



**Linda S. Adams**  
Secretary for  
Environmental Protection

# Air Resources Board

**Mary D. Nichols, Chairman**  
1001 I Street • P.O. Box 2815  
Sacramento, California 95812 • [www.arb.ca.gov](http://www.arb.ca.gov)



**Arnold Schwarzenegger**  
Governor

TO: Regulation Writer

FROM: Lori Andreoni, Manager  
Board Administration and Regulatory Coordination Unit  
Office of Legal Affairs

DATE: March 18, 2009

SUBJECT: ASSESSING A REGULATION'S ECONOMIC IMPACT ON THE  
REGULATED COMMUNITY – A GUIDANCE DOCUMENT

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Executive Officer James Goldstene is implementing a new approval process & guidance for submitting regulatory cost and economic analysis (Form 399) to Department of Finance. Details of this new process are outlined in his memo of February 18, 2009.

To comply with the Administrative Procedures Act, Government Code section 11346.5 requires that regulation writers consider and assess the economic impacts a regulation may have on the regulated community. The economic analysis is included in the Initial and Final Statement of Reasons. To support the regulation writer, the Economic Studies Section (ESS) has developed methods and data to assist regulation writers to analyze the costs and impacts of the proposed regulation. The economic impact analysis is comprised of the following seven (7) components:

## 1. Cost of Regulation and Alternatives

The first component of the economic analysis is an assessment of the cost of the regulation on the regulated community. Cost is an important factor that is used in the internal decision making process. As part of the regulation development, two alternative approaches to the regulation are also developed. The ESS has developed methods to analyze the cost of the regulation and the cost of the two alternatives. This analysis will help decision makers select the most cost-effective alternative to comply with statutory mandates.

## 2. Economic Impacts on California Businesses and Individuals

Regulatory actions may impose costs or encourage savings on the regulated community. The costs or savings may lead to a creation, elimination, expansion, or reduction in business activities. As businesses are affected, so are jobs. A new regulation may cause an increase in expenditure on items that create jobs, or a

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decrease in expenditures on other items that decrease jobs. The new regulation may reduce or enhance competitiveness of California business enterprises vis-à-vis firms in the rest of the nation or the world.

### 3. Assess Benefits of Regulation

An ARB regulation reduces risks to the public health, safety, and the environment. These risk reductions accrue benefits to the public. A third element of the economic analysis is to assess the benefits of the proposed regulation. The ESS staff can assist with the assessment and quantification of the regulation's benefits.

### 4. Cost Analysis of Submitted Alternatives to Proposed Regulation after Public Notice

Once a regulation is publicly announced, the regulation writer needs to consider alternatives to the proposed regulation submitted by the public. ESS will assist with a cost evaluation of the submitted alternatives. The evaluation will be performed on alternatives that are equally as effective as the proposed regulation. The cost analysis determines whether a less costly alternative to the draft regulation has been proposed.

### 5. Analysis of Proposed State Regulations Differing from Federal Regulations

In some instances, protection of public health, safety, and welfare in California may require regulations that differ from those adopted by the federal government. If a proposed regulation is similar to the federal regulation, the regulation writer will explain and describe their efforts to avoid unnecessary duplication or conflicts with the federal regulations. If a differing proposed State regulation is explicitly authorized by law, then additional economic analysis is not required. However, if the proposed regulation differs significantly from federal regulations, then the costs of the regulation and benefits must be assessed. The regulation is justified by showing the benefits of the regulation outweigh the cost.

### 6. Analysis of Costs or Savings to State and Local Governments

A sixth component of the assessment focuses on estimation of any costs or savings that a proposed regulation imposes on State agencies, local governments, or school districts. This component is known as the Fiscal Impact Statement. Detailed information on the costs and savings to State agencies and local governments can be found in the State Administrative Manual, beginning in section 6601 <http://sam.dgs.ca.gov/default.htm> .

## 7. Completion of Economic and Fiscal Impact Statement (Form 399)

The Administrative Procedures Act also requires an Economic and Fiscal Impact Statement, the Form 399, be included in each rulemaking record. The economic and fiscal analysis developed for the above six (6) components is summarized on the Form 399. The ESS will assist the regulation writer to accurately complete the 399.

### Economic and Fiscal Impact Statement: Form 399

As mentioned above, the Administrative Procedures Act, Government Code section 11346.5, requires an Economic and Fiscal Impact Statement be included in each rulemaking record. Upon filing of the Notice Package with the Office of Administrative Law (OAL), State agencies must include a completed 399.

In order to help regulatory staff address DOF's concerns and issues (e.g., consistency throughout ARB), we have developed a procedure to ensure that regulation writers solicit and receive help from the Economic Studies Section (ESS) to assist with the economic and fiscal impact assessments. Doing so will promote consistent and robust analyses which should help to streamline review by the OAL. ESS will conduct training for each division writing regulations.

The attached guidance packet provides regulatory staff instructions on how to obtain help from ESS, including consultation on information and data needs to complete the economic and fiscal analysis, including the Form 399, and establishes a deadline for draft review and approval by ESS. The Board Administration and Regulatory Coordination Unit (BARCU) will not advance the 399 without ESS sign-off.

This packet has been developed to assist you in completing the economic and fiscal impacts and the Form 399 in an efficient manner. It is recommended that regulatory staff begin coordinating with ESS early in the regulation development process. Please initiate this process by using the attached memo template to have your division or branch chief request ESS assistance.

If you have any questions or need further information, please contact Fereidun Feizollahi, Manager, Economic Studies Section, at (916) 323-1509 or [ffeizoll@arb.ca.gov](mailto:ffeizoll@arb.ca.gov).

### Attachments

cc: Fereidun Feizollahi  
Research Division