

## Preparing the Initial Statement of Reasons

The Initial Statement of Reasons (ISOR) answers the “why” question. Why is the agency proposing to make the proposed regulatory change(s)? It also identifies material relied upon by the agency, if any, in proposing the action to provide factual support in answering the “why” question. The ISOR is the primary document in the rulemaking record that demonstrates that the adoption, amendment or repeal satisfies the Necessity standard.

The ISOR must contain the following:

(1) For each regulatory provision proposed for adoption, amendment, or repeal, an agency must provide a statement:

- Identifying the problem the agency intends to address by way of each particular proposed regulatory provision (Gov. Code, sec. 11346.2, sub. (b)(1).), and
- Explanation of the specific purpose of each proposed regulatory provision (Gov. Code, sec. 11346.2, sub. (b)(1).), and
- Setting forth the necessity for the proposed regulatory provision. (Gov. Code, secs. 11346.2, sub. (b)(1) and 11349, subd. (a).) This means explaining the agency’s rationale for the determining why the proposed regulation is reasonably necessary to carry out the purpose and to address the problem for which it is proposed. The Necessity standard requires a demonstration of the need for a regulation to effectuate the purpose of the statute that the regulation implements, interprets, or makes specific. The statement must *explain why each provision* of the adopted regulation is required to carry out the described purpose. The agency must explain why it is addressing the stated problem in the way proposed.
- A statement enumerating the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. The benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. (Gov. Code, sec. 11346.2, sub. (b)(1).)

- Prescriptive versus Performance Standard: Where the adoption or amendment of a regulation would mandate the use of specific technologies, actions, procedures or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required as opposed to a performance standard. (Gov. Code, secs. 11340.1, sub. (a), 11346.2, sub. (b)(1), and 11346.2, sub. (b)(4)(A).)

(2) **Documents Relied Upon:** The ISOR must include an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies upon in proposing the rulemaking action. (Gov. Code, sec. 11346.2, sub. (b)(3).) Documents relied upon should include complete titles, publication date, version number or other information necessary to properly identify the material relied upon.

(3) **Economic Impact Assessment (EIA).** For non-major regulations, an Economic Impact Assessment (EIA) must be performed in accordance with Government Code Section 11346.3, subdivision (b). The EIA must be included as part of the ISOR and must be provided to OAL prior to publication of the Notice of Proposed Action. The EIA must provide adequate information to explain how the agency reached the required conclusions regarding:

- 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,
- the expansion of businesses currently doing business within the State of California, and
- the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Warning: Do not just state the results. One of the purposes of the EIA is to allow the regulated public to evaluate not only the results of the EIA, but also how the agency came to the conclusions reached. Simply restating the results is not acceptable. Government Code, Section 11346.3, subdivision (e), which governs the EIA and other required economic assessments, provides:

Analysis conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy.

Note: Failure to provide a compliant EIA may prevent publication of your Notice of Proposed Action. (Gov. Code, sec. 11346.4, sub. (d).)

(4) **Standardized Regulatory Impact Analysis (SRIA):** For major regulations, the SRIA must be included in the body of the ISOR. (Gov. Code, sec. 11346.36, sub. (e).) The SRIA must assess all required elements pursuant to Government Code, Section 11346.3, subdivisions (c)(1)(A) through (F). The SRIA must include details regarding the agency's methods and efforts to seek public input regarding alternatives. (Cal. Code. Regs., tit. 1, sec. 2001, sub. (d).)

(5) **Alternatives:** A description of reasonable alternatives, if any, to the regulation and the agency's reasons for rejecting those alternatives. This includes the following:

- Reasonable alternatives to be considered include alternatives that are proposed as more effective, less burdensome and equally effective, or more cost effective and equally effective in effectuating the purpose of the statute. Any such proposed alternatives must be considered if the alternatives achieve the purpose of the regulation and are in full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. (Gov. Code, sec. 11346.2, sub. (4).)
- Prescriptive Standard versus Performance Standard: Where the adoption or amendment of a regulation would mandate the use of specific technologies, actions, procedures or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required as opposed to a performance standard. (Gov. Code, secs. 11340.1, sub. (a), 11346.2, subd. (b)(1) and 11346.2, sub. (b)(4)(A).)
- 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. (Gov. Code, sec. 11346.2, sub. (b)(4)(B).)

- Remember, an agency is not required to artificially construct alternatives or describe unreasonable alternatives. (Gov. Code, sec. 11346.2, sub. (b)(4)(C).)

**(6) Significant Adverse Economic Impact Directly Affecting Business:** The ISOR must contain facts, evidence, documents, testimony, or other evidence on which the agency relies to support the initial determination made in the NOPA that the action will not have a significant adverse economic impact directly affecting business. (Gov. Code, sec. 11346.2, sub. (b)(5).)

**(7) Duplication or Conflicts with Federal Regulations:** A department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. (Gov. Code, sec. 11346.2, sub. (b)(6).)

These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

**(8) Mandated by Federal Law or Regulations:** A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with all of the above, if:

(A) A statement is included to the effect that a federally mandated regulation or amendment to a regulation is being proposed; and

(B) A citation to where an explanation of the provisions of the regulation can be found, is included in the Notice of Proposed Action. (Gov. Code, sec. 11346.2, sub. (c).)

However, the agency shall comply fully with the APA with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.