



RRU  
Review  
Comment  
Communicate

# REGULATION REVIEW UNIT

## Improving Regulations and Rulemaking

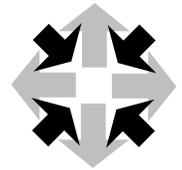


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State of California  
Pete Wilson, Governor

California Trade and Commerce Agency  
Lee Grissom, Secretary

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## AN OVERVIEW

Regulations affect the lives of all Californians and nearly every aspect of the state economy. The Legislature and the Governor have long recognized that excessive or poorly designed regulations can place an unreasonable burden on the people and businesses of this state, and put California at a competitive disadvantage to other states and countries. Numerous statutes have been enacted and Executive Orders have been issued this decade requiring state agencies to improve the impact information they provide on their proposed regulations.

The Trade and Commerce Agency was authorized in 1993 to evaluate the findings and determinations of any state agency that proposes to adopt regulations, and to submit written comments into the record of the agency as necessary (Government Code section 15363.6). Factors to be reviewed include economic and cost impacts, business reporting requirements, alternatives analyses, or other aspects of a proposal regulation that may affect the state's businesses, industries, economy, or job base. To conduct these reviews, the Legislature approved five limited-term positions in the 1995-96 Budget Act to establish a Regulation Review Unit (RRU) in the Agency. Early indicators of RRU effectiveness and success led the Legislature to extend the positions through the 1997-98 fiscal year. (A Budget Change Proposal has been submitted to permanently establish the program effective July 1, 1998.)

RRU is responsible for determining whether state agencies have adequately assessed the economic and business impacts of the regulations they are proposing; but does not prepare the economic

analyses required of regulatory agencies proposing regulations. RRU conducts objective and balanced reviews, without supporting or opposing regulations. In addition to reviewing regulations and submitting comments, RRU works with state agencies and regulated parties to ensure the best possible approach when a regulation is needed. The program fills a void in the state rulemaking process, and does not duplicate the work of any other public or private organization.

This report documents the workload and performance of RRU since its inception in December 1995. To provide perspective on the program, Chapters I and II describe the regulatory problems which necessitated the creation of the program, and the actions taken by the Legislature and Governor to establish RRU and implement other regulatory reforms. Chapters III through V discuss the workload, tasks, and accomplishments of the program. The material will show how written comments submitted by RRU have resulted in numerous changes to proposed regulations that have saved regulated parties millions of dollars. At the same time, the program has worked cooperatively with state agencies and the private sector to increase the effectiveness of the rulemaking process. Chapter VI contains RRU findings on state agency rulemaking practices, based upon about 1,000 regulatory proposals examined by RRU staff. The findings are primarily directed to the Governor and the Legislature, to whom RRU has a responsibility to report, for their information in formulating regulatory policies.



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# I. REGULATORY PROBLEMS NECESSITATING RRU



Constructive regulation is a service that government can and should perform, since thoughtful regulation can address serious problems not solved by private markets. However, there is major concern by businesses and other regulated parties, as well as the Legislature and the Governor, about excessive or poorly designed regulations. Such regulations can disrupt the economy and create burdens on the private sector that reduce economic growth, productivity and job creation, without providing commensurate benefits. These economic impacts reduce the competitiveness of California, and ultimately affect state revenues by reducing personal income, sales, and business income that are the basis for most tax collections.

One of the keys to developing and imposing constructive regulations is to fully consider the resulting costs and benefits of such government involvement. The consideration of these economic and competitiveness factors has too often been lacking during the creation and implementation of regulations. Numerous studies, by a wide range of groups and individuals within and outside of government, have identified this and other regulatory problems. These problems necessitated the creation of RRU and other recent state reforms.

The major regulatory problems can be classified into the following four general areas: the cost of regulations; the complexity of regulations; impacts on state competitiveness; and added federal burdens.

## The Costs

The cost of regulations to the California economy is not known, but is significant, given the high environmental and health and safety standards in this state. The Governor's Council on California Competitiveness found that: "Decades of good intentions have produced an accumulation of regulations that, in the aggregate, are placing a massive burden on California's businesses, municipalities, consumers, and taxpayers." (*California's Jobs and Future*, April 1992)

The California business community has voiced the same concerns. The New Vision Business Council of Southern California found that: "Much of the regulatory and tax pressure on the region derives from external state and federal mandates which must be substantially adjusted to improve the business climate." (*The New Economy Project Final Report*, September 1994.) The 1996 business climate survey of the California Business Roundtable found that 80 percent of the business leaders responding believed that the state regulatory environment has had a negative impact on the California economy.

Regulations are particularly burdensome to small business. According to a study by Thomas Hopkins, an economics professor at the Rochester Institute of Technology, the average small firm with fewer than 20 employees spends nearly double the amount per employee than a firm with 500 or more employees spends to comply with federal regulations (*Regulatory Costs in Profile*, August 1996.) It is unknown whether the study mirrors the

experiences of businesses attempting to comply with California regulation. However, in April and May of 1996, the Governor's Office of Planning and Research held a series of Regulatory Review Roundtable hearings throughout the state to solicit opinions from the regulated community and other interested parties. Small businesses and others continually expressed their concern about regulations that duplicated or conflicted other state and/or federal regulations; their inability to effectively participate in the rulemaking process; and the severity of fines for minor violations of state regulations that did not endanger public health, safety, or welfare.

The bipartisan California Economic Strategy Panel heard from more than one hundred business leaders, representing nine emerging industry clusters, on a variety of issues including regulations. Panel members were told that the cost of regulations must be weighed against the benefits of California's infrastructure and quality of life. In *Collaborating to Compete in the New Economy: An Economic Strategy for California*, published in 1996, the Panel presented the following findings regarding regulation costs:

*"The ability of firms to absorb the costs of taxes and regulations and remain competitive is not uniform. Industries characterized by a large number of new, small firms in relatively untested markets or by established firms undergoing transition are particularly vulnerable to the cost of regulations ... Firms working on small margins of profit in highly cost-competitive markets are less able to absorb taxes and regulatory costs than those in high-profit, less cost-competitive markets."*

## **The Complexity**

Regulations are legal documents that generally address complex social or technical issues. There are thousands of regulations already on the books, and new regulations are filed every week of the year. For example, Executive Order W-127-95 found that nearly 28,000, or about three fourths of all state regulations, affected businesses. Despite this situation, businesses and other regulated parties are generally unaware of proposed regulations, and even when informed, find it difficult to participate in the rulemaking process.

The Council on California Competitiveness observed this problem, and succinctly summarized its implications in their April 1992 report:

*"California's present agency system does not effectively cope with the state's complicated web of social needs and priorities. Traditional mechanisms for the oversight and control of our public agencies are not working. Neither our elected officials nor the public have the time and resources required to monitor the profusion of regulatory bodies operating with full-time staffs. As a result, agency actions are frequently implemented without consideration of how they might affect jobs or other socio-economic standards."*

Reports and recommendations from the Regulatory Review Roundtable hearings disclosed that the regulatory process of state government is "like background noise... It's constant, it frequently escapes notice and often the implications are not fully understood until later. Structure, clarity and

attention need to be brought to this process and the role of the public needs to be enhanced”.

The inability of private sector parties to stay apprised of regulatory developments is a nationwide phenomena. Even the federal government faces a lack of public participation in the rulemaking process. A November 1996 study by the General Accounting Office (GAO), titled *Regulatory Burden: Measurement Challenges and Concerns Raised by Selected Companies*, was intended to investigate the cumulative impact of federal regulations on a number of businesses. However, the most significant finding of the study was the reluctance of many companies to participate. Two-thirds of the few companies that did agree to participate requested anonymity. Companies that declined to participate cited lack of time or resources, lack of specific data requested by GAO, or lack of knowledge as to the exact regulations that affected their businesses.

RRU has discovered through direct experience that businesses and other regulated parties do not have the time or expertise to systematically monitor complex state regulations. Most potentially

affected parties were not even aware of proposed regulations until contacted by RRU, and many indicated that they have never been contacted by a state agency regarding a proposed regulation. It is common for the rulemaking records of state agencies to have few, if any, public comments.

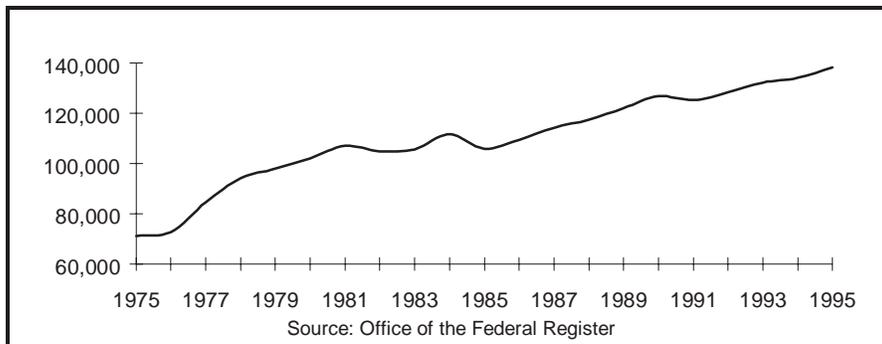
### Competitiveness Impacts

Regulations are an issue of national and international competitiveness. The Assembly Democratic Economic Prosperity Team (ADEPT) emphasized that point in its 1992 report, *Toward an ADEPT California*: “California has imposed a wide variety of programs regulating business to promote worker safety, consumer safety, and public safety in general. The costs of complying with these programs individually and cumulatively create a greater burden that businesses do not face elsewhere.”

As California has worked to improve its regulatory process, competitor states and countries have done the same. The National Association on Administrative Rules Review, in their *1996-97 Administrative Rules Review Directory and Survey*, reported that 41 states revised their administrative procedure acts since



Figure I-1  
Number of Pages in the Code of Federal Regulations  
1975 to 1995



January 1994. In 1995, all of the countries in the Organization for Economic Cooperation and Development agreed to use techniques such as regulatory impact analysis to improve the quality of new regulations.

### **Added Federal Burdens**

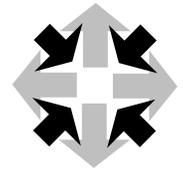
The regulatory policies and practices of the federal government have a large influence on California and the other states, because many state regulations are in response to the steadily increasing number of federal regulations. As Figure I-1 illustrates, the number of pages in the Code of Federal Regulations has roughly doubled in the last 20 years. Currently, some 55 federal regulatory agencies and more than 130,000 staff develop, implement and enforce regulations.

There is a growing interest in Washington D.C. to shift more regulatory power and responsibilities to the states. This interest is partly due to state complaints about unfunded federal regulatory mandates. The most recent effort to address those complaints was the passage of Public Law (P.L.) 104-4, the Unfunded Mandates Reform Act of 1995. Congress found that federal mandates were not adequately funded, and that environmental mandates were the most burdensome to state and local governments. A 1990 study by the U.S. Environmental Protection Agency (EPA), titled *Environmental Investments: The Cost of a Clean Environment*, estimated that the total cost of environmental mandates to state and local governments will rise (in constant 1986 dollars) from \$22.2 billion in 1987 to \$37.1 billion by the year 2000, an increase in real terms of 67 percent.

California, as the largest state, and a leader in environmental protections, has been significantly affected by unfunded federal mandates. In light of this situation, it is crucial that state regulations do not exceed federal standards, unless absolutely necessary. An independent regulation review function can provide this oversight, and ensure that state-federal differences are fully justified. “*Redundancy in state and federal programs may have made more sense in the early days of the EPA, but duplication is expensive as well as unnecessary in our more sophisticated era of environmental protection.*” (Center for California Studies, *Federal and State Parallelism In Environmental Regulation*, May 1995.)

There is hope that the flow of federal regulations will slow. Regulations affecting economic activities—such as electricity, natural gas, communications, transportation, agriculture, and banking—have been scaled back in recent years. There now appears to be movement at the federal level to repeal or reform “social” regulations. These regulations, concerning areas such as the environment, health, safety, and consumer goods, have continued to grow (see Figure I-1). Regulated parties, as well as state and local governments, now feel that most of the low-cost fixes have been made. They want further regulation to be subject to economic and risk justification, to ensure that regulations are needed, effective, and the least burdensome.

## II. THE CREATION OF RRU AND OTHER STATE REFORMS



The current California rulemaking process is the result of numerous actions undertaken by the executive and legislative branches of state government over time. This chapter describes the ongoing bipartisan efforts to maintain reasonable and cost-effective state regulations, and explains how the creation of RRU has played a key role in those efforts.

### A Brief History Prior to RRU

The California Legislature has long recognized the problems resulting from excessive or poorly written regulations. In Government Code (GC) section 11340, within the rulemaking portion of the Administrative Procedure Act (APA), the Legislature found that:

- There has been an unprecedented growth in the number of regulations in recent years.
- The language of many regulations is frequently unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. The language is often confusing to the persons who must comply with the regulation.
- Substantial time and public funds have been spent in adopting regulations, the necessity for which has not been established.
- The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving social goals.

- Correcting the problems caused by the unprecedented growth of regulations requires the direct involvement of the Legislature and the executive branch of state government.
- The complexity and lack of clarity in many regulations put small businesses at a disadvantage.

The creation of the Office of Administrative Law (OAL) in 1979 was a major turning point in the way state regulations were developed and announced. OAL was established to ensure that regulations are authorized by statute, consistent with other law, and written in a way that can be understood by regulated parties, as provided in the rulemaking part of the APA.

During the 1980s, a number of laws were enacted to further improve the rulemaking process, and particularly to reduce impacts on regulated parties. Important legislative measures included: AB 2305 (Katz, 1982), which required notice of regulation impacts on small businesses; AB 1747 (Hill, 1983), which required notice of “potential cost impact” on private persons and businesses; and AB 1718 (Leonard, 1983), which required an explanation why “prescriptive standards” were proposed and why alternatives that included performance standards were rejected.

The economic recession of the 1990s, and numerous studies and reports that documented regulation problems in California, spurred a new wave of regulatory reforms. Table II-1 summarizes key actions, up to the time that the Trade and Commerce Agency was authorized to review proposed regulations.

Table II-1 Key Actions to Reform Rulemaking During the Early 1990s	
AB 2061 (Polanco, 1991, Chapter 794)	Requires a rulemaking agency to assess the potential for adverse economic impacts on California small businesses and individuals.
AB 3511 (Jones, 1992, Chapter 1306)	Requires a rulemaking agency to assess the potential for adverse economic impacts on all California businesses, not just small businesses and individuals.
AB 1144 (Goldsmith, 1993, Chapter 1046)	Requires a rulemaking agency, when proposing state regulations substantially different from federal regulations, to include in the notice of regulatory action a brief description of the significant differences and a summary of agency efforts to minimize duplication and conflicts.
AB 969 (Jones, 1993, Chapter 1038)	Requires a rulemaking agency to include in its assessment of the potential for adverse economic impact on California businesses and individuals, the ability of California businesses to compete with businesses in other states.
Executive Order W-35-92 (Governor Wilson)	Created a State Agency Work Group to conduct a thorough review of all regulatory activities to reduce those that entail <i>“bureaucratic delays, unnecessary costs, duplicative efforts, and contradictory rules without necessarily ensuring adequate or effective environmental protection....”</i>
SB 513 (Morgan, 1993, Chapter 1063)	Requires a rulemaking agency to assess the potential impact that a proposed regulation may have on California jobs, business expansion, elimination, or creation, and to include the result of the assessment in the notice of proposed action.
SB 726 (Hill et al., 1993, Chapter 870)	Requires a state agency, when adopting a regulation that affects small business, to adopt a plain English policy statement overview, to draft regulations in plain English, and to make available to the public a non-controlling plain English summary of any regulation that is technical in nature.

### **The Creation of RRU**

Authority for the Regulation Review Unit is found primarily in Senate Bill 1082, Calderon (Chapter 418, Statutes of 1993). This bill authorizes the Secretary of Trade and Commerce to evaluate the findings and determinations required of any state agency that proposes to adopt regulations, and to submit written comments into the record of the agency if the Secretary makes specific determinations.

The bill also requires the Secretary of Trade and Commerce to advise the Governor and members of the cabinet on the potential impacts of regulations on the state’s businesses, economy and job base. (Table II-2 contains excerpts from Government Code section 15363.6 that specifically define the regulation review authority of the Trade and Commerce Agency.)

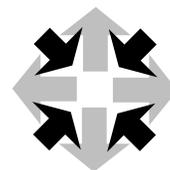


Table II-2  
Excerpts from Senate Bill 1082 (Calderon, 1993, Chapter 418)

Government Code section 15363.6. The secretary shall have the following responsibilities:

(d) In his or her capacity as a member of the Governor's cabinet, coordinating the development of a state policy on economic development and trade, and advising the Governor and members of the cabinet of the potential impacts of regulations on the state's business, economy, and job base. The initial policy and implementation strategy shall be included as a part of the secretary's first annual report to the Governor and the Legislature following enactment of this chapter. Each year thereafter, the secretary's annual report shall discuss economic development and trade policies including accomplishments and needed modifications.

(e) Evaluating, at his or her discretion, the findings and determinations required of any state agency which proposes to adopt regulations under Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1, including economic and cost impacts, reporting requirements, and alternatives analyses. The secretary shall, during the written comment period specified pursuant to paragraph (9) of subdivision (a) of Section 11346.5, submit written comments into the record of the agency which proposes to adopt those regulations in those instances when the secretary determines that the contents of the notice of the proposed action or the supporting analysis and initial statement of reasons do not sufficiently support the findings and determinations of the agency. The secretary may, at his or her discretion, comment on other aspects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative effects of the proposed action that significantly affect the state's business, industry, economy, or job base, including the cumulative effects of the proposed action considered along with regulatory requirements in place at the federal, state, and local levels.

In recognition of this review authority, the California Legislature approved a budget augmentation for the 1995-96 fiscal year, allowing for the creation of five staff positions in RRU to conduct regulation reviews and related tasks. One year later, the Legislature extended the limited-term positions until June 30, 1998. (RRU

is located within the Economic Research and Strategic Planning Division of the Trade and Commerce Agency.)

#### **More Recent Reforms**

The Governor and the Legislature have continued to monitor and reform rulemaking practices in California since the

Table II-3  
Key Regulation Legislation and Executive Orders, 1994-1996

AB 2531 (Gotch, 1994, Chapter 1039)	This bill, prepared with the cooperation of OAL, revised, reorganized, and made other changes to the rulemaking portion of the APA to make it more easily understood. One of the many changes consolidated all APA provisions on assessing impacts.
SB 523 (Kopp, 1995, Chapter 938)	Prohibits state agencies from imposing a penalty unless the penalty is based upon a duly adopted regulation.
Executive Order W-127-95 (Governor Wilson)	Required all state agencies to review the nearly 28,000 regulations within their jurisdiction that affect the business sector. The agencies were further required to identify all regulations suitable for repeal, and to submit formal recommendations to the Governor's Office.
Executive Order W-131-96 (Governor Wilson)	Required all state agencies to forward the regulations, submitted to the Governor's Office under Executive Order W-127-95, to OAL for appropriate action. (About 3,900 dated or duplicative regulations were repealed; another 1,700 were modified.) Established a Regulatory Review Task Force that held regional meetings throughout California to receive public testimony on additional regulatory reform.
SB 1019 (Jonannessen and Hayes, 1996, Chapter 501)	Requires OAL, on and after July 1, 1998, to make available on the Internet, free of charge, the full text of the California Code of Regulations, and authorizes OAL to contract with another state agency or a private entity to provide this service.
SB 1507 (Petris, 1996, Chapter 928)	Prohibits the removal, alteration, destruction, or other disposal of any item in a rulemaking file after it has been returned by OAL to a state rulemaking agency. Also requires the agency to maintain the file, unless it elects to transmit the file to the State Archives.
Executive Order W-144-97 (Governor Wilson)	Established a variety of regulatory reforms, including: a new Consolidated Regulatory Program; the sunset review of regulations; continuous review processes, including customer service surveys; and the creation of a regulatory ombudsman program in each state agency. The Order also required the Trade and Commerce Agency, working with other specified agencies, to develop a standard economic impact statement to be included in each rulemaking record. (This statement was subsequently developed by RRU.)

establishment of RRU. Many of these actions support the work of RRU, or increase its authority, as illustrated in Table II-3.

### **Other Federal and State Actions**

The actions taken by the legislative and executive branches in California are not unique, since the regulatory problems in this state parallel those occurring nationwide. The federal government and other states are continually reviewing and modifying their rulemaking processes to ensure that regulations are necessary, well-written, and as least burdensome as possible.

**The Federal Government.** The federal “*Regulatory Flexibility Act*” (P.L. 96-354) requires any agency publishing a notice of proposed rulemaking to prepare a regulatory flexibility analysis if the regulation impacts a substantial number of small businesses. These analyses must include a description of the projected reporting and compliance requirements, an estimate and description of the small entities affected, and the type of professional skills necessary for report preparation or record keeping. Each year, federal agencies must prepare and submit to the Office of Information and Regulatory Affairs (OIRA), in the Office of Management and Budget (OMB), a Regulatory Plan. The Plan must include: agency objectives; a summary of each planned “significant” action; alternatives being considered; preliminary estimates of the anticipated costs and benefits; legal basis and authority; a needs statement; a schedule; and contact persons on the proposal.

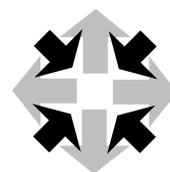
Executive Order 12866 for Regulatory Planning and Review was issued in September 1993 to make the federal regulatory process more efficient. The Order reaffirmed the commitment of the

federal government to: use the best available scientific and economic data and analysis for informed decision-making; consider flexible performance standards; and, allow early public participation in the regulatory process.

In recent years, the federal government has taken additional steps to streamline regulations and amend its rulemaking process. Recent examples of regulation reform include PL 104-4, the Unfunded Mandates Reform Act of 1995, and P.L. 104-121, the Small Business Regulatory Enforcement Fairness Act of 1996. In 1996, Congress mandated OMB to submit a report by September 30, 1997, that provides estimates of the total annual costs and benefits of federal regulatory programs.

Even after all these actions, the federal government will likely do more. Evidence of the need for additional federal reforms is contained in an April 1997 GAO report, titled *Air Pollution: Information Contained in EPA’s Regulatory Impact Analysis Can Be Made Clearer*. The GAO found that many of the analyses submitted to OIRA by the U.S. Environmental Protection Agency did not clearly identify: key economic assumptions; the rationale for using the assumptions; the degrees of uncertainty associated with both the data and the assumptions used; or, the alternatives considered.

**Other States.** Although economic impact information has been required for many years in most states, there is a growing trend to increase the amount of such information. Most states have enacted new laws, strengthened existing ones, or issued executive orders to increase economic impact information requirements and make other regulatory reforms.



The National Association on Administrative Rules Review (NAARR) reports that 41 states have revised their administrative procedure acts since January 1994. According to the *1996-97 Administrative Rules Review Directory and Survey* produced by NAARR, 27 states require an economic impact analysis for all of their regulations. Ten states require cost-benefit analysis for all of their regulations.

Ongoing state reform efforts are also documented in a 1996 study by the Center for Risk Analysis in the Harvard School of Public Health. Titled *State Regulatory Reform Initiatives*, the study found that 25 of the 35 states surveyed were currently making regulatory reforms. Fifteen of the states were including in their reforms the requirement of risk assessment, comparative risk assessment, or cost-benefit analysis. At least 27 states have executive orders or statutes which require state agencies to justify regulations which are more stringent than federal standards.

The large amount of state regulatory reform activity is primarily due to several factors. States now recognize that regulations are an important competitiveness issue. States have found that regulations can significantly affect the cost of doing business, and that businesses are very sensitive to differences in state regulatory environments. In addition, regulatory reforms can be less costly and more

effective than other economic development incentives, such as subsidies and tax breaks.

States are also having to react to regulatory actions by the federal government. In response to state complaints about the cost of federal regulations, which historically have been inadequately funded, Congress has considered shifting regulatory power to the states. One rationale behind such a move is that state governments are more knowledgeable about regional and local problems, particularly those involving the environment. At the same time, local governments are complaining to state governments about unfunded state mandates. Additional state regulatory reforms are needed to resolve these intergovernmental conflicts.

Finally, national organizations such as NAARR are increasingly reporting on state regulatory issues, making it easier to spot problems in individual states. If the federal government is able to shift some of its regulatory burden, the difference between states may become even more prominent, and no state will want to be identified as having excessively burdensome requirements.

### III. WORKLOAD AND PERFORMANCE



The Regulation Review Unit (RRU) workload is largely a function of state agency actions to propose or amend regulations, and the requirements of the state rulemaking process. To understand the activities and accomplishments of RRU, it is necessary to understand how regulations are proposed, and what is required for their approval or disapproval by the Office of Administrative Law (OAL). As a result, this chapter briefly describes the state rulemaking process, and the RRU review process, before discussing the workload and performance of the program.

The staff of RRU must clearly understand rulemaking procedures, as well as the content of each individual proposed regulation. As the following material will illustrate, the job of reviewing the regulatory findings of state agencies is highly technical and specialized. RRU staff have not only developed the required regulatory expertise, but have used it to improve state regulations and rulemaking.

#### **The State Rulemaking Process**

The Administrative Procedure Act (APA) was enacted in 1979 to encourage the rational development of regulations by requiring public notice and participation in the rulemaking process. All state agencies are subject to the APA unless expressly exempted by statute. Generally, all policies and procedures of general application that implement, interpret, or make law specific — and are intended to be enforced or administered by a state agency — must be developed and announced as regulations under the rulemaking procedures of the APA.

The APA requires an agency to give the public at least 45 days to comment on

a regulatory proposal. During this 45-day period, the public may submit written and/or oral comments directly to the agency, or at a public hearing, if one is scheduled. (A public hearing must be held if one is requested.) The public comment period begins on the date a notice of proposed rulemaking is published in the *California Regulatory Notice Register (Register)*, and ends on the date specified in the *Register*. The *Register* is published weekly by OAL and mailed to those who have purchased a subscription to the *Register*. (The annual subscription rate is currently \$162; however, some courtesy copies are provided.)

If substantial changes are made to proposed regulations, after the close of the comment period, the APA requires that the regulations be re-noticed for another 45-day comment period. If changes in the regulations are not substantial, or are sufficiently related to the original text, the changes may be made by providing an additional 15-day comment period. Often agencies will have multiple 15-day comment periods, because of numerous amendments suggested by the public. Original or amended regulations must be submitted to OAL for approval within one year of the date the rulemaking was published in the *Register*.

To assist agencies in complying with the APA, three state agencies are authorized by law to review regulations, each having unique mandates and responsibilities. OAL conducts a legal review, the Department of Finance (DOF) conducts a fiscal review, and RRU conducts an economic review. Both OAL and DOF are control agencies that have the authority to disapprove regulatory proposals.

RRU is not a control agency, and acts in an advisory capacity.

OAL has the primary responsibility for enforcing the APA and ensuring that state agency regulations are authorized by statute, necessary, consistent with existing laws, and written in a comprehensible manner. The OAL review ensures that regulations meet both the procedural and legal standards set forth in the APA. OAL cannot question the wisdom of a regulation.

DOF is responsible for ensuring that agencies have considered whether proposed regulations will have a fiscal impact by creating costs or savings to state or local agencies, or will affect the level of federal or other funding to the state. DOF reviews and approves the fiscal information presented on the Economic and Fiscal Impact Statement (STD 399).

RRU examines regulations and the economic impact statement on the STD. 399 to determine whether the agency has adequately assessed the economic and business impacts which may result from the adoption of the regulations. RRU also determines whether the agency considered and selected the least burdensome alternative, or justified why that alternative was not feasible.

According to OAL, over two hundred different agencies, boards, departments, councils, and commissions propose, amend, and adopt regulations. These regulations interpret laws, implement policy and/or establish operating procedures to protect the health, safety, and property of Californians. In carrying out their mission, state agencies generate hundreds of regulations each year affecting every aspect of economic and community life in California.

All of the following parties may be impacted by proposed regulations and are

involved in the regulatory process to varying degrees:

- The state agency proposing the regulations;
- The Office of Administrative Law;
- The Department of Finance;
- Individual businesses and industry groups;
- Professional and trade associations;
- Consumer and environmental organizations;
- Federal agencies (when Federal laws require state regulations);
- Local government agencies;
- Local economic development or community organizations;
- Citizens; and
- The Regulation Review Unit.

### **The RRU Examination and Review Process**

RRU examines the findings of regulatory agencies, and submits written comments into their rulemaking records when appropriate. In addition to this duty, RRU works with agencies and regulated parties to improve impact information. RRU staff communicate with regulatory agency staff on nearly all proposed regulations. They also maintain regular contact with businesses and other groups impacted by regulations. The purposes of these communication and outreach efforts are to discuss and evaluate proposals, minimize impacts on regulated parties, minimize uncertainty for regulatory agencies, and in general, encourage agencies to choose the best possible approach when a regulation is needed.

RRU developed and implemented a regulation review process that allocates program resources to those regulations with the greatest complexity and potential economic impacts. Regulatory proposals are prioritized, based on the subject matter and the amount of review and analysis required.

The following three steps are completed for each regulatory proposal. (Additional steps are undertaken when necessary, as described in subsequent paragraphs.)

1. The weekly *Register* is received by RRU, and each regulatory proposal (which typically contains several proposed regulations) is assigned to two analysts. One analyst acts as the primary reviewer, and is responsible for completing the review. The second analyst is the alternate reviewer, who validates the findings of the primary reviewer.
2. The analyst obtains from the sponsoring state agency the Initial Statement of Reasons (ISOR), proposed text of the regulation, and the Economic and Fiscal Impact Statement (STD.399). The analyst may also attend meetings, workshops, and public hearings on the regulation.
3. An RRU file and review form are created for each regulatory proposal. Summary information on the regulation is also entered into a computer database. The analyst updates the regulation file and tracking database as necessary during the review process.

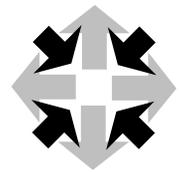
Once these steps have been completed, the analyst examines the proposed regulation text, STD.399, and the ISOR to determine whether the regulations fall within RRU criteria for review. If the regulations do not appear to affect the economy, business, job base or other aspects of the private sector, the RRU file is closed without further review or analysis. Regulations that do not affect the private sector typically involve government operations, conflict of interest codes, regulation repeals, technical matters or legal issues. (In 1996,

nearly half of all the regulations proposed were examined but not reviewed by RRU.)

The remaining proposed regulations, which may potentially impact business or the economy, are subjected to a comprehensive review and analysis. RRU relies on a wide range of sources to obtain impact information and to gain a broader perspective on the proposed regulation, including: 1) discussions with the agency proposing the regulations; 2) reviews of the agency rulemaking file (which is required to contain all research data, reports, surveys, and other supporting data); 3) outreach to businesses, associations, and others potentially impacted by the regulations; 4) interested or knowledgeable parties; and 5), business journals, Internet sites and other business and economic reference materials.

The goal of RRU reviews is to ensure that the impacts of proposed regulations have been fully considered, and that reasonable alternatives have been discussed with affected parties. The outreach efforts are designed to ensure impacted parties are aware of proposed regulations, and how they can participate in the rulemaking process. The RRU review function is unique. No other public or private entity has the expertise, contacts, or resources to determine whether the economic and business impacts of proposed regulations have been fully and accurately assessed.

Written comments are prepared and submitted to the agency when RRU finds that the proposal may have significant impacts which have not been addressed, or when there are less burdensome alternatives that should have been considered. RRU comments may also note other items of concern that are discovered during the course of a review.



Prior to submitting any written comments, RRU staff contacts the proposing agency staff to discuss the regulatory issues and RRU concerns about the proposed regulations. This two-way communication enhances the working relationship between RRU and state agencies, and gives them the opportunity to modify their regulations before they are submitted to OAL for approval. Also, since agencies are required by law to respond to all comments, discussing concerns in advance gives the agency additional time to prepare their responses to RRU comments.

The comments prepared by RRU staff are then reviewed by both the Economic Research Director and the Agency Undersecretary. The comments are submitted to the regulatory agency during the public comment period, so that they will be included in the rulemaking record the agency sends to OAL.

### **Tracking Regulations**

The regulation process can take as long as one year from the time a regulatory proposal is published in the *Register*, until it is finally submitted to OAL for approval. At any one time, there are hundreds of regulations awaiting comments from different parties or some other action. For example, as of August 1997, there were about 400 regulatory proposals that were either in the public comment period, with the state agency after the comment period, or being reviewed by OAL. RRU staff developed a computer tracking system that enables the program to track the progress of each individual regulation from its publication in the *Register*, through multiple comment periods, to its eventual approval or rejection by OAL.

When a proposed regulation is submitted to OAL for publication in the *Register*, a distinct number is assigned which includes the year, month, and day the

proposal was received by OAL. For example, the first regulation submitted on January 1, 1997, would have the number Z97-0101-01. RRU uses the *Register* number to track regulations through the entire rulemaking process. All proposals having a Z97 number are included in the 1997 program statistics, regardless of the *Register* publication date. Because RRU became operational in December 1995, statistics for that month were combined with the 1996 data. Therefore, the program statistics in this report for the year 1996 actually represent about 13 months of data.

### **The Number and Type of Regulations Reviewed**

During 1996, 127 state agencies published 663 regulatory proposals. RRU examined about 19,000 pages of regulation text and supporting documents associated with those proposals. During the first six months of 1997, 121 state agencies published 282 regulatory proposals. RRU examined about 7,700 pages of text and documents associated with those proposals.

The number of proposed regulations reviewed by RRU is less than the total number filed, since not every proposed regulation affects businesses or the economy, as noted earlier. However, all proposals must be examined, since there is no way to identify in advance those regulations that need to be reviewed. During 1996, 320 regulatory proposals were examined, but ultimately not reviewed by RRU (48 percent). During the first six months of 1997, 118 of the proposals filed were not reviewed (42 percent).

Regulations that affect businesses or the economy are reviewed by RRU. Written comments are submitted into the record of a state agency when it is determined that the contents of the notice of the proposed action or the supporting analysis

do not support the findings and determinations of the agency.

During 1996, RRU staff reviewed 343 regulatory proposals and submitted written comments on 70 of those. In the first six months of 1997, 164 proposals were reviewed and 36 written comments were submitted. During both periods, RRU submitted written comments on about one of every five regulatory proposals reviewed.

(Note: Each regulatory proposal published in the *Register* may adopt, amend, or repeal several legal code sections. Each code section is considered a separate regulation, therefore, each proposal may contain several regulations, each of which has the force of law and may result in impacts.)

### **RRU Written Comments**

RRU submitted 106 comment letters to state agencies proposing regulations during 1996 and the first six months of 1997. The preparation of comments letters requires extensive research, analysis and external communications, therefore the letters represented a significant workload for the RRU staff. Although the regulations that generated RRU comment letters were only one-fifth of the total reviewed, they tended to be the most complex and potentially burdensome regulations affecting the private sector.

As a result of comments submitted by RRU and other parties during the public comment period, agencies frequently agreed to make substantive or technical wording changes to their proposals, before submitting them to OAL for approval. In some instances, all or part of the regulations were withdrawn or abandoned by the sponsoring state agency. Since agencies are not required to notify OAL or others when they abandon a regulatory proposal,

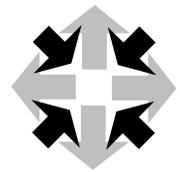
“pending” regulations often include regulations that will not be pursued by the agency.

About one fourth of the 1996 regulatory proposals were still “pending” in the rulemaking process as of August 1997. This large number of pending proposals is partially due to the length of time allowed under the regulatory process. It also reflects a significant number of poorly written or ill-conceived regulations that must be substantially amended or eventually withdrawn by the agency. This situation usually occurs when the agency proposes regulations without adequate impact assessments or public input, and subsequently receives comments from RRU and other parties, objecting to all or part of the proposal.

### **The Effects of RRU Comments**

RRU comments on proposed regulations, and state agency actions in response to those comments, have already saved regulated parties millions of dollars in costs. It is impossible to estimate the dollar savings with any precision, due to the absence of quantitative data from regulatory agencies. However, outside sources have identified numerous examples where RRU involvement in the rulemaking process resulted in significant reductions in unnecessary costs to the private sector. The following are four examples; additional examples are provided in the next chapter of this report:

- Regulations to prohibit commercial activity on state property would have inadvertently prohibited filming, and according to the California Film Commission, could have cost California communities tens of millions of dollars annually. (*California Regulatory Notice Register* number Z95-1227-01)
- Regulations to amend the Taxpayer Bill of Rights would have limited taxpayer reimbursements for professional repre-



sentation below standard fee rates, and limits set under federal regulations. This would have forced taxpayers to absorb the higher costs or abandon their tax appeal. (Z96-0318-04)

- Regulations to establish commercial fish harvest quotas would have unnecessarily stopped fishing during two crucial months for the industry. (Z96-0702-04)
- Regulations on the use of non-hazardous ash would have needlessly cost farms and other businesses about \$750,000 per year. (Z96-1015-05)

Through its comments, RRU has identified potential economic impacts and raised other issues, such as the possibility of less burdensome alternatives. As a result, state agencies have become aware of the benefits of discussing their proposals with RRU staff, and with knowledgeable and affected parties in the private sector. The agencies have found that such consultations can save them time and money when they develop regulations. OAL estimated that it saves state agencies \$500,000 to \$2 million per year through their legal assistance. That assistance helps agencies avoid unnecessary revisions and re-submittals of their proposals, and possible lawsuits once the regulations are adopted. Similarly, although the dollar value cannot be quantified, RRU found numerous errors and omissions in proposed regulations that saved agencies the cost of correcting those problems later in the rulemaking process, or after the regulations had been adopted.

#### **Other Assistance to State Agencies**

RRU has also helped agencies to improve their rulemaking procedures, without submitting written comments. RRU provided assistance on 19 regulatory proposals by: making recommendations to improve the economic impact assessments; correcting deficiencies in the ISOR to

provide the public with more complete information about the proposal; or providing contacts that generated increased private sector information and assistance on the proposals.

#### **Future Workload Increases**

RRU expects to have an increased workload in the future due to the following new or additional program mandates and activities:

1. The roughly 80 state agencies which did not propose regulations during the past 18 months, may begin proposing amendments to their regulations when the review of existing regulations becomes mandatory under Executive Order W-144-97;
2. RRU outreach efforts will be extended to people and businesses who are still unaware of their ability to comment on proposed regulations and potentially influence agencies to change their regulatory approach;
3. Presentations will be made by RRU staff to businesses and other groups to explain the purpose of RRU and its role in the rulemaking process;
4. RRU staff will be providing training and assistance to state agencies during the implementation of the new Economic Impact Statement (revised STD. 399) which is mandated by Executive Order W-144-97;
5. RRU has been asked by OAL and DOF to participate in future rulemaking classes held at the State Training Center.

## IV. CONTRIBUTIONS ON SPECIFIC REGULATIONS

The primary goal of RRU is to ensure that the impacts of proposed regulations have been fully assessed, as required under rulemaking law. RRU provides objective and balanced reviews of the economic impacts of proposed regulations, and does not support or oppose regulations, or prepare the economic analyses required of state agencies for their proposed regulations.

RRU participation in the rulemaking process has had many beneficial outcomes for impacted parties and state agencies. Often, RRU was the first group to notify potentially impacted parties about a proposal. Other times RRU was able to facilitate communications between an agency and regulated parties. In some instances, RRU was the only party submitting comments on a proposed regulation. In the majority of cases where RRU submitted written comments, agencies agreed with those comments and modified or abandoned their proposals.

The following pages contain a sampling of RRU involvement in specific regulations. These examples were chosen to illustrate the breadth and scope of proposed regulations and their impacts, and to demonstrate how an objective analysis can have positive results for all concerned. The examples are listed chronologically, according to their file number in the *California Regulatory Notice Register*.

**The Occupational Safety and Health Standards Board (OSHSB) proposed ergonomics regulations to minimize repetitive motion injuries (Z95-1121-02).** The intent of the legislatively-mandated regulations was to reduce

injuries in the workplace. However, while OSHSB determined that there would be no significant adverse impacts on businesses, RRU found that private sector costs could be tens of millions of dollars, primarily due to the lack of clarity and enforcement criteria in the regulations. RRU submitted written comments to OSHSB outlining its clarity and impact concerns. Subsequently, a study co-authored by a U.C. Berkeley economics professor and a San Francisco-based economic consultant, concluded that workplace modifications mandated by the rule would cost employers billions of dollars. The Office of Administrative Law (OAL) disapproved the regulations in January 1997, stating that the regulations lacked clarity and noting other problems previously expressed by RRU. OSHSB modified the regulations and obtained OAL approval in June 1997.

**The California Highway Patrol (CHP) proposed regulations requiring additional equipment on electric buses (Z95-1130-02).** The CHP determined the regulations would not have an adverse economic impact. RRU submitted written comments expressing concern that the regulations may require the owners and operators of buses currently being operated to undertake costly retrofitting to comply with the regulations. In addition, the lack of clarity in other portions of the regulations could limit interstate commerce. CHP staff indicated RRU had valid concerns and that it was not their intent to apply the regulations retroactively or to buses incidentally traveling within the state. CHP staff agreed the regulations should be clarified and stated they would probably be amended to incorporate RRU suggestions. The one-year “notice”



deadline subsequently expired, so regulations must be published again by OAL for another 45-day comment period to be considered for adoption.

***The Franchise Tax Board (FTB) proposed regulations to implement the manufacturers investment tax credit (Z95-1219-05 and 06).*** The FTB proposed two alternative implementation approaches. Alternative One would have unfairly excluded property used to refine reformulated gasoline. The resulting loss of tax credits for property owners was estimated to be \$150,000,000 over a three-year period. RRU and the Trade and Commerce Agency Undersecretary had extensive discussions with FTB staff regarding the potential adverse economic impact on the California refinery industry and California consumers who must purchase the reformulated gas. FTB adopted Alternative Two which made it clear these properties were eligible for the investment tax credit.

***The California Highway Patrol (CHP) proposed regulations to control various commercial activities in or on state buildings and grounds, such as hot dog vendors and coffee carts (Z95-1227-01).*** The regulations were intended to be substantially similar to existing regulations governing the use of state property. However, under the auspices of “commercial activities,” the proposed regulations would also have prohibited filming on state properties – an outcome that the California Film Commission estimated would cost California communities tens of millions of dollars annually due to the loss of film production expenditures. RRU identified the problem language and submitted written comments to the CHP that recommended modifications to the regulations. In response to RRU comments, the CHP amended the regulations

to reduce unintended impacts on filming and other commercial activities.

***The Office of Oil Spill Prevention and Response (OSPR) proposed regulations which would grant the Administrator authority to assess penalties of up to \$100,000 per day for each violation of OSPR laws and regulations (Z96-0130-03).*** RRU submitted written comments expressing concern that OSPR apparently did not consider a range of penalties which differentiated between minor infractions and serious violations. This situation could have resulted in significant adverse economic impacts to businesses, since OSPR regulations are highly prescriptive and vary from harbor to harbor. In April 1997, OSPR proposed new regulations that included criteria for assessing fines, established a range of penalties, and addressed other RRU concerns.

***The Office of Oil Spill Prevention and Response (OSPR) proposed regulations specifying the method of determining the amount of oil that is recovered in an oil spill (Z96-0130-04).*** Persons or parties responsible for causing oil to be discharged are fined \$10 per gallon for oil that is not recovered. If negligence is found, additional fines may be imposed. RRU expressed concern that the proposed regulations set forth prescriptive methods that may not be feasible, practical and/or cost effective and could serve as a disincentive to cleanup efforts. OSPR made extensive modifications to the regulations and provided explanations that addressed RRU concerns.

***The State Board of Equalization (BOE) proposed regulations to modify the Taxpayer Bill of Rights by limiting taxpayer reimbursements for attorney***

**and other professional representation expenses (Z96-0318-04).** RRU submitted written comments to the BOE stating that, among other concerns, the proposed reimbursement limit of \$75 per hour was below standard rates billed by accountants and tax professionals, and below the fee limits set by federal regulations. As a result of the comments submitted by RRU and others, the regulations were withdrawn.

**The Department of Conservation proposed regulations concerning predatory pricing (Z96-0405-01) and scrap value (Z96-0430-04).** In reviewing these two proposals, RRU worked with impacted parties on different sides of the issue. Representatives of the recycling industry expressed strong support for the objective work RRU was doing, and expressed regret that it had not been in existence earlier. They encouraged RRU staff to continue monitoring the regulatory process. The following specific comments were made to RRU by two different individuals: "...no government agency has ever personally contacted me or solicited my opinion before;" and "it's nice to see that someone in government has finally asked the questions you seek to answer...". RRU submitted comments to the Department concerning the use of the undefined term "predatory pricing", and the resulting potential for adverse economic impacts. The Department clarified the "predatory pricing" regulations to minimize the potential for frivolous complaints. (RRU did not submit comments on the scrap value regulations.)

**The Department of Food and Agriculture (DFA) proposed regulations to clarify the description of a "pack-out basis" contract, by ensuring that all essential conditions of the sample processing procedures were**

**stated in the contract (Z96-0528-05).** RRU commented that the regulations appeared to be inconsistent with the underlying statutes and unclear. Independent growers indicated to RRU and DFA that the regulations would result in significant cost impacts, despite a DFA determination that there would be no adverse economic impacts. After a public hearing, DFA withdrew the regulations.

**The Air Resources Board (ARB) proposed revisions to the content and format of the Emission Inventory Criteria and Guidelines Report (Z96-0528-07).** This report is used by businesses and others in complying with the Air Toxics Hot Spots Program. The proposed content revisions would exempt low-risk facilities from reporting requirements, streamline reporting requirements for intermediate- and high-risk facilities, and make other changes. RRU noted that the proposed regulation text was omitted from the staff report, and that changes from the *April 1996 Guidelines* to the proposed *May 1996 Guidelines* were not clearly indicated, thereby increasing compliance costs for businesses. Thirty-two substances were added to the list of over 700 substances subject to the program, and these additions were also not clearly identified. The proposed *May 1996 Guidelines* also incorporated other documents by reference, in effect creating a complex "three-level" regulatory structure. RRU discussed its concerns with ARB staff and suggested ways to reduce clarity problems for the benefit of regulated industries. ARB amended the regulations to address all specific RRU concerns, but retained the "three-level" structure.

**The Department of Insurance (DOI) proposed regulations that would reduce insurance company participa-**



**tion in the California FAIR Plan Association (FAIR), if companies voluntarily provided coverage for high-risk areas (Z96-0611-03).** Insurance companies are required to participate in FAIR in direct proportion to their total underwriting. FAIR is the insurer of last resort for individuals and businesses in inner cities or in rural areas with brush hazards, since these parties are unable to obtain insurance at a reasonable cost through traditional underwriting. RRU found that the proposed regulations had an incorrect calculation to determine the reduction in participation for voluntary writings. In addition, RRU pointed out a number of inconsistent uses of words and terminology. DOI has withdrawn the regulations and is in the process of developing amendments to incorporate suggestions made by RRU and others.

**The Department of Toxic Substance Control (DTSC) proposed regulations regarding the disposal of various hazardous wastes in land disposal sites (Z96-0611-05).** The proposed regulations eliminated or modified unnecessary or unclear regulations and made changes mandated by legislation (SB 1222). Because DTSC standards and requirements often exceed federal standards, RRU contacted several private sector parties for information. Representatives from Portland Cement, the California Cement Manufacturers Environmental Coalition, and the Hazardous Waste Association of California were all unaware of the proposed regulations and expressed gratitude for the existence of RRU. Each indicated that they had requested to be placed on the DTCS mailing list, but had thus far not been successful. Other cement manufacturers reported similar problems to RRU. An industry representative stated that RRU was a valuable addition to the rulemaking process and

“sorely needed”. These regulations were approved by OAL in July 1997.

**The Department of Parks and Recreation, Office of Historic Preservation (OHP), proposed regulations for listing properties in the California Register of Historic Resources (Z96-0618-06).** The regulations stated that property owners would be notified of a listing, but they did not specify how or when notification would occur. Discussions with OHP staff indicated their preliminary plans were to accomplish notification through general circulation newspapers. RRU objected in writing, and continued discussions with OHP staff and interested parties. RRU also assisted the staff with formatting and other technical changes to make the regulations more understandable. A representative for the Resource Landowners Coalition, as well as OHP staff, expressed appreciation and support for RRU efforts and assistance. The regulations were ultimately amended to address the majority of RRU concerns.

**The Fish and Game Commission proposed regulations to establish quotas for commercial anchovy fish harvests (Z96-0702-04).** The regulations were prompted by the repeal of federal regulations which established annual quotas for commercial anchovy harvests. The proposed regulations established an annual quota, and an allocation between northern and southern permit areas. The timing of the proposed regulations effectively eliminated the prime fishing months of September and October. RRU suggested that the Commission adopt emergency regulations, or take other action, to tell affected parties how to proceed until the regulations could take effect. As a result of concerns expressed by RRU, the Commission sought further clarification from federal agencies. State

and federal officials subsequently agreed that the fisheries could remain open until the California regulations became effective.

**The Structural Pest Control Board (SPCB) proposed regulations related to Pre-Treatment Inspection Reports for termites (Z96-0702-08).** SPCB proposed a new form and reporting requirements, but failed to demonstrate that the form and reporting requirements were necessary for the health, safety, and welfare of the people as required by Government Code section 11346.3(c). RRU recommended that SPCB consider less burdensome alternatives, or include the required justification for the new form and reporting requirements in the rulemaking record. Since the one-year “notice” deadline for these regulations expired, they must be published again by OAL for another 45-day comment period.

**The California Integrated Waste Management Board and the State Water Resources Control Board proposed to consolidate regulations related to landfill facilities (Z96-0716-08 and 09).** RRU found that the proposed regulations were unclear to the extent that regulated parties would incur unnecessary time and expense to determine the intent of the regulations.

RRU commented on problems with 13 proposed code sections, and identified hundreds of text errors, which violated the clarity standard in rulemaking law. RRU further recommended that the regulations be withdrawn, edited and re-noticed. The regulations were amended to include many of the changes suggested by RRU.

**The Air Resources Board (ARB) proposed amendments to the Air Toxic “Hot Spots” Fee Regulations for 1996-97 (Z96-0730-06).** The regulations

incorporated a definition of small business that included facilities with 10 or fewer employees. This definition was more stringent than most generally-used definitions. It was also inconsistent with the definition used in the Air Pollution Streamlining Act, which defined small business as an establishment with 100 or fewer employees. RRU discussed this issue with ARB, and requested that the definition be reconsidered and/or more fully justified in the fee regulations for 1997-98. RRU also identified, and reported to ARB, several suggestions for changes to the proposed regulation text. ARB amended the regulations to incorporate all RRU suggestions.

**The Occupational Safety and Health Standards Board (OSHSB) proposed amendments pertaining to explosives and pyrotechnics in Group 18 of the General Safety Orders (Z96-0816-01).** By adding to the existing regulations the phrase “where there is no employee exposure”, OSHSB would become the lead agency for the enforcement of pyrotechnic and special effects displays. This change could have caused significant delays to filming schedules, resulting in higher production costs, because of OSHSB unfamiliarity with the industry and a potential conflict with State Fire Marshal (SFM) responsibilities. RRU contacted representatives of the SFM and the major pyrotechnic companies in California, and were thanked by both for bringing these regulations to their attention. RRU submitted comments questioning OSHSB justification for including both the manufacture and display of pyrotechnics in the regulations. RRU also noted that the apparent overlap of SFM and OSHSB duties and responsibilities, combined with other inconsistencies in the proposed text, could cause confusion for regulated parties. The regulations



were amended to address the concerns of RRU and the SFM. (The SFM is also satisfied with the revised text.) In addition, a Memorandum of Understanding between the SFM and OSHSB on safety responsibilities is currently in draft form and is expected to be completed by the end of 1997.

**The Air Resources Board (ARB) proposed regulations regarding reductions in emissions from volatile organic compounds (VOC) in consumer products (Z96-0924-17).** Although RRU did not identify any issues with these regulations, RRU staff assisted the ARB Ombudsman's Office by establishing new avenues of interagency cooperation. RRU provided the ARB with new contacts, described the programs of the Office of Small Business in the Trade and Commerce Agency, and the California Pollution Control Financing Authority, and explained how those programs could contribute to ARB goals and objectives. ARB staff thanked RRU for what was termed "...the most valuable information and contacts received..." regarding small business assistance.

**The Employment Training Panel (ETP) proposed regulations regarding training program eligibility and requirements (Z96-1008-07).** The ETP program is designed to foster job creation, minimize employer unemployment insurance costs, and provide training to people who are unemployed or about to be displaced. RRU submitted comments stating that the requirement that contractors attend an unspecified number of meetings with ETP appeared overly burdensome, and that contract termination requirements were inadequate. RRU also suggested that ETP consider allowing for partial payments, when people are unable to complete their training, and making

training requirements for temporary agency employees consistent with the requirements for employees of other businesses. As of August 1997, these regulations had not been submitted to OAL for approval.

**The California Integrated Waste Management Board (CIWMB) proposed regulations related to permits for non-hazardous ash (Z96-1015-05).** At the time of this proposal, non-hazardous ash was not subject to CIWMB regulations. The ash was given to farmers and ranchers free of charge for the regeneration of their soil. The proposed regulations would require ash generators to obtain a permit and maintain records on the distribution of the ash. Because the ash would be designated as a hazardous product under the proposed regulations, it was unlikely that farmers and ranchers would accept and use the ash as fertilizer for soil regeneration. The cost to farmers and ranchers to comply with the regulations and purchase alternative fertilizers was estimated to be \$750,000 annually. RRU submitted comments regarding the potential adverse economic impacts, and urged the consideration of less burdensome alternatives. CIWMB amended the proposed regulations to eliminate permit and record keeping requirements for ash used to regenerate agricultural soil.

**The California Integrated Waste Management Board (CIWMB) proposed amendments to regulations in Title 14 related to the Rigid Plastic Packaging Container Program (Z96-1022-04).** The amendments were intended to implement legislation which exempted plastic containers containing floral preservatives from certain recycling and source reduction provisions. However, the regulations excluded many non-traditional floral businesses, such as

growers and supermarkets who sell or handle cut flowers, from the benefits of this legislation. The regulations also established reporting requirements and deadlines that would be a disincentive to manufacturers to sell floral preservatives in reusable containers. Because of the potential adverse impact on small businesses, RRU submitted comments suggesting that the provisions excluding non-traditional florists be either eliminated or justified. RRU also suggested that manufacturers be allowed a more reasonable period to comply with the proposed requirements. In response to RRU comments, CIWMB amended the regulations and clarified the definition of floral industry to include all businesses that include a floral component. In addition, the date for reporting compliance methodology was extended from April 1, 1997 to July 1, 1997.

**The Office of the State Fire Marshal (SFM) proposed regulations which would require SFM approval of emergency exit publications for apartment buildings (Z96-1029-06).** RRU expressed concern that requiring all brochures, pamphlets, and video tapes to be submitted for approval would not only add to apartment owner costs, but would also add to the SFM workload. The requirement also exceeded statutory language and intent. The SFM staff indicated that this was not their intent and that the regulations would be amended to remove this requirement.

**The Board of Landscape Architects (BLA) proposed regulations which would rescind a candidate's ability to appeal their examination score (Z96-1203-01).** The proposed regulations would have eliminated the ability of a landscape architect candidate to appeal an examination score. The

annual savings estimated by BLA appeared to be overstated. RRU recommended that BLA consult with the Department of Finance regarding their fiscal situation before imposing a potential burden on California businesses. BLA amended the proposed regulations to again allow candidates to appeal test decisions. BLA also revised its original savings estimate of \$330,000 to a more realistic \$800.

**The State Lands Commission (SLC) proposed regulations to establish requirements for testing, witnessing, and reporting on the testing and maintenance of marine terminal pipelines (Z96-1217-08).** RRU submitted written comments expressing concern that the regulations: exceeded federal regulations; established qualifications for testing personnel and reporting requirements that would force regulated parties to incur unnecessary costs; and failed to consider risk-based alternatives. SLC received 97 comments concerning these and other issues. SLC agreed with the majority of RRU comments and amended the proposed regulations to remove burdensome qualification and reporting requirements. SLC also agreed with the RRU suggestion that risk-based assessments be considered as an alternative to the proposed regulations however, SLC said they lacked the resources to implement such an alternative.

**The Department of Motor Vehicles (DMV) proposed regulations which would implement the provisions of AB 2639, which requires DMV to certify ignition interlock devices (Z97-0318-06).** These devices are mandated by court order and require any person who is convicted of drunk driving to install a functioning, certified, ignition interlock device on any vehicle the person owns or



operates. DMV concluded that there would not be a significant adverse impact from the regulations; however, they had not conducted an impact assessment. RRU submitted comments regarding the potential adverse economic impacts on manufacturers of the devices. RRU also noted that the proposed regulations were inconsistent with existing regulations and statutes. As of August 1997, the proposed regulations had not been submitted to OAL for approval.

**The Office of Statewide Health Planning and Development (OSHPD) proposed regulations to expand the amount of information that hospitals must collect and report on the source of payment for each discharged patient (Z97-0411-01).** The regulations would redefine payer categories, and require that information on the type of health coverage and the name of the health plan be collected and reported. OSHPD indicated that these expanded reporting requirements would not have an adverse impact on businesses, and only a “minimal cost impact on some hospitals that may need to upgrade their data collection systems.” RRU was unable to find any cost analysis in OSHPD files, and various industry sources estimated the statewide cost to be between \$2 million and \$10 million. RRU submitted written comments requesting that OSHPD assess the economic impact of the new requirements, justify the new reporting requirements, and consider delaying the proposed implementation date. OSHPD has agreed to delay the implementation date and assess economic impacts. The regulations will be revised and re-noticed.

**The Air Resources Board (ARB) proposed amendments related to reducing volatile organic compound (VOC) emissions from consumer products (Z97-0527-12)** These regulations, which would become effective on various dates between the years 2000 and 2005, would amend existing consumer products regulations by adding product category definitions and VOC standards for product categories. During the review process, RRU staff had numerous contacts with representatives of the impacted businesses. The Automotive Chemical Manufacturers Council wrote that RRU staff solicited “many divergent opinions and because of that are seen by industry as an honest broker of information within California government.” A California manufacturer wrote that RRU was “a breath of fresh air.” RRU submitted written comments on the regulations, and the ARB agreed to establish sub-categories for products that demonstrated higher reformulation costs and withdrew a proposed two-tier compliance format and other additional reporting requirements.

## V. CONTRIBUTIONS TO THE RULEMAKING PROCESS

In addition to contributing to the improvement of individual regulations, RRU makes contributions affecting more than one regulation, or the rulemaking process in general. Ongoing improvements in rulemaking are essential if the regulatory environment in California is to remain competitive with the rest of the nation and the world. The following are specific examples of RRU contributions.

**Impact Assessment Paper.** RRU prepared a paper in February 1996 that discussed the economic information and analysis that California rulemaking law and RRU expect to accompany regulatory proposals. Titled *Bringing Economic Sense to Regulation: Impact Assessment Information and Criteria*, the report was added to the RRU Web site and distributed to regulatory agencies and regulated parties as a guide on generally-accepted procedures for conducting impact assessments. Some of the information in the paper was later incorporated into the revised Economic and Fiscal Impact Statement (STD. 399) form and instructions completed in August 1997 (see below).

**Development of the Revised STD. 399 Form.** Executive Order W-144-97 by Governor Wilson required the development of an economic impact statement to be incorporated into the existing STD. 399 (Fiscal Impact Statement) form. RRU was assigned the lead role in developing the statement and the corresponding instructions for the State Administrative Manual. The revised STD. 399, the Economic and Fiscal Impact Statement, requires agencies to indicate who will be affected by a regulation, the

benefits that will accrue, the costs that will be incurred, and the alternatives that were considered. With the new form, state agencies must clearly document the impacts of their proposals, as required by the APA. In turn, regulated and interested parties will be able to more easily understand the affects of proposed regulations. The Executive Order requires that "... the economic impact statement shall be submitted to the Regulation Review Unit of the Trade and Commerce Agency, and all state agencies and departments shall respond to the Trade and Commerce Agency's comments."

**Reviewed Draft Cal/EPA Guidelines for Major Regulations.** Senate Bill 1082 (Chapter 418, Statutes of 1993) required the California Environmental Protection Agency (Cal/EPA) to adopt guidelines for evaluating alternatives to its major regulations. Cal/EPA was also required to consult with the Trade and Commerce Agency before adopting these guidelines. RRU worked with Cal/EPA and ARB staff on the draft guidelines, providing technical comments on the methods and procedures to be used in conducting the required evaluations.

**Using Technology to Increase Access to Rulemaking Information.** RRU established a Web site on the Internet, to increase public and private sector awareness of the role of RRU in the regulatory process, and to allow regulated parties to communicate with RRU staff electronically. The Web site is located within the Trade and Commerce Agency site at the following address: <http://commerce.ca.gov/regreview>. In addition to providing information about



RRU, the Web site contains news of rulemaking developments, such as recent Executive Orders, as well as links to other regulation-related sites. RRU believes that less burdensome and more effective regulations will be adopted as regulated parties become more involved in the rulemaking process.

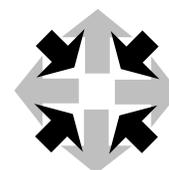
**Reaching Out to Regulated Parties.** RRU contacts regulated and interested parties on nearly every regulation that is reviewed. During such contacts, it is not unusual to find that most parties are unaware of proposed regulation that can potentially impact them. (Many are also not aware of RRU.) For these reasons, RRU produced a leaflet describing its role and responsibilities, and explaining how to contact state agencies to submit comments or obtain rulemaking information. The leaflet is regularly sent by RRU to parties that are contacted during the regulation review process.

**Development of a Practices and Procedures Manual.** RRU has established standard practices and procedures that are documented in a continually-updated manual. These practices and procedures provide consistent guidance to each of the RRU staff, to ensure that regulation reviews are conducted in a uniform and objective manner. The manual is organized into numerous sections, each of which provides information and examples on the review process and other RRU tasks.

**Monitoring the Activities of Other States.** To ensure that the best review practices are used in California, RRU periodically monitors rulemaking activities in other states and federal agencies. RRU also maintains files containing information on the structure, operation and practices of state and federal rulemaking agencies. RRU is a member of the National Association on Administrative Rules Review (NAARR), a professional organization established to help states and the private sector handle issues concerning the promulgation and oversight of administrative rules. RRU also provided information to NAARR for their annual *Administrative Rules Review Directory and Survey*.

**Coordination with Other State Agencies.** RRU contacts state agencies on nearly every proposed regulation, and encourages them to contact RRU at any time with their questions or comments. Since the establishment of RRU in December 1995, interagency communication and cooperation have steadily increased. Many agencies now automatically send the proposed text of their regulations, the Initial Statement of Reasons (ISOR), and other pertinent information to RRU. Contacting regulated parties, who in turn contact agencies, has brought a new level of awareness to the rulemaking process. And regular RRU contact with agencies has given them a new level of sensitivity about the potential impacts of proposed regulations. Some agencies indicated to RRU staff that they were the first parties to request a review of the agency rulemaking file, or to request the text and ISOR for proposed regulations.

## VI. RRU FINDINGS ON STATE AGENCY PRACTICES



Although state rulemaking requirements and procedures are delineated in the Administrative Procedure Act (APA), state agencies have some latitude regarding their rulemaking practices. In addition, practices continue to evolve in response to changing conditions, state agency initiatives, legislation and executive orders. For example, the Internet has emerged as a tool to send and receive information on proposed regulations, even though it is not mentioned in the APA.

RRU staff examined about 1,000 regulatory proposals between December 1995 and June 1997. During that time, they observed state agency practices that improved the rulemaking process, as well as those that were contrary to the letter or intent of rulemaking law. RRU written comments on individual regulations, as discussed in earlier chapters, provide detailed information about the problems with specific rulemakings. However, to get a broader picture of state practices, one would have to review all RRU comments and monitor the state regulatory process over time.

The purpose of this chapter is to summarize and report on state agency rulemaking practices that are affecting the quality of proposed regulations, and the overall effectiveness of the rulemaking process. This information is directed to the Governor and Legislature, to whom RRU has a responsibility to report, for their information in formulating regulatory policies. The findings are also for the use and information of state agencies, and particularly the two control agencies for proposed regulations — the Office of Administrative Law (OAL) and the

Department of Finance. Although the control agencies have extensive rulemaking knowledge, it is hoped that the unique role of RRU provides an additional and beneficial perspective.

The following sections present specific RRU findings on state agency rulemaking practices.

**Small Business Impact Assessments.** Small businesses account for 98 percent of all businesses in California. Given this situation, it is hard to believe undocumented claims by many state agencies that their regulations would not affect a single small business. Some of the agencies making such claims are licensing boards, whose licensees tend to be sole-proprietorships or other small businesses.

The California Legislature has found and declared that regulations pose a potentially large burden on small businesses, and has included special provisions in the APA for such businesses. State agencies are required to identify alternatives that would lessen adverse impacts on small businesses, provide explanations for rejecting such alternatives, and draft regulations in plain English. RRU has found that state agencies frequently fail to follow the letter or the spirit of these requirements, by simply claiming (without supporting evidence) that small businesses would not be impacted.

In some instances, agencies conclude that a regulation would have no cost impact, because the benefits of the regulation offset the costs. However, under this situation, some groups in the economy are still bearing significant and uncompensated

costs. Rulemaking law requires agencies to identify the parties directly affected by a proposed regulation, and defines directly affected persons as those who derive a benefit or incur a detriment from the regulation.

**Writing in Plain English.** Most state agencies claim in the Notice of Proposed Action that the regulation text is written in plain English. However Government Code (GC) section 11342 (e) states, “ ‘Plain English’ means language that can be interpreted by a person who has no more than an eighth-grade level of proficiency in English.” Until recently it was difficult to know if proposed text complied with the law. However, most word-processing software now have built-in grammar checks that compute the grade level of text automatically. Using such software, RRU has found that few regulations are written at the eighth-grade level.

It is generally possible for agencies to write regulations in plain English. The U.S. Securities and Exchange Commission (SEC) provides an example of how government can improve the readability of its documents. That agency produced a handbook explaining how to prepare security filings, which are also very complex legal documents, in plain English.

**Rulemaking Information on the Internet.** The Internet is a powerful tool that can increase the availability of rulemaking information. Some state agencies have begun to use it to disseminate information and communicate with regulated parties. Some agencies also allow written comments submitted during the 45-day public comment period to be sent electronically. All state agencies should use the Internet in addition to the existing methods of disseminating information and communicating with regulated and interested parties.

RRU believes that agencies should include the following information for proposed regulations on their Web sites: Notice of Proposed Action; Initial Statement of Reasons; proposed regulation text; Final Statement of Reasons; Office of Administrative Law (OAL) decisions on the regulation; the date the regulation was filed with the Secretary of State; and the effective date of the regulation.

The Internet can also be used to provide an overview of all newly proposed regulations. OAL has worked with the Office of State Printing, RRU, and other parties to test the feasibility of posting the weekly *California Regulatory Notice Register* on the Internet. RRU commends this effort, and feels that more widespread distribution of the *Register* is necessary to increase participation in the rulemaking process. There are about two million small businesses and self-employed persons in California; however, the average weekly distribution of the *Register* is less than 800 copies. The *Register* contains a valuable weekly summary of proposed regulations, and other rulemaking news and information, and should be more accessible.

**User-Friendly Regulatory Documents.** A few agencies have taken the innovative approach of providing proposed regulation text and 15-day modifications in different colors to denote additions and deletions to the text. The use of color, or other highlighting techniques, are needed to improve the readability of regulatory documents. This need is particularly large for 15-day modifications, which have both the changes to existing law that were originally proposed, and additional changes resulting from the 45-day comment period. (The APA requires that agencies allow an additional 15-day comment period when the modi-

fied proposed action differs sufficiently from the original text.)

**Public Events on Proposed Regulations.** Many agencies involve regulated parties in the rulemaking process before they file their Notice of Proposed Rulemaking. For example, the Air Resources Board often holds workshops and disseminates information on proposed regulations that are being developed. RRU believes that holding workshops, hearings, meetings, or other public events, prior to publishing the regulatory proposal in the *Register*, can significantly increase public participation in the rulemaking process and improve the quality of regulations.

**The Timeliness of Rulemaking Records.** Many regulatory agencies do not keep their rulemaking records current during the 45-day public comment period. Missing items often include public comments received, and supporting information prepared by the agency that will later be sent to OAL.

Some agencies note that the APA does not require them to keep all of the information related to a regulation in a central location. They are only required to assemble the information when the rulemaking file is submitted to OAL for approval. However, by not keeping records current, the agencies are depriving regulated parties of information that will help them understand a proposed regulation and its potential impacts. Generally, the practice is the result of poor record keeping; however, on occasions it appears to be an attempt to limit public access to information.

**Hearings During the Comment Period.** Most agencies hold their hearings during the last day or two of the comment

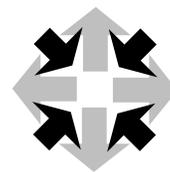
period. The justification agencies frequently give for this timing is that they need to review public comments before their hearing, and most comments arrive near the end of the comment period. However, this practice makes it nearly impossible to know what comments or questions have been submitted to the agency, particularly since most agency files are not current. (See the previous finding.)

Holding hearings at least one week prior to the comment deadline would allow agencies time to review most comments, while allowing regulated and interested parties to meet and hear from others affected by the regulation.

**Trivial Regulations.** State agencies are allowed, subject to OAL approval, to avoid the rulemaking process if they are making a change without “regulatory effect.” [California Code of Regulations, Title 1, Section 100] Such changes include, but are not limited to: renumbering or reordering regulatory provisions; deleting provisions that no longer have statutory or constitutional authority; or making grammar, punctuation or syntax changes.

Despite this exemption, some agencies unnecessarily go through the complete rulemaking process for these regulations. This situation wastes state government funds, and causes regulated parties to expend time, effort, and money to monitor regulations of no consequence. Some agencies may not be aware of the exemption, but others seem to consider the filing of regulations as a workload and performance measure.

**Tracking Each Regulation.** Under current rulemaking practices, there is no unique identifying number for each regula-



tory proposal. A regulatory agency may use its own unique code number, while OAL uses two separate numbers for each proposal: the number identified in the *California Regulatory Notice Register*; and a second number when a complete rulemaking file is submitted by an agency. These different numbering systems make it difficult for RRU and other parties to follow regulations through the rulemaking process. Regulated parties who are not familiar with the rulemaking process have an even more difficult time. They may not know that they have to refer to different code numbers, depending upon the agency they are contacting. RRU believes that each regulation be given a distinct number, that could possibly be pre-assigned in the annual rulemaking calendar. That number would stay with the regulation throughout the entire rulemaking process.

#### **Contact Persons for Regulations.**

GC section 11346.5(a)(13) states that the Notice of Proposed Action shall include “The name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed.” This requirement of the APA is designed to ensure that regulated parties receive accurate information in a timely manner from a knowledgeable individual at the agency proposing the action. RRU has encountered the following problems in this regard:

- In some instances, the Notice provides the name of a contact person who is not directly associated with the writing of a regulation, such as a Regulation Coordinator. Consequently, regulated parties lose valuable time during the 45-

day comment period tracking down a person who can answer detailed questions. The contact person in the *Register* should be someone who has in-depth knowledge about the proposed regulation.

- Other times, persons calling the telephone number in the Notice are connected to a voice-mail system instead of a live person. This situation might be acceptable if all voice-mail messages were promptly returned by an agency employee who can answer questions and provide documents associated with the regulation. However, some agencies fail in this regard. In a number of cases, RRU staff have waited several days to receive any response from their voice-mail request. In a few cases, the delay was several weeks. When agencies fail to respond in a reasonable time, regulated parties are less able to review and comment on regulations during the public comment period.
- A back-up contact person should always be available. RRU has experienced situations where the official contact person was on vacation, or otherwise unavailable to answer questions or respond to requests for documents. As result, callers had to wait for the contact person to return.

**Access to the Final Statement of Reasons (FSOR).** Agencies are not legally required to provide the FSOR to parties who submitted oral or written comments during the 45-day comment period. While some agencies provide the FSOR anyway, other agencies only provide it when specifically requested. The latter situation makes it difficult for parties to know the extent to which their comments were incorporated into the proposed regulations.

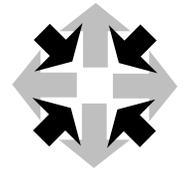
It is not always reasonable for agencies to send a copy of the FSOR to everyone who has submitted oral or written comments, since an agency may receive thousands of comments on controversial regulations. However, RRU feels that the FSOR should be sent to anyone who submitted comments and specifically requested a copy of the FSOR in those comments. In addition, RRU suggests that agencies make the FSOR available on their Web sites for a reasonable period of time after its publication.



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# APPENDIX

## California Rulemaking Law Excerpts



The following selected sections of the Administrative Procedure Act (APA) describe required information that is evaluated by the Regulation Review Unit.

Government Code section 11346.2. Statement of Reasons for Adoption or Amendment; Specific Technology or Equipment; Alternatives.

(b)... An initial statement of reason ... shall include, but not be limited to, all the following:

(2)... Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes such mandates or prescriptive standards are required.

(4) (A) A description of the alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. In the case of a regulation which would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered an alternative.

(B) A description of any alternatives the agency has identified that would lessen any adverse impact on small business....

Government Code section 11346.3. Assessing Potential for Significant Adverse Economic Impact on Business or Individuals; Ability of California Businesses to Compete; Assessing Creation or Elimination of Jobs and Businesses; Exempting from Reporting.

(a) State agencies proposing to adopt or amend any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, record keeping, or compliance requirements. For purposes of this subdivision assessing the potential for adverse economic impact shall require agencies, when adopting new regulations or reviewing or amending existing regulations, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The regulations shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting regulations to the office, shall consider the impact on business when initiating, processing, and adopting regulations with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of proposed regulations or amendments to regulations.

(b) (1) All state agencies proposing to adopt or amend any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(3) (c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to small businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety or welfare of the state that the regulation apply to business.

Government Code section 11346.5. Notice of Proposed Adoption, Amendment or Repeal; Contents; Plain English Policy Statement Overview; Availability to Public.

(a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

...

(3) ...

(A) If the proposed action differs substantially from an existing comparable federal statute, the information digest shall also include a brief description of the significant differences and the full citation of the federal regulations or statutes.

(B) If the proposed action affects small business, the informative digest shall also include a plain English policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

...

(7) If a state agency, in proposing to adopt or amend any administrative regulation, determines that the action may have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) finds that the (adoption/ amendment) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses."

(8) If a state agency, in adopting or amending any administrative regulation,

determines that the action will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this determination, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support that finding.

...

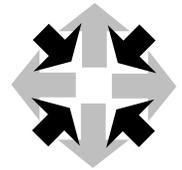
(9) A statement of the potential cost impact of the proposed action on private persons or businesses directly affected, as considered by the agency during the regulatory development process.

For purposes of this paragraph, “cost impact” means the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, determines that the action would have an effect...

(12) A statement that the adopting agency must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.



Regulation Review Unit  
California Trade and Commerce Agency

801 K Street, Suite 1700  
Sacramento, CA 95814

Tel: (916) 322-1394

Fax: (916) 322-0669

Web site: <http://commerce.ca.gov/regreview>

