

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME Department of Justice	CONTACT PERSON Melan Noble	EMAIL ADDRESS Melan.Noble@doj.ca.gov	TELEPHONE NUMBER (916) 322-0908
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Proposition 65 Private Enforcement			NOTICE FILE NUMBER Z

**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements              |
| <input checked="" type="checkbox"/> b. Impacts small businesses          | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations                  | <input type="checkbox"/> g. Impacts individuals                         |
| <input type="checkbox"/> d. Impacts California competitiveness           | <input type="checkbox"/> h. None of the above (Explain below):          |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.**If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*2. The Department of Justice estimates that the economic impact of this regulation (which includes the fiscal impact) is:  
(Agency/Department)

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: 10-50Describe the types of businesses (Include nonprofits): See AddendumEnter the number or percentage of total businesses impacted that are small businesses: 25-50%4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: \_\_\_\_\_

5. Indicate the geographic extent of impacts:  Statewide  
 Local or regional (List areas): \_\_\_\_\_6. Enter the number of jobs created: 0 and eliminated: 0Describe the types of jobs or occupations impacted: There may be less work for lawyers, legal assistants, investigators, and employees of nonprofits whose work is funded wholly or in part from Alternative Settlement Payments.7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?  YES  NO

If YES, explain briefly: \_\_\_\_\_

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**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

- 1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 0
  - a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_
  - b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_
  - c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_
  - d. Describe other economic costs that may occur: \_\_\_\_\_

No anticipated compliance costs. May reduce payment/attorneys fee revenue of plaintiff law firms and nonprofit groups.

- 2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_

- 3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ \_\_\_\_\_

- 4. Will this regulation directly impact housing costs?  YES  NO  
 if YES, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_  
 Number of units: \_\_\_\_\_

- 5. Are there comparable Federal regulations?  YES  NO

Explain the need for State regulation given the existence or absence of Federal regulations: State regulations implement Proposition 65, a California law.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS** *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

- 1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: Regulation will increase health benefits in California from Proposition 65 settlements by (a) requiring more in-state benefit to accrue from certain projects undertaken in lieu of penalty payments, and (b) directing greater fraction of certain settlement payments to Prop 65 agency (OEHHA).

- 2. Are the benefits the result of:  specific statutory requirements, or  goals developed by the agency based on broad statutory authority?  
 Explain: Regulations reflect DOJ authority to review, and problems noted with, terms of certain Prop 65 settlements.

- 3. What are the total statewide benefits from this regulation over its lifetime? \$ not quantifiable

- 4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

- 1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: No alternative contemplated would as effectively curb potential abuses of in-lieu-of-penalty payments and attorney's fee recovery in private settlements, without erecting unnecessary barriers to private Prop 65 enforcement.

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2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

Alternative 1: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

Alternative 2: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?  YES  NO

Explain: \_\_\_\_\_  
Not an option under statutory mandate.

**E. MAJOR REGULATIONS** include calculations and assumptions in the rulemaking record.

*California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?  YES  NO

*If YES, complete E2. and E3*

*If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

*(Attach additional pages for other alternatives)*

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES  NO

*If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: \_\_\_\_\_

The incentive for innovation in products, materials or processes: \_\_\_\_\_

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: \_\_\_\_\_

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**FISCAL IMPACT STATEMENT**

**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

a. Funding provided in \_\_\_\_\_  
Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

b. Funding will be requested in the Governor's Budget Act of \_\_\_\_\_  
Fiscal Year: \_\_\_\_\_

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

*Check reason(s) this regulation is not reimbursable and provide the appropriate information:*

a. Implements the Federal mandate contained in \_\_\_\_\_

b. Implements the court mandate set forth by the \_\_\_\_\_ Court.

Case of: \_\_\_\_\_ vs. \_\_\_\_\_

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_

Date of Election: \_\_\_\_\_

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: \_\_\_\_\_  
\_\_\_\_\_

e. Will be fully financed from the fees, revenue, etc. from: \_\_\_\_\_

Authorized by Section: \_\_\_\_\_ of the \_\_\_\_\_ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

3. Annual Savings. (approximate)

\$ \_\_\_\_\_

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain \_\_\_\_\_  
\_\_\_\_\_

## **Addendum to Form 399 – Economic and Fiscal Impact Statement**

- A.3. Describe the types of businesses (include nonprofits): Nonprofit corporations, consumer & environmental groups.

There are two potential economic impacts of the proposed regulation on businesses in California. The first impact will be to nonprofit corporations and consumer and environmental groups that receive funding through “Additional Settlement Payments” (“ASPs”) in Proposition 65 settlements. These groups include some of the private enforcers of Proposition 65 that use ASPs to fund their work, and third parties that receive ASPs. Average annual ASPs recovered in private Proposition 65 settlements over the last three years, however, were \$2.8 million. (See Annual Summaries of Private Settlements, at <http://oag.ca.gov/prop65>.) While the proposed regulations may result in a portion of future settlement funds being allocated as civil penalties instead of as ASPs, it is anticipated that private enforcers will continue to recover ASPs. Therefore, any economic impact on groups that receive ASPs necessarily will be less than the amounts recovered over recent years.

The second potential economic impact of the proposed regulation arises from the increased specificity the regulation prescribes for defining, documenting, and reporting the use of ASPs. These requirements must be met by the nonprofit and consumer and environmental groups that collect funding through ASPs. While there may be costs associated with complying with the requirements, the current regulation requires entities that receive ASPs to be able to demonstrate how funds will be spent and to assure that the funds are being spent for the proper, designated purpose. The proposed regulation should not, therefore, create any significant increase in the costs of documenting how ASPs are used.

- B.1. Additional expenditures in the current State Fiscal Year. (Approximate): Unknown. The cost of implementing the regulation cannot be quantified absent experience with post-regulation conduct of private bar.
- B.4. Other. Explain: The potential for additional DOJ attorney time to object to settlements that do not comply with the new regulation is offset by the potential for fewer objections as a result of improvements to the Attorney General’s Settlement Guidelines.

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**FISCAL IMPACT STATEMENT (CONTINUED)**

**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

§ See Addendum

*It is anticipated that State agencies will:*

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the \_\_\_\_\_ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain See Addendum

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain \_\_\_\_\_

FISCAL OFFICER SIGNATURE



DATE

9-14-15

*The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

AGENCY SECRETARY



DATE

9.14.15

*Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.*

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

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