

## Cost Benefit Analysis Model Language

**Sec. 1. Purpose:** The purposes of this Act are —

- (1) to require agencies to conduct cost benefit analysis to promulgate any rule;
- (2) to require that projected costs of a proposed regulation must not exceed the projected benefits;
- (3) to require agencies to perform cost benefit analysis for new rules, at renewal of rules, or upon re-approval;
- (4) to require agencies to make their cost benefit analysis publicly available, transparent, and data driven; and
- (5) to guarantee the right of citizens to challenge a proposed rule on the basis of its cost benefit analysis.

## **Sec. 2. Definitions:**

- (1) “Cost” refers to any value loss that results from proposed regulation. The lost value should be converted to a monetary sum.
- (2) “Benefits” refers to any value gain that results from proposed regulation. The gained value should be converted to a monetary sum.
- (3) “Agency” has the same definition as [Cite to agency definition in state APA].
- (4) “Direct Benefit” refers to a benefit that occurs as an immediate result of the stated goals of the regulation (in accordance with the purpose of the authorizing statutory provision), without any intervening steps or actions.
- (5) “Indirect Benefit” refers to a benefit that occurs because of the regulation but is unrelated to its stated goals.
- (6) “Indirect Cost” refers to a cost that occurs because of the regulation but is unrelated to its stated goals.
- (7) “Stakeholder” refers to any group, individual, or entity subject to proposed regulation, i.e. small business, large business, consumers, etc.
- (8) “Stakeholder specific cost” refers to any cost that affects one stakeholder group but not another, such as small business compliance costs which differ from costs for larger businesses or unique compliance costs for rural or urban entities .
- (9) “Stakeholder specific benefit” refers to any benefit that one stakeholder group may gain that another group does not.
- (10) “Rule” or “regulation” refers to agency writings that hold the force of law and articulates the legal restrictions the regulated community must follow to comply with statutory law.
- (11) “Monetized” refers to any costs or benefits represented as dollar amounts.

## **Sec. 3. Analysis Requirements:**

- (1) All agencies must include a cost benefit analysis which clearly demonstrates that the benefits exceed the costs in every proposed regulation.
- (2) All agencies must include a cost benefit analysis when publishing final rules. The final rule cost benefit analysis must explain:
  - (a) All differences in the final cost benefit analysis from the cost benefit analysis that accompanied the proposed rule; and

(b) Any decision not to make changes to the cost benefit analysis in response to public comments to the cost benefit analysis that accompanied the proposed rule.

(3) All documentation for the cost benefit analysis shall be published on an easily accessible website made readily available to the public, to include any supporting calculations, documents, data, databases, or data tables.

(4) Standardized analysis and metrics must be applied to all regulations. Analysis techniques and methods must not vary between rules. Any variation must be justified and approved by the [Attorney General, Secretary of State or other executive authority].

(5) Stakeholders may challenge any final rule, subject to the statute of limitations, on the sole basis of significant deficiency in the agency's cost benefit analysis. The court shall stay the rule and remand the rule for additional agency analysis if it finds either:

- (a) The cost benefit analysis fails to consider relevant significant costs;
- (b) The cost benefit analysis was not provided to the public for scrutiny prior to the adoption of the final rule;
- (c) The cost benefit analysis significantly underestimates costs or significantly overestimates benefits; or
- (d) The cost benefit analysis in the final rule fails to justify changes from the cost benefit analysis in the proposed rule.

#### **Sec. 4. Timeline of Analysis; Discount Rates:**

(1) Cost benefit analysis should incorporate a timeline equivalent to [State's] periodic regulatory review cycle. If no periodic review cycle exists, analysis should be limited to a 5 year timeline. A state agency may include longer periods of review as well, but must provide a cost benefit analysis that projects the first five years after the regulation goes into effect.

(2) Use of discount rates is subject to the following restriction:

- (a) No use of social or otherwise implementing discount rates is required.
- (b) Use of discount rates must be justified if applied to analysis.
- (c) Calculations of compound interest rates are exempt.
- (d) Non-dollar factors of life shall not be monetized, and should never be calculated as if they will compound value at the marginal rate of return to capital.

#### **Sec. 5. Exemptions:**

(1) Rules which are already exempt from certain regulatory processes are exempt from the cost benefit analysis requirements. Examples include fast tracked or emergency rulemaking.

**Sec. 6. Effective Date:** This legislation goes into effect on October 1, 2024.