OFFICE OF ADMINISTRATIVE LAW

WRITTEN TESTIMONY FOR

LITTLE HOOVER COMMISSION

BY:

DEBRA M. CORNEZ, ASSISTANT CHIEF COUNSEL/ACTING DIRECTOR,
OFFICE OF ADMINISTRATIVE LAW
1986 – PRESENT: ATTORNEY WITH THE OFFICE OF ADMINISTRATIVE LAW (OAL) (2004 – CURRENT: ASSISTANT CHIEF COUNSEL; JANUARY 2011: ACTING DIRECTOR OF OAL)

MICHAEL MCNAMER, SENIOR COUNSEL, RETIRED ANNUITANT,
OFFICE OF ADMINISTRATIVE LAW
1982 – 2005: ATTORNEY WITH THE OFFICE OF ADMINISTRATIVE LAW (1982 – 1983 STAFF ATTORNEY, 1983 – 1985 SUPERVISING ATTORNEY,1985 – 2005 SENIOR ATTORNEY, DIRECTOR OF TRAINING (RETIRED FROM FULL TIME GOVERNMENTAL SERVICE – 2005); 2009 MARCH-APRIL: IN VIETNAM, UNDER THE AUSPICES OF THE USAID/STAR PROJECT WITH FUNDING FROM THE GE FOUNDATION, ASSISTED IN THE IMPLEMENTATION OF VIETNAM'S NEW LAW ON LAWS BY DESIGNING AND DELIVERING A SERIES OF HIGHLY SUCCESSFUL TRAINING PROGRAMS FOR CENTRAL AND LOCAL GOVERNMENT OFFICIALS, TRAINERS OF NATIONAL ASSEMBLY DEPUTIES, JOURNALISTS, AND MEMBERS OF THE BUSINESS COMMUNITY TO AUGMENT THE PROJECT'S EFFORTS TO STRENGTHEN THE RULE OF LAW IN VIETNAM. THE TRAINING PROGRAMS FOCUSED ON PUBLIC PARTICIPATION IN GOVERNMENTAL DECISION-MAKING AND THE INTEGRATION OF THE REGULATORY IMPACT ANALYSIS USED IN THE UK WITH A CALIFORNIA ADMINISTRATIVE PROCEDURE ACT STYLE PUBLIC POLICY DECISION-MAKING SCHEME.)

A. ROLE OF THE OFFICE OF ADMINISTRATIVE LAW IN THE REGULATION DEVELOPMENT PROCESS IN GENERAL

The Office of Administrative Law (OAL) was created in 1979 to provide California with greater public protection with respect to rulemaking by state agencies. OAL has only one program, Regulatory Oversight, which falls into three main statutorily mandated activities:

a. Review and approval/disapproval of proposed regulations by over 200 state agencies for substantive and procedural requirements of the Administrative Procedure Act (APA);
b. Compilation, publication and maintenance of the California Code of Regulations (CCR) and the weekly California Regulatory Notice Register (Notice Register), including free Internet access to the CCR and the Notice Register; and
c. Review of alleged “underground regulations.”

OAL provides an important function to the public and the state of California by protecting the public's rights under the APA, and curtailing the state's exposure to potential litigation for state agencies enforcing illegal rules. In addition to the statutorily mandated activities OAL provides the following "services":

a. Training for employees of the state of California, members of the Legislature, and the public on the rulemaking process; and
b. A "Reference Attorney" service to answer questions from any interested person on the rulemaking process.

These functions and services are provided by a small staff of 20 positions, consisting of the OAL Director, OAL Deputy Director, Assistant Chief Counsel, ten staff attorneys and seven other staff members.

Regulation Review— State agencies each year propose thousands of regulations which when adopted affect virtually every economic activity and segment of the California public. The volume of this regulatory activity is driven largely by the enactment of new state and federal statutes and the amendment of existing statutes. It is OAL's ultimate statutory responsibility to ensure that the regulations are based on and are consistent with statutory authority, necessary to implement that authority, and are clear and unambiguous. Additionally, OAL enforces Department of Finance instructions on assessing the fiscal impact of regulations on local and state government, and federal funding to the state with regard to all agencies in the executive branch, including agencies independent of the Governor. OAL also ensures that rulemaking agencies demonstrate that they assessed the economic impact of regulations on business and private persons as required by the APA.

From 2000 through 2010, OAL received an average of 737 rulemaking files for review each year. Each rulemaking file may affect one regulation, or many regulations which is more common (10, 20, 30 or more regulations in one rulemaking file). The majority of these files were approved by OAL and filed with the Secretary of State. On average, OAL disapproved 16 files each year, and 50 files were withdrawn from OAL's review by the state agency. It is common for the state agency to address the deficiencies pointed out by OAL for noncompliance with the APA and later resubmit the rulemaking file. Most often an agency fails to meet the following legal standards of the APA of consistency, necessity, clarity, and occasionally authority; and fails to follow the required rulemaking procedures, such as, properly respond to a comment, or provide notice to the public for substantive changes made to the proposed text after the initial public notice is issued.

B. ROLE OF THE DEPARTMENT OF FINANCE IN THE APA PROCESS

In conducting a rulemaking action, a rulemaking agency must estimate the fiscal impact of its proposed changes on state and local government. The initial estimates must be made before a notice of proposed action is drafted since the initial estimates must be included in the notice. A notice of proposed rulemaking must include the following:

1. A determination as to whether the rulemaking action creates a mandate on local government and, if so, whether the mandate is reimbursable under Article XIIIB of the California Constitution; and
2. An estimate, prepared in accordance with instructions adopted by the Department of Finance, of:
   a. the reimbursable mandated cost to any local agency or school district;
   b. other nonreimbursible cost or saving imposed on local agencies;
   c. the cost or savings to any state agency (including the rulemaking agency); and,
   d. the cost or savings in federal funding to the state.

"Cost or savings" means additional costs or savings both direct and indirect, that a public agency necessarily incurs in reasonable compliance with the regulations.[1]

The Department of Finance (Department) instructions for preparing these fiscal estimates are published in sections 6601-6616 of the State Administrative Manual (SAM).[2] Section 6614 of the SAM provides that a rulemaking agency must summarize its fiscal impact estimates on the Department's Fiscal Impact Statement Form, STD. 399. The final STD. 399 must be included in the rulemaking record. Omission of the STD. 399, or failure to follow the Department's instructions concerning proper completion of the Fiscal Impact Statement will prevent the regulation from being approved by OAL.

It is important to note that the APA requires only that the rulemaking agency comply with the Department's instructions regarding the fiscal impact estimates set forth in section 11346.5(a)(6), and that there is no such requirement as it relates to the Economic Impact Statement portion of the STD. 399.[3]

C. REGULATION DEVELOPMENT PROCESS

The following is a discussion of the regulation development process after a statute is passed with emphasis on economic analysis legal requirements under the APA and other laws and the extent to which those requirements are followed by agencies and departments.

INITIATION OF A RULEMAKING ACTION

The California Administrative Procedure Act (APA), Government Code section 11340 et seq., requires a state agency in the Executive Branch of the

Government of the State of California (state agency) to adopt every rule or standard of general application, or procedure that implements, interprets, or makes specific the law enforced or administered by the agency pursuant to the procedures specified in the APA, unless an express statutory provision exempts the rule, standard, or procedure from the APA. (All subsequent references are to the Government Code unless otherwise specified.) Consequently, statutory changes to the law enforced or administered by a state agency may stimulate the state agency to initiate a rulemaking action to adopt, amend, or repeal regulations to legally give effect to newly adopted, amended, or repealed statutory provisions. In the making of that decision the state agency must analyze the statutory changes to determine which are self-implementing, which are subject to interpretation, and which are fully enabling. (A fully enabling statutory provision has no effect unless and until an agency has adopted a regulation to give it legal effect.)

PRELIMINARY ACTIVITIES

Once a state agency makes a decision to initiate a rulemaking action, its staff begins to do the preliminary activities necessary to prepare to conduct a rulemaking pursuant to the procedures specified in the APA and in other applicable law. The pre-notice staff work involves identification of all applicable procedural requirements and development of a procedural work plan, analysis of the newly adopted statutory provisions, legal research, factual research, policy development, possible public workshops, drafting of the proposed regulation text, impact analysis, preparation of the fiscal impact analysis (STD Form 399), drafting of the initial statement of reasons, drafting of the notice of proposed rulemaking, and preparation for issuance of the notice.

IMPACT ANALYSIS AND PERFORMANCE GOAL

Section 11346.3 requires a rulemaking agency to conduct an impact analysis at this stage. It provides in part:

> State agencies proposing to adopt, amend, or repeal 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, recordkeeping, or compliance requirements.

APA CONSTRAINTS ON IMPACT ANALYSIS

Other APA provisions, however, qualify or limit this requirement. We consider first how the results of the impact analysis are to be made available to the public and to OAL. The APA requires the rulemaking agency to set out the initial

results of the analysis as required statements and declarations that must be included in the notice of proposed rulemaking and initial statement of reasons. The APA also provides for documentation regarding impact analysis in the initial statement of reasons[4] and in the rulemaking record[5]. The description of each of these statements, declarations, and documentation requirements in the APA has a limiting effect on the actual impact information that must be developed by rulemaking agency staff during the pre-notice stage of rulemaking. The APA provides that these declarations and statements must specifically state the following:

> (1) whether the proposed action "may have" or "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;[6] (If the agency determines that the proposed action "may have" such an effect, the notice of proposed rulemaking must include information about the types of businesses that would be affected, a description of the requirements the proposal would impose, and a boilerplate statement soliciting proposals that would lessen any adverse economic impact.[7] The APA does not require the record to include evidence the agency relies upon to support an initial determination that the regulation may have a significant adverse impact on business.[8]);
>
> (2) cost impacts that a representative private person or business would incur in reasonable compliance with the proposed action;[9] (However, no universal costing out of the proposal required. If, at the pre-notice stage, no costs that a representative person or business would incur are known to the agency, the agency must include in the notice a statement to that effect, i.e., "The agency is not aware of any cost impacts …."[10]);
>
> (3) whether and to what extent the proposed action will affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State of California;[11] (However, information required from state agencies for the purpose of completing the assessment regarding these declarations may come from existing state publications.[12]);
>
> (4) a description of reasonable alternatives to the proposed regulation, and any alternatives that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives;[13] (However, "an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.").

CONSULTATION AND INTENT

1. The APA does not clearly require the agency to consult with the impacted public about impact analysis during the pre-notice stage of rulemaking when impact analysis activities are being conducted. The only provision in the APA that specifically requires a rulemaking agency to engage the public prior to publication of the notice of proposed action applies only when the regulations to be proposed are "complex" or involve a "large number of proposals that cannot easily be reviewed during the comment period." The provision makes no mention of impact analysis.[14] Thus, there is no APA requirement to actively consult with the public in conducting the impact analysis of regulations prior to publication of the notice.[15]

2. In 1994 the Legislature added section 11346.3[16] which specifies the following:

> 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 a proposed adoption, amendment, or repeal of a regulation.

LEAST BURDENSOME, EFFECTIVE ALTERNATIVE FINDING

A key procedural element regarding impact analysis in the APA is a requirement that the notice of proposed rulemaking must include a statement to alert the public that at the completion of the rulemaking process the rulemaking agency must determine that the regulatory action adopted by the agency is the least burdensome, effective alternative.[17] This, in effect, is a solicitation to the public to provide input regarding less burdensome, effective alternatives to the regulation proposed by the agency. At the end of the rulemaking process, in the Final Statement of Reasons the agency must make the following finding "with supporting information":

> … no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

OAL REVIEW

OAL reviews the content of notices of proposed rulemaking for compliance with APA content requirements before publishing the notices in the California Regulatory Notice register.

OAL reviews the rulemaking record to determine whether the rulemaking record demonstrates that the rulemaking agency has satisfied applicable procedural requirements, including whether the agency has complied with section 11346.3.[18] This review includes checking the notice and the initial statement of reasons included in the rulemaking record to ensure that they contained all required statements, declarations, and descriptions relating to impact analysis. It also includes checking the final statement of reasons to ensure that it includes the least burdensome, effective alternative finding. While OAL considers the totality of the record in determining whether this finding is supported, the primary support for the finding is in the agency's summary and response to comments on that topic.

OAL also reviews the summary and response to comments prepared by the agency and set out in the Final Statement of Reasons. Any comments received by the agency during a scheduled public comment period that suggest less burdensome alternatives, otherwise comment on the impact analysis or are otherwise addressed at the proposed action or the procedures followed must be considered by the rulemaking agency before it finally adopts the proposal. The affected public may and does comment on the adequacy of an impact analysis performed by the agency during the formal APA rulemaking process but rarely suggests less burdensome alternatives. To demonstrate that the rulemaking agency considers each and every comment directed at the proposed action or the procedures followed, the agency must either amend the proposal to accommodate the input from the affected public, or to explain a reason for not accommodating the input. OAL strictly enforces this requirement. OAL will not approve a rulemaking action unless and until the rulemaking agency demonstrates in the record that it has considered all comments directed at the proposed action or the procedures followed. One of the most frequent reasons that OAL sends a rulemaking action back to the rulemaking agency for additional work is the agency's failure to demonstrate that it has adequately considered one or more comments from the public.

In conducting its review of a rulemaking action OAL keeps in mind the above-described constraints as well as the following:

1. Notice content requirements 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 cost estimates, … if there has been substantial compliance with those requirements.[19]

2. 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.

3. OAL may not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.[20]

D. CONCLUSION AND RECOMMENDATIONS

The economic impact analysis required by the California Administrative Procedure Act (APA) is illusory and ineffective because it allows an agency to make a perfunctory, after-the-fact assessment of impact that is more symbolic that real. It fails to specify a series of steps (such as the ones specified in the California Environmental Quality Act, CEQA) which guide the regulatory process during the development of the proposal, raising issues and questions about the impact of proposed regulations. Consequently it is not effective in achieving the purpose of informing the decision-making process with empirical knowledge to make the process more transparent and accountable.[21]

OAL recommends that the APA be amended to provide for an effective regulatory impact assessment by providing for,

> "the steps of problem definition, the identification of a range of options, consultation, the classification of costs and benefits, (from a simple description of how stakeholders might be affected to full quantification and monetization), a plan for monitoring and review, and the choice of an option on the basis of decision-making criteria such as cost effectiveness, minimization of administrative burdens, cost-benefit analysis ratios, or thresholds."[22]

If California intends to provide for an effective regulatory impact assessment, OAL recommends that the APA be amended to provide that an agency has to find that it has adopted the option that satisfies the decision-making criteria, such as least burdensome, effective alternative and that the finding is supported by "substantial evidence in the rulemaking record." OAL has the experience and expertise to determine whether the record contains substantial evidence to support a conclusion. Such a review by OAL would not substitute judgment for that of the agency as expressed in the substantive content of the regulation. Rather, it is a procedural determination as to whether the record contains such evidence as a reasonable person, reasoning from the record would accept as adequate to reach the conclusion that the option satisfies the decision-making criteria. This could be an effective means of ensuring rulemaking agency compliance with impact analysis requirements.

OAL recommends that the APA be amended to establish an effective method of applying regulatory impact assessment when priority review of existing regulations is requested by the Legislature pursuant to section 11349.7.

> Even the most innovative government will soon discover that the main task is to manage the legacy of the past (Rose and Davies 1994).

> Consequently, ex-ante RIAs have a limited impact on the regulatory process if mechanisms of ex-post control (of the costs and benefits of existing regulations) are lacking. [Radaelli, C. M. (2004) The diffusion of regulatory impact analysis in OECD countries: best practices or lesson-drawing? European Journal of Political Research, 43(5): 725-749.]

OAL currently has authority to conduct a priority review of existing regulations.[23] In 1987 – 1988 OAL conducted three priority reviews which resulted in a modification of the scope of a regulation, repeal of a regulation, and a decision to not repeal a regulation.[24] If as part of such review a rulemaking agency were to be required to conduct a regulatory impact analysis it would establish a mechanism for ex-post control of existing regulations.

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[1] Section 11346.5(a)(5) and (a)(6).

[2] The Department's instructions to any state or local agency for the preparation, development, or administration of the state budget are expressly exempt from the APA. (See sec. 11357.)

[3] To the best of my knowledge, I provide the following information regarding the Economic Impact Statement of the STD. 399: In 1997, Governor Wilson signed W-144-97 that required the development of an economic impact statement (EIS) to be included in each rulemaking record. Pursuant to item 3 of W-144-97, the Department of Finance, the Trade and Commerce Agency, and the Governor's Office of Planning and Research, in consultation with other Cabinet Members, Office of Emergency Services, and OAL, were to develop a standard economic impact statement to be included in each rulemaking record. Furthermore, EIS "shall be incorporated into the fiscal impact statement required for proposed regulations" and "shall be submitted to the regulation review unit of the Trade and Commerce Agency, and all state agencies and department shall respond to the Trade and Commerce Agency's comments." Research revealed that the regulatory review unit (RRU) was created within the Trade and Commerce Agency in 1995, in response to SB 1082, signed by Governor Wilson in 1993 (Stats. 1993, c. 418). Pursuant to Health and Safety Code section 57005, at that time the Trade and Commerce Agency was already reviewing the economic impact analysis of regulations proposed by departments and boards under the Agency, thus, it made sense for all state agencies to do the same. As part of Governor Davis' May revise of the budget in 2002, the RRU was defunded. The Budget Act was signed on Sept 5, 2002 (Stats 2002, c. 379) thereby eliminating the RRU.

[4] Regarding documentation, section 11346.2(b)(4) provides that an initial statement of reasons shall include:

> Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

[5] Section 11347.3(b)(7)provides that the rulemaking record shall include:

> All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3.

[6]Section 11346.5(a)(7) provides that a notice must include the following initial determination:

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.

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

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

Section 11346.5(a)(8)specifies what an agency must do if the agency determines that the action will not have a significant, statewide adverse economic impact directly affecting business.

> 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.
>
> ….

[7] Section 11346.5(a)(7)provides:

> 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.
(iii) The use of performance standards rather than prescriptive standards.
(iv) Exemption or partial exemption from the regulatory requirements for businesses."

[8] Regarding documentation, section 11346.2(b)(4) provides only that an initial statement of reasons shall include:

> Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

[9] Section 11346.5(a)(9) provides that a notice shall include:

> 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] Ibid.

[11] Section 11346.5(a)(10)provides that the notice of proposed rulemaking shall contain:

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

Subdivision (b)(1) of 11346.3 provides: All state agencies proposing to adopt, amend, or repeal 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.

[12] Section 11346.3(b)(3).

[13] Section 11346.2(b)(4)provides that the initial statement of reasons shall include:

> (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives.
> (B) A description of any performance standard that was considered as an alternative. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.
> (C) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.
> (D) Notwithstanding subparagraph (A), (B), or (C), an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.

[14] Section 11346.45(a) provides:

In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

[15] Section 11346.3(a)(2) provides:

> 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.
>
> This provision does not require state agency staff to actively consult with the public about impact analysis during the pre-notice stage. Rather, it specifies that a rulemaking agency shall consider information supplied by interested parties apparently during the entire rulemaking process.

[16] Statutes 1994, chapter 1039.

[17] Section 11346.5(a)(13)provides that the notice must include:

> 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.

[18] Section 11349.1(d)(2).

[19] Section 11346.5(c).

[20] Section 11340.1(a).

[21] "RIA includes a range of methods (from full cost-benefit analysis to simpler checklists, see OECD 1997a) which can be used flexibly to measure ex ante the impact of proposed regulatory policies on social welfare or on selected target populations, such as small businesses, companies, non-profit organizations, and public administration. The aim of impact assessments is to enhance the empirical basis of political decisions. The idea is not to substitute political decisions with technocratic solutions, but to inform the decision-making process with empirical knowledge [fn omitted]. Another important aim of RIA is to make the regulatory process more transparent and accountable. Indeed, RIA cannot be reduced to a document – the usually concise paper containing the data on costs and benefits and the choice of a regulatory option. Quite the opposite, RIA consists of a series of steps which guide the regulatory process, raising issues and questions [Fn omitted]." Radaelli, C. M. (2004) The diffusion of regulatory impact analysis in OECD countries: best practices or lesson-drawing?, European Journal of Political Research, 43(5): 725-749.

[22] Radaelli, C. M. (2010) Radaelli, Governance: An International Journal of Policy, Administration, and Institutions, Vol. 23, No. 1, January 2010, (pp. 89—108, at p. 90).

[23] Section 11349.7 provides:

The office, at the request of any standing, select, or joint committee of the Legislature, shall initiate a priority review of any regulation, group of regulations, or series of regulations that the committee believes does not meet the standards set forth in Section 11349.1.

The office shall notify interested persons and shall publish notice in the California Regulatory Notice Register that a priority review has been requested, shall consider the written comments submitted by interested persons, the information contained in the rulemaking record, if any, and shall complete each priority review made pursuant to this section within 90 calendar days of the receipt of the committee's written request. During the period of any priority review made pursuant to this section, all information available to the office relating to the priority review shall be made available to the public. In the event that the office determines that a regulation does not meet the standards set forth in Section 11349.1, it shall order the adopting agency to show cause why the regulation should not be repealed and shall proceed to seek repeal of the regulation as provided by this section in accordance with the following:

(a) In the event it determines that any of the regulations subject to the review do not meet the standards set forth in Section 11349.1, the office shall within 15 days of the determination order the adopting agency to show cause why the regulation should not be repealed. In issuing the order, the office shall specify in writing the reasons for its determination that the regulation does not meet the standards set forth in Section 11349.1. The reasons for its determination shall be made available to the public. The office shall also publish its order and the reasons therefor in the California Regulatory Notice Register. In the case of a regulation for which no, or inadequate, information relating to its necessity can be furnished by the adopting agency, the order shall specify the information which the office requires to make its determination.

(b) No later than 60 days following receipt of an order to show cause why a regulation should not be repealed, the agency shall respond in writing to the office. Upon written application by the agency, the office may extend the time for an additional 30 days.

(c) The office shall review and consider all information submitted by the agency in a timely response to the order to show cause why the regulation should not be repealed, and determine whether the regulation meets the standards set forth in Section 11349.1. The office shall make this determination within 60 days of receipt of an agency's response to the order to show cause. If the office does not make a determination within 60 days of receipt of an agency's response to the order to show cause, the regulation shall be deemed to meet the standards set forth in subdivision (a) of Section 11349.1. In making this determination, the office shall also review any written comments submitted to it by the public within 30 days of the publication of the order to show cause in the California Regulatory Notice Register. During the period of review and consideration, the information available to the office relating to each regulation for which the office has issued an order to show cause shall be made available to the public. The office shall notify the adopting agency within two working days of the receipt of information submitted by the public regarding a regulation for which an order to show cause has been issued. If the office determines that a regulation fails to meet the standards, it shall prepare a statement specifying the reasons for its determination. The statement shall be delivered to the adopting agency, the Legislature, and the Governor and shall be made available to the public and the courts. Thirty days after delivery of the statement required by this subdivision the office shall prepare an order of repeal of the regulation and shall transmit it to the Secretary of State for filing.

(d) The Governor, within 30 days after the office has delivered the statement specifying the reasons for its decision to repeal, as required by subdivision (c), may overrule the decision of the office ordering the repeal of a regulation. The regulation shall then remain in full force and effect. Notice of the Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

The Governor shall transmit to the rules committee of each house of the Legislature a statement of reasons for overruling the decision of the office, plus any other information that may be requested by either of the rules committees.

(e) In the event that the office orders the repeal of a regulation, it shall publish the order and the reasons therefor in the California Regulatory Notice Register.

[24] PRIORITY REVIEWS:

Priority Review #	Agency	CCR title/sec.	Subject	OAL action	Any post-action
87-1	SWRCB	Title 23, 26, sec. 2582	Surface Impoundment Closure Requirements (related to Toxic Pits Cleanup Act)	March 6, 1988, OAL issues "Statement of reasons in Priority Review 87-1)" that effective 4-4-88, section 2582 be stricken from the CCR, unless the reference citation as a nonsub is changed; The governor's office affirms OAL's determination.	SWRCB submitted a change of reference citation per this determination prior to 4-4-88 date and 2582 is not repealed.
87-2	Industrial Relations	Title 8, section 16200(a)(3)(E)	Payment of Prevailing Wages on Public Works Projects	OAL issues order of repeal on April 26, 1988 Governor's office "has reviewed OAL's Statement of Reasons and has not overruled the decision to repeal"	
87-3	Department of Motor Vehicles	Title 13, sec. 403.04	Advertising by Automobile Brokers	OAL's July 13, 1988 letter to Assemblymember Richard Katz states that it has decided **not** to repeal the regulation	