
Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation that is approved, or deemed approved, by the office shall be filed with the Secretary of State and shall take effect on the 30th day after that filing, except as specified.

This bill would adopt the regulatory philosophy and the principles of regulation, as outlined in Presidential Executive Order 12866, in order to achieve the same regulatory benefits within the state. This bill would require the Department of Finance to assist state agencies with the review of new and existing regulations for compliance and consistency with these requirements, and to review analyses performed by agencies in promulgating new regulations or in reviewing existing regulations.

This bill would require an agency to annually provide to the department a list of its planned regulatory actions for that year, as specified, and indicate the actions which the agency believes are
significant regulatory actions, as defined. This bill would require an agency, for each significant regulatory action, to submit prescribed information to the director at least 30 days prior to issuing a notice of proposed action, as specified. The bill would require the director to review the submitted information, as specified. This bill would require the department, in order to establish a baseline for the determination of the costs and benefits of significant regulatory actions that it reviews, to complete a review of all significant regulatory actions completed by state agencies since January 1, 2004, and summarize the costs and benefits of those actions in a report to be completed prior to July 1, 2011.

This bill would require the Governor to convene an interagency group with specified duties for the purpose of formulating an effective methodology for performance of the analysis and cost-benefit studies by state agencies, as specified.

Existing law establishes the Bureau of State Audits, which is headed by the State Auditor and has specified statutory duties. Existing law establishes the State Audit Fund, which is continuously appropriated for the expenses of the State Auditor.

This bill would require the State Auditor, using information submitted by an agency proposing a regulation, to conduct a cost benefit analysis of the regulation that includes certain determinations, as specified. This bill would require the agency to include this cost benefit analysis in its notice of proposed action for the proposed regulation. To the extent that this bill imposes additional duties on the State Auditor that are funded through a continuously appropriated fund, this bill would make an appropriation.

This bill would require the office, if a proposed regulation is approved or deemed approved, to provide a prescribed notification to specified committees in the Legislature if the State Auditor’s cost benefit analysis determines that the regulation has an annual statewide economic cost of more than $10,000,000 or that the benefits of the regulation do not equal or exceed the costs of the regulation.

This bill would require the specified legislative committees to conduct a public hearing to review each regulation for which it receives a notification from the office and to issue a recommendation as to whether the regulation should be invalidated by statute.

This bill would extend the effective date of a regulation that the office has submitted to the Secretary of State until the 60th day after the filing.

The people of the State of California do enact as follows:

SECTION 1. Section 11343.4 of the Government Code is amended to read:
11343.4. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the 30th 60th day after the date of filing unless:
(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.
(b) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.
(c) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

SEC. 2. Section 11346.35 is added to the Government Code, to read:
11346.35. (a) The State Auditor shall, within a reasonable time, conduct a cost benefit analysis of any proposed regulation before the agency issues a notice of proposed action pursuant to Section 11346.4. Based on the results of the cost benefit analysis, the State Auditor shall make a determination, to be included in the cost benefit analysis, as to both of the following:
(1) Whether the proposed regulation will have an annual statewide economic cost of at least ten million dollars ($10,000,000).
(2) Whether the proposed regulation, considered in its totality, has regulatory benefits that equal or exceed the overall economic costs.
(b) The agency proposing the regulation shall provide the State Auditor with any information that the State Auditor deems necessary to conduct the cost benefit analysis, including, but not limited to, any information that the agency is required to include in the notice of proposed action pursuant to Section 11346.5.
(c) The agency shall not issue the notice of proposed action pursuant to Section 11346.4 until the State Auditor completes the cost benefit analysis.
SEC. 3. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel’s digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, “cost or savings” means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.
(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting 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, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: “The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting business, 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.


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

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting 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 declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.
An agency’s initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

“The agency is not aware of any cost impacts that a representative private person or business would necessarily incur 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) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) 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, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14), shall make available to the public, upon request, the agency’s evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of 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.

(14) The name and telephone number of the agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.
(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet Web site or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(21) The results of the cost benefit analysis issued by the State Auditor pursuant to Section 11346.35.

(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action. If the representative receives an inquiry regarding the proposed action that the representative cannot answer, the representative shall refer the inquiry to another person in the agency for a prompt response.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the
alleged inadequacy or inaccuracy of the housing cost estimates, if
there has been substantial compliance with those requirements.

SEC. 4. Section 11349.35 is added to the Government Code,
to read:

11349.35. (a) The office shall identify, for each proposed
regulation that is approved or deemed approved by the office
pursuant to Section 11349.3, the determinations made by the State
Auditor in the cost benefit analysis conducted pursuant to Section
11346.35. The office shall notify the Committee on Appropriations
of each house of the Legislature of each regulation for which the
State Auditor determined that the regulation will have an annual
statewide economic cost of at least ten million dollars
($10,000,000) or that the regulation’s benefits do not equal or
exceed the overall economic costs. The notification shall include,
but not be limited to, the text of the regulation and the cost benefit
analysis conducted by the State Auditor.

(b) The Committee on Appropriations of each house of the
Legislature shall conduct a public hearing to review each
regulation for which it receives a notification from the office and
shall issue a recommendation as to whether the regulation should
be invalidated by statute.

SECTION 1. Article 5.5 (commencing with Section 11348.5)
is added to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the
Government Code, to read:

Article 5.5. Regulatory Planning and Review

11348.5. For purposes of this article, the following terms shall
have the following meanings:

(a) “Department of Finance” or “department” shall have the
same meaning as Section 13000.

(b) “Director of Finance” or “director” shall have the same
meaning as Section 13001.

(c) “Significant regulatory action” means a regulatory action
that is likely to result in a regulation that may result in any one of
the following:

1. Have an annual cost to the state’s economy of ten million
dollars ($10,000,000) or more or have a material adverse effect
on the economy, productivity, competition, public health or safety,
local governments, or tribal communities.
(2) Create a serious inconsistency with, or otherwise interfere with, an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of its recipients.

(4) Raise novel legal or policy issues arising out of legal mandates or involving the regulatory philosophies and principles expressed in Section 11348.6.

11348.6.—(a) The Legislature finds and declares all of the following:

(1) An efficient regulatory planning and review process is vital to ensure that the state’s regulatory system best serves the people of this state.

(2) There is a need for adequate information indicating the need for and consequences of proposed regulatory actions, and that state agencies should establish that potential benefits to the state justify any potential costs of regulatory actions.

(3) In 1993, President Clinton reviewed and revised the federal government’s program for regulatory review and issued Executive Order 12866, titled “Regulatory Planning—and—Review;” establishing the general principle that the benefits of intended regulations should justify the costs.

(4) Executive Order 12866 focused on the most significant rules, established a 90-day period of review of proposed rules, and increased the openness and accountability of the federal process for reviewing regulations.

(5) The federal Office of Management and Budget monitored and assessed the implementation of Executive Order 12866, concluding that significant improvements were made in all of the following six broad areas of federal regulation:

(A) Properly identifying problems and risks to be addressed, and tailoring the regulatory approach narrowly to address them.

(B) Developing alternative approaches to traditional command and control regulation, such as using performance standards that tell people what goals to meet instead of how to meet them, relying on market incentives, or issuing nonbinding guidance instead of rules and regulations.

(C) Developing rules that, according to sound analysis, are cost effective and have benefits that justify their cost.
(D) Consulting with those affected by the regulation, particularly state, local, and tribal governments.

(E) Ensuring that agency rules are well coordinated with rules and policies of other agencies.

(b) In order to achieve the benefits associated with Executive Order 12866, this state adopts the following regulatory philosophy, as outlined in Section 1(a) of Executive Order 12866:

(1) Agencies should promulgate only those regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of Californians.

(2) In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures, to the fullest extent that these can be usefully estimated, and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity, unless a statute requires another regulatory approach.

(c) (1) In order to achieve the benefits associated with Executive Order 12866, this state adopts the principles of regulation contained in this subdivision, as outlined in Section 1(b) of Executive Order 12866.

(2) To ensure that the agencies’ regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles to the extent permitted by law and where applicable:

(A) Each agency shall identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as assess the significance of that problem.

(B) Each agency shall examine whether existing regulations, or other law, have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations...
or other law, should be modified to achieve the intended goal of regulation more effectively.

(C) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(D) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(E) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance, to the government, regulated entities, and the public; flexibility, distributive impacts, and equity.

(F) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(G) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(H) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(I) Wherever feasible, agencies shall seek views of appropriate state, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of federal regulations on state, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect those governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize federal regulatory actions with
related state, local, and tribal regulatory and other governmental functions.

(J) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other federal agencies.

(K) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities, including small communities and governmental entities, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(L) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

11348.7. (a) The department shall assist state agencies to review new and existing regulations for compliance and consistency with this article, and shall review analyses performed by agencies in promulgating new regulations or in reviewing existing regulations.

(b) Prior to January 1 of each year, a state agency shall provide the department, at the time and in the manner specified by the director, with a list of its planned regulatory actions for that year and indicate the actions which the agency believes are significant regulatory actions. A planned regulatory action that is not designated as significant, absent a material change in the development of that regulatory action, shall not be subject to review under this section unless, within 10 days of receipt of the list, the director notifies the agency that he or she has determined that a planned regulation is a significant regulatory action.

(c)(1) For each significant regulatory action, the agency shall submit to the director for review, at least 30 days prior to the issuance of a notice of proposed action required pursuant to Section 11346.4, all of the following:

(A) The text of the draft regulatory language, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulation will meet that need.

(B) An analysis of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with the statutory mandate.
(2) For each significant regulatory action that satisfies the criteria of paragraph (1) of subdivision (c) of Section 11348.5, the agency shall also submit to the director for review, at least 30 days prior to the issuance of a notice of proposed action required pursuant to Section 11346.4, all of the following:

(A) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action, including, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias, together with, to the extent feasible, a quantification of those benefits.

(B) An assessment, including the underlying analysis, of costs anticipated from the regulatory action, including, but not limited to, the direct cost to both the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets, including productivity, employment, and competitiveness, health, safety, and the natural environment, together with, to the extent feasible, a quantification of those costs.

(C) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public, including improving the current regulation and reasonably viable nonregulatory actions, and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(d) No agency considering a significant regulatory action shall issue a notice of proposed action pursuant to Section 11346.4 prior to the department’s completion of the review of the proposed regulation and the agency’s compliance with the requirements of this article.

(e) The director shall review the agency’s submitted analysis of new, amended, or existing regulations for consistency with the regulatory philosophy and principles of regulation enumerated in Section 11348.6. If the director determines that a planned regulatory action may be inconsistent with the regulatory philosophy and principles of regulation enumerated in Section 11348.6, the director shall notify the agency in writing.
(f) The agency shall include in its initial statement of reasons, required pursuant to Section 11346.2, the director’s analysis of new, amended, or existing regulations, and the agency’s responses to any determinations made by the director.

(g) The agency shall reimburse the department for the cost to the department of the analysis, not to exceed 5 percent of the total cost of developing the regulation. The agency shall build the cost of reimbursement into the cost of developing the regulation.

(h) In order to establish a baseline for the determination of the costs and benefits of significant regulatory actions reviewed pursuant to this article, the department shall complete a review of all significant regulatory actions completed by state agencies since January 1, 2004, and summarize the costs and benefits of those actions. This review shall be completed prior to July 1, 2011.

11348.8. (a) In order to formulate an effective methodology for performance of the analysis and cost-benefit studies by state agencies pursuant to this article, by January 31, 2011, the Governor shall convene an interagency group, to be chaired by the director, to review the state of the art for analysis of regulatory action in California at the state, regional, and local levels.

(b) Prior to July 1, 2011, the director shall issue a “best practices” report to the Legislature, detailing the findings of the interagency group regarding the state of the art for regulatory action analyses and proposing standard methods of regulatory analysis for use by state agencies.

11348.9.—Nothing in this article affects the current requirement of state agencies to prepare an economic analysis of a proposed regulation’s potential for adverse economic impact on businesses and individuals pursuant to Section 11346.3, or to make those economic impact analyses available for public comment in the initial state of reasons for the proposed regulation pursuant to Section 11346.2.