

Requirements for Rulemaking Regulatory Analysis (FMC 5.2 – July 14, 2023)

Section 1 – Applicability: This Circular establishes the standards for the regulatory analysis required by IC 4-22-2-22.7 and applies to all rules and amendments or modifications to existing rules adopted by any state agency under Indiana Code § 4-22-2 et. seq. or § 13-14-9 et. seq.

Section 2 – Background: A sound regulatory analysis is designed to inform the agency conducting the rulemaking and the public of the effects of regulatory actions. In certain cases, the analysis required by this FMC may demonstrate that the proposed rules require additional tailoring to more closely match the benefits with the costs of the rule. In other situations, the analyses will validate that the rules are reasonable, necessary, and warranted.

IC 4-22-2-19.5 requires that, to the extent possible, rules shall minimize the expenses to regulated entities that are required to comply with the rule; persons who pay taxes or pay fees for government services affected by the rule; and consumers of products and services of regulated entities affected by the rule. IC 4-22-2-19.5 also requires that, in the adoption of a rule or amendment, an agency shall determine the least intrusive and most efficient regulatory choice for the rule or amendment.

IC 4-22-2-19.6 requires that for a rule adopted under IC 4-22 or IC 13-14-9 that includes a fee, fine, or penalty imposed by an agency that is not set as a specific amount in state law, a rule must describe the circumstances for which the agency will assess the fee, fine, or penalty. The rule must set forth the amount of the fee, fine, or penalty as (a) a specific dollar amount, (b) a formula by which a specific dollar amount can be reasonably calculated, or (c) a range of potential dollar amounts with the factors that the agency will utilize to set a specific dollar amount in an individual case with sufficient certainty that a review of an agency action under IC 4-21.5 or comparable process can evaluate whether the amount was reasonable. IC 4-22-2-19.6 further provides that the amount of a fee must be reasonably based on the amount necessary to carry out the purposes for which the fee is imposed as well as setting forth factors an agency must consider for setting the amount of a fine or civil penalty.

Section 3 – Regulatory Analysis: Before submitting a request to the Office of Management and Budget (OMB) and State Budget Agency (SBA) to authorize commencement of the public comment period, agencies shall conduct a regulatory analysis for the proposed rule. The regulatory analysis must follow the Regulatory Analysis Template attached to this FMC, which was jointly established by OMB, SBA, and the Legislative Services Agency (LSA) as required under IC 4-22-2-22.7(b). The regulatory analysis must be submitted in a form that can be easily loaded into commonly used business analysis software and published in the Indiana Register, please submit this document in Word or WordPerfect (not PDF).

For assistance in completing the regulatory analysis, please review the additional resources available on the [OMB rulemaking website](#).

A handwritten signature in black ink, appearing to read 'Zachary Q. Jackson', with a stylized flourish at the end.

Zachary Q. Jackson, Director
State Budget Agency

Regulatory Analysis Template

Pursuant to IC 4-22-2-22.8, agencies must prepare the following regulatory analysis that will be published in the Indiana Register along with a proposed rule. Agencies should include a response to each high-level section below (denoted with Roman numerals) that covers the information described. Agencies do not necessarily need to separately address each subsection below (denoted with lower-case letters) so long as the information described is otherwise contained in the response. For questions regarding how to prepare the regulatory analysis, please reach out to the Office of Management and Budget (OMB) at SBArules@sba.in.gov.

NOTE: Please submit this document in Word or WordPerfect (not PDF). Attached tables may be submitted in Excel.

TITLE [IAC TITLE NUMBER] [AGENCY NAME]
LSA Document #XX-XXX

I. Description of Rule

This section should include an overview of the proposed rulemaking, background, and high-level justification. Topics to address include (as applicable):

a. History and Background of the Rule – Explain the genesis for this rulemaking, including what prompted the agency to undertake this rulemaking. For example, is this rulemaking due to an update in state or federal law, court order, audit finding, operational issue or some other factor? When was the last major update to the rule? What process did the agency follow to develop this rule, for example was there a committee, external working groups, model code, etc.?

b. Scope of the Rule – Describe at a high-level the scope of the changes in the proposed rule. For example, is the rule simplifying a process, clarifying definitions, aligning the rules with current law, or is it a repeal and replace effort to assist with regulatory compliance and implementation. If it is a repeal and replace, explain why this method was chosen rather than simply amending the existing regulations.

c. Statement of Need – Provide a statement explaining the need for the rule and an evaluation of the policy rationale or goal behind the proposed rule, including an explanation as to whether the rule is intended to address 1) a federal or state statutory requirement; 2) a court order; 3) an audit finding, 4) an operational issue, or 5) another factor. For required changes, indicate what are the required changes and when were the new laws enacted, court order issued, audit conducted, etc.? If changes prompted by another factor, explain how that factor creates the need for the rulemaking.

d. Statutory Authority for the Proposed Rule – Include both the authority for the agency to generally regulate in the subject area and the specific authority for the agency to issue the proposed rule.

e. Fees, Fines, and Civil Penalties – Indicate whether the rule adds or increases any fees, fines, or civil penalties and needs to follow the additional steps in IC 4-22-2-19.6.

II. Fiscal Impact Analysis

This section should include a discussion of the impact of the proposed rulemaking on State and local government expenditures and revenues. Topics to address include (as applicable):

a. Anticipated Effective Date of the Rule

b. Estimated Fiscal Impact on State and Local Government – Does the rule impact expenditures and revenues of State agencies or local government? If so, to the extent possible, quantify the total impact by year.

c. Sources of Expenditures or Revenues Affected by the Rule – If the rule impacts expenditures and revenues of State agencies or local government, indicate (1) which units of government are impacted, (2) which years are impacted, and (3) which funds are impacted (if known). Also indicate which specific provisions in the rule impose the fiscal impact.

III. Impacted Parties

This section should identify all parties that may be impacted from the proposed rule. This will serve as the multiplier for costs and benefits. Consider the impact of the rule on all persons affected by the rule, not just regulated persons. Impacted parties can be determined by a variety of sources including, but not limited to, agency records, calculation, research, estimates, and surveys. Agencies can exclude parties already in compliance from the cost-benefit analysis.

IV. Changes in Proposed Rule

This section should identify all changes from existing regulation. This can be done by creating a list of changes or showing the changes in a table format. Failure to identify all changes in the proposed rule is the biggest reason for delays in the OMB review of a proposed rule. Be sure to check legal authority for each provision.

As part of this process, identify all requirements that are being included as part of the proposed rulemaking but are imposed by another source of law. For example, these requirements could be in statute, other regulations, federal regulations, court orders, or compacts. These sources should be included in a list, table, or annotation on the proposed rule language. Requirements that are imposed by another source of law should be excluded from the cost-benefit analysis.

Also, as part of this process, identify all requirements that are being included as part of the proposed rulemaking that incorporate an existing agency standard that is contained in a non-rule document. For example, these standards can be contained in a policy, manual, handbook, contract, form, application, etc. These sources should be included in a list, table, or annotation along with an estimate of the current compliance rate by regulated parties with the standard.

V. Benefit Analysis

This section should include a discussion of the benefits of the changes made in the proposed rule compared to existing requirements. For each new requirement in the proposed rule, consider the benefits to the general public, regulated community, businesses and other regulated entities, your agency, other state agencies, local partners, individuals, families, and small businesses.

When considering possible direct and indirect benefits, consider questions such as the following: Will the regulation save time or money for your agency or another agency? Does the regulation decrease compliance costs? Does the regulation increase business profitability by reducing costs? Does the regulation make the market more competitive? Does the regulation decrease the price of goods or services? Does the regulation create benefits for public health or safety?

If benefits cannot be monetized or quantified, the agency should explain why and include a thorough description of the non-quantifiable benefits as well as a determination whether such benefits will be significant.

Topics to address include (as applicable):

a. Estimate of Primary and Direct Benefits of the Rule – A direct benefit is one that occurs as an immediate result of the stated goals of the regulation without any intervening steps or actions and can include things such as the impact on consumer protection, worker safety, the environment, or business competitiveness. For example, the amount of time an employee saves by not having to complete a certain form and the amount of time the agency saves by not having to review the form.

b. Estimate of Secondary or Indirect Benefits of the Rule - An indirect benefit is one that occurs because of the regulation but is unrelated to its stated goals. Continuing from the direct benefit example, an indirect benefit of getting rid of a form would be using money saved to upgrade a certain technology in the agency. The rule change was not made with the goal of updating technology, but that is an added benefit of the change.

c. Estimate of Any Cost Savings to Regulated Industries – Indicate if the proposed rule will provide cost savings individuals and/or businesses. Please note if the savings are from a change in an existing requirement or the imposition of a new requirement.

VI. Cost Analysis

This section should include a comprehensive enumeration of the cost imposed by the changes made in the proposed rule compared to existing requirements, including tangible and intangible costs. For each new requirement in the proposed rule, consider the costs to the general public, regulated community, businesses and other regulated entities, your agency, other state agencies, local partners, individuals, families, and small businesses.

When considering possible direct and indirect costs, consider questions such as the following: Does the regulation increase compliance costs? Will the regulation require individuals or businesses to change their behavior or procedures to comply? Will the regulation require regulated parties to buy new equipment or software, take more time to complete tasks, hire new workers, take new training, develop new procedures, provide additional information, or take additional actions to comply? Will the regulation require more time or money for your agency or another agency? Does the regulation decrease business profitability by increasing costs? Does the regulation make it more difficult to enter the market? Does the regulation increase the price of goods or services?

If costs cannot be monetized or quantified, the agency should explain why and include a thorough description of the non-quantifiable costs as well as a determination whether such costs will be significant.

Topics to address include (as applicable):

a. Estimate of Compliance Costs for Regulated Entities – Costs are the burden of complying with the rule and can include the costs of fees, new equipment or supplies, increased labor and training, education, supervisory costs, and any other compliance cost imposed by the requirements of the rule. Consider both direct and indirect costs. Direct costs are an immediate result of the regulation without any intervening steps or actions. Indirect costs occur because of the regulation but are unrelated to its stated goals. If possible, agencies should monetize the costs by expressing them in numbers.

b. Estimate of Administrative Expenses Imposed by the Rules – To the extent possible, quantify any legal, consulting, reporting, accounting or other administrative expenses imposed by the requirements of the rule. This includes any additional time regulated parties will need to spend to understand the requirements and comply with them through new processes or procedures.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – If the rule adds or increases a fee, fine, or civil penalty, the agency must define what the fee, fine, or civil penalty is doing / seeking to punish; the circumstances for which the agency will assess a fee, fine, or civil penalty; and provide a calculation of how the agency decided the specific dollar amount (or formula). For a fee, discuss how the amount of a fee is reasonably based on the amount necessary to carry out the purposes for which the fee is imposed. For a fine or civil penalty, discuss how the amount of the fine or civil penalty was determined based on the following considerations as applicable: Whether the violation has a major or minor impact on the health, safety, or welfare of a person or animal; whether the number of previous violations committed by the offender of laws, rules, or programs administered by the agency; the need for deterrence of future violations; and whether the conduct, if proved beyond a reasonable doubt, would constitute a criminal offense, and the level of penalty set by law for the criminal offense.

VII. Sources of Information

This section should include a discussion of the sources of outside information utilized to calculate the cost and benefits for the rule. Topics to address include (as applicable):

a. Independent Verifications or Studies - Were there any studies that were relied upon in the cost-benefit analysis? Potential sources include the following: official government reports (e.g., federal, state, or local); academic, technical, or professional articles; commercial literature; businesses' websites; survey data; and word of mouth (e.g., inquiring among business owners). If any source listed above was relied upon in the cost benefit analysis, provide citations to where the studies can be located or indicate how a person can obtain copies from the agency to review.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – Did the agency use any outside sources to calculate costs and benefits? For example, the consumer price index database, bureau of labor statistics, IRS data, or any internal, industry specific databases. If these were used, provide a citation to view the source or indicate how a person can obtain copies from the agency to review. Did the agency consult with industry groups or associations or conduct a survey of regulated parties to help determine the costs and benefits? If so, please provide a description of what was done and the information obtained.

VIII. Regulatory Analysis

Conclude with an aggregated tally of the costs and benefits for each new requirement along with the agency's determination whether the benefits are likely to exceed the costs.

Additional Information for OMB and SBA Review

The following information is required for OMB and State Budget Agency (SBA) review but will not be published along with the regulatory analysis.

IX. Contact Information of Staff to Answer Substantive Questions

X. Redline Draft of Proposed Rules

Please provide a link or attachment to the proposed rule that includes a redline of the changes made by the proposed rule from existing regulations, or an alternative form of identifying changes approved in advance by OMB. This draft can include annotations with other sources of requirements as discussed in Section IV above.

XI. Resubmission Information (if applicable)

Pursuant to IC 4-22-2-22.8(e), if an agency revises a proposed rule after it has been approved by OMB and SBA, the agency must submit the revised proposed rule and a revised regulatory analysis for review. If applicable, this section should include (1) a list of the changes in the revised rule from the previously approved version, (2) an explanation for the reason(s) for the changes, and (3) a description of how those changes impact the regulatory analysis previously submitted.