

## DEPARTMENT OF FINANCE

### ADDENDUM TO THE FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Major Regulations

Section Affected: Title 1, California Code of Regulations 2002

#### Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

- §2002 (c)

- (4) “Categories of individuals and business” was added to ensure it was clear that agencies must summarize by category of individuals and category of business enterprises that are impacted by the regulation to ensure a thorough analysis of the estimated economic impact on the various categories of individuals and business enterprises that would be impacted.

- (5) “Total economic impact” was replaced with “all costs and all benefits,” to clarify that agencies must summarize both on this form. An agency cannot conduct a proper assessment of an alternative to a proposed regulation without analyzing all costs and all benefits of that alternative.

- (8) “Each” replaced “the” to clarify that there may be more than one alternative considered. The section was also amended to clarify that agencies must include both “each alternative” that was provided by the public or another governmental agency and “each alternative” that the agency considered. This change was intended to clarify that agencies may consider alternatives that are not “provided by the public or another governmental agency” and instead are formulated by the agency itself. In addition, “all costs and all benefits” replaced “the economic impact” to conform with the changes in section 2002(c)(5).

#### Objections or Recommendations/Responses

Response to Comments Received during the Second 15-day Comment Period

#### Section 2002(c)(8) – Department of Insurance

1. **“As we stated in prior comments, SB 617 does not contain a grant of rulemaking authority that would enable DoF to require that rulemaking agencies perform an economic analysis of regulatory alternatives before issuing a notice of proposed action. Similarly, SB 617 does not permit DoF to require agencies to present conclusions as to the costs and benefits of the alternatives, before issuing a notice of proposed action.”**

Response: This comment was rejected because it did not relate to the textual changes made in the second modified text and for the reasons set forth in response to this commenter in Chart A (Responses to 45-day Comment Period) for section 2002 (c)(8) and Chart B (Responses to 15-day Comment Period).

2. **“Nor does SB 617 require that an alternatives analysis be included in the Standardized Regulatory Impact Analysis (the SRIA). The new language requiring rulemaking agencies to state “all costs and all benefits,” instead of “the economic impact,” of each regulatory alternative considered does nothing to change the fact that the proposed regulations continue to require an economic analysis of alternatives, above and beyond the analysis of the economic impact of the proposed regulations, which is what SB 617 actually requires to be included in the SRIA.”**

Response: This comment was rejected for the reasons set forth in response no. 1 above.

3. **As previously explained, the device of requiring information to be included on a form that must accompany the SRIA instead of requiring the information to be part of the SRIA itself cannot circumvent the authority standard of the Administrative Procedure Act (the APA). The forms exemption does not apply. 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 such information. Government Code section 11340.9(c) provides no authority for DoF to require rulemaking agencies to provide information not specified in that section in connection with the SRIA, regardless of whether the information is specified on a form.**

Response: This comment was rejected because it did not relate to the textual changes made in the second modified text and for the reasons set forth in response to this commenter in Chart A (Responses to 45-day Comment Period) for section 2002 (c)(2) .

4. **“The Legislature clearly distinguished OAL’s [sic] authority to specify methodologies for assessing the costs and benefits of proposed regulations themselves (Gov. Code § 11346.36, subd. (b)(1)) from its authority to specify methodologies for comparing proposed alternatives and making the cost-effectiveness determination that agencies are not required to make until the end of the process (Gov. Code § 11346.36, subd. (b)(2)); Gov. Code § 11346.9, subd. (a)(4)). The reason why this distinction is necessary is that the Legislature presumably did not intend for SB 617 to eviscerate the existing provisions of the APA by forcing the entire rulemaking process into prenotice activities, as these proposed regulations attempt to do.”**

Response: This comment was rejected because it did not relate to the textual changes made in the second modified text and for the reasons set forth in response to this commenter in Chart B (Responses to 15-day Comment Period) for section 2002 (c)(8) .

**5. “The new requirement that the SRIA identify ‘all costs and all benefits’ of proposed alternatives also runs amok of the consistency standard of the APA. Subdivision (c) of Government Code section 11346.3 enumerates the components of the SRIA, but does not include analysis of regulatory alternatives as one of the components. Instead, the SRIA as described in statute contains only information relating to the costs and benefits of proposed regulations themselves. The effect of DoF’s new language is to add a new element to the list set forth in Subdivision (c) of Government Code section 11346.3. DoF cannot change the provisions of SB 617 by regulation. ‘[W]hen administrative rules or regulations ‘alter or amend the statute...,’ they ‘are void’.’ (J. R. Norton Co. v. Agric. Labor Relations Bd. v (1979) 26 Cal.3d 1, 29 (quoting Morris v. Williams (1967) 67 Cal.2d 233, 748).)**

Response: This comment was rejected for the reasons set forth in response to this commenter in Chart A (Responses to 45-day Comment Period) for section 2002 (c)(8).

**6. “Finally, this new requirement violates the necessity standard of the APA because it does not accomplish its proposed purpose. Forcing the alternatives analysis into the period preceding the formal rulemaking process virtually guarantees that not all alternatives proposed during the formal rulemaking process will receive the same treatment or scrutiny as alternatives generated prior to notice issuance. It also fails to acknowledge the fact that under the APA rulemaking agencies are free to develop and implement new alternatives not previously considered, by issuing a modified text that takes a new approach to meeting identified needs, in a 15-day comment period.”**

Response: This comment was rejected because it did not relate to the textual changes made in the second modified text and for the reasons set forth in response to this commenter in Chart B (Responses to 15-day Comment Period) for section 2002 (c)(8) .