing to OAL) which DoF may impose is 30, not 60 or 90, days. Accordingly, the sentence is in direct conflict with Government Code section 11346.3. The economic impact will be difficult to estimate at this early stage. Preparing an estimate up front, before the notice is published will be unnecessarily time-consuming. DOF seems to be attempting to force the entire rulemaking process into prenotice activities. _____	and the potential economic impact of the proposed major regulation and seems inconsistent with the legislative intent of SB 617. The comment regarding the difficulty of estimating the economic impact 60 to 90 days prior to filing a notice of proposed action with OAL was rejected. Consideration of the economic impact, including alternatives is already part of the required analysis that must be completed at the beginning of the rulemaking process. Indeed, if an agency is that close to filing a notice of proposed action with OAL, it will already be fully aware of many possible alternatives and should already have prepared an estimate of the economic impact of the proposed regulation. In addition, many fiscal and economic impact statements are currently required in the notice and STD 399 and the ISOR must contain a description of alternatives considered. See Govt. Code §§ 11346.2(b)(2),(5) and 113465.(a)(13). See also the response to commenter #4 (Calif. Energy Commission) under section 2001(d). _____
3. California Energy Commission The deadlines for submitting the standardized regulatory impact assessment to the Department of Finance other than "upon completion" as specified in Government Code section 11346.3, subd. (f), should be clarified as advisory rather than mandatory. There should be no question that a missed deadline forecloses an agency from adopting a proposed regulation, where the Department of Finance lacks	**Response:** The comment that the Department lacks the statutory authority to place a deadline for submission of a SRIA and therefore any such deadline should be advisory rather than mandatory was rejected for the reasons set forth in the response to commenter #1 (Dept. of Insurance) above and to commenter #2 [Dept. of Insurance in section 2001(d)]. In addition, there must be a time frame by which the SRIA must be submitted to the Department or the Department will be unable to complete its statutory review prior to the agency filing

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statutory authority to disapprove an impact assessment or otherwise halt a rulemaking proceeding. The requirement in proposed Section 2002(a)(2) to submit a standardized regulatory impact assessment to the Department of Finance not less than 90 days before filing a Notice of Proposed Action if the agency has not provided prior notice of the anticipated regulation conflicts with the 60-day notice requirement in proposed section 2001(a). This requirement should be deleted or harmonized with Section 2001 (a). Related to this, the regulations should clarify that if the Department fails to meet its obligation to comment on a standardized regulatory impact assessment within 30 days, it will be deemed to have no comments. Language reflecting this suggestion is provided.	the notice of proposed action. Since the SRIA must be included in the ISOR, this regulation provides time for the Department to review and comment on it prior to the initiation of the formal rulemaking process, consistent with the intent of SB 617. The comment regarding consistency between this section and section 2001(a) is rejected. The two time frames serve different purposes and are unrelated to each other. The comment that the Department should clarify that it will be deemed to have no comments if it fails to comment within the statutory 30-day time period was rejected. The Department retains the right to comment, as any other person can, during the 45-day comment period and this recommendation would appear to foreclose that option.
Section 2002(b) – No comment was received.	
Section 2002(c) **1. Department of Insurance** The device of calling for information to be included on a form that is required to be submitted along with the SRIA instead of requiring the information to be part of the SRIA itself cannot circumvent the authority standard of the APA. The forms exemption stated in Government Code section 11340.9(c) does not apply here. In order for the regulations to require additional information to be submitted in connection with the SRIA, there would first have to be some basis in law for requiring any such additional information in connection with the SRIA. Government Code	**Response:** The comment regarding authority was rejected for the reasons set forth in response to commenter #2 (Dept. of Insurance) in section 2001(d). All of the information required on the form is included in the regulation itself and reflects information that is required in the statute to be included in a SRIA. _____

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section 11346.3(c) provides no authority for DoF to require agencies to provide information not specified in that section in connection with the SRIA, regardless of whether or not the information is to be specified on a form. The preceding paragraph applies to each provision of Subdivision (c) of proposed Section 2002.	
2. Department of Insurance It is unclear why this form is necessary in addition to the existing, similar Form 399. This requirement adds more bureaucracy and paperwork for agencies, but it differs only slightly from the Form 399 since it requires identification of a baseline for comparison of alternatives.	**Response:** The comment questioning the need for the form is rejected. Without the information required by this subdivision, provided in a consistent format, the Department would be faced with the potentially time-consuming (and resource-consuming) task of sorting out this information from the collection of documents provided to it by an agency. This would be inefficient and counter-productive, given that the Department has only 30 days within which to comment on the SRIA. Having the information provided in a consistent format will result in governmental efficiency as it will provide a means by which the Department can more readily check to ensure that all the required information has in fact been provided.
3. Cal Chamber Standardized Regulatory Impact Assessment (2002(c)(5),(6) and (e)) Conforming changes to recommendations in 2000(g).	**Response:** The comment that the Department should add a specified definition of "fully implemented" was accepted in part and rejected in part. The proposed language was not accepted as it was too vague. But a portion of the concept contained in that language was accepted and the Department has modified the

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(5) An identification and description of the total economic impact of changes due to the proposed regulatory change, calculated on an annual basis from the proposed date of adoption until a year after the proposed major regulation is fully implemented. "Fully implemented" means that all components and phases of regulatory implementation of the statute are substantially complete.	text to capture economic impacts through 12 months after the date that the proposed major regulation is estimated to be fully implemented.
(6) Description of the 12-month period ~~single year~~ in which the agency estimates the economic impact of the proposed major regulation will exceed $50 million.	The comment to delete the reference to a "single year" was accepted and the regulation has been modified accordingly.
_____	_____
4. Energy Commission Subdivision (c) refers to "economic impact," which section 2000, subdivision (e), defines as costs or benefits. However, some of these references appear to mean only cost impacts, not benefits (e.g., subdivision (c)(6)). Thus, there is some conflict between the definition of economic impact and its use within the regulations. The proposed regulation should be clear whether the Department means "economic impact" or cost impact in this section, or modify the definitions to clarify	**Response:** The comment concerning the need to clarify the meaning of "economic impact" was accepted in part and we have modified section 2000(g) to address this concern. See also the response to commenter #1 (Cal. Energy Commission and Gary Fernstrom) in section 2000(e).

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the meaning of "economic impact."	
Section 2002(c)(1)-(6) No comment was received.	
Section 2002(c)(7) **1. Department of Insurance** Section 2002(c)(7) purports to require information about the economic comparison of proposed alternatives to agencies' proposed regulations. This section fails of the authority and consistency standards of the APA, however, because the determination resulting from the economic analysis and comparison of proposed alternatives in relation to agencies' proposed regulations is not required to appear in the SRIA. Nor it is required at all until the end of the formal rulemaking process, when the agency completes its final statement of reasons. The final statement of reasons is required to include the determination, with supporting information, that no alternative proposed at any time in the rulemaking process would be as effective as the proposed regulations and less burdensome to affected entities or more cost-effective than the proposed regulations and equally effective in implementing the statutory policy. (Gov. Code § 11346.9(a)(4).) Instead of the process contemplated by Section 2002(c)(7), at the time the initial notice is published, rulemaking agencies must disclose in the initial statement or reasons that they are required to make these determinations. (Gov. Code § 11346.5(a)(13).) Agencies are simply not required to make these determinations, however, until the end of the rulemaking process. SB 617 does not change this fact. There is no legal basis for the proposed regulation to convert	**Response:** This comment regarding authority and consistency was rejected. Government Code §11346.3(b)(2) requires that the proposed regulation and the alternatives be compared with an established baseline so a department can determine the most effective and least burdensome regulatory solution. This section of the form asks for a description of the baseline that is used in making the analysis required for completion of the SRIA. The Department of Insurance is correct that agencies are required by Government Code §11346.9(a)(4) to determine that no alternative considered would be as effective and less burdensome to affected private persons or would be more cost effective to affected private persons and equally effective implementing the law than the proposed regulation. However, it appears mistakenly to believe this determination is made only at the end of the rulemaking process. See Govt. Code §§ 11346.2(b)(2) and (5) and 11346.3. For a major regulation, the proposed regulation requires this determination to be made on the basis of the benefits of the regulation mentioned in Government Code 11346.5(a)(3)(C) and from the SRIA (which also must include a discussion of the major regulation's benefits). This information should be known at the time the agency files its notice with OAL as it must be included in the ISOR filed with OAL at the same time. Govt. Code §§ 11346.2(b)(2) and (5)(A).

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rulemaking activities that are required to take place during the formal rulemaking process into prenotice activities. Accordingly, Section 2002(c)(7), requiring agencies to describe the baseline the agency *used* to perform the economic comparison regulatory alternatives, runs afoul of the consistency as well as the authority standard of the APA. The provision therefore must either be deleted or amended as follows: delete "compare regulatory alternatives," and insert "analyze the economic impact of the proposed regulations."	
Section 2002(c)(8) **1. Department of Insurance** Any requirement that a rulemaking agency include in the SRIA a report on (a) the regulatory alternatives it has reviewed and rejected or (b) the reasons for rejecting them would violate the authority and consistency standards of the APA. As has been noted, an exhaustive list of the elements of the SRIA is set forth in Government Code section 11346.3(c), but the report required by Section 2002(c)(8) of the proposed regulations is simply not part of the SRIA as defined in statute. Accordingly, a regulation stating that such a report is in fact part of the SRIA would necessarily violate the consistency standard of the APA. The device of requiring the information to be submitted on a form that is required to be submitted along with the SRIA instead of requiring the information to be part of the SRIA itself cannot save this requirement of the proposed regulations from violating the authority standard of the APA; in order for the regulations to include such a requirement, there would have to be some basis in law for requiring this additional information in the first	**Response:** This comment was rejected. Govt. Code §11346.36(b) specifically sets a minimum standard for what must be included in the Department's regulations. The Department has express authority to adopt regulations necessary to implement SB 617 (Govt. Code §11346.36(a)). The Department believes that Govt. Code §11346.3(c), in conjunction with Govt. Code §11346.36, gives it broad authority to prescribe how the SRIA shall be prepared. Reading Govt. Code §§11346.36(a) and (b) together, an alternatives analysis is required to be included in a SRIA, which must be included in the Initial Statement of Reasons (ISOR). The ISOR must be filed with OAL at the same time as the notice of proposed action. See Govt. Code §§11346.2(b)(2) and (5). Govt. Code §11346.3(e) clearly contemplates consideration of alternatives at an early stage of the process of crafting regulations. The Department's regulations are consistent with requirements specified in the APA and requirements specifically attributable to the expectations related to the SRIA. Indeed, as the

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place, and Government Code section 11346.3(c) provides no authority for DoF to require agencies to provide information not specified in that section, regardless of whether or not the information is specified on a form. Additionally, regulations that effectively made the alternatives analysis part of the SRIA would also impose the new mandate — not present in SB 617 — that rulemaking agencies submit their alternatives analyses to DoF prior to notice filing with OAL, and publish in their notices a summary of and a response to DoF comments on the agency's alternatives analysis. For this reason, Section 2002(c)(8) of the proposed regulations also runs aground on the authority standard of the APA.	commenter has noted elsewhere, Govt. Code §11346.3 (c)(1) requires agencies to prepare a SRIA "…in the manner prescribed by the Department of Finance…". Public input on alternatives is part of the required assessment. In addition, Govt. Code § 11346.3 (e) specifies that "[a]nalyses conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices not reassess statutory policy." This section of the law puts great emphasis on the consideration of alternatives and "regulatory choices" in getting to the determination that the "…regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute……in the least burdensome manner."
2. Energy Commission/ Gary Fernstrom, PG&E The requirement in Section 2002(c)(8) to identify "the consequences of each regulatory alternative considered" is vague. It is not clear what is encompassed by the term "consequences." Moreover, it is duplicative of requirements for considering alternatives in proposed Section 2003, discussed below, and in the initial statement of reasons that must accompany the standardized regulatory impact assessment. (See Gov. Code § 11346.2, subd. (b)(4).) This requirement should be deleted in light of these other requirements.	**Response:** The comment regarding the clarity of the word "consequences" was accepted and the text has been modified accordingly. The comment that the requirement in subsection (c)(8) is duplicative of other requirements for considering alternatives and should be deleted is rejected for the reasons set forth in response to commenter #2 (Dept. of Insurance) in section 2002(c).

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3. Department of Fish and Wildlife The requirement that agencies shall include as part of the SRIA a report on the alternatives that were reviewed and the reasons why they were rejected is duplicative, as it also required in the agencies' ISOR.	**Response:** This comment was rejected for the reasons set forth in response to commenter #2 (Dept. of Insurance) in section 2002(c).
Section 2002(c)(9) **1. Department of Insurance** As has been pointed out, DoF's statutory grant of rulemaking authority is limited by its own terms to permitting DoF to "adopt regulations for conducting the [SRIAs] required by subdivision (c) of Section 11346.3" of the Government Code. Government Code section 11346.3(c) specifies the matters that shall be addressed in SRIAs; it does not contain a provision requiring or suggesting that rulemaking agencies request information from interested parties in advance of notice filing. Nor does it contain a provision requiring that the SRIA contain a description or documentation of the methods by which agencies sought input from interested parties or public input prior to submitting the SRIA to DoF. Any such documentation requirement would also illegitimately impose an additional lag time on notice filing, since in order to satisfy this requirement an agency would have to have sought the input from the public or interested parties not just prior to noticing regs but 30 days before that, so that the agency's efforts to seek the input could be documented in the SRIA. For these reasons this section of	**Response:** The comments that the Department lacks authority to promulgate this regulation and that the regulation fails the consistency standard are rejected for the reasons set forth in the response to commenter #1 (Dept. of Insurance) under section 2002(c)(8).

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the proposed regulations fails of the authority and consistency standards of the APA.	
Section 2002(c)(10) – No comment was received.	
Section 2002(c)(11) **1. Department of Insurance** Again, DoF's statutory grant of rulemaking authority is limited by its own terms to permitting DoF to "adopt regulations for conducting the [SRIAs] required by subdivision (c) of Section 11346.3" of the Government Code. Government Code section 11346.3(c) specifies the matters that shall be addressed in SRIAs; it does not contain a provision requiring or suggesting that the agency secretary or head of rulemaking agencies submitting a SRIA must sign a form to be submitted with the SRIA. Additionally, DoF's initial statement of reasons provides no rationale for imposing such a requirement. Accordingly, this section of the proposed regulations violates the authority and necessity standards of the APA. _____	**Response:** The comment recommending deletion of the requirement for signature by the agency secretary has been accepted and the proposed regulation has been modified accordingly. The comment that the Department lacks authority to promulgate this regulation is rejected for the reasons set forth in the response to commenter #1 (Dept. of Insurance) under section 2002(c)(8). With respect to the comment regarding necessity, the Department believes, based on its experience, that it is necessary that an agency demonstrate that something as important as a major regulation has been reviewed and approved by the head of the agency. _____
2. Energy Commission/ Gary Fernstrom, PG&E The regulations should not require that each agency's secretary sign the standardized regulatory impact analysis. This requirement is unnecessary and burdensome, is not required by the statutory language, could delay proposed regulations with no identifiable benefit or harm to be	**Response:** The comment recommending deletion of the requirement for signature by the agency secretary has been accepted and the proposed regulation has been modified accordingly. There is no statutory requirement that the signature requirements on the STD 399 and the signature requirement in this regulation must mirror each other.

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redressed, and frustrates the Legislature's intended autonomy granted independent agencies like the Energy Commission. The Energy Commission is comprised of five Commissioners, each representing the entire state and having distinct expertise in the State's needs for a safe, reliable energy supply. (Pub. Res. Code §§ 25200,25201,25203.) The Commissioners serve staggered five-year terms, upon appointment by the Governor and the consent of the Senate. (Pub. Res. Code §§ 25204, 25206.) In most instances, a majority vote of at least three Commissioners is necessary for the Commission to take any action. (Pub. Res. Code §§ 25209,25211.) This structure provides the Commission with a degree of independence from any sitting Governor, enabling it to make decisions in the long-term best interests of all Californians, and participants in California's energy sector a degree of stability to facilitate long-term planning and investment. Subjugating the Energy Commission's rulemaking decisions establishing statewide energy policy to the approval of the Secretary of the Natural Resources Agency threatens this. It undermines the Legislature's intent for the Energy Commission to be an independent policy-setting body, and erodes the stability created by the Commission's structure. The proposed requirement also differs from the requirement in the State Administrative Manual, section 6614, for Fiscal Impact Statements, STD Form 399, which allows signatures from (1) the Agency fiscal officer, and (2) either "the Agency Secretary; the highest ranking official in the state agency, if it is not under an Agency Secretary; or a designee having a written delegation from the Agency Secretary or the highest ranking official." The Department's proposed regulations should not	

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require agency secretary approval. At most, the regulations should require only approval of the head or chair of the agency proposing a major regulation.	
Section 2002(d) – No comment was received.	
Section 2002(e) **1. Air Resources Board** ARB suggests omitting 2002(e) and 2001(b). 2002(e) and 2001(b) would be rendered redundant by 2001(c) and 2002(d), respectively. Providing copies of documents to Go-Biz is redundant and superfluous if the same documents will be simultaneously published on the Department's internet website. ——————— **2. Air Resources Board** ARB recommends opening any pre-notice comments process to all interested parties, regardless of affiliation. Per 2002 (e), the Department would solicit pre-Notice comments exclusively from Go-Biz and other state government agencies, 2002(e) thus appears to place the interests of government agencies ahead of the interests of individuals and non-governmental organizations. Per §11345.3(e), SRIAs are intended to provide both agencies **and the public** with the tools to assess regulatory proposals, and should be available to all.	**Response:** This comment was rejected for the reasons set forth in response to the ARB in section 2001(b). ——————— **Response:** This comment was rejected. Part of the Department's role in reviewing economic impact assessments should include sharing an agency's assessment of a proposed major regulation's economic impact with agencies such as GO-Biz, which is the office that serves as California's single point of contact for economic development and job creation efforts, and other state agencies that may be impacted by a proposed major regulation. This allows for efficient transfer of information to those agencies about a potential major regulation without the need for those agencies to continually monitor the Department's website. The agency itself is responsible for making the required estimates and assessments. The APA provides ample opportunities to contest an agency's

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	economic impact determination during the rulemaking process (see Govt. Code §11346.45(a)) and by way of judicial action (Govt. Code §11350). It is more appropriate for public comment to appear during the formal comment period so it will be captured in the rulemaking effort.
Section 2003(a)(1) **1. Department of Insurance** If only one year of analysis is required it is unclear why a multiyear model or economic impact method would be necessary just for setting forth a baseline year. The tool DoF has for this, REMI, is expensive — $38,250 per year, as noted in the Attachment to the Form 399. Such a sophisticated tool as REMI would not be needed to compare a baseline year with the projected year. It appears that this may not be the	**Response:** This comment was rejected. There is a difference in using an economic modeling tool to determine whether a regulation meets the threshold, and using the tool to conduct the full analysis. A SRIA analyzes the economic impact of a regulation, whereas a determination whether a regulation is a major regulation depends on the economic impact within a "twelve-month period" between the date the major regulation is estimated to be filed with the Secretary of State through12 months after the major regulation is estimated to be fully implemented. The economic impact of a

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most cost-effective alternative.	regulation is the effect of the proposed regulation on the state's economy and would last as long as the regulation is effective. The agency is free to choose any modeling tool that allows it, in conjunction with other tools, to meet the requirements set forth in the law and regulations.
Section 2003(a)(2) **1. Department of Insurance** It is unclear why all these variables are required. Export/import effects, for instance, are unlikely to be applicable in most cases.	**Response:** This comment has been rejected. To analyze the full economic impact of a proposed regulation an agencies must model or use some method that can estimate all economic effects. This model or method would have to measure the economy using variables that affects the economy. Imports and exports are two of these measurements. Without these variables, an economic model would be unable to quantify the effect of the trading of goods and services to another state or country. In California's case, without measuring these two variables, it would be impossible to measure the effect on competitiveness with businesses from other localities but also to measure the total effect on business enterprises because many California businesses sell their goods or services to other states and countries. While in many instances a major regulation does not have an effect on exports or imports into the state, these two factors play a major role in the competitiveness of business enterprises. If an agency determines that a major regulation does not affect imports or exports, an agency should just include a justification for this determination.

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Section 2003(a)(3)(D) **1. Department of Fish and Wildlife** The requirement that the SRIA also include the evaluation of: "(4) the increase or decrease of investment in the state; and (5) the incentives for innovation in products materials, or process," will increase the potential for biased assessment. Estimation techniques to predict the future levels of investment and innovation are quite speculative and are often influenced by variables outside of the sphere of a regulatory action. Both investment and innovation levels are not standard outputs of economic impact modeling software. As suggested in the regulatory text, the commercially available economic models cannot deliver all the assessments required by Section 1136.3(c).	**Response:** This comment was rejected. The statute specifically provides that the "standardized regulatory impact analysis shall address: … (D) The increase or decrease of investment in the state, (E) the incentives for innovation in products, materials, or processes" (Government Code 11346.3). To address these factors, the economic impact method and approach must include these aspects. These estimates may be completed using a general equilibrium economic model but also through other techniques. The economic model used is only part of the total assessment. As the circumstances addressed by regulations will differ greatly across agencies, agencies must exercise their best judgment in adequately covering all the portions of the assessment required and the tools must be tailored to the nature of the regulation being proposed.
Section 2003(b) **1. Energy Commission/ Gary Fernstrom, PG&E** Subdivision (b) permits agencies to use a different projection from the Department of Finance's current publicly available economic and demographic projections on a case-by-case basis. However, the proposed regulation does not explain what factors justify using a different projection (i.e., the criteria for approving a different projection). The proposed regulation is unclear; this makes it difficult for an agency to	**Response:** This comment was rejected. The Department requires agencies to use its publicly available economic and demographic data and projections when conducting a SRIA. The Department's data, which is included in the Governor's yearly budget summary, are widely used sources for California economic and demographic data. The goal of SB 617 is to ensure some standardization and consistency in analyzing the potential economic impact of a

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determine when and on what basis it may request approval to use different projections, and on what grounds the Department would agree to those projections. This will unduly delay the rulemaking process. The proposed regulation should provide criteria for using different projections, or allow different projections upon application. _____	major regulation. Thus, the Department is given the authority in Govt. Code §11346.36(b) to write regulations for the methodologies used in the assessment of the economic impact of a major regulation. In creating this methodology for a *standardized* regulatory impact assessment, baseline data of the economy and demography of the state must be uniform used to ensure consistency and this is why it is important that the Department's data be used. At the same time, the Department realizes that certain assessments may need to include different types of economic or demographic data aside from the Department's data. The Department also recognizes that timing—where in the rulemaking process an agency is when the Department's data is updated—may impact which data set is to be used. In these types of circumstances, an agency may make a written request to deviate from this requirement, which the Department may grant on a case-by-case basis (which is fact-specific and will vary depending upon a myriad of currently unknown factors). _____
2. Department of Insurance The requirement that when performing a SRIA rulemaking agencies must use projections provided by DoF also violates the consistency standard of the APA, because this requirement contradicts Subdivision (c)(1) of Government Code section 11346.3, which states that "[i]nformation required from state agencies for the purpose of completing the [SRIA] may be derived from existing state, federal, or	**Response:** This comment regarding the Department's authority was rejected. The Department believes that the use of the Department's current economic and demographic data is necessary to ensure greater consistency in the economic impact assessment process. While "information required from state agencies for the purpose of completing the [SRIA] may be derived from existing state, federal or academic publications" (Government Code §11346.3), in order to ensure standardization of assessment, an agency must use the

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academic publications." Agencies are thus entitled by statute to use data from federal or academic publications, regardless of whether or not DoF approves of the agency's choice in this regard. It is important to note that SB 617 studiedly refrains from granting DoF approval power over any aspect of agency rulemaking. The statute grants DoF authority only to comment on SRIAs prepared by rulemaking agencies in connection with major regulations, as defined, and requires the rulemaking agency to publish in its notice a summary of and response to DoF's comments. To the extent that the proposed regulations seek to confer on DoF the power to disapprove the sources of information used in the SRIA, the regulations exceed DoF's statutory authority. _____	Department's projections for economic and demographic data. A SRIA is intended to provide "agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner" (Govt. Code §11346.3(e)). The regulation would not preclude an agency, for example, from using published actuarial data, academic data about certain regulated industries or federal environmental data. In fact, agencies are encouraged to use data from various relevant sources, but the Department's economic and demographic data form a baseline that will permit other agencies and the public to easily compare and analyze SRIAs. As noted in the response to the California Energy Commission comment above, the Department may also, on a case by case basis, approve the use of economic and demographic projections other than those of the Department. _____
3. Department of Insurance Written approval for using alternate projections imposes yet another unnecessary hurdle. If an agency has good reasons for not using them, couldn't this be stated by the agency in the SRIA along with good reasons for not using them such as the availability of federal projections with modeled federal health statistics from the Centers for Disease Control for incidence rates. Some of this type of detail is not part of DOF projections.	**Response:** This comment was rejected for the reasons set forth in response to commenter #1 (Cal. Energy Commission/Gary Fernstrom and commenter #2 (Dept. of Insurance) above. The proposed regulation only requires written approval for economic and demographic projections used instead of the Department's own projections. It does not preclude use of additional resources or data that may be needed in order to adequately assess the economic impact of a proposed major regulation.

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Section 2003(c) **1. Air Resources Board** ARB recommends tightening the focus of 2003(c) to reduce opportunities for potential abuse. The Department should assign responsibility for determining which groups require separate analysis to the agencies conducting the regulatory impact assessment. The proposed language is extremely broad and could inadvertently allow any potentially identifiable group or subgroup (e.g. legislative district, county, age group, ethnic, etc.) to claim their sector or group was not properly analyzed. ARB therefore recommends writing 2003(c) as follows: *(c) Costs and benefits shall be separately identified for different groups of agencies, businesses and individuals if the agency's work in preparing the impact analysis's required by 11346.3(c) shows that the major regulation's impact will significantly differ between identifiable groups.*	**Response:** This comment was rejected. To limit separate identification of economic impact on different groups to only those identified by the agency's model would narrow the focus too greatly. The public should be able to make the case for inclusion of separate identification of economic impact for other groups. By its nature, economic modeling requires choices to be made about the scope of the analysis, and it is the responsibility of the agency to consider how to weigh completeness versus tractability of analysis. The requested recommendation would not prevent others from claiming during the public comment period that the economic impact for their group or sector was not properly analyzed.
Section 2003(d) **1. Cal Chamber** The methodology section is thoughtful and thorough. We recommend some changes to create more clarity and	**Response:** The comment recommending use of a cost-effectiveness analysis was rejected. The statute specifically requires consideration of benefits as

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better align with the statute: (d) The agency shall compare its proposed regulatory alternatives, using a cost-effectiveness analysis, 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. SB 617, in numerous sections, refers to a classic description of cost-effectiveness in setting a baseline for comparisons of regulatory alternatives. The regulation should specifically rely on these statutory directives in calling out a cost-effectiveness analysis. By way of example, in Section 11346.36(b)(2) – which is the section applying specifically to the Department of Finance – the Legislature provided that: Comparing proposed regulatory alternatives with an established baseline so agencies can make analytical decisions for the adoption, amendment, or repeal of regulations necessary to determine that the proposed action is the most effective, or equally effective and less burdensome, alternative in carrying out the purpose for which the action is proposed, or the most cost-effective alternative to the economy and to affected private persons that would be equally effective in implementing the statutory policy or other provision of law. Similar references are found in sections 11346.2(b)(4)(A), 11346.3(e), 11346.5(a)(13), and 11346.9(a)(4). _____	well as costs. Some of these benefits are, by their nature, not easily quantifiable, and thus not suitable for inclusion in a cost-effectiveness analysis. To exclude these would improperly narrow the analysis. When read in its entirety, SB 617 clearly contemplates that cost-effectiveness is not the sole standard by which a regulation should be measured. See, for example, Govt. Code §§ 11346.2(b)(1), 11346.3(b)(1)(D) and 11346.36(b)(1). _____
2. Energy Commission/ Gary Fernstrom, PG&E The requirements for considering and analyzing regulatory alternatives remain unduly burdensome and	**Response:** The comment that the requirements for considering and analyzing regulatory alternatives is burdensome and contrary to SB 617 is rejected for the reasons set forth in response to commenter #2 (Dept. of Insurance) in section

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contrary to the statutory language of SB 617. The express legislative intent for standardized regulatory impact analyses is: to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute ... in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the pubic of the economic consequences of regulatory choices, not reassess statutory policy. The baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. (Gov. Code, § 11346.3, subd. (e).) This language complements Section 11346.2, subd. (b), describing reasonable alternatives to be considered and conspicuously omitting "no regulation" as an alternative. In other words, an alternatives analysis for an economic impact statement (distinguished from other comparisons of alternative scenarios, such as in environmental analyses) should compare with other potential regulations, not with no regulations at all, as regulations are the appropriate means for State agencies to implement, interpret, and make specific policy decisions made by the Legislature. These aspects of the proposed regulations should not be adopted. Any language should accord with the statutory requirements. Additionally, the regulations should be clear that all economic impact assessments and comparisons of "regulatory alternatives" are only of alternatives that were considered but rejected in favor of the proposed regulations. As currently drafted, using the phrase "proposed regulatory alternatives"	2001(d). The Department notes that an agency chooses which alternatives to consider and in some cases an agency may legitimately list "no regulation" as an alternative. The comment concerning use of the phrase "proposed regulatory alternatives" was accepted and the proposed regulation has been modified to strike the word "proposed."

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suggests that agencies must actually propose competing regulatory language, and conduct multiple economic impact assessments of competing alternatives.	
Section 2003(e) **1. Department of Insurance** This section of the proposed regulations violates the clarity standard of the APA because it is ambiguous: The reader cannot determine whether or not its provisions apply to the SRIA. Alternatively, to the extent this section does apply to the SRIA, it fails of the authority and consistency standards of the APA. As repeatedly noted above, an exhaustive list of the elements of the SRIA is set forth in Government Code section 11346.3(c), but the information required by Section 2003(e)(3) does not appear in that list. Accordingly, DoF lacks authority to require this information in or in connection with the SRIA. Further, as explained above, any provision of DoF's proposed regulations that purport to require information about the economic comparison of proposed alternatives to agencies' proposed regulations must fail of the authority and consistency standards of the APA. The determination resulting from the economic analysis and comparison of proposed alternatives in relation to agencies' proposed regulations is not required to appear in the SRIA. In fact, the determination resulting from the economic analysis and comparison of alternatives is not required at all until the end of the formal rulemaking process, when the agency completes its final statement of reasons. The final statement of reasons is required to include the determination, with supporting	**Response:** This comment was rejected This section is not required but instead includes permissive guidance/recommendations for how to conduct the alternative analysis in the SRIA. Suggestions in this section are based on the best practices guidelines from the Office of Management and Budget Circular A-4. Govt. § Code 11346.36(a) mandates the Department promulgate regulations detailing what must be included in a SRIA, which includes "(2) comparing the proposed regulatory alternatives with an established baseline so agencies can make analytical decisions for the adoption, amendment, or repeal of regulations necessary to determine that the proposed action is the most effective, or equally effective and less burdensome, alternative in carrying out the purpose for which the action is proposed, or the most cost-effective alternative to the economy and to affected private persons that would be equally effective in implementing the statutory policy or other provision of law." The recommended guidelines in this section of the regulation are meant to help agencies compare the alternatives to the proposed regulation. The Department is required by Govt. Code §11346.36(b) to provide guidance in this area and has chosen to include guidance in subdivision (e) that is permissive in nature. As mentioned in the response to the Department of Insurance comment for section 2002(c)(7), the determination described above will be made as part of the analysis that results in the SRIA and the SRIA must be included with the ISOR, which is filed with OAL at the beginning of the rulemaking

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information, that no alternative proposed at any time in the rulemaking process would be as effective as the proposed regulations and less burdensome to affected entities or more cost-effective than the proposed regulations and equally effective in implementing the statutory policy. (Gov. Code § 11346.9(a)(4).) Instead of the process envisioned by the proposed regulations, rulemaking agencies must state in the initial statement of reasons, at the time the initial notice is published, that they are subject to the requirement that they make these determinations. (Gov. Code § 11346.5(a)(13).) Agencies are simply not required to make these determinations until the end of the rulemaking process. SB 617 does not change this fact. There is no legal basis for the proposed regulation to convert rulemaking activities that are required to take place during the formal rulemaking process into prenotice activities. Assuming that it is intended to apply to the SRIA, Section 2003(e)(3) in particular violates the consistency standard, as well, because it specifies requirements for comparing the cost-effectiveness of proposed alternatives to the proposed regulations, while SB 617 does not require agencies to make determinations as to the relative cost-effectiveness of their proposed regulations and the alternatives until the end of the rulemaking process, in the final statement of reasons. (The SRIA, again, must be completed before an agency may deliver an initial notice filing to OAL.) The distinction between the cost-effectiveness determination required by SB 617 and the SRIA is made explicit in Government Code section 11346.9(a)(4), where the Legislature has stated the requirement that the cost-effectiveness determination must be based in part on the SRIA; it is logical impossibility for the cost-effectiveness	process. _____

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determination to be based in part on the SRIA and, at the same time, to be a part of the SRIA. Accordingly, proposed Section 2003(e)(3) must either be amended to make clear that it does not apply to the SRIA or be deleted. _____ **2. Department of Insurance** This alternatives analysis is unnecessarily rigid. It irrationally assumes that there will be a lower cost alternative and higher cost alternative and that an agency's preferred regulation should be in the middle. This section imposes a statistical confidence interval type of calculation onto an alternatives analysis when the reality may not be so easily quantified or not so statistical, mathematical or logical.	**Response:** This comment was rejected for the reasons set forth in the response to the previous comment. As noted in the previous response, this section is not mandatory but permissive and includes guidance and recommendations for how to conduct the alternatives analysis required for the SRIA.
Section 2003(e)(2) **1. Cal Chamber** Similar references are found in sections 11346.2(b)(4)(A), 11346.3(e), 11346.5(a)(13), and 11346.9(a)(4). With regard to subdivision (e)(2), we are not aware of any statutory requirement, much less in SB 617, requiring an agency to compare its base case with an alternative that is more beneficial. The purpose of a regulation is to implement the statute, which is the source of the public policy goal and presumed public benefit. It is up to the agency to determine (based on evidence and with public input) what that policy goal/benefit is – not to present a menu of alternatives with different benefits. Indeed, the Department should look at it	**Response:** This comment was rejected As noted in the first response to Department of Insurance comments regarding subdivision (e), subdivision (e)(2) is not mandatory but rather permissive and as such, contains guidance and recommendations for how to conduct the alternative analysis in the SRIA. The suggestions in this section are based on the best practices guidelines from the Office of Management and Budget Circular A-4. Although SB 617 has no statutory requirement that an agency compare its proposed major regulation with alternatives that are more beneficial than the preferred alternative, neither does it prohibit the Department from offering guidance to that effect. SB 617 clearly expresses the Legislature's intent that benefits—both monetary and non-monetary—be considered in the

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through a different lens: the Agency should identify the goal/benefit as provided by the underlying statute, derive the regulation, then attempt to find the most cost-effective ways to implement it. The sections of SB 617 noted above support this approach. Your proposal seems to turn that on its head. (e)(2) Whenever possible, at least two alternatives should be compared to the proposed alternative, including: (A) An alternative that could achieve equally effective ~~additional~~ benefits ~~as beyond those associated with~~ the proposed alternative, but is less burdensome or can be achieved at a lower cost or economic impact; and [Indeed, this second alternative seems superfluous.] (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, for a lower aggregate cost or economic impact.	analysis of the economic impact of a regulation. This subdivision encourages agencies to compare benefits across several alternatives, including alternatives that might achieve additional benefits beyond those associated with the preferred alternative. Cost-effectiveness of the alternatives is separated out from benefits and is addressed in section 2003(c)(3) and therefore, there is no need to add the language suggested by the commenter.
Section 2003(e)(5) **1. Energy Commission/ Gary Fernstrom, PG&E** Subdivision (e)(5) requires the agency to document the assumptions, analytical methods, and data used in the analysis. It is not clear if the documents themselves need to be submitted to the Department of Finance, only on request, or not at all. This should be clarified.	**Response:** This comment is rejected as subdivision (e) is entirely permissive in nature and the Department will not be assessing compliance with that subdivision.
Section 2003(f)-(h) – No comment was received.	
Section 2004 – No comment was received.	

DEPARTMENT OF FINANCE
Chart A (Revised): Responses to 45-day comment period
Regulations to Implement S.B. 617 Re Major Regulations

Comments	Responses
ADDITIONAL COMMENTS	
1. R.E.A.L. Coalition Under the current DOF draft regulations, each regulatory implementing agency is charged with conducting its own economic impact study with DOF serving in a review, monitoring and selective oversight function. However, we are concerned that there is no real clarity as to whether there will be consistent standards applied across the almost 200 regulatory implementing agencies. Similarly, we are very concerned that not every agency has the requisite levels of staffing, expertise and/or capacity to satisfactorily carry out these types of economic impact analyses, including alternatives analyses, which may call for both a benefit-cost and cost-effective analysis. To help overcome this, we recommend the Department of Finance – as it looks to prescribe standards across the state's regulatory implementing agencies – incorporate in its own guidance many of the "best practices" contained in the Office of Management and Budget's (OMB) Circular A-4. We believe OMB's Circular A-4 provides indispensable guidance for economic analysis of rulemaking, standardizing the way benefits and costs of regulatory actions are measured and reported across multiple agencies and departments. We urge DOF to make use of many of the circular's principles and absorb them into its own rulemaking guidelines for regulatory agencies to better anticipate and evaluate the likely consequences of rules and to determine which of a range of possible alternatives would be the most cost-effective.	**Response:** This comment was rejected because the Department's regulations are intended to provide consistency in the analysis of economic impacts and the Department has already incorporated principles from the Office of Management and Budget's Circular A-4's standards in section 2003(e).

Comments	Responses
2. Joyce Dillard Economic Assessments are necessary as we aging infrastructure and poor planning for operations and maintenance costs in so many of our local and state agencies. We need to encompass the entirety of regulations in relationship to the State and Local agencies and the impacts thereof. Many regulations do not take into consideration the process. Take Division of Oil, Gas, and Geothermal Resources DOGGR and fracking. Key to economic impacts are seismicity issues and interruption of water conveyance as this State relies on imported water to populated areas. This delivery system has not been addressed in fracking—only local wells are addressed, yet the implications of an earthquake can destroy the State economy. Regulations have to be based on current information subject to the area of application with consideration of multi-agency application. Only then, can economic impacts be addressed. Mention in the Little Hoover Commission report is the City of Los Angeles Office of Economic Analysis. Request for Proposals are issued on larger items such as Major Land Development. Rarely do we see FISCAL IMPACT STATEMENTS on any legislation passed. The City of Los Angeles does not keep current any Infrastructure Reports to analyze capital conditions and operation and maintenance needs. If fact, the City relies on additional taxpayer assessments including property taxes and increased fees in lieu of real accounting. The residents and property owners in	**Response:** The comment recommending encompassing the entirety of regulations was rejected as the Department has no statutory authority to review the economic impact of regulations promulgated by local agencies. The comment that regulations need to be based on current information subject to the area of application was accepted because these regulations already require consideration of the impact of a proposed major regulation on other state agencies that may be affected by it.

Comments	Responses
Los Angeles are taxed to death as the City fails to have sufficient funding for Public Health and Safety. "Major Regulations" definitions need to allow for those catastrophic instances that could cause unusual economic impacts. One year time frame may be insufficient. It implies that costs are steady, yet costs may be conditional. Sources of study should be applicable. A study from another State may have no effect on California. All documentation should be kept online and available for the public. The public should be able to dispute the accuracy of such documentation.	The comment recommending modification of the definition of major regulation (section 2000(g) was rejected for the reasons set forth in response to commenter #3 (Dept. of Insurance) in section 2000(g). The comment regarding sources of study from another state may have no effect on California was rejected for the reasons set forth in response to commenter #2 (Dept. of Insurance) in section 2003(b). Current law does not require all documents contained in a rulemaking file to be maintained online and the Department lacks authority to impose such a requirement. However, the rulemaking file is a public record and a copy may be requested by any member of the public. With respect to the comment that the public should be able to dispute the accuracy of the documentation, this comment is accepted and no changes are made since the Administrative Procedures Act ("APA") provides ample opportunities to contest an agency's determinations regarding economic impact both during the rulemaking process (see Govt. Code §11346.45(a)) and by way of judicial action (Govt. Code §11350).
3. Department of Fish and Wildlife Finally, the current draft ISOR does not include a projection regarding the fiscal impact of the state from the proposed rule, Fiscal impacts to state agencies should be estimated since computing and personal costs for agencies are likely to increase substantially under the proposed regulation. _____	**Response:** This comment is rejected since the ISOR does contain the economic impact statements required to be included. The supplement to the STD 399 contains a projection of the estimated costs to state agencies. See below: "This new requirement will cost an additional $300,000 to $600,000 in employee costs…The other additional cost will be procuring a quantitative economic modeling capability …

Comments	Responses
	The Department of Finance has entered into a contract with Regional Economic Modeling Inc. to secure licenses for and technical assistance related to its Policy Insight system. All five of the agencies that anticipate proposing major regulations can also access this tool as affiliate users under the Department's contract at a cost of $38,250 per year. Other agencies will still need to assess the statewide economic impacts to determine whether or not the regulations meet the threshold. In these cases, the agencies will have the option of also accessing the Policy Insight system, consulting with the Department of Finance, or contracting with consultants. Additionally, many agencies will only intermittently propose regulations. Given these uncertainties, it is not possible to estimate how much will be spent acquiring this capability beyond the five agencies mentioned above." _____
4. California Energy Commission Comments re typographical errors and suggestions to improve clarity not addressed elsewhere.	
2001(a)(1)--Change "promulgating" to "proposing."	**Response:** This comment was accepted and the proposed regulation was modified accordingly.
20001(d)--Change "the" to "any."	**Response:** This comment was rejected as the Department believes its language to be clearer.
2002(a)(2)(B)—Change "who" to "that."	**Response:** This comment was rejected as the Department believes such change is not necessary.
2002(b)(2)B)—Change "who" to "that."	**Response:** This comment was rejected as the Department believes such change is not necessary.

DEPARTMENT OF FINANCE
Chart A (Revised): Responses to 45-day comment period
Regulations to Implement S.B. 617 Re Major Regulations

Comments	Responses
2003(a)(1)—Change "effects" to "impacts."	**Response:** This comment was rejected as the Department believes its language to be clearer. Economic effects are broader than economic impacts, as they encompass not just costs and benefits, and the current language of the proposed regulation more fully reflects the breadth of requirements in Government 11346.3(c)(1).
2003(e)(2)—Change "costs" to "impacts" in two places.	**Response:** This comment is rejected as unnecessary, since impacts include both benefits and costs and the change would be redundant. The Department further notes that this section provides permissive guidance, and is not mandatory.
2003(g)—Change "value of benefits" to "beneficial impacts" in four places.	**Response:** This comment was rejected. The term "value of benefits" maintains consistency with Govt. Code §11346.36(b)(1), which speaks about the "value of nonmonetary benefits.".
2003(g)(3)—Change "hypothetical choices made by" to "the stated preferences of" individuals.	**Response:** This comment was rejected. The requested change would narrow the scope of the analysis, as there may be hypothetical choices about which there is no stated preference.