



California Regulatory Notice Register

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ADOPTION

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

STATE AGENCY: California Energy Commission

ADOPTION

MULTI-COUNTY: California Community Power (CC Power)

A written comment period has been established commencing on July 29, 2022 and closing on September 12, 2022. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return

the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than September 12, 2022. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING
COSTS AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code-reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

TITLE 2. SECRETARY OF STATE

PROPOSED REGULATORY ACTION:
NOTICES REGARDING PROHIBITION OF
ELECTIONEERING AND CORRUPTION OF
THE VOTING PROCESS

NOTICE IS HEREBY GIVEN that the Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under *Contact Persons* in this Notice, must be received by the SOS at its office not later than **September 12, 2022**.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: July 29, 2022, through September 12, 2022.

AUTHORITY AND REFERENCE

Authority cited: Sections 18372, 18504, Elections Code, and Section 12172.5, Government Code.

Reference cited: Sections 18370, 18371, 18372, 18500, 18501, 18502, 18503, 18504, 18520, 18521, 18522, 18523, 18524, 18540, 18541, 18542, 18543,

18544, 18545, 18546, 18547, 18548, 18560, 18561, 18562, 18562.5, 18563, 18564, 18564.5, 18565, 18566, 18567, 18568, 18569, 18570, 18571, 18572, 18573, 18573.5, 18574, 18575, 18576, 18577, and 18578, Elections Code.

INFORMATIVE DIGEST

A. Informative Digest

The Notices Regarding Prohibition of Electioneering and Corruption of the Voting Process were adopted as an emergency prior to the June 7, 2022, Statewide Primary Election. The emergency regulations provided uniform notices for prohibition on electioneering and corruption of the voting process.

These regulations are intended to make the emergency regulations permanent, as well as to add a new provision that will provide greater flexibility to elections officials.

On January 1, 2022, Senate Bill 35 (SB 35, Chapter 318 of the Statutes of 2021) became law. Amongst other things, SB 35 required the Secretary of State to promulgate regulations for notices regarding the prohibitions on electioneering and regarding the prohibitions on activity relating to corruption of the voting process. While SB 35 did not provide a timeframe for when the regulations were to be promulgated, the Secretary of State determined that it was imperative to have the notices available and provided to the public prior to the June 7, 2022, Statewide Primary Election.

The proposed regulations provide information on how and where county elections officials and the Secretary of State are to provide the notice, and also the language that the notices are to require. The language of the notices is provided to ensure that all California voters are receiving the same messages on the prohibitions of electioneering and corruption of the voting process.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The proposed regulations provide information on how and where county elections officials and the Secretary of State are to provide the notices on the prohibition of electioneering and what constitutes corruption of the voting process. The proposed regulations provide clear and concise language that the notices are to require. The language of the notices is provided to ensure that all California voters are receiving the same messages on the prohibitions of electioneering and corruption of the voting process.

C. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation of regulations in this area, the SOS has determined that these are the only regulations related to notices regarding electioneering and corruption of the voting process. Therefore, the

proposed regulations are neither inconsistent nor incompatible with existing state regulations.

D. *Documents Incorporated by Reference:* None

E. *Documents Relied Upon in Preparing the Regulations:*

Senate Bill 35 (Chapter 318 of the Statutes of 2021)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB35

DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The SOS has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Mandate on Local Agencies and School Districts: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact: The SOS has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business: The SOS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with these proposed regulations. These regulations only pertain to elections officials, who are required to post notices to voters relating to the prohibitions of electioneering and corruption of the voting process.

Significant Effect on Housing Costs: None.

Effect on Small Business: These regulations will have no effect on small businesses. These regulations only pertain to elections officials, who are required to post notices to voters relating to the prohibitions of electioneering and corruption of the voting process.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The SOS has determined that the proposed regulations are (1) unlikely to create or eliminate any jobs in California, (2) unlikely to create or eliminate any California businesses, (3) unlikely to result in the expansion of businesses currently doing business within California, (4) unlikely to have any impact on worker safety, and (5) unlikely to have any impact on California's environment. These regulations only pertain

to elections officials, who are required to post notices to voters relating to the prohibitions of electioneering and corruption of the voting process. These regulations do not significantly change existing business practices such that jobs or businesses would be created or eliminated.

Benefits of the Proposed Regulations: The benefits of the regulation to the health and welfare of California residents lies in the fact that these regulations will provide greater confidence in the conduct of California's election activities by providing clear warnings to the public about the prohibition of electioneering and what constitutes corruption of the voting process, uniform guidance for petition processing, signature verification, ballot processing, and ballot counting. These regulations will ultimately benefit California residents as they are intended to dissuade individuals from interfering with the elections process which will likely strengthen the public trust in the State of California's election process.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the SOS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SOS has determined that there are no reasonable alternatives to these regulations. There are currently no regulations for notices regarding the prohibition of electioneering and corruption of the voting process.

Any interested person may present statements or arguments relevant to the above determinations.

INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The SOS has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the SOS's website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the SOS contact or on the website listed below.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Robbie Anderson
Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95814
(916) 657-2166
aanderso@sos.ca.gov

The backup contact person is:

Raj Bathla
Secretary of State
1500 11th Street, Room 495
Sacramento, CA 95814
(916) 657-2166
rbathla@sos.ca.gov

Website Access: Materials regarding this proposal can be found at:

<https://www.sos.ca.gov/administration/regulations/proposed-regulations/>

TITLE 2. SECRETARY OF STATE

PROPOSED REGULATORY ACTION:
ELECTION OBSERVATIONS RIGHTS
AND RESPONSIBILITIES

NOTICE IS HEREBY GIVEN that the Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under *Contact Persons* in this Notice, must be received by the SOS at its office not later than **September 12, 2022**.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 5:00 p.m., on August 29, 2022. Follow-

ing the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: July 29, 2022, through September 12, 2022.

AUTHORITY AND REFERENCE

Authority cited: Section 10, Elections Code, and Section 12172.5, Government Code.

Reference cited: Sections 303.4, 319.5, 320, 335.5, 336.5, 338.5, 338.6, 339, 353.5, 358, 359.2, 360, 361, 362, 2550, 2300, 2301, 2302, 3018, 3203, 14215, 14422, 14223, 14240, 14294, 15004, 15101, 15104, 15015, 15360, 15367, and 18370, Elections Code.

INFORMATIVE DIGEST

A. *Informative Digest*

Groups and individuals (“election observers”) observe the conduct of various aspects of many California Elections. There are some references to election observation in the Elections Code, but those references are not sufficient to clearly set forth the rights and responsibilities of the election observers and the county elections officials. These regulations are being proposed to close that gap and provide uniform guidance to election observers and county elections officials for the observation process. It is anticipated that having clear guidance with respect to the observation process — in the form of these regulations — will aid elections officials in addressing tense situations with election observers that have appeared more frequently in the past few elections.

The purpose of these regulations is as follows:

1. Establish guidelines and procedures for elections officials and election observers.
2. Establish the rights of election observers.
3. Establish rights of county elections officials with respect to the elections observation process.
4. Provide clear duties for election observers.
5. Provide clear duties for county elections officials with respect to the elections observation process.

6. Establish guidelines for the conduct of election observers.
7. Provide clear guidance with respect to voter challenges.

These regulations are necessary to ensure uniform observation of elections in California. With these regulations, observers will know up front what their rights are, regardless of the jurisdiction where they are observing an election. They can point to these regulations to ensure they have appropriate access to observing election activities. Similarly, county elections officials will be clear on how elections observers fit into the election administration process. These regulations balance the rights and needs of elections observers with county elections officials' need to efficiently and accurately complete elections activities.

During the development of these regulations, the Secretary of State's office worked with county elections officials and several voting advocacy groups to ensure that there is agreement with the need and content of these regulations.

B. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation of regulations in this area, the SOS has determined that these are the only regulations related to observation of the elections process. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

C. Documents Incorporated by Reference: None.

D. Documents Relied Upon in Preparing the Regulations: None.

DISCLOSURES REGARDING THE
PROPOSED REGULATIONS

The SOS has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Mandate on Local Agencies and School Districts: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact: The SOS has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business: The Secretary of State is not aware of any

cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect on Housing Costs: None.

Effect on Small Business: These regulations will have no effect on small businesses. These regulations pertain to elections observation activities and responsibilities only.

RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT

The SOS has determined that the proposed regulations are (1) unlikely to create or eliminate any jobs in California, (2) unlikely to create or eliminate any California businesses, and (3) unlikely to result in the expansion of businesses currently doing business within California. These regulations pertain to elections observation activities and responsibilities only. These regulations do not significantly change existing business practices such that jobs or businesses would be created or eliminated.

Benefits of the Proposed Regulations: The benefits of the regulation to the health and welfare of California residents lies in the fact that these regulations will provide greater confidence in the conduct of California's election activities by providing uniform guidance for the rights and responsibilities of observers of the elections process and elections officials. These regulations will ultimately benefit California residents as rules for observing elections will be clear and uniformly applied throughout California's 58 counties.

The regulations do not provide any benefits for worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the SOS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SOS has determined that there are no reasonable alternatives to these regulations. There are currently no regulations relating to the process of election observations.

Any interested person may present statements or arguments relevant to the above determinations.

**INITIAL STATEMENT OF REASONS,
THE TEXT OF PROPOSAL AND THE
RULEMAKING FILE**

The SOS has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the SOS's website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the SOS contact or on the website listed below.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE**

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Robbie Anderson
Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95814
(916) 657-2166
aanderso@sos.ca.gov

The backup contact person is:

Raj Bathla
Secretary of State
1500 11th Street, Room 495
Sacramento, CA 95814
(916) 657-2166
rbathla@sos.ca.gov

Website Access: Materials regarding this proposal can be found at:

<https://www.sos.ca.gov/administration/regulations/proposed-regulations/>

**TITLE 3. DEPARTMENT OF FOOD
AND AGRICULTURE**

**CALIFORNIA CODE OF REGULATIONS
SECTION 3591.13**

The Department of Food and Agriculture (Department) proposes to revise Title 3 of the California Code of Regulations (CCR) Section 3591.13 pertaining to the Guava Fruit Fly (GFF) Eradication Area.

PUBLIC HEARING

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulations to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on September 23rd, 2022. The Department will consider only comments received at the Department offices by that date or postmarked no later than September 23rd, 2022. Submit comments to:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street,
Sacramento, CA 95814
Dean.Kelch@cdfa.ca.gov
916.403.6650 916.651.2900 (FAX)

Questions regarding the substance of the proposed regulation should be directed to Dean Kelch. In his absence, you may contact Erin Lovig at (916) 654-1017 or erin.lovig@cdfa.ca.gov, FAX number (916) 651-2900.

Unless there are substantial changes to the proposed regulations prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY

The Department proposes to amend Section 3591.13 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5761, 5762, 5763 and 5764 of the Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The specific purpose of amending California Code of Regulations (CCR) 3591.13 Guava Fruit Fly Eradication Area is to expand the eradication area for the Guava fruit fly (GFF) in California to include El Dorado and Placer counties. This will allow targeted actions for eradication of GFF in El Dorado and Placer counties, if necessary, and reduce the chance of allowing natural and artificial dispersal and the subsequent spread of the pest in California. Any necessary eradication and quarantine actions taken by the Department will be in cooperation with the USDA and the affected county agricultural commissioners.

EXISTING LAWS & REGULATIONS

Existing law, Food and Agricultural Code (FAC) Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code that the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest that is described in FAC Section 5321.

Existing law, FAC Section 5761, provides that the Secretary may proclaim any portion of the state to be an eradication area with respect to the pest, prescribe the boundaries of such area, and name the pest and the hosts of the pest which are known to exist within the area, together with the means or methods which are to be used in the eradication or control of such pest.

Existing law, FAC Section 5762, provides that the Secretary may proclaim any pest with respect to which an eradication area has been proclaimed, and any stages of the pest, its hosts and carriers, and any premises,

plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances.

Existing law, FAC Section 5763, provides that the Secretary, or the commissioner acting under the supervision and direction of the director, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which he thinks is necessary.

Existing law, FAC Section 5764, provides that if an eradication area has been proclaimed with respect to a species of fruit flies and the removal of host plants of such species is involved, the director may enter into an agreement with the owner of such host plants to remove and replace them with suitable nursery stock in lieu of treatment.

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT

This regulation will benefit the guava, peach, cherry, melons, and tangerines industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by expanding the geographic scope of an eradication program to prevent the artificial spread of the GFF over short and long distances.

This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

There is no existing, comparable federal regulations or statute regulating the intrastate movement of GFF.

There are no known specific benefits to worker safety or the health of California residents.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department considered any other possible regulations addressing GFF, and it found that the proposed amendments are the only regulations dealing with this subject, and the Department is the only State agency which can designate these eradication areas for plant pests. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3591.13 and has determined that it is not inconsistent or incompatible with existing state regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Prior to conducting any action authorized by this regulation, the Department shall conduct environmental analysis pursuant to the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et seq. as amended) and the State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et. seq.).

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: Compliance activities are currently being performed by existing state staff throughout quarantine areas within the State. The Department is currently monitoring for fruit flies, and thus there is no change to the cost due to these regulations. The Department has determined that no savings or increased costs to any state agency and no costs or savings in federal funding to the State will result from the amendment of Section 3591.13. The amendment of this regulation would have no fiscal impact on the Department.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: The amendment of Section 3591.13 will provide authority for the Department to conduct eradication activities against GFF in El Dorado and Placer counties and there are no known private sector cost impacts. The agency is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The cost impacts are expected to be none and minimal/non-consequential. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

Significant effect on housing costs: None.

Small business determination: The proposed action will not affect small business because compliance ac-

tivities are currently being performed by existing state staff throughout quarantine areas within the State without any impact on small business.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Department has concluded that the Section 3591.13 amendment (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, (3) will have no impact on the expansion of businesses within the State of California, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is not expected to benefit workers' safety.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present alternatives during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department has prepared an initial statement of reasons for the proposed action, and has made available all the information upon which its proposal is based and the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdffa.ca.gov/plant/Regulations.html). A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may

adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer named herein.

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

PROPOSED AMENDMENTS TO REGULATIONS PERTAINING TO TEACHING PERFORMANCE ASSESSMENT

The Commission on Teacher Credentialing (Commission) proposes to take the regulatory action described below after considering all comments, objections, and recommendations regarding the proposed action. A copy of the proposed regulations is included with the added text underlined and the deleted text lined out.

The Commission has not scheduled a public hearing on this proposed action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the comment period.

SUMMARY OF PROPOSED ACTION

The proposed section 80059 regulation will clarify that candidates shall only be required to pass one teaching performance assessment (TPA) when earning multiple credentials and that credentialing programs must collaborate with teacher candidates seeking two or more credentials to determine the TPA that best aligns with the candidates' field placement and career goals. These regulations also make clear the instances when credentialed teachers seeking a subsequent credential be required or not be required to take and pass a TPA.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed action by fax, through the mail, or by email. The written comment period closes at on September 12, 2022. Comments must be received by that time or may be submitted at the public hearing, should one be requested. Interested parties may fax their response to (916) 327-3165; write to the Commission on Teacher Credentialing, Attention: Lynette Roby, 1900 Capitol Avenue, Sacramento, California 95811; or submit an email to Lynette.Roby@ctc.ca.gov or Cheryl Hickey at CHickey@ctc.ca.gov.

Any written comments received by the closing of the public comment period will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

AUTHORITY AND REFERENCE

Requiring a TPA satisfies the performance assessment requirement outlined in Education Code 44320.2, which establishes a TPA as one component for recommendation of the Preliminary Multiple Subject, Single Subject, and Education Specialist teaching credentials. These regulations align with the intent in Education Code section 44320.2(c) which states that performance assessments be implemented in a manner that does not increase the number of assessments required for teacher credential candidates. Education Code section 44225 authorizes the commission to create and amend regulations.

SUMMARY OF THE EFFECT OF THE PROPOSED ACTION

These TPA requirements for teacher candidates enrolled in dual/multiple credential programs will maintain the integrity of the credentials sought while not burdening teacher candidates with multiple measures of the same knowledge, skills and abilities as identified in the credential specific teaching performance expectations (TPE) and ensuring that Education Code section 44320.2(c) is clear to candidates and programs. Credentialing programs in collaboration with teacher candidates seeking two or more preliminary credentials will be able to determine the TPA that best aligns with the candidate's field placement and career goals.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Section 44259(b)(3)(A) of the Education Code establishes the minimum requirements for earning a Preliminary Multiple or Single Subject teaching credential, which includes passage of a teaching performance assessment (TPA) approved by the Commission. AB 320 (Medina, Chap. 663, Stats. 2021) added passage of a TPA to the requirements for earning an Education Specialist Credential. Education Code section 44320.2(c) requires that the Commission “implement the performance assessment in a manner that does not increase the number of assessments required for teacher credential candidates prepared in this state.” Currently, a teacher candidate in a preparation program is required to complete a TPA that is Commission approved and is consistently applied to candidates in similar preparation programs.

Objectives and Anticipated Benefits of the Proposed Regulations

The Commission anticipates that the proposed regulations will benefit the welfare of candidates as they will maintain the integrity of the credentials sought while not burdening teacher candidates with multiple measures of the same knowledge, skills and abilities as identified in the credential specific TPEs and ensuring that Education Code section 44320.2(c) is clear to candidates and programs. The regulation will also clarify that credentialing programs must collaborate with teacher candidates seeking two or more credentials to determine the TPA that best aligns with the candidates’ field placement and career goals. Additionally, the regulations make clear the instances when credentialed teachers seeking a subsequent credential be required or not be required to take and pass a TPA.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Commission has determined that the proposed regulation amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Commission has concluded that these are the only regulations that concern TPA requirements as applied to candidates seeking multiple credentials.

DISCLOSURES REGARDING THE
PROPOSED ACTIONS/FISCAL IMPACT

The Commission has made the following initial determinations.

LOCAL MANDATE

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 17500) of the Government Code. Local education agencies may choose sponsor educator preparation programs utilizing the proposed regulation; however no mandate exists that require local agencies or school districts to have educator preparation programs and, therefore, no reimbursement in accordance with Part 7 (commencing with section 17500) of the government code is required.

FISCAL IMPACT

Costs to any local agency or school districts requiring reimbursement pursuant to Government Code section 17500 et seq.

These proposed regulations will not impose a cost to local agencies or school districts requiring reimbursement in accordance with Part 7 (commencing with section 17500) of the Government Code as sponsoring an educator preparation program which is aligned to the proposed regulations and is not required by law.

Cost or savings to any state agency.

None. Sponsoring an educator preparation program that is aligned to the proposed regulations is not required by law.

Other non-discretionary costs or savings imposed upon local agencies.

None. Sponsoring an educator preparation program that is aligned to the proposed regulations is not required by law.

Cost or savings in federal funding to the state.

None. Sponsoring an educator preparation program that is aligned to the proposed regulations is not required by law.

HOUSING COSTS

No significant effect on housing costs exists. The proposed regulations do not intersect with the cost of housing.

SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESSES, INCLUDING
THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE WITH
BUSINESSES IN OTHER STATES

The Commission has concluded there is no significant adverse impact on business. Only Commission approved credentialing programs administer the TPA.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code section 11346.3(b), the Commission has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs within California

The Commission concludes that it is unlikely that the proposal will create or eliminate a significant number of jobs within the State of California. All Commission approved credential programs utilize the Commission's model CalTPA, the edTPA and FAST to administer the TPAs. These programs have not indicated any elimination of jobs.

Creation of New Businesses or Elimination of Existing Business within California

The Commission concludes that it is unlikely that the proposal will create any new businesses or eliminate any existing businesses within the State of California since the educational institutions are California State Universities, Universities of California, private four-year colleges and universities, or local education agencies, none of which meet the definition for small business.

Expansion of Businesses Currently Doing Business within the California

The Commission concludes that it is unlikely the proposal would cause the expansion of businesses currently doing business within the State of California since the TPAs are administered by Commission approved programs including CalTPA, edTPA or the Fresno Assessment of Student Teachers (FAST). Programs have not indicated any creation or elimination of jobs as a result of the proposed regulations.

Benefits of the Regulations

The Commission anticipates that the proposed regulations will continue to benefit the health and welfare of California residents by ensuring that candidates who earn multiple credentials are not burdened with additional assessment, while still ensuring that educators in California are well prepared to meet the needs of public school students. The Commission does not anticipate that these regulations will result in a direct benefit to worker safety or the state's environment.

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORT

This proposal does not require a business report to be made.

EFFECT ON SMALL BUSINESS

The proposed regulations will not have a significant adverse economic impact upon small business. The proposed regulations apply only to educational institutions electing to offer or offering Commission-approved and accredited educator programs. Educational institutions are California State Universities, Universities of California, private four-year colleges and universities, or local education agencies, none of which meet the definition for small business as defined in government code 11342.610. Most Commission approved program sponsors are nonprofit educational institutions. A very few institutions of higher education approved by the Commission at this time are for profit businesses. Because offering an educator preparation program is voluntary, any institution must evaluate whether they have sufficient resources to offer a high-quality preparation program in accordance with the state adopted standards, state statute, and regulations

ALTERNATIVES STATEMENT

The Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearing.

CONTACT PERSON/ FURTHER INFORMATION

General or substantive inquiries concerning the proposed action may be directed to Kathryn Taylor by telephone at (916) 445-0229, by mail at Commission on Teacher Credentialing: Attention: Regulations, 1900 Capitol Avenue, Sacramento, CA 95811, or by email to Lynette Roby (Lynette.robby@ctc.ca.gov) or Cheryl Hickey (CHickey@ctc.ca.gov). General question inquiries may also be directed to the addresses mentioned above. Upon request, a copy of the express terms of the proposed action and a copy of the Initial Statement of Reasons will be made available. This information is also available on the Commission's web-

site at <http://www.ctc.ca.gov/notices/rulemaking.html>. In addition, all the information on which this proposal is based is available for inspection and copying.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice of Register, the rulemaking file consists of the Notice of Proposed Rulemaking, the proposed text of regulations, the Initial Statement of Reasons, and an economic impact assessment/analysis contained in the Initial Statement of Reasons. Copies may be obtained by contacting Lynette Roby at the addresses or telephone number provided above.

MODIFICATION OF PROPOSED ACTION

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non-substantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, following the conclusion of the public hearing. Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Lynette Roby at Lynette.Roby@ctc.ca.gov or Cheryl Hickey at CHickey@ctc.ca.gov.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations can be accessed through the Commission's website at <http://www.ctc.ca.gov/notices/rulemaking.html>.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

GENERAL INDUSTRY SAFETY ORDERS

TITLE 8: NEW SECTIONS 3205, 3205.1,
3205.2, AND 3205.3

COVID-19 PREVENTION

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board, or OSHSB) proposes to adopt, amend or repeal the foregoing provisions of title 8 of the California Code of Regulations (CCR) in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **September 15, 2022**, in the **Coastal Hearing Room** of the **Cal/EPA Building at 1001 I Street, Sacramento, California** as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **July 29, 2022**, and closes at 5:00 p.m. on **September 15, 2022**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition,

Labor Code section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards. Section 142.3 permits the Board to prescribe suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and to provide for monitoring or measuring employee exposure for the protection of employees. Section 142.3(c) also requires standards to include specific warnings to ensure that employees are apprised of all hazards to which they are exposed, and medical testing to assess exposure at no cost to the employee. These proposed regulations will implement, interpret, and make specific Labor Code section 142.3.

Additionally, Labor Code section 144.6 requires the Board, when dealing with standards for toxic materials and harmful physical agents (includes biological agents — bacteria, virus, fungus, etc.), to “adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life.” Section 144.6 also requires that the Board base standards on research, demonstrations, experiments and other appropriate information, taking into consideration the latest scientific literature, the reasonableness of the standards, and the experience gained under the health and safety laws.

Labor Code section 6409.6, among other things, requires employers to provide certain written notification to employees, employers of subcontracted employees, and employees’ exclusive representative of potential exposure to COVID-19, as well as notification on the employer’s disinfection and safety plan.

Authority: Labor Code section 142.3.

Reference: Labor Code sections 142.3, 144.6, and 6409.6.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

On May 20, 2020, the Board received Petition 583 (the Petition), filed by Worksafe and the National Lawyers’ Guild, Labor & Employment Committee (Petitioners), requesting the Board amend title 8 standards to create new temporary emergency standards.¹ Petitioners requested the Board provide specific protections to California employees who may have exposure to COVID-19, but who are not protected by the Aero-

sol Transmissible Diseases (ATD) standards (sections 5199 and 5199.1).

The Board directed Board staff to prioritize the evaluation of this petition and the efficacy of existing regulations to address the health and safety of workers in the wake of the novel coronavirus. The evaluation process included an analysis of current regulations, finding that while protections exist in the title 8 ATD standards, they are limited in scope primarily to medical facilities. Employers not included in the scope of the ATD standards have generally applicable requirements, which include the Injury and Illness Prevention Program (IIPP) (section 3203), Washing Facilities (sections 1527, 3366, 3457, and 8397.4), Personal Protective Equipment (PPE) (section 3380), Respiratory Protection (section 5144), Sanitation (article 9), and Control of Harmful Exposures (section 5141).

While existing regulations (such as IIPP, section 3203) require employers to protect workers from harmful exposures, they do not necessarily identify specific measures that must be taken to fight the spread of a novel infectious disease. Instead, the responsibility is placed on employers, given their intimate knowledge of the hazards at issue and the workings of the place of employment, to devise such methods or procedures.

Throughout the course of the pandemic, the Division of Occupational Safety and Health (Division, or Cal/OSHA) issued guidance for employers regarding safe reopening. This guidance, much of which was issued jointly with other state agencies, included industry-specific information. Nonetheless, cases began to rise precipitously in October and November 2020. Guidance was not sufficient to address the increase in cases and the risk of occupational spread. Furthermore, the proposed emergency regulations introduced specific requirements, such as employer-provided testing, that were critical to reduce occupational spread during the ongoing rise in infections. The threat of exponential growth in COVID-19 cases demanded immediate action.

During its September 17, 2020, meeting, the Board considered the Petition, which requested an emergency rulemaking to address the potential harm posed to workers by COVID-19.² The Petition sought adoption of an emergency standard that would apply to employees in any facility, service category, or operation not covered by title 8, sections 5199 or 5199.1. In addition, the Petition sought a permanent regulation to protect employees from infectious diseases, including those caused by novel pathogens. Given the unprecedented nature of the COVID-19 pandemic, and informed by analysis performed by Board staff and the Division, at

¹ Occupational Safety and Health Standards Board (OSHSB). Petition 583 submitted by Worksafe and the Labor & Employment Committee of the National Lawyers Guild. <https://www.dir.ca.gov/oshsb/documents/petition-583.pdf>.

² OSHSB. Petition 583 submitted by Worksafe and the Labor & Employment Committee of the National Lawyers Guild. <https://www.dir.ca.gov/oshsb/documents/petition-583.pdf>.

the September 17, 2020, meeting, the Board found a specific emergency regulation in title 8 was necessary to provide clear instructions to employers and employees on what needs to be done to protect workers from COVID-19, eliminating any confusion and enhancing compliance. The Board requested the Division work with Board staff to expeditiously submit a proposal for an emergency regulation to protect all workers not covered by sections 5199 and 5199.1 from COVID-19 exposure in the workplace, for consideration no later than the November 19, 2020, Board meeting.

The Board voted to grant Petition 583 in part, agreeing that “COVID-19 is a hazard to working people” and that “an emergency regulation would enhance worker safety.” The Board requested that the Division draft an emergency rulemaking proposal to protect all workers not covered by section 5199 from COVID-19 exposure in the workplace.³

On November 19, 2020, the Board approved the adoption of title 8 sections 3205 and 3205.1–3205.4. These emergency regulations became effective on November 30, 2020. Due to the ongoing nature of the pandemic, the need for the emergency temporary standard (ETS) continued.

The ETS was readopted, with amendments, on June 17, 2021, and December 16, 2021, with effective dates of June 17, 2021, and January 14, 2022, respectively.

On December 16, 2021, Governor Gavin Newsom issued Executive Order N-23-21, which waived the limitations found in Government Code section 11346.1(h) and allowed a third readoption of the ETS.⁴ The ETS was again readopted, with amendments, on April 21, 2022, with an effective date of May 6, 2022. Per Executive Order N-23-21, the third readoption of the ETS shall not remain in effect beyond December 31, 2022.

The specific changes are as follows:

New Section 3205. COVID-19 Prevention.

Proposed section 3205 sets forth the requirements for COVID-19 prevention in places of employment.

Proposed subsection (a) limits the effective time of the proposed regulation to two years after its effective date (except for the recordkeeping provisions, which will apply for three years after the regulation’s effective date). Subsection (a) also sets forth exceptions to the proposed regulation’s general application for the following settings: work locations with one employee who does not have contact with other persons; employees working from home; employees with occupational exposure as defined by section 5199, when

covered by section 5199; and employees teleworking from a location of the employee’s choice, which is not under the control of the employer. The intended effect of this subsection is to inform the regulated public of the duration of the proposed regulation’s application as well as the exceptions to the regulation’s coverage.

Proposed subsection (b) provides definitions for terms used in sections 3205 through 3205.3. The effect of these definitions is to establish the exact meanings for the terms as used within the context of the requirements of these sections. They are necessary to clarify that the terms, as used, may have more specific meaning in the context of COVID-19 prevention in the workplace than they would in the more general usage.

Proposed subsection (c) requires that employers address COVID-19 under section 3203, IIPP. The written COVID-19 procedures may be integrated into the employer’s written IIPP or kept as a separate document. The employer must treat all persons as potentially infectious regardless of symptoms, vaccination status, or negative COVID-19 test results. When determining measures to prevent COVID-19 transmission and to identify and correct COVID-19 hazards, the employer must review applicable orders and guidance from the State of California and the local health department and must treat COVID-19 as an airborne infectious disease. Employees must receive training regarding COVID-19. The employer’s procedure to investigate COVID-19 illness at the workplace must include elements set forth in the regulation. The employer must have effective methods and/or procedures for responding to a COVID-19 case at the workplace. The intended effect of this subsection is to inform the regulated public of the specific obligations associated with applying section 3203 in the context of COVID-19 prevention.

Proposed subsection (d) requires that employers make COVID-19 tests available at no cost, during paid time, to all employees of the employer who had a close contact in the workplace, with the exception of returned cases, as defined in the regulation, and provide them with information on available benefits. The intended effect of this subsection is to increase incentives for regular testing, which is a critical component of preventing the spread of COVID-19 in the workplace.

Proposed subsection (e) requires that employers notify employees and independent contractors who had a close contact, as well as any employer with an employee who had a close contact. The notice must be provided as soon as possible, and in no case longer than the time required to ensure that the exclusion requirements are met. When Labor Code section 6409.6(a) or any successor law is in effect, the employer must provide notice of a COVID-19 case to employees, employers, and independent contractors at

³ OSHSB. Petition 583 Adopted Decision. <https://www.dir.ca.gov/oshsb/documents/petition-583-adopteddecision.pdf>.

⁴ Governor Gavin Newsom. Executive Order N-23-21. <https://www.gov.ca.gov/wp-content/uploads/2021/12/12.16.21-ETS-Readoption-and-Shareholder-Meeting-EO.pdf>.

the worksite during the infectious period, as defined in the regulation. The employer must also provide the notice to the authorized representative of employees at the worksite. The intended effect of this subsection is to ensure that employers provide timely notice of exposure to a COVID-19 case to all possible workplace close contacts, and to clarify and make specific that employers must comply with the notice requirements of Labor Code section 6409.6. Recordkeeping will make contact tracing possible, and contact tracing is an important intervention for preventing transmission.

Proposed subsection (f) requires that employers provide face coverings and ensure they are worn by employees when required by a California Department of Public Health (CDPH) regulation or order. When a CDPH regulation or order requires face coverings indoors, that includes spaces within vehicles. Face coverings must be clean, undamaged, and worn over the nose and mouth. If an employee is not wearing a face covering pursuant to allowed exceptions, the employer must assess COVID-19 hazards and take necessary action. The employer must not prevent any employee from wearing a face covering, including a respirator, when not required by the regulation, unless it would create a safety hazard. The intended effect of this subsection is to provide the regulated public with clarity regarding the use of face coverings, which are an important non-pharmaceutical intervention to prevent COVID-19 transmission in the workplace.

Proposed subsection (g) states that, upon request, employers must provide respirators for voluntary use to all employees who are working indoors or in vehicles with more than one person. Whenever an employer makes respirators for voluntary use available, the employer must encourage their use and must ensure that employees are provided with a respirator of the correct size and that employees are trained how to properly wear the respirator provided; how to perform a user seal check according to the manufacturer's instructions each time a respirator is worn; and the fact that facial hair interferes with a seal. The intended effect of this subsection is to clarify the requirements regarding the provision and use of respirators for voluntary use. As with other forms of face coverings, respirators for voluntary use represent an important intervention to prevent COVID-19 transmission in the workplace. However, respirators must be fitted and used properly to provide the intended level of protection. This subsection, therefore, will ensure that employers understand their obligations not only to provide respirators for voluntary use upon request, but also to train employees on respirator use and fit.

Proposed subsection (h) sets forth requirements relating to air quality and ventilation in indoor workplaces. Employers must review guidance from CDPH and the Division regarding ventilation, evaluate

whether current ventilation is adequate to reduce the risk of transmission if a COVID-19 case enters the workplace, and where it is not adequate, implement changes as necessary. In vehicles, the employer must maximize the supply of outside air, except when doing so would cause a hazard to employees or expose them to inclement weather. A place of employment subject to COVID-19 outbreaks provisions must continue to comply with the ventilation requirement under the COVID-19 outbreaks section even after the outbreak has passed. The intended effect of this subsection is to ensure that employers will improve ventilation at their worksites. Improved ventilation has been shown to reduce COVID-19 transmission.⁵

Proposed subsection (i) addresses employees in work settings that are exempt from section 5199, who are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids. Under this subsection, employers must evaluate the need for respiratory protection to prevent COVID-19 transmission under section 5144 and must comply with that section. The intended effect of this subsection is to ensure that employers take additional steps to protect employees who are exempt from section 5199, but are nonetheless exposed to aerosolizing procedures that could potentially transmit COVID-19, from COVID-19 transmission.

Proposed subsection (j) describes the reporting and recordkeeping requirements of the proposed section. Employers must report information about COVID-19 cases and outbreaks at the workplace to the local health department whenever required by law, and must provide any related information requested by the local health department. The employer must keep a record of and track all COVID-19 cases with information required by the regulation. The employer must also keep a record of persons who had a close contact. The employer must retain the notices required by the regulation. Personal identifying information of COVID-19 cases or persons with COVID-19 symptoms, and any employee medical records required by the regulation, must be kept confidential unless disclosure is required or permitted by law. The intended effect of this subsection is to inform employers of their specific reporting and recordkeeping obligations with respect to COVID-19 cases and close contacts. Recordkeeping makes contact tracing possible, and contact tracing is a key component of combatting community and workplace transmission of COVID-19.

⁵ United States Environmental Protection Agency (EPA). Ventilation and Coronavirus (COVID-19). Accessed on November 6, 2020. <https://www.epa.gov/coronavirus/ventilation-and-coronavirus-covid-19>; CDC. COVID-19 Employer Information for Office Buildings, Updated April 7, 2021. Accessed on May 18, 2022. <https://public4.pagefreezer.com/browse/CDC%20Covid%20Pages/11-05-2022T12:30/https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>.

Proposed subsection (k) provides that the Division may, pursuant to title 8, section 332.3, require an employer to take additional actions to protect employees against COVID-19 hazards through the issuance of an Order to Take Special Action. The intended effect of this subsection is to make explicit that the Division can use section 332.3 as another tool in preventing COVID-19 transmission in the workplace.

New Section 3205.1. COVID-19 Outbreaks.

Proposed section 3205.1 sets forth requirements for COVID-19 outbreaks.

Subsection (a) describes the scope of proposed section 3205.1, clarifying that it applies to workplaces covered by section 3205 if three or more employee COVID-19 cases within an exposed group, as defined in the regulation, visited the workplace during their infectious period during a 14-day period, unless a CDPH regulation or order defines outbreak differently, in which case this section applies when the number of cases at the workplace constitutes an outbreak under CDPH's definition. This section applies until there are no new COVID-19 cases detected in the exposed group for a 14-day period. The intended effect of this subsection is to inform the regulated public about the conditions under which the proposed regulation applies to workplaces covered by proposed section 3205.

Proposed subsection (b) sets forth the requirements for testing during a workplace outbreak: the employer must make COVID-19 testing available at no cost to employees within the exposed group, and then make testing available on a weekly basis to all employees in the exposed group who remain at the workplace. Employees who had close contacts must provide a negative COVID-19 test taken within three to five days after the close contact or must be excluded from the workplace for the same period that COVID-19 cases are excluded. The intended effect of this subsection is to ensure that employers follow increased testing guidelines when outbreaks occur at their workplace.

Proposed subsections (c) and (d) address the use of face coverings during outbreaks: under subsection (c), employees in the exposed group must wear face coverings when indoors, or when outdoors and less than six feet from another person, while under subsection (d) the employer must notify employees of their right to request and receive a respirator for voluntary use. The intended effect of both subsections is to increase the use of face coverings and respirators for voluntary use (if requested) to slow or stop transmission of COVID-19 during an outbreak.

Proposed subsection (e) describes the actions an employer must take to investigate, review, and correct hazards relating to COVID-19 outbreaks. The employer must immediately perform a review of potentially relevant COVID-19 policies, procedures, and controls and implement changes as needed to prevent

further spread of COVID-19. The intended effect of this subsection is to ensure that an investigation and review is conducted and COVID-19 hazards are identified and corrected to control and prevent further spread of COVID-19 in a workplace in which an outbreak has occurred.

Proposed subsection (f) addresses ventilation in the outbreak context. Indoors, if there is mechanical ventilation, the employer must use at least Minimum Efficiency Reporting Value (MERV)-13 filters, or the highest level of filter compatible with the existing ventilation system. The employer must use High Efficiency Particulate Air (HEPA) units in indoor areas where ventilation is inadequate to reduce the risk of COVID-19 transmission. The intended effect of this subsection is to reduce employee exposure to COVID-19 in the workplace by improving ventilation, as filtering the air reduces the concentration of potentially infectious material in the indoor air.

Proposed subsection (g) addresses major outbreaks. A major outbreak has occurred when there are 20 or more employee COVID-19 cases in an exposed group within a 30-day period. COVID-19 testing must be required of all employees in the exposed group at least twice a week. Employees in the exposed group must be tested or must be excluded from the workplace for the same period that COVID-19 cases are excluded. The employer must report the outbreak to the Division. The employer must provide respirators for voluntary use to employees in the exposed group, encourage their use, and provide employees training on the respirators. When any employees in the exposed group are not wearing respirators required by the employer, the employer must separate these employees from other persons by at least six feet, except where not feasible or during momentary exposure while persons are in movement. The intended effect of this subsection is to ensure that, in major outbreak situations, employers take specific additional precautions in addition to the precautions required for outbreaks: testing more employees, more frequently; reporting major outbreaks to the Division; providing respirators for voluntary use, encouraging the use of respirators, and training employees on the use of respirators; and requiring distancing measures for employees who do not wear respirators when required by the employer.

New section 3205.2. COVID-19 Prevention in Employer-Provided Housing.

Proposed section 3205.2 sets forth the requirements for COVID-19 prevention in employer-provided housing.

Proposed subsection (a) limits the effective time of the proposed section, and defines "employer-provided housing." The intended effect of this subsection is to inform the regulated public of the duration of the proposed regulation's application, and to clarify what con-

stitutes employer–provided housing for purposes of this section. Proposed subsection (a) also includes four exceptions to coverage. The first exemption, housing that is provided for emergency response and support activities, recognizes that the imminent risks associated with an emergency response operation supersede the risks associated with not enforcing the proposed housing requirements in emergency–response operations. The second exemption, housing in which all residents maintained a household together before living in employer–provided housing (for example, family members), recognizes that individuals who maintain a household together are assumed to spend time in close proximity to one another within their household. The third exemption, employees with occupational exposure as defined by section 5199, when covered by section 5199, clarifies that the requirements of section 5199, rather than proposed section 3205.2, apply to employees covered by section 5199. Finally, the fourth exemption, housing used exclusively to house COVID–19 cases or where a housing unit houses one employee, recognizes the reality that these two housing conditions do not present a great risk of potential transmission of COVID–19 to their resident(s).

Proposed subsection (b) requires employers to assign employee housing in a manner that prioritizes keeping households, and cohorts that work or travel together, within the same housing unit. The intended effect of this proposed subsection is to reduce the spread of COVID–19 transmission in both the workplace and employer–provided housing by minimizing the number of different individuals who come into close contact with each other.

Proposed subsection (c) requires that employers maximize the quantity and supply of outdoor air and increase filtration efficiency to the highest level compatible with the existing ventilation system. If there is not a MERV–13 or higher filter in use, portable or mounted HEPA filtration units must be used in all sleeping areas. The intended effect of this proposed subsection is to reduce the indoor concentration of the virus, thereby reducing the risk of employee exposure to COVID–19 in each employer–provided housing unit. Evidence exists that increased ventilation and air filtration, when used along with the other control measures, such as face coverings and cleaning, can reduce risk from airborne transmission of COVID–19.⁶ In shared sleeping areas, where people remain for

hours without face coverings, filtration is especially valuable.

Proposed subsection (d) requires employers to provide face coverings to all residents and provide information to residents on when they should be used. The intended effect of this subsection is to encourage the use of face–coverings, which are a non–pharmaceutical intervention that has been shown to reduce transmission of COVID–19.

Proposed subsection (e) requires employers to encourage residents to report COVID–19 symptoms to the employer. The intended effect of this subsection is to allow employers to respond effectively to employee symptoms to prevent or reduce the risk of transmission of COVID–19 in the workplace and employer–provided shared housing units.

Proposed subsection (f) requires employers to establish, implement, and maintain effective policies and procedures for COVID–19 testing of residents who had a close contact or COVID–19 symptoms, and communicate these policies and procedures to the residents. The intended effect of this subsection is to minimize the transmission of COVID–19 in employer–provided housing; diagnostic testing identifies which residents are infected and need isolation to prevent further spread to employees and residents.

Proposed subsection (g) requires employers to isolate COVID–19 cases from all residents who are not COVID–19 cases, and effectively quarantine persons who had a close contact from all other residents in the employer–provided shared housing unit. The intended effect of this subsection is to limit transmission of COVID–19 in the workplace and employer–provided housing by requiring that residents who are COVID–19 cases isolate to further prevent the spread to other residents

New section 3205.3. COVID–19 Prevention in Employer–Provided Transportation.

Proposed section 3205.3 sets forth the requirements for COVID–19 prevention in employer–provided transportation.

Proposed subsection (a) limits the effective time of the proposed section, and defines “employer–provided transportation.” The intended effect of this subsection is to inform the regulated public of the duration of the proposed regulation’s application, and to clarify what constitutes employer–provided transportation for purposes of this section. Proposed subsection (a) also includes three exceptions to coverage. The first exception, which applies to employees alone in a vehicle, employees taking public transportation, or vehicles in which the driver and all passengers are from the same household outside of work, recognizes that: a lone driver in a vehicle neither is at risk of a COVID–19 exposure nor presents a potential risk of COVID–19 exposure to other employees; public transit is dis-

⁶ United States Environmental Protection Agency (EPA). Ventilation and Coronavirus (COVID–19). Accessed on November 6, 2020. <https://www.epa.gov/coronavirus/ventilation-and-coronavirus-covid-19>; CDC. COVID–19 Employer Information for Office Buildings, Updated April 7, 2021. Accessed on May 18, 2022. <https://public4.pagefreezer.com/browse/CDC%20Covid%20Pages/11–05–2022T12:30/https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>.

similar to other forms of employer–provided transportation because employers lack direct control over public transportation; and individuals who maintain a household together are assumed to spend time in close proximity to one another within their household. The second exception, employer–provided transportation for emergency response, recognizes that the imminent risks associated with an emergency response operation supersede the risks associated with not enforcing the proposed transportation requirements in emergency–response operations. Finally, the third exception, employees with occupational exposure as defined by section 5199, when covered by section 5199, clarifies that the requirements of section 5199, rather than proposed section 3205.3, apply to employees covered by section 5199.

Proposed subsection (b) requires employers to comply with the requirements of section 3205 within a vehicle and respond to a COVID–19 case within the vehicle in accordance with the requirements of section 3205. The intended effect of this subsection is to minimize employees’ exposure to COVID–19 hazards in employer–provided motor vehicle transportation, because being in a vehicle with another person represents a condition in which airborne transmission of COVID–19 may occur.

Proposed subsection (c) requires employers to assign transportation such that cohorts travel and work together, separate from other workers. To the extent feasible, employees who usually maintain a household together must travel together. The intended effect of this subsection is to limit the number of different individuals who come into close contact with each other while using employer–provided transportation, recognizing that individuals who maintain a household together are assumed to spend time in close proximity to one another within their household.

FEDERAL REGULATIONS AND STATUTES

There is no existing federal Occupational Safety and Health Administration (OSHA) standard that governs airborne exposure to infectious disease such as SARS–CoV–2 in general industry. However, the federal Occupational Safety and Health Act of 1970’s General Duty Clause, section 5(a)(1), requires employers to provide their workers with a safe and healthful workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm. Federal OSHA has used the General Duty Clause to address conditions that are not subject to other federal regulations, such as exposure to harmful airborne pathogens, such as SARS–CoV–2. From September 9, 2020, to November 11, 2021, federal OSHA issued 26 COVID–19 related citations under the General Duty Clause. However, federal OSHA has concluded that

it was not adequate to protect employees, particularly unvaccinated employees, from the grave danger of being infected by, and suffering death or serious health consequences from, COVID–19. Under the General Duty Clause, federal OSHA cannot require abatement before proving in the enforcement proceeding that an existing condition at the workplace is hazardous. The proposed regulation would allow Cal/OSHA to cite employers for each protective requirement not implemented without the need to wait for employee infection or death to prove in an enforcement proceeding that the particular cited workplace was hazardous without that particular measure in place.

Other federal OSHA regulations, such as those governing respiratory protection (29 Code of Federal Regulations (CFR) section 1910.134), sanitation and washing facilities (29 CFR section 1910.141), PPE (29 CFR sections 1910.132, 1910.133, and 1910.138), employee access to medical and exposure records (29 CFR section 1910.1020), and the mandatory COVID–19 Health Care ETS which became effective June 21, 2021 (29 CFR section 1910.502), are similar to their counterpart regulations in title 8 of the CCR. The federal OSHA regulation governing temporary labor camps (29 CFR section 1920.142) is more detailed than its counterpart regulation in title 8, section 3350.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATION

The Board evaluated the proposed regulations pursuant to Government Code subsection 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Board).

ANTICIPATED BENEFITS

COVID–19 is a pandemic disease, found in every county in California, every state in the United States, and nearly every country in the world. While a high percentage of individuals affected by COVID–19 will experience mild to moderate flu–like symptoms, some will have more serious symptoms and will require hospitalization, particularly individuals who are el-

derly or have underlying medical conditions.⁷ Serious symptoms of COVID-19 include shortness of breath, difficulty breathing, pneumonia, and organ failure, and COVID-19 can result in death.⁸ The virus can damage the lungs, heart, and brain, and can cause long-term health problems.⁹

As of April 19, 2022, there have been 8,550,657 cases of COVID-19 and 89,054 COVID-19 deaths in California.¹⁰ The case numbers represent an undercount, as the data include only cases identified by a positive polymerase chain reaction (PCR) test and exclude cases identified by a positive antigen test.¹¹

The SARS-CoV-2 virus that causes COVID-19 is an airborne transmissible pathogen.^{12, 13} The virus is readily transmissible in workplaces because there are areas where multiple people come into contact with one another, often for extended periods of time. When employees report to their workplaces, they may regularly come into contact with co-workers, the public, delivery people, patients, and other people who enter the workplace. Workplace factors that exacerbate the risk of transmission of the virus include working in indoor settings, working in poorly ventilated areas, and spending hours in close proximity with others. Even in the cases where workers can do most of their work from, for example, a private office within a workplace, they share common areas like hallways, restrooms, lunch rooms, and meeting rooms. Many work areas are poorly ventilated.

⁷ Centers for Disease Control and Prevention (CDC). Evidence used to update the list of underlying medical conditions that increase a person's risk of severe illness from COVID-19, updated February 15, 2022. Accessed on April 21, 2022. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/evidence-table.html>.

⁸ Wiersinga WJ, Rhodes A, Cheng AC, Peacock SJ, Prescott HC. Pathophysiology, Transmission, Diagnosis, and Treatment of Coronavirus Disease 2019 (COVID-19): A Review. JAMA. July 10, 2020; 324(8):782–793. doi:10.1001/jama.2020.12839. Accessed April 21, 2022. <https://jamanetwork.com/journals/jama/fullarticle/2768391>.

⁹ CDC. Post-COVID Conditions, updated September 16, 2021. Accessed 4–21–22. <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html>.

¹⁰ California Department of Public Health (CDPH). Tracking COVID-19 in California. “Today’s Update,” updated April 19, 2022. Accessed April 20, 2022. <https://web.archive.org/web/20220420212321/https://covid19.ca.gov/state-dashboard/>.

¹¹ California Health and Human Services (CHHS). COVID-19 Cases Deaths Tests Data Dictionary, updated March 20, 2021; accessed February 10, 2022. https://data.chhs.ca.gov/dataset/f333528b-4d38-4814-bebb-12dbf10f535/resource/e6667716-5ec6-499f-acab-0e085020135a/download/covid-19_cases_deaths_tests_data_dictionary.xlsx.

¹² An airborne transmissible pathogen is a pathogen transmitted through dissemination of airborne droplet nuclei, small particle aerosols, or dust particles containing the disease agent.

¹³ CDC. Scientific Brief: SARS-CoV-2 Transmission. May 7, 2021. Accessed April 23, 2022. <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html>.

Data for the number of cases of COVID-19 infection and number of hospitalizations and deaths attributable to workplace exposure to COVID-19 is not currently available; however, the numbers are likely substantial, particularly among essential workers and other employees who interact with the public, due to workers’ exposure to persons outside of one’s household, along with the close proximity among persons practiced in some industries.

Employees infected with COVID-19 at work can transmit the infection to persons in their homes and communities, resulting in an increase in infection rates.

Clusters and outbreaks of COVID-19 have occurred in workplaces throughout California, including in food manufacturing, agricultural operations, educational services, retail establishments, and warehouses, among other industries.

There has been an overrepresentation of migrant temporary farmworkers testing positive for COVID-19 in California compared with workers in other industries. Many of these workers live in compact, dorm-like housing facilities provided by employers.¹⁴ One California health officer noted that “farmworkers face the greatest infection risk not at work, but at home.”¹⁵ In recognition of the need to control against the spread of COVID-19 among farmworkers, Governor Newsom unveiled the Housing for the Harvest program, which provides 14 paid days of temporary hotel rooms for California farmworkers who have been exposed to, or tested positive for, COVID-19 but are unable to adequately quarantine at home.¹⁶ In addition, the Centers for Disease Control and Prevention (CDC) has published COVID-19 prevention guidance documents encouraging employers to adopt various workplace control measures for workers residing in communal living arrangements, including employer-furnished

¹⁴ VC Star. Farmworker housing coronavirus outbreak: 188 test positive for COVID-19, dated July 4, 2020. Accessed on November 6, 2020. <https://www.vcstar.com/story/news/local/2020/07/03/oxnard-california-farmworker-housing-covid-19-coronavirus-outbreak/5368774002/>.

¹⁵ The Californian. COVID-19 rips through California motel rooms of guest workers who pick nation’s produce, dated August 26, 2020. Accessed on November 6, 2020. <https://www.thecalifornian.com/story/news/2020/08/17/california-motel-guest-farm-workers-coronavirus-case-outbreak/5475182002/>.

¹⁶ State of California. Help for agricultural workers, Housing for the Harvest, updated March 22, 2022. Accessed April 20, 2022. <https://covid19.ca.gov/housing-for-agricultural-workers/>.

housing, and workers traveling to and from work in shared motor vehicles.¹⁷

Occupational safety and health standards within title 8 of the CCR protect workers from hazards in general. However, other than those employees who are covered under section 5199, there is currently no specific regulation that protects all workers from exposure to airborne diseases such as COVID-19.

The proposed regulation is necessary to combat the spread of COVID-19 in California workers. The proposed regulation would significantly reduce the number of COVID-19 related illnesses, disabilities and deaths in California's workforce.

COVID-19 vaccination has been shown to reduce the incidence of serious illness or death among those infected with COVID-19.¹⁸ However, a serious hazard to employees remains, as evidenced by the emergence of the Delta and Omicron variants of SARS-CoV-2. For the Delta variant, viral loads were found to be on average about 1,000 times greater than the SARS-CoV-2 (alpha) lineages present during the first months of the pandemic.¹⁹ The risk of hospital admission, intensive care unit (ICU) admission, and death for COVID-19 was much higher for individuals infected with the Delta variant, as compared to strains that were not "variants of concern." The need for ICU admission increased 241 percent and the likelihood of death increased 121 percent.²⁰

Beginning in December 2021 and continuing into April 2022, the Omicron variant emerged as dominant, proving at least two to four times more transmissible than the Delta variant.²¹

Exposure to the Omicron variant could result in "breakthrough infections" amongst vaccinated per-

sons.²² The highly transmissible Omicron variant resulted in a surge of COVID-19 cases in late December 2021 into early to mid-January 2022, with levels of cases, emergency department visits, and hospital admissions higher than in previous stages of the pandemic and the average daily number of deaths remaining substantial.²³

Subvariants of Omicron, such as BA.2 and others, have been shown to be even more transmissible than the original Omicron variant.²⁴

Following recommended prevention strategies, therefore, is critical to preventing infections, severe illness, or death from COVID-19. Worker protections continue to be urgently needed in the event another variant emerges which can compete successfully with Omicron.

Due to changes in social norms and in federal, state, and local requirements that make mask-wearing and physical distancing voluntary, future adherence to these precautions is unlikely.²⁵ As COVID-19 vaccination has been shown to reduce the incidence of serious illness or death among those infected with COVID-19, unvaccinated employees will be particularly at risk for serious illness or death, especially given the spread of highly contagious SARS-CoV-2 variants, unless protective measures are taken.

At this time, non-emergency regulations are necessary to continue providing worker protections and furthering recovery from the pandemic. The emergence of variants like Delta and Omicron underscores that COVID-19 will likely remain a significant workplace hazard for potentially years to come. As COVID-19 continues to infect workers, the proposed rulemaking will reduce the number of COVID-19 infections in the workplace. This in turn will reduce deaths and illnesses among employees and within employees' communities. Lower transmission rates decrease the possibility of further state or locally-mandated shut-

¹⁷ CDC. Agriculture Workers & Employers, updated November 6, 2020. Accessed on April 20, 2022. <https://web.archive.org/web/20201106163831/https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html> CDC. COVID-19 Guidance for Shared or Congregate Housing, updated Aug. 22, 2020. Accessed on April 20, 2022. <https://web.archive.org/web/20201106144800/https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>.

¹⁸ Tenforde MW, Self WH, Adams K, et al. Association Between mRNA Vaccination and COVID-19 Hospitalization and Disease Severity. *JAMA*. November 4, 2021;326(20):2043–2054. Accessed on April 21, 2022. doi:10.1001/jama.2021.19499.

¹⁹ Baisheng Li, et al. Viral infection and transmission in a large, well-traced outbreak caused by the SARS-CoV-2 Delta variant. *Nat Commun*. 2022 Jan 24;13(1):460. Accessed on April 21, 2022. <https://pubmed.ncbi.nlm.nih.gov/35075154/>.

²⁰ Fisman DN and Tuite AR. Evaluation of the relative virulence of novel SARS-CoV-2 variants: a retrospective cohort study in Ontario, Canada. *CMAJ*. October 5, 2021. Accessed on April 21, 2022. <https://pubmed.ncbi.nlm.nih.gov/34610919/>.

²¹ CDPH. Tracking Variants, dated February 3, 2022. Accessed on April 21, 2022. <https://web.archive.org/web/20220207170746/https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-Variants.aspx>.

²² CDC. Omicron Variant: What You Need to Know, updated March 29, 2022. Accessed on April 21, 2022. <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>.

²³ Iuliano AD, Brunkard JM, Boehmer TK, et al. Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous SARS-CoV-2 High Transmission Periods — United States, December 2020–January 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:146–152. January 28, 2022. Accessed March 29, 2022. https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e4.htm?s_cid=mm7104e4_w.

²⁴ Lyngse FP, Kirkeby CT, Denwood M, et al. Transmission of SARS-CoV-2 Omicron VOC subvariants BA.1 and BA.2: Evidence from Danish Households. *medRxiv* 2022.01.28.22270044. January 30, 2022. Accessed April 21, 2022. doi: <https://www.medrxiv.org/content/10.1101/2022.01.28.22270044v1.full.pdf>.

²⁵ Bokemper SE, Cucciniello M, Rotesi T, et al. Experimental evidence that changing beliefs about mask efficacy and social norms increase mask wearing for COVID-19 risk reduction: Results from the United States and Italy. *PLoS One*. 2021; 16(10): e0258282. Published online October 11, 2021. Accessed April 21, 2022. <https://doi.org/10.1371/journal.pone.0258282>.

downs, along with the risk of outbreaks at places of employment. The proposed regulations will also reduce the financial costs caused by medical care and lost workdays, costs that may be borne by employees, their families, employers, insurers, and public benefits programs.

Thus, the benefits of the proposed regulation are two-fold:

- (1) Monetary benefits, including lowered costs to employers, insurers, employees, their families, and public benefits programs; and
- (2) Non-monetary benefits, including a reduction in the pain and suffering associated with COVID-19 illnesses and deaths for those affected, directly or indirectly, by COVID-19.

Current regulations are not sufficiently specific as to what employers are required to do during the COVID-19 pandemic. This results in confusion on behalf of both employers and employees, leaving many employees unprotected. This confusion causes the Division to expend staff resources to respond to questions that will be answered by title 8, new sections 3205 through 3205.3.

Controlling the spread of COVID-19 is a challenge. A person who is infected with COVID-19 may have no obvious symptoms, or no symptoms at all, yet still be infectious to others.

The Board is proposing new sections 3205 through 3205.3 to provide clear and specific requirements to employers so that they may better protect employees from the harmful effects of COVID-19; avoid a potential increase in COVID-19 related fatalities, serious illnesses, and long-term disabilities; and reduce related financial costs to employees, employers, insurers, public benefit programs, and taxpayers. The proposed regulations will mitigate costs associated with COVID-19-related company shut-downs, employee absences, hospitalizations, death, responding to agency investigations, increased workers' compensation insurance rates, personnel replacement expenses, and lost production.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies or School Districts:

None.

Cost or Savings to State Agencies:

Based on information from the California Employment Development Department (EDD), there are approximately 13,600 state government establishments and more than 360,000 state employees covered by the proposed regulation. Table 4. Summary of Direct Costs for State Government Entities in 2023 by NAICS Code, published within the COVID-19 Pre-

vention Initial Statement of Reasons available on the OSHSB website, reports the direct costs to state government entities in the first year of the proposed regulation by two-digit North American Industry Classification System (NAICS) code. The direct costs to state government entities in 2024 are anticipated to be similar to the costs in 2023 if COVID-19 infection rates remain the same. Information from Table 4. Summary of Direct Costs for State Government Entities in 2023 by NAICS Code is also listed below:

NAICS 51 — Information

21 Establishments, 96 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to <\$0.1.

NAICS 54 — Professional and Technical Services

96 Establishments, 3,483 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to \$0.3.

NAICS 56 — Administrative and Waste Services

31 Establishments, 930 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to <\$0.1.

NAICS 61 — Educational Services

3,598 Establishments, 213,142 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$6.1, 2023 direct costs (high end estimate in millions) equal to \$19.1.

NAICS 62 — Health Care and Social Assistance

1,053 Establishments, 8,729 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$0.7, 2023 direct costs (high end estimate in millions) equal to \$2.5.

NAICS 71 — Arts, Entertainment, and Recreation

25 Establishments, 480 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to <\$0.1.

NAICS 92 — Public Administration

8,789 Establishments, 134,341 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$9.1, 2023 direct costs (high end estimate in millions) equal to \$27.5.

TOTAL

13,613 Establishments, 361,201 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$16.1, 2023 direct costs (high end estimate in millions) equal to \$49.5.

Savings in the current State Fiscal Year.

The number of state and local employees that might avoid a COVID-19 infection due to the proposed regulation is highly uncertain. The Department of Indus-

trial Relations (DIR) estimated nearly 1.8 million state and local employees, approximately 14 percent of all affected employees in California, are covered by the proposed regulation. To the extent that the proposed regulation improves the safety and health of public employees — resulting in fewer COVID-19 infections, hospitalizations, and fatalities — the proposed regulation would result in a significant cost savings for public entities. Given that many state and local employers are likely to be following existing public health orders and recommendations, the benefits to public employees may be smaller relative to the benefits to employees of privately-owned businesses. If the benefits of the proposed regulation were distributed proportional to employment in the private and public sectors, as many as 3,000 to 12,000 COVID-19 cases and 20 to 70 COVID-19 deaths of state employees would be avoided each year. This level of benefits would yield \$9 million to \$36 million in avoided productivity losses to state government entities. Additional benefits due to avoided COVID-19 deaths (not quantified here) would be realized by those state government employees and their employers.

Cost to Any Local Government or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630:

None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies:

Based on information from the California EDD, there are approximately 19,200 local government establishments and more than 1.4 million local government employees covered by the proposed regulation. Table 5. Summary of Direct Costs for Local Government Entities in 2023 by NAICS Code within the COVID-19 Prevention Initial Statement of Reasons available on the OSHSB website, reports the direct costs to local government entities in the first year of the proposed regulation by NAICS code. The direct costs to local government entities in 2024 are anticipated to be similar to the costs in 2023 if COVID-19 transmission rates remain the same. Information from Table 5. Summary of Direct Costs for Local Government Entities in 2023 by NAICS Code is also listed below:

NAICS 11 — Agriculture, Forestry, Fishing and Hunting

7 Establishments, 79 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to <\$0.1.

NAICS 22 — Utilities

702 Establishments, 38,438 Covered Employees, 2023 direct costs (primary estimate in millions) equal

to \$1.0, 2023 direct costs (high end estimate in millions) equal to \$3.2.

NAICS 23 — Construction

106 Establishments, 8,769 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$0.2, 2023 direct costs (high end estimate in millions) equal to \$0.7.

NAICS 44–45 — Retail Trade

11 Establishments, 253 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to <\$0.1.

NAICS 48–49 — Transportation and Warehousing

440 Establishments, 46,100 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$1.0, 2023 direct costs (high end estimate in millions) equal to \$3.6.

NAICS 51 — Information

188 Establishments, 8,334 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$0.2, 2023 direct costs (high end estimate in millions) equal to \$0.7.

NAICS 52 — Finance and Insurance

29 Establishments, 1,955 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to \$0.2.

NAICS 53 — Real Estate and Rental and Leasing

63 Establishments, 1,379 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to \$0.1.

NAICS 54 — Professional and Technical Services

66 Establishments, 873 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to <\$0.1.

NAICS 56 — Administrative and Waste Services

116 Establishments, 3,136 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to \$0.2.

NAICS 61 — Educational Services

14,192 Establishments, 843,728 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$24.3, 2023 direct costs (high end estimate in millions) equal to \$75.6.

NAICS 62 — Health Care and Social Assistance

406 Establishments, 22,819 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$1.6, 2023 direct costs (high end estimate in millions) equal to \$6.3.

NAICS 71 — Arts, Entertainment, and Recreation

304 Establishments, 34,590 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$0.7, 2023 direct costs (high end estimate in millions) equal to \$2.7.

NAICS 72 — Accommodation and Food Services

136 Establishments, 22,048 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$0.5, 2023 direct costs (high end estimate in millions) equal to \$1.7.

NAICS 81 — Other Services, excluding Public Administration

257 Establishments, 3,320 Covered Employees, 2023 direct costs (primary estimate in millions) equal to <\$0.1, 2023 direct costs (high end estimate in millions) equal to \$0.3.

NAICS 92 — Public Administration

2,224 Establishments, 297,128 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$13.6, 2023 direct costs (high end estimate in millions) equal to \$50.5.

TOTAL

19,247 Establishments, 1,332,950 Covered Employees, 2023 direct costs (primary estimate in millions) equal to \$43.4, 2023 direct costs (high end estimate in millions) equal to \$145.9.

Annual savings

The number of state and local employees that might avoid a COVID–19 infection due to the proposed regulation is highly uncertain. DIR estimated nearly 1.8 million state and local employees, approximately 14 percent of all affected employees in California, are covered by the proposed regulation. To the extent that the proposed regulation improves the safety and health of public employees — resulting in fewer COVID–19 infections, hospitalizations, and fatalities — the proposed regulation would result in a significant cost savings for public entities. Given that many state and local employers are likely to be following existing public health orders and recommendations, the benefits to public employees may be smaller relative to the benefits to employees of privately-owned businesses. However, DIR notes that the largest share of local government employees are in public education, which has accounted for one-third of all COVID–19 outbreaks that are not covered by section 5199. DIR estimated the proposed regulation would result in avoiding approximately 105,000 to 410,000 COVID–19 cases and 600 to 2,500 COVID–19 fatalities per year. If the benefits of the proposed regulation were distributed proportional to employment in the private and public sectors, as many as 11,000 to 44,000 COVID–19 cases and 70 to 270 COVID–19 deaths of local government employees would be avoided each year. This level of benefits would yield \$34 million to \$133 million

in avoided productivity losses to local governments. Additional benefits due to avoided COVID–19 deaths (not quantified here) would be realized by those local government employees and their employers.

Cost or Savings in Federal Funding to the State:

None.

Cal/OSHA staff have been enforcing occupational COVID–19 prevention requirements since February 2020. Cal/OSHA has issued guidance and conducted outreach to warn employers that COVID–19 is a workplace hazard under section 3203. Furthermore, Cal/OSHA staff are currently issuing citations to employers related to COVID–19 hazards based on the ETS, sections 3205–3205.4. Therefore, while DIR assumed that the number and relative complexity and length of investigations would vary significantly with COVID–19 transmission rates, it did not anticipate that the level of enforcement activities would change relative to the no regulatory action baseline. The agency may realize a cost savings if the proposed regulation effectively reduces transmission rates in the workplace, decreasing the number of complaints that the agency receives and the number of investigations it conducts due to the pandemic.

Cost Impacts on a Representative Private Person or Business:

DIR estimates the reporting and recordkeeping requirements of the proposed regulation, including contact tracing investigations, would cost between \$20.9 million to \$83.7 million depending on projections of the baseline transmission rate of COVID–19 in the general population. A typical business will incur costs of approximately \$10 to \$50 per establishment. Many businesses will have no occupational COVID–19 exposures and will have no recordkeeping costs.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals, Including the Ability of California Businesses to Compete:

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. The proposed regulation is unlikely to have a significant impact on the expansion of businesses currently operating in California. The estimated costs of the proposed regulation are relatively small on a per establishment basis; however, the additional requirements add to the costs of doing business in California. It is assumed that other reasons for doing business in California likely outweigh the costs associated with the proposed regulation. Furthermore, the proposed regulation will be unlikely to significantly impact the ability of California businesses to compete with businesses in other states, as COVID–19 poses a similar

risk of illness to workers regardless of geographical location.

Significant Affect on Housing Costs:

None.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulation may affect small businesses.

The California legislature defines small businesses as businesses that have fewer than 100 employees, are not dominant in their field, and are independently owned and operated (A.B. 1033, Ch. 346, 2016). Information is only available on the number of employees, rather than ownership structure of individual business establishments. Based on information from the California EDD, among privately owned companies in California approximately 98.8 percent of establishments have fewer than 100 employees. This may overstate the number of small businesses because some establishments may be owned or operated by larger companies or companies that are dominant in their field. Based on this information, DIR estimates that there are 1,579,472 small businesses affected by the proposed regulation.

The average expected costs for small businesses are estimated to be relatively small because most workplaces are not anticipated to experience widespread COVID-19 outbreaks. Businesses with employees that experience occupational COVID-19 exposures may incur additional costs—however, a portion of these costs are attributable to workers being unable to work due to an illness or hospitalization and are not directly attributable to the proposed regulation. The Board estimates that the average compliance cost for a small business will be between \$280 and \$850 in 2023, and between \$110 and \$400 in 2024.

**RESULTS OF THE STANDARDIZED
REGULATORY IMPACT ASSESSMENT**

The creation or elimination of jobs in the state.

Statewide employment impacts of the proposed regulation may be positive or negative due to countervailing macroeconomic impacts. Businesses will increase spending on PPE and ventilation equipment and services, which may cut into corporate profits but will increase final demand in other industries that supply materials and services to those businesses. However, local supply may not be able to meet the increase in demand for these products, and California businesses will import a large share of manufactured goods from other states, resulting in a smaller impact to jobs in the state.

Other significant changes in final demand will result from both losses in business productivity due to

time spent on compliance activities and worker absences due to requirements for testing and exclusion of COVID-19 cases and close contacts and losses in labor income due to workdays lost as a result of the requirements of the proposed regulation. These impacts will be offset by gains in business productivity and labor income due to reductions in COVID-19 transmission as a result of the proposed regulation (i.e., due to reductions in employee illnesses and absences and reductions in outbreaks), which will increase hours worked, benefitting business productivity and wages earned.

The efficacy of the various safety and prevention measures will impact the reduction in COVID-19 transmission rates and reduction in the number of workdays lost due to illnesses, thus boosting the overall economy. A key limitation of this analysis is that it does not account for benefits associated with the avoided loss of workers due to COVID-19 deaths. That number is significantly higher than the employment impacts estimated here. Therefore, DIR estimated that there will be a temporary change in employment that may be either positive or negative depending on the rate of COVID-19 transmission and the number of workdays missed due to illness or mandated exclusion periods.

The direct costs of the proposed regulation may result in the equivalent of a loss of approximately 6,600 to 22,000 jobs due to business productivity losses and worker absences. On the other hand, the direct benefits may result in the equivalent of a gain of approximately 6,100 to 23,000 jobs due to new capital expenditures and avoided business productivity losses and worker absences. Therefore, the estimated magnitude of the impact to jobs ranges from a loss of approximately 500 jobs to a gain of approximately 690 jobs in the first 12 months of the proposed regulation. In 2024, the estimated employment impacts range from a loss of approximately 250 to 500 jobs to a gain of approximately 340 to 680 jobs.

The creation of new businesses or the elimination of existing businesses in the state.

DIR does not anticipate the elimination of any existing businesses in California as a result of the proposed regulation. In contrast, reductions in COVID-19 transmission rates may reduce the number of infections, outbreaks, and temporary business closures due to employee illnesses. Furthermore, increases in business productivity and labor income due to avoided employee illnesses (and worker absences) may result in an increase in demand for suppliers of products and services to these industries.

The expansion of businesses currently doing business in the state.

The proposed regulation is unlikely to have a significant impact on the expansion of businesses cur-

rently operating in California. The estimated costs of the proposed regulation are relatively small on a per-establishment basis; however, the additional requirements add to the costs of doing business in California. It is assumed that other reasons for doing business in California likely outweigh the costs associated with the proposed regulation. Furthermore, the proposed regulation will be unlikely to significantly impact the ability of California businesses to compete with businesses in other states, as COVID-19 poses a similar risk of illness to workers regardless of geographical location.

The competitive advantages or disadvantages for businesses currently doing business in the state.

The proposed regulation is unlikely to have a significant impact on competitive advantages or disadvantages for businesses operating in California. A recent study found that California was one of the safest states for COVID-19.²⁶ California has one of the highest vaccination rates in the country—more than 75 percent of the population aged 5 and up is fully vaccinated and another 8.9 percent of the population is partially vaccinated.²⁷ While the additional testing requirements and performance standards will add to the cost of doing business in California, the average cost to most businesses is relatively small and the anticipated reduction in workplace COVID-19 cases and outbreaks will likely more than offset this burden.

The increase or decrease of investment in the state.

California businesses have already undertaken a number of preventative measures due to existing public health orders or as a condition of re-opening during the pandemic. The proposed regulation is likely to increase investment in ventilation systems by some businesses; however, these expenditures are likely to be relatively insignificant in comparison to the overall size of the California economy. The majority of indoor establishments in California have heating, ventilation, and air conditioning (HVAC) systems and would only need to upgrade to MERV-13 or higher rated filters. The proposed regulation will expire in two years, so it is unlikely to have a long-term impact on investment in the state; however, it is anticipated that a proposed regulation with the effect of reducing COVID-19 cases in California might increase investment in the short term, because this would make California a more reliable place to do business.

²⁶ McCann, Adam, “Safest States During COVID-19,” WalletHub, April 21, 2022, accessed at <https://wallethub.com/edu/safest-states-during-covid/86567> on May 12, 2022.

²⁷ California for All, Vaccination data, accessed at <https://covid19.ca.gov/vaccination-progress-data/> on April 22, 2022.

The incentives for innovation in products, materials, or processes.

The proposed regulation provides an incentive for employers to prevent or significantly reduce COVID-19 infections due to the costly requirements for testing, exclusion of COVID-19 cases, and monitoring close contacts. This incentive to avoid more costly regulatory requirements is in addition to pre-existing incentives to mitigate COVID-19 hazards in the workplace to reduce the risk of COVID-19 transmission and employee absences that result in lost productivity, staffing shortages, and other disruptions.

Although many businesses already have preventative measures in place due to existing public health orders and local regulations, the proposed regulation will likely increase the demand for higher-rated filtration for air-conditioning and ventilation systems, such as MERV-13 and portable air filtration systems. Increased use of higher rated filtration systems can promote competition and innovation in this sector. Some manufacturers could have incentives to invest in new technologies to improve their productivity and obtain a larger market share. In addition, the proposed regulation could increase the demand for respirators and other response to COVID-19 to reduce workplace contacts, such as automation of certain processes. As a result, there could be incentives for innovation in new respirator technology and other related industries.

BENEFITS OF THE PROPOSED ACTION

The benefits of the regulation, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, environment and quality of life, and any other benefits identified by the agency.

Direct benefits to businesses and workers from regulations that prevent workplace transmission of COVID-19 accrue from multiple aspects of the proposed regulation, although all benefits attributed to the proposed regulation trace back to avoided COVID-19 illnesses. The value of avoided COVID-19 cases come from two primary sources: avoided productivity losses for employers, and avoided wage, health, and broader utility losses for workers.

The value of avoided COVID-19 cases depends on the severity of the case. The Board assumes 35.1 percent of cases are asymptomatic. The distribution of severity of symptomatic cases is based largely on the counts of hospitalizations and deaths. The Board conservatively assumes that 35.1 percent of reported cases are asymptomatic, although many asymptomatic cases are likely to go unreported. Cases that are not asymptomatic and do not result in hospitalization or death are assumed to be mild. Hospitalizations are assumed to be either severe or critical. Based on the

CDC analysis (Taylor et al, 2021), the Board assumes 20 percent of hospitalizations result in an ICU admission and are therefore classified as critical, with the remaining 80 percent being classified as severe.²⁸

Assessing and determining the benefits of the proposed regulation, expressed in monetary terms to the extent feasible and appropriate.

Estimates of workers' valuation of avoided COVID-19 cases are based on a willingness to pay (WTP) estimates developed by Robinson et al (2021).²⁹ These values are developed by first comparing health-related quality of life (HRQL) estimates with and without COVID-19, then multiplying the difference in HRQL by the expected illness duration to estimate the total change in quality-adjusted life years (QALY), then monetizing those changes in QALY based on values provided by the U.S. Department of Health and Human Services. Robinson et al (2021) provide different values based on age (20, 40 and 70) and future discount rate (three percent and seven percent). The calculation of benefits in this Standard Regulatory Impact Assessment (SRIA) does not incorporate worker age, and thus assumes the WTP estimates for age 40 best represent the value for an average worker.³⁰ The calculations of benefits in this SRIA as based on three percent discount rates; using seven percent discount rates instead does not meaningfully change the results because the values for the highest-cost cases (critical cases and fatal cases) do not change between three percent and seven percent discount rates.

In addition to these WTP estimates, avoided asymptomatic cases also have benefit for employers through reduced productivity losses, for other workers through reduced transmission, and for the employees themselves through reduced wage loss. DIR assumes the WTP estimates in Robinson et al (2021) are presumed to include the average value of lost wages, and that 25 percent of employees would experience lost wages.

Avoided productivity losses requires estimating changes in the number of excluded workers due to the regulation. The exclusion period is not a new requirement of the proposed regulation, and symptomatic workers may be unwilling or unable to return to work regardless. The Board attributes 14 percent of

the COVID-19 exclusions to the proposed regulation. Thus, the Board attributes 78,573 exclusions to the proposed regulation in the primary estimate, and 314,290 exclusions to the proposed regulation in the high-end estimate. Estimates of benefits focus on changes relative to these values.

Employees who are unable to work due to illness also represent lost productivity to employers. The benefits of avoiding COVID-19 cases thereby provide two benefits to employers. First, the avoided case averts productivity losses for that employee. Second, the risk of other employees falling ill is reduced, as discussed in the section on testing of close contacts. Both issues are covered in discussions of the direct benefits of the proposed regulation.

Estimating the productivity benefits associated with avoided illness requires assumptions about the extent to which the different severities of illness are associated with absence from work. Macroeconomic impacts require these absences to be distributed by NAICS code. DIR assumes asymptomatic cases are associated with five days of work absence, because asymptomatic employees with positive test results must be excluded for five days from the date the sample was taken.

The Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses (SOII) reported that in 2020, the median days away from work due to "Other diseases due to viruses, not elsewhere classified" was 12 to 14 days, depending on industry sector.³¹ The Board assumes that mild cases of COVID-19 involved fewer lost workdays, while severe and critical cases involved a larger number of lost workdays. The Board developed specific assumptions for each severity based on the illustrative description of symptoms associated with each severity category in Robinson et al (2021).³² Mild cases were assumed to experience eight workdays of absence, based on an assumption of 10 days of mild symptoms. Severe cases were assumed to experience 20 workdays of absence, based on an assumption of 13 days lost in the near term, followed by one lost day per week over the next 50 days. For reference, the median length of hospital stays for COVID-19 was six days (Ohsfeldt et al., 2021).³³ Critical cases were presumed to experience 45 days of absence, based on an

²⁸ Severity of Disease Among Adults Hospitalized with Laboratory-Confirmed COVID-19 Before and During the Period of SARS-CoV-2 B.1.617.2 (Delta) Predominance — COVID-NET, 14 States, January–August 2021 | MMWR (cdc.gov), https://www.cdc.gov/mmwr/volumes/70/wr/mm7043e1.htm#T1_down (accessed April 28, 2022).

²⁹ United States Department of Health and Human Services (HHS). Valuing COVID-19 Mortality and Morbidity Risk Reductions (hhs.gov), <https://aspe.hhs.gov/sites/default/files/2021-08/valuing-covid-risks-july-2021.pdf> (accessed April 28, 2022).

³⁰ Bureau of Labor Statistics (BLS). Median age of the labor force, by sex, race, and ethnicity, <https://www.bls.gov/emp/tables/median-age-labor-force.htm> (accessed April 28, 2022).

³¹ BLS. How COVID-19 is reflected in the SOII data, <https://www.bls.gov/iif/how-covid-19-is-reflected-in-the-soii-data.htm> (as of April 29, 2022).

³² Menni, Christina, et al. Symptom prevalence, duration, and risk of hospital admission in individuals infected with SARS-CoV-2 during periods of omicron and delta variant dominance: a prospective observational study from the ZOE COVID Study, available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(22\)00327-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(22)00327-0/fulltext) (accessed April 29, 2022).

³³ Ohsfeldt, Robert L., et al. Inpatient hospital costs for COVID-19 patients in the United States. *Advances in therapy* 38.11 (2021): 5557–5595. October 5, 2021. <https://link.springer.com/content/pdf/10.1007/s12325-021-01887-4.pdf>.

assumption of 13 days lost in the near term, followed by one lost day per week over the next six months, based on the assumption that not all workers become ill at the start of the year. Fatalities are assumed to be replaced with a new worker, potentially drawn from the pool of unemployed workers. It is difficult to know how quickly workers will be replaced; many California industries, such as agriculture, health, and restaurants, have high rates of turnover. We conservatively do not include the small number of fatalities, biasing our estimates of benefits downward.

The productivity losses associated with severe cases is particularly uncertain, making the productivity benefits correspondingly uncertain. These more severe cases are less common, and DIR assumes the distribution of severity is identical across NAICS codes. The lost workdays are monetized by using the fully loaded hourly labor cost of \$47.64 for California workers.

Other Benefits

Several specific provisions of the proposed regulations are predicted to yield benefits, as discussed in greater detail below.

Subsection 3205(d) requires testing of close contacts. DIR assumes each case among covered workers has 4.5 close contacts, for a total of 2,518,352 close contacts in the primary estimate. Of these close contacts, DIR assumes that seven percent will become infected with COVID-19. Miao and Zhang (2022) found “the infection risk (one-hour close contact with an infected person) of COVID-19 of students, workers, and non-workers/non-students was 3.1%, 8.7%, and 13.6%, respectively.”³⁴ However, this study is based in China rather than the United States. Nowotny et al (2021) conducted a study of infections in U.S. prisons relative to the general population, and found that “The rolling 7-day average case rates for prison staff, prison population, and general population on January 15, 2021 were 196.04 per 1000 (95%CI 194.81, 197.26), 219.16 (95%CI 218.45, 219.86), and 69.80 (95%CI 69.78, 69.83), respectively.”³⁵ Based on these studies, DIR assumes that, on average, seven percent of close contacts lead to infections at the community level.

DIR assumes that of those infected with COVID-19, 35.1 percent will be asymptomatic. DIR further assumes that without the requirement to test close contacts, these asymptomatic cases would return to the workplace, and would each have 4.5 close contacts

among covered employees during their infectious period, of whom seven percent will become infected in turn. DIR conservatively does not calculate the further infections associated with these secondary infections, given the speculative nature of the rate of spread and the prevalence of businesses with a small number of employees. This results in an additional 19,491 cases, in the primary estimate, that DIR assumes would not have occurred under the proposed regulation.

Under the assumptions about the distribution of severity and the associated costs, this section of the proposed regulation avoids approximately \$59 million in productivity losses and approximately \$6.8 million in lost wages under the primary estimate, and approximately \$236 million in productivity losses and \$59 million in lost wages under the high-end estimate. This section of the proposed regulation also avoids approximately \$1.9 billion in WTP losses under the primary estimate, or approximately \$7.5 billion under the high-end estimate.

Subsection 3205(c)(5)(A) requires excluding positive cases to prevent initial close contacts from becoming ill in the first place. DIR attributes two days of exclusion of asymptomatic cases from the workplace to the proposed regulation. DIR assumes infections among the 4.5 close contacts of these 196,431 asymptomatic carriers would be prevented under the exclusion and protective measures of the proposed regulation. Under the assumption that seven percent of close contacts contract COVID-19, this corresponds to 61,876 avoided cases.

Under the assumptions about the distribution of severity and the associated costs, this section of the proposed regulation avoids approximately \$187 million in productivity losses and approximately \$47 million in lost wages under the primary estimate, and approximately \$749 million in productivity losses and \$187 million in lost wages under the high-end estimate. This section of the proposed regulation also avoids approximately \$6.2 billion in WTP losses under the primary estimate, or approximately \$24.9 billion under the high-end estimate.

Subsection 3205(c)(5)(B) requires employers to develop, implement, and maintain effective policies to prevent transmission of COVID-19 by persons who had close contacts. Employees who tested positive after close contact with an infected individual would be required to follow exclusion and other protective requirements in subsection 3205(c)(5)(A); these benefits are already accounted for under exclusion of and protective measures for COVID-19 cases. This section considers the benefits associated with the provision of face coverings for close contacts in non-high-risk settings for a total of 10 days. DIR assumes each initial COVID-19 case has 4.5 close contacts, and seven percent of initial close contacts become infected with

³⁴ Miao D, Zhang N. Human Close Contact Behavior-Based Interventions for COVID-19 Transmission. *Buildings*. March 16, 2022; 12(3):365. <https://www.mdpi.com/2075-5309/12/3/365> (accessed April 28, 2022).

³⁵ Nowotny, K.M., Seide, K. & Brinkley-Rubinstein, L. Risk of COVID-19 infection among prison staff in the United States. *BMC Public Health* 21, 1036 (2021). <https://bmcpubhealth.biomedcentral.com/articles/10.1186/s12889-021-11077-0> (accessed April 28, 2022).

COVID-19, each of which has 4.5 second-order close contacts, of whom seven percent become infected with COVID-19. The filtration efficiency of masks varies widely depending on design and materials.^{36, 37} Twill fabrics can have filtration efficiencies of 20 to 40 percent, while masks that use N95 base fabric can have filtration efficiencies of 90 percent or more depending on particle mobility diameter. The proposed regulation does not require surgical masks or high-filtration fabrics, and workers are likely to make use of different mask types depending on availability and preferences. Given the high variability in the effectiveness of face coverings, DIR assumes that the face covering requirement for close contacts in the proposed regulation reduces infections among second-order close contacts by 45 percent. As a result, DIR attributes 5,309 avoided COVID-19 cases among second-order close contacts to the proposed regulation.

Under the assumptions about the distribution of severity and the associated costs, this section of the proposed regulation avoids approximately \$16 million in productivity losses and approximately \$4 million in lost wages under the primary estimate, and approximately \$64 million in productivity losses and \$16 million in lost wages under the high-end estimate. This section of the proposed regulation also avoids approximately \$514 million in WTP losses under the primary estimate, or approximately \$2.1 billion under the high-end estimate.

Further, subsection 3205(c)(5)(B) requires employers to review CDPH guidance for persons who had close contacts and develop effective policies to prevent transmission of COVID-19 by persons who have had close contacts. In high-risk settings, as of this writing, CDPH recommends that persons who have had close contacts be excluded for five days and comply with CDPH masking guidance. DIR assumes that asymptomatic cases among covered high-risk workers would each have 4.5 close contacts, for a total 110,676 close contacts in high-risk settings in the primary estimate. Of these, DIR assumes that seven percent would be COVID-19 positive and 35.1 percent of those would have been asymptomatic and hence may have returned to the office while contagious. Because section 3203 already requires employers to manage such risks in high-risk settings, DIR only attributes 40 percent of these benefits to the proposed regulation. As a result,

³⁶ Zangmeister, Christopher D., et al. Filtration efficiencies of nanoscale aerosol by cloth mask materials used to slow the spread of SARS-CoV-2. *ACS nano* 14.7 (2020): 9188–9200. <https://pubs.acs.org/doi/pdf/10.1021/acsnano.0c05025>.

³⁷ Konda, A., Prakash, A., Moss, G.A., Schmoldt, M., Grant, G.D., Guha, S., 2020. Aerosol Filtration Efficiency of Common Fabrics Used in Respiratory Cloth Masks. *ACS Nano* 14, 6339–6347. <https://doi.org/10.1021/acsnano.0c03252>.

DIR attributes 343 avoided cases amongst high-risk workers to this exclusion requirement.

Under the assumptions about the distribution of severity and the associated costs, this section of the proposed regulation avoids approximately \$1 million in productivity losses and approximately \$0.26 million in lost wages under the primary estimate, and approximately \$4 million in productivity losses and \$1 million in lost wages under the high-end estimate. This section of the proposed regulation also avoids approximately \$33 million in WTP losses under the primary estimate, or approximately \$133 million under the high-end estimate.

Subsection 3205(g) requires employers to provide respirators to employees that request them. DIR assumes that five percent of employees will request respirators from their employers during local upswings in cases, and that these employees would be wearing masks in the no regulatory action baseline. Respirators have been measured to block 30 to 60 percent more respiratory aerosols than masks (Konda et al., 2020). DIR assumes that the provision of respirators reduces the annual transmission rate of employees who use them (.045 percent in the primary estimate and 0.180 percent in the high-end estimate) by 50 percent. As a result, DIR calculates that subsection 3205(g) of the proposed regulation will avoid 13,991 cases in the primary estimate.

Under the assumptions about the distribution of severity and the associated costs, this section of the proposed regulation avoids approximately \$42 million in productivity losses and approximately \$10 million in lost wages under the primary estimate, and approximately \$169 million in productivity losses and \$42 million in lost wages under the high-end estimate. This section of the proposed regulation also avoids approximately \$1.4 billion in WTP losses under the primary estimate, or approximately \$5.4 billion under the high-end estimate.

Making the estimation described in Government Code Section 11342.548.

The proposed COVID-19 Prevention regulations would be fully implemented in 2023 and are estimated to result in an annual economic impact exceeding \$50 million starting in 2023. Most provisions of the proposed regulation would be in effect for two years; recordkeeping provisions would be in effect for three years. Cal/OSHA staff has estimated that the proposed regulation could result in direct costs to regulated entities totaling \$0.5 billion to \$1.6 billion in 2023 and \$0.2 billion to \$1.5 billion 2024. The estimated direct benefits range from \$6.0 billion to \$41.2 billion a year.

Department of Finance (DOF) Comments on SRIA and DIR Responses.

There were four concerns raised in DOF's comments on the SRIA.

1. **Two parts:**

- a. **The SRIA must clearly report quantitative estimates of all fiscal impacts, including enforcement costs, and report state and local government impacts separately. The SRIA explains qualitatively that the Department of Industrial Relations may realize a cost savings in enforcement from reduced enforcement activity due to reduced transmission of COVID-19, but does not provide the required quantitative estimate.**

Upon further analysis, the Division does not expect to realize a cost savings from reduced enforcement if COVID-19 transmission levels are reduced by these proposed regulations. Rather, to the extent that COVID-19 rates are decreased, either by this proposal or by other factors, the Division will simply return staff to pre-pandemic activities.

Additionally, the Division expects that certain enforcement activities will return to normal. The Division has statutory deadlines to respond to complaints in certain circumstances. (Labor Code section 6309.) From the start of the pandemic, the Division received very high levels of complaints. For example, in 2021, the Division received more than 5,200 complaints that were coded for COVID-19-related issues; the actual number is likely higher, since it is possible that some COVID-related complaints were not coded properly. To deal with this influx, the Division took a number of measures to use its limited resources most effectively. Among these measures was an increased use of letter investigations starting in 2020. In a letter investigation, the Division sends a written query to an employer requesting information. A satisfactory response will conclude the matter; an unsatisfactory response, or no response, will cause the Division to open an inspection. The Division conducted more than 4,400 letter investigations in 2021, the great majority of which were closed after a satisfactory employer response. If COVID-19 transmission rates decrease, the Division expects to conduct a greater proportion of its enforcement activity as onsite inspections, in keeping with pre-pandemic practice. Inspections, of course, are much more time-consuming than letter investigations.

Thus, reduced COVID-19 transmission rates will allow the Division to return to pre-pandemic activities rather than reduce enforcement costs.

- b. **Additionally, the SRIA should discuss any expected impacts on penalties raised if the specificity provided by the proposed regulation is expected to provide sufficient guidance to employers to reduce citable violations.**

The Division has determined that it cannot reliably quantify a prediction of the degree to which the proposal will affect penalties collected from employers for COVID-19 violations. It is possible that the improved specificity of the proposed regulations will make it easier for employers to comply, as compared with addressing COVID-19 hazards through the existing section 3203 and other regulations. If so, the overall number of citable hazards in California would decrease. It is unknown whether that would affect the total amount of penalties collected, however. The penalty for any particular violation depends on a complex variety of fact-specific factors set forth in regulation, CCR, title 8, sections 334-336, which must be applied on a case-by-case basis. A violation of the identical regulatory section or subsection will result in an entirely different penalty, depending on surrounding facts which cannot be estimated in advance.

2. **The SRIA does not attribute the workplace exclusion of symptomatic employees (which comprise 65 percent of COVID-19 cases) to the proposed regulation. However, if any employers begin excluding symptomatic employees in response to the specificity provided by the proposed regulation, the impacts of that exclusion must also be quantified.**

Based on Cal/OSHA's experience conducting investigations during the pandemic, DIR assumed that the vast majority of employers are already excluding symptomatic COVID-19 cases from the workplace and would do so without regard to the proposed regulation. Furthermore, due to the existing requirements in section 3203, employers are already required to have in place "procedures for correcting unsafe or unhealthy conditions...in a timely manner based on the severity of the hazard." (CCR title 8, subsection 3203(a)(6).) Therefore, DIR assessed that it was not reasonable to attribute the entirety of the costs or benefits of this requirement to the proposed regulation. If employers were not excluding symptomatic COVID-19 cases for the full duration of the exclusion period, as already required under section 3203, then there would be a greater number of COVID-19 cases in the baseline as sick employees would likely be exposing and infecting others. If this were the case, based on the assumptions reported in the SRIA, the benefits of elevating all employers to full compliance under the proposed regulation would outweigh the costs of doing so.

For example, if the SRIA were to assume that the additional specificity in the proposed regulation contributed to employers excluding all asymptomatic COVID-19 cases and all symptomatic COVID-19 cases that might otherwise return to work, both the costs and the benefits would be higher. DIR already conservatively assumed that a portion of days of the required exclusion period for all asymptomatic cases

would be attributable to the proposed regulation. As a proxy for the number of symptomatic COVID-19 cases that might otherwise return to work, one could use the percentage of COVID-19 cases without fever that do not result in hospitalization or death. While this may still overstate the number of employees that might return to work before the end of the exclusion period as other symptoms may be as or more debilitating, it is a useful proxy because fever has been an employer condition for workplace exclusion long before the pandemic. In other words, employers' policies usually prevent feverish employees from coming to a shared workplace, regardless of whether the employee has COVID-19, flu, another virus, or a severe infection. Furthermore, many employers were recording employees' temperatures from the outset of the pandemic, even before the enactment of the emergency versions of section 3205 et seq. The UK ZOE COVID Study, which uses an app that collects self-reported information related to SARS-CoV-2, estimates the percentage of COVID-19 cases that have any of 32 given symptoms.³⁸ A study published in April 2022 found that approximately 40 percent of COVID-19 cases reported symptoms including fever when Delta was the predominant strain and slightly less under Omicron (80 percent to 94 percent of the rate relative to Delta).³⁹ The SRIA assumed 35.1 percent of COVID-19 cases were asymptomatic, 58.2 percent were mild, 6.1 percent required hospitalization, and 0.6 percent resulted in death.

To calculate a maximum upper bound, assuming that 60 percent of mild cases did not involve fever, a portion of the exclusion period for approximately 70 percent of all COVID-19 cases may be attributable to the proposed regulation.⁴⁰ In this extreme case, the estimated costs would increase by approximately 35 percent to 45 percent and the estimated benefits attributable to the proposed regulation would increase by approximately 80 percent relative to the estimates in the SRIA. This is not expected because the exclusion requirement does not represent a policy change relative to the baseline—it is an existing requirement in section 3203. It is highly unlikely that the additional specificity in the proposed regulation would affect behavioral changes in how employers are handling 70 percent of all COVID-19 cases. In addition to hospitalizations, a wide range of COVID-19 symptoms

beyond a fever, or simply a positive COVID-19 test result, may leave employees unable to return to work before the end of the exclusion period—thus, there would be little change relative to the baseline.

3. **The SRIA uses disease data from 2021, when the Alpha and Delta strains were dominant, as the basis for assumptions including transmission rate and case severity. More recent data indicate that the Omicron variant is less lethal and vaccination rates are higher than in 2021, implying that benefits may be about half the estimated amount.**

DIR acknowledges there is considerable uncertainty regarding future projections of COVID-19 transmission rates. In the SRIA, DIR relies on COVID-19 case projections from the CDPH for 2023 that are based on the COVID-19 Scenario Modeling Hub. These projections were provided to DIR on April 8, 2022 and incorporate data through as late as March 2022—therefore, baseline projections of transmission and case severity include the period when the Omicron strain was dominant. Specifically, DIR's assumptions about the distribution of severity of disease come directly from CDPH's estimates of the number of hospitalizations and deaths as a percentage of total cases. The transmission rate and case severity of future waves is uncertain.

DIR's review of the public health literature included peer-reviewed studies that were published when the Alpha and Delta strains were dominant; however, DIR relied on the most recent available information to inform key assumptions in the SRIA.

Following DOF's comments, DIR's subsequent review noted additional studies, some of which were released after DIR completed the SRIA, with different estimates. Since this information was not available at the time to inform DIR's decision-making, and the estimates would not change the direction of the net benefits (i.e., from positive to negative), DIR plans to continue to rely on the primary estimates in the SRIA.

For transmission, DIR based its estimates regarding close contacts on a 2021 U.S. study that found approximately seven percent of close contacts with a COVID-19 case would lead to new infections at the community level.⁴¹ Subsequent to making our calculations, DIR identified a U.K. study published in February 2022 capturing early cases of the Omicron strain that suggests this assumption remains a reasonable one.⁴²

³⁸ General information about the ZOE COVID Study app is available at: <https://joinzoe.com/learn/omicron-symptoms>.

³⁹ Cristina Menni, *et al.*, Symptom prevalence, duration, and risk of hospital admission in individuals infected with SARS-CoV-2 during periods of omicron and delta variant dominance: a prospective observational study from the ZOE COVID Study, *the Lancet*, 2022; 399: 1618–24, April 7, 2022. <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2822%2900327-0>.

⁴⁰ This is calculated as 35.1% asymptomatic cases + (1–40%) x 58.2% mild cases = 70.0% of all COVID-19 cases.

⁴¹ Nowotny, Kathryn M., Kapriske Seide, and Lauren Brinkley-Rubinstein, Risk of COVID-19 infection among prison staff in the United States, *BMC Public Health* 21, 1036, 2021.

⁴² P. Elliott, *et al.*, Rapid increase in Omicron infections in England during December 2021: REACT-1 study, *Science*, February 8, 2022.

Weighted prevalence in round 16 (November 23 to December 14, 2021) was highest...in those having been in contact with a confirmed COVID-19 case at 8.00% (7.25%, 8.82%) compared to 0.81% (0.73%, 0.89%) for those without such contact.

While a study of Omicron cases in Denmark published in January 2022 found the effective reproduction number of Omicron was 3.19 times greater than that of Delta under the same epidemiological conditions, it is not straightforward to convert the increase to the number of new infections, because community immunity levels have also changed.⁴³ If the transmission rate were higher, as suggested, it would increase the benefits of the proposed regulation and lower the costs of excluding close contacts since more employees would test positive for COVID-19 in the baseline, while at the same time potentially increasing the number and cost of outbreaks. Evidence suggests that the Omicron variant is less lethal, and this is already reflected in DIR's assumptions about the distribution of severity of cases with regard to hospitalizations and fatalities.

Among hospitalizations, DIR relied on data from January to August 2021 published by the CDC to estimate the distribution of severe and critical (i.e., requiring an ICU admission) cases. DIR assumed approximately 20 percent of hospitalizations would require an ICU admission.⁴⁴ Subsequent to performing the analysis included in the SRIA, DIR found more recent estimates from November 22 to December 24, 2021 during the emergence of Omicron in Ontario, Canada. This study was published in early April 2022 and suggests the risk of hospitalization or death was lower for Omicron cases compared with Delta cases.⁴⁵ This study suggests that approximately half as many hospitalizations for Omicron cases would require an ICU admission. Based on this information, if the SRIA assumed that 10 percent, versus 20 percent, of hospitalizations would require an ICU admission, it would reduce the overall level of benefits estimated by approximately 11 percent.

In response to DOF's letter, DIR reviewed assumptions about the proportion of COVID-19 cases that remained asymptomatic. Based on a meta-analysis

that included studies conducted from January 1, 2020 to April 2, 2021, DIR assumed 35.1 percent of COVID-19 cases were asymptomatic.⁴⁶ Two other meta-analyses have estimated the asymptomatic rate to be 40.5 percent and 44.1 percent, respectively.^{47, 48} The latter study was released after DIR's SRIA was published. None of the meta-analyses included studies after the emergence of the Omicron variant. A UK study—published in May 2022 after DIR's SRIA was completed—suggests that the BA.2 variant is more likely to produce symptomatic infection.⁴⁹

The proportion of swab positive individuals reporting any of 26 symptoms was highest in those infected with BA.2 (75.9%, compared with 70% in those with BA.1, 63.8% in those with Delta, 54.7% in those with Alpha, and 45% in those with wild-type). Background prevalence of symptoms was also highest during January–March 2022, when Omicron dominated: 21.9% of all respondents reported one or more symptoms, compared with 13.5% during the wild-type period.

This information about the proportion of COVID-19 cases that are asymptomatic was not available at the time the SRIA was being prepared and therefore could not be considered in the economic analysis. While the data suggest the BA.2 variant is less likely to produce an asymptomatic response relative to other strains, it is unknown whether future variants will be more or less severe or will be more likely or less likely to result in asymptomatic COVID-19 cases.

4. **The SRIA does not clearly disclose how inflation is incorporated into the analysis, although the costs of acquiring materials such as filters for ventilation systems may be different under higher assumed inflation rates, particularly since some costs are based on old data (such as the MERV-13 filter costs based on a 2017 report). The estimates must incorporate the most recent inflation projections at the time of the analysis.**

For direct comparison in the SRIA, all costs and benefits are reported in 2021 dollars (p.20, p.63). The

⁴³ Ito, K., Piantham, C., & Nishiura, H. (2022). Relative instantaneous reproduction number of Omicron SARS-CoV-2 variant with respect to the Delta variant in Denmark. *Journal of Medical Virology*, 94(5), 2265–2268, January 11, 2022.

⁴⁴ Taylor, Christopher A., et al., Severity of Disease Among Adults Hospitalized with Laboratory-Confirmed COVID-19 Before and During the Period of SARS-CoV-2 B.1.617.2 (Delta) Predominance — COVID-NET, 14 States, January–August 2021 | MMWR ([cdc.gov](https://www.cdc.gov/mmwr/volumes/70/wr/mm7043e1.htm#T1)), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7043e1.htm#T1> down.

⁴⁵ Ulloa, A. C., Buchan, S. A., Daneman, N., & Brown, K. A. (2022). Estimates of SARS-CoV-2 Omicron Variant Severity in Ontario, Canada. *JAMA*, 327(13), 1286–1288, April 5, 2022.

⁴⁶ Sah, Pratha, et al., Asymptomatic SARS-CoV-2 infection: A systematic review and meta-analysis, *Proceedings of the National Academy of Sciences of the United States of America*, August 24, 2021.

⁴⁷ Ma Q, Liu J, Liu Q, Kang L, Liu R, Jing W, et al., Global Percentage of Asymptomatic SARS-CoV-2 Infections Among the Tested Population and Individuals With Confirmed COVID-19 Diagnosis: A Systematic Review and Meta-analysis, *JAMA network open*, 2021;4(12).

⁴⁸ Bing Wang, et al., Asymptomatic SARS-CoV-2 infection by age: A systematic review and meta-analysis, *medRxiv*, May 5, 2022.

⁴⁹ Matthew Whitaker, et al., Variant-specific symptoms of COVID-19 among 1,542,510 people in England, *medRxiv*, May 23, 2022.

estimated unit costs for specific preventative measures generally reflect prices as of the time of the research and writing of the SRIA, such as the cost of acquiring N95 respirators (based on vendor prices as of October/November 2021, p.32) and the cost of purchasing commercial HEPA units (based on listed vendor prices as of November 2021, p.41), and are converted into 2021 dollars, if necessary. DOF appropriately notes that unit cost estimates for MERV-13 filters were based on a 2017 report. However, to clarify, DIR specifically relied on estimates of the incremental cost (or cost differential) of MERV-13 versus MERV-8 filters, as some employers with older HVAC systems would be required to replace their existing filters with MERV-13 or higher-rated filters. DIR estimated the cost differential to be approximately \$0.03/square foot when replacing MERV-8 filters with MERV-13 filters (instead of replacing them with new MERV-8 filters). As the same manufacturers produce both MERV-8 and MERV-13 filters, it is likely both products are subject to the same inflationary factors; thus, the price ratio of the two products would not necessarily diverge at the rate of inflation in the overall economy. DIR assumed the cost differential would remain constant over time.

DOF's Consumer Price Index Forecast estimates that California prices rose approximately 13.2 percent between 2017 and 2021.⁵⁰ If the SRIA assumed that the price of MERV-13 filters rose at this rate relative to the price of MERV-8 filters, it would increase the estimated costs of "managing outbreaks" by approximately 0.5 percent and the estimated costs of "COVID-19 prevention in employer-provided housing" by approximately 2.6 percent. This would increase the overall cost estimates in the SRIA by \$0.2 to \$0.4 million, or less than 0.1 percent overall.

DIR appreciates the opportunity to further elaborate on the assumptions and methods used in the SRIA.

Business Reporting Requirement:

It is necessary for the health, safety, or welfare of the people of the state that the regulation, which requires a report, apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affect-

ed private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

The Board considered and rejected two alternatives.

Alternative #1 would require employers to comply with all CDPH orders regarding COVID-19. Employers are already legally bound to follow mandatory CDPH orders, but Alternative 1 would allow the Division to enforce those orders in the occupational context, during site inspections. Currently, however, while there are many guidance documents that set forth recommendations from CDPH, there are relatively few mandatory orders. Specifically, CDPH has issued State Public Health Officer Orders regarding vaccination requirements for healthcare workers, including in state and local correctional facilities and detention centers; vaccination requirements for workers in schools; requirements for visitors in acute healthcare and long-term care settings; reporting of COVID-19 results by healthcare providers; and face covering requirements in emergency shelters, cooling and heating centers, homeless shelters, long-term care settings, adult and senior care facilities. Alternative #1 would give the Division additional enforcement authority by making the Division an enforcement arm for CDPH orders.

The total costs and benefits for Alternative #1 are unquantifiable because Alternative #1 does not change employers' legal obligations to comply with existing CDPH orders. However, Alternative #1 is not identical to a *no regulatory action* baseline, despite economic and fiscal similarities. Without a regulation specifically allowing the Division to enforce CDPH orders, the Division could not issue citations against employers for violating those orders. This would not change employers' legal obligations—and thus would not have an economic effect relative to existing law—but as a practical matter, this alternative would likely improve compliance, particularly in areas of the state in which local public health authorities initiated fewer enforcement actions of their own.

DIR rejected Alternative #1 because it was insufficiently protective of worker safety and health. The Division works closely with CDPH and uses CDPH guidelines in the development of regulations. Further, the Division's regulations can be written to reference changing public health orders and regulations; indeed, the proposed regulation incorporates current CDPH guidance on Isolation and Quarantine, and also defers to CDPH regulations or orders if the timelines change.

⁵⁰ California Department of Finance (DOF), Economic Forecasts, U.S. and California, prepared by the Economic Research Unit in April 2022, accessed at <https://dof.ca.gov/forecasting/economics/economic-forecasts-u-s-and-california/> on June 3, 2022.

However, as discussed above, despite the extensive library of CDPH guidance and recommendations, there are relatively few formal, mandatory CDPH orders that the Division could enforce; CDPH recommendations are generally directed to the public and do not always address occupational hazards. It is, of course, possible that CDPH could issue formal mandatory orders in the future that would be enforceable by the Division. But a regulation cannot rely on speculative future orders from a sibling agency. The Division does not have the authority to issue a citation for failure to follow a CDPH requirement; instead, the Division must rely on the general obligation of section 3203. The IIPP regulation does not provide sufficient detail to employers and employees regarding the particular context of COVID-19, which reduces employer compliance.

Alternative #2 would require employers with 100 or more employees to develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead adopt a policy requiring employees to either get vaccinated or elect to undergo regular COVID-19 testing and wear a face covering at work in lieu of vaccination. Alternative #2 is similar to the ETS proposed by Federal OSHA, which was eventually blocked by the United States Supreme Court. After the Supreme Court's ruling, Federal OSHA then withdrew the vaccination and testing ETS as an enforceable emergency temporary standard. Despite this, multiple Standards Board members have urged the Division to adopt vaccination or test requirements that would apply to California's workplaces, and a recent bill (AB 1993) was submitted mirroring these requirements.

For Alternative #2, DIR's cost methodology is based on OSHA's feasibility study and analytic spreadsheets in support of the COVID-19 vaccination and testing ETS.⁵¹ DIR's benefits methodology follows the same approach as the proposed regulation and relies on peer-reviewed studies of vaccine effectiveness to quantify the potential number of avoided COVID-19 illnesses, hospitalizations, and fatalities. Those avoided COVID-19 cases are monetized using the same basis as for the proposed regulation.

DIR rejected Alternative #2 for several reasons. First, it would cost significantly more per entity than the proposed regulation, with new costs associated with documentation of vaccination status as well as enforcement of testing and face covering by both employers and the Division, through citations and investigations. Overall, it would cost nearly as much as the proposed regulation and yield a considerably lower level of benefits. Further, potentially large (but unquantifiable) costs would have been incurred in

connection with severance from the workforce; employers were already concerned that employees would quit rather than get vaccinated. Second, California already enjoys a relatively high rate of vaccination: as of April 22, 2022, approximately 75.2 percent of the population aged five and up is fully vaccinated and 8.9 percent is partially vaccinated.⁵² Finally, the political and social climate across the State varies widely with respect to vaccination against COVID-19. Significant opposition to this alternative would be expected, due to a perception, albeit an incorrect one, that this alternative would impose a "vaccine mandate" for workers.

Table 6. Summary of Direct Costs and Benefits of Regulatory Alternatives Compared to the Proposed Regulation, in 2023 within the COVID-19 Prevention Initial Statement of Reasons available on the OSHSB website, summarizes the total costs and benefits of the proposed regulation and each alternative considered for the first 12 months after the regulation is enacted. Information from Table 6. Summary of Direct Costs and Benefits of Regulatory Alternatives Compared to the Proposed Regulation in 2023 is also listed below:

Benefits (In Billions)

Proposed Regulation = \$10.51

Alternative #1 = Not quantified; Difference = Indeterminate

Alternative #2 = \$2.79; Difference = -\$7.72

Costs (In Billions)

Proposed Regulation = \$0.49

Alternative #1 = Not quantified; Difference = Indeterminate

Alternative #2 = \$0.30; Difference = -\$0.19

Net Benefits (In Billions)

Proposed Regulation = \$10.03

Alternative #1 = Not quantified; Difference = Indeterminate

Alternative #2 = \$2.49; Difference = -\$7.53

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) or the back-up contact person, Steve Smith (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

⁵¹ Federal OSHA, Analytic Spreadsheets in Support of the COVID-19 Vaccination and Testing ETS, October 2021.

⁵² State of California. Statewide vaccination data as of April 22, 2022, accessed at <https://covid19.ca.gov/vaccination-progress-data/#overview> on April 22, 2022.

**AVAILABILITY OF STATEMENT OF
REASONS, TEXT OF THE PROPOSED
REGULATIONS AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Smith at the address or telephone number listed above.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Shupe or Mr. Smith at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shupe or Mr. Smith at the address or telephone number listed above or via the internet.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.

**TITLE 14. BOARD OF FORESTRY AND
FIRE PROTECTION****"FOREST RESILIENCY AMENDMENTS"****DIVISION 1.5, CHAPTER 4,
SUBCHAPTERS 4, 5, AND 6**

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on September 22, 2022, at its regularly scheduled meeting commencing at 9:00 a.m., at the Redding Red Lion Hotel, 1830 Hilltop Drive, Redding, CA 96002. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to Government Code (GOV) § 11125.1(b), writings that are public records pursuant to GOV § 11125.1(a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

Attendees may also participate via GoToWebinar online meeting platform or telephone conferencing. To participate via GoToWebinar online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on September 20, 2022, to request a link to the meeting. A link to the meeting will also be posted under the "Webinar Information" heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on at the conclusion of the public hearing on September 22, 2022.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who sub-

mit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attention: Eric Hedge
Regulations Program Manager
P.O. Box 944246
Sacramento, CA 94244–2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
715 P Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653–0989

Written comments may also be delivered via e-mail at the following address:

PublicComments@BOF.ca.gov

AUTHORITY AND REFERENCE

(pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)

Authority cited: Sections 4551, 4553, 4561, 4561.1, and 4561.2, Public Resources Code. Reference: Sections 4513, 4551.5, 4561, 4561.1, 4561.2, 4582, 4587, 4597 and 21080.5, Public Resources Code

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

(pursuant to GOV 11346.5(a)(3)(A)–(D))

The Z’berg–Nejedly Forest Practice Act of 1973 (Act) describes many of the broad forest management goals and policies of the state, including Public Resources Code (PRC) § 4512(c), which states “The Legislature finds and declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public’s need for timber and other forest products, while giving consideration to the public’s need for watershed protection, fisheries and wildlife, sequestration of carbon dioxide, and recreational opportunities alike in this and future generations.”

PRC § 4551 describes the mechanism through which forest policy is implemented through the authorization of the Board of Forestry and Fire Protection (Board) to “...adopt district forest practice rules and regulations for each district in accordance with the policies set

forth in Article 1 (commencing with Section 4511) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries.” PRC § 4553 requires the Board to continuously review those rules in consultation with other interests and make appropriate revisions.

Additionally included in the Act is PRC § 4561, which sets forth “resource conservation standards”, which are minimum standards intended to “...ensure that a cover of trees of commercial species, sufficient to utilize adequately the suitable and available growing space, is maintained or established after timber operations.” The section goes on to outline various prescriptive standards for minimum tree occupancy required under described site-specific conditions.

The Board has implemented the Act as the Forest Practice Rules (Rules) (Chapter 4, Division 1.5, Title 14 California Code of Regulations), and the above-mentioned standards of tree occupancy, or stocking, have been implemented by the Board primarily within regulations for silvicultural methods within Article 3 of Subchapters 4, 5, and 6 of the Act for the Coast, Northern, and Southern Forest Districts, respectively. One of the elements of stocking requirements in the Rules are regulations regarding unevenaged forest management (14 CCR §§ 913.2., 933.2, 953.2), which is intended to establish and maintain a forest which is composed of a multi-aged, balanced structure through the imposition of limitations on tree harvesting and requirements on tree retention and regeneration.

Since the initial creation of the regulatory stocking standards for unevenaged management five decades ago several factors have significantly influenced forest health and management practices throughout the state. When the regulations were initially adopted, management often focused on maximizing site occupancy of species. In the case of group selection, a form of unevenaged management, this meant limiting harvest to twenty percent or less of the stand per entry. These harvesting restrictions resulted in limited amounts of sunlight reaching the forest floor, where regeneration occurs, and generated stands that favored shade tolerant species (like *Abies concolor*) at the expense of shade intolerant species (like *Pinus ponderosa*). This resulted in many stands where density levels were high, especially in shade tolerant species, and these species tend to exacerbate water demand and create fuel and fire conditions that are not receptive to fire.

Additionally, since the initial adoption of these regulations, the socioecological goals of forest management have significantly expanded and have influenced forest stocking and planting procedures. Issues sur-

rounding atmospheric carbon sequestration, the risk and threat of loss and damage from wildfires, growing forest pest conditions, ongoing and potentially long-term drought conditions, climate change, and forest heterogeneity and diversity all serve to influence forest management practices and will impact associated stocking and planting procedures.

As has been demonstrated over the last several years, stand replacing fire has become common, with 14 of the 20 largest wildfires in state history occurring within the last decade.¹ Historically, these stands tended to have much high ratios of shade intolerant species, which are more adapted to frequent fire.

“Uneven-aged silviculture also offers opportunities for management strategies that incorporate a more natural distribution of temporal-spatial disturbance patterns. However, this does not include the traditional form of single-tree selection silviculture that relied on very minor disturbances and used negative exponential diameter distributions to guide the selection of target structures. Instead, the creation of simpler two- or three-aged stand structures is recommended, as these require less frequent entries, provide sufficient light resources for regeneration of shade-intolerant species, and more closely represent the effects of natural disturbance processes (O’Hara 1998).”²

The regulatory and forest management mechanism which most closely mimics natural patterns of small-scale temporal-spatial disturbance is Group Selection (14 CCR §§ 913.2(a)(2)(B), 933.2(a)(2)(B), and 953.2(a)(2)(B)), which allows for the harvesting of trees in small group clearings, not to exceed two and a half acres in size, and not to exceed twenty percent of the THP area in aggregate.

In 2019 and 2020, the Board engaged in rulemaking actions which addressed the regeneration requirements in stocking regulations in order to address improved forest resilience to drought, fire, forest pests and disease, and increase carbon sequestration rates statewide (OAL Rulemaking Matter Numbers 2019-1003-01S and 2020-0420-04S). These regulations modernized and improved the flexibility of forest management activities related to stocking by decreased minimum regeneration stocking requirements, which were based on forest data roughly seventy years out of date, in order to allow for lower forest densities which lower competition, mortality, water use, and, ultimately, large scale wildfires which have the potential to destroy forest resources on the landscape level.

The problem is that current regulations related to stocking following certain selection silvicultural ac-

tions do not address these changing conditions and do not provide for optimal stocking conditions in light of those conditions. Currently, group selection harvesting regulations limit the portion of a THP area which may be harvested through the creation of group openings in a pattern which encourages, at a minimum, 5 distinct age classes, which is unlikely to achieve the level of resilience that is provided by optimal, or even historic, forest conditions. Furthermore, the existing regulations contain rigid prescriptive requirements for stocking conditions which are often outdated, or even inappropriate, in their application, or simply do not provide adequate flexibility to achieve the level of forest resiliency which is necessary to address the changing climatic conditions of the state. The proposed action was developed in response to these changing ecological conditions and the exclusion of shade intolerant (and fire adapted) species and is intended to continue the work on establishing resilient, healthy forests that the Board began in 2019 by addressing structural stocking components, rather than simply the prescriptive quantitative stocking minimums.

This proposal will allow for improved overall flexibility in the management of forests through increased opportunities for the use of group selection to promote heterogeneity in stands, encourage shade tolerant reproduction, better fuel profiles, and greater retention of forests into the future.

The amendments were developed, in part, help to address certain specific forest health and ecological goals identified by the Board and clarify how those goals may achieve suitable resource conservation. These goals include:

- Increased carbon sequestration
- Reduction in fire risk, fuels loading
- Increased resilience to forest pests
- Increased resilience to drought/increased water yield
- Appropriate stocking for resilient forests in a changing climate
- Avoidance of large-scale disturbances which promote homogeneity in forests
- Promoting retention of feature favorable to wildlife

The *purpose* of the proposed action is to provide a modification to the Group Selection Method, allowing for more openings and therefore encourage shade intolerant species regeneration and allow for the generation of fewer, more resilient age-classes, clarify retention standards, and provide more flexibility in the management of uneven aged forests through the elimination or simplification of prescriptive standards which may not be suitable for the establishment of resilient forests.

¹ CAL FIRE, “Top 20 Largest California Wildfires. https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf, accessed July 2, 2022.

² USDA Forest Service General Technical Report PSW-GTR-193. 2004

The *effect* of the proposed action is a regulatory scheme related to selection silviculture which provides more opportunities for the management of forests in a manner that can address the changing forest and climatic conditions throughout the state.

The *benefit* of the proposed action is forest stands that will be more receptive to the inevitable fires that will occur, and provide increased opportunity to landowners to manage for improved resiliency.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to timber operations within State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statutes to which the proposed action was compared: Chapter 8, Part 2, Division 4, Public Resources Code.

Regulations to which the proposed action was compared: Article 4, Subchapters 4, 5, & 6, Chapter 4, Division 1.5, Title 14, California Code of Regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations related to the harvesting of timber on private or state-owned timberland. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5))

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the conduct of timber operations and will not result in any direct or indirect costs or savings to any state agency.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed 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 (by making it costlier to produce goods or services in California).

FACTS, EVIDENCE, DOCUMENTS,
TESTIMONY, OR OTHER EVIDENCE
RELIED UPON TO SUPPORT INITIAL
DETERMINATION IN THE NOTICE THAT
THE PROPOSED ACTION WILL NOT HAVE
A SIGNIFICANT ADVERSE ECONOMIC
IMPACT ON BUSINESS

(pursuant to GOV § 11346.2(b)(5) and GOV
§ 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating forest practice in California that the Board brings to bear on regulatory development.

STATEMENTS OF THE RESULTS OF THE
ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)–(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));
- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). The proposed action will result in a more efficient and effective regulatory scheme for the determination of Class II–L watercourses and improved regulatory certainty to the public through the elimination of certain regulatory sunset provisions. The proposed action will not affect the health and welfare of California residents or worker safety.

COST IMPACTS ON REPRESENTATIVE
PERSON OR BUSINESS
(pursuant to GOV § 11346.5(a)(9))

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. No adverse impacts are to be expected.

BUSINESS REPORT
(pursuant to GOV §§ 11346.5(a)(11) and
11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS
(defined in GOV § 11342.610)

The proposed regulation may affect small business, though small businesses, within the meaning of GOV § 11342.610, are not expected to be significantly affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if it does not comply with the regulation.

ALTERNATIVES INFORMATION

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attention: Eric Hedge
Regulations Program Manager
P.O. Box 944246
Sacramento, CA 94244–2460
Telephone: (916) 619–9796

The designated backup person in the event Mr. Hedge is not available is Jane Van Susteren, Regulations Coordinator for the Board of Forestry and Fire Protection. Ms. Van Susteren may be contacted at the above address or phone.

AVAILABILITY STATEMENTS
(pursuant to GOV § 11346.5(a)(16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at: <https://bof.fire.ca.gov/regulations/proposed-rule-packages/>.

TITLE 22. DEPARTMENT OF SOCIAL SERVICES

ITEM #1 SINGLE LICENSE CHILD CARE CENTER REGULATIONS

The California Department of Social Services (hereafter known as CDSS) hereby gives notice of the proposed regulatory action(s) described below. A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the public comment period, any interested person, or his or her authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be sent to:

California Department of Social Services
Office of Regulations Development
744 P Street, MS 8–4–192
Sacramento, CA 95814
Telephone: (916) 657–2856, Fax: (916) 653–7395
Email: ord@dss.ca.gov

Statements or arguments relating to the proposals may be submitted in writing, e-mail, or by facsimile to the address/number listed above. All comments must be received by, September 12, 2022.

Following the public comment period, CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed above. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at *CDSS Public Comment Period for Proposed Regulations* (<https://www.cdss.ca.gov/inforesources/letters-regulations/legislation-and-regulations/regulations-home-page/cdss-regulation-changes-in-process-and-completed-regulations/public-hearing-information>). Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed above. Following the public comment period, copies of the Final Statement of Reasons will be available at the above address.

CHAPTERS

California Code of Regulations (CCR), Title 22, Division 12, sections 101152, 101169, 101182, 101185, 101215.1, 101226.2, 101415, 101415.1, 101416.5, 101417, 101438.3, 101451, 101482, 101515, 101516.2, 101538.2, 101538.3, 101561, 101582, 101615, 101616.2, 101638.2, 101638.3, 101639, and 101639.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CDSS licenses child day care facilities for children. CDSS is proposing amendments and adoptions to CCR, Title 22, Division 12, for Child Care Centers (CCC). The proposed regulations will ensure that risk factors are addressed regarding the implementation of a single license child care center.

Within the proposed regulations, CDSS will implement new single license child care center procedures and requirements for new license applicants, while maintaining existing health and safety protections for infants and children of varying ages.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The CDSS has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the CDSS has concluded that these are the only regulations that concern a single license child care center. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Anticipated Benefits of the Proposed Regulations

The benefits of the regulatory action to the health and welfare of infants and children served in child care environments are as follows: risks posed to the infants and young children in child care center settings will be decreased by maintaining existing health and safety regulatory protections under a single license, thus, streamlining licensure and maximizing administrative efficiency while supporting a continuum of services in a manner consistent with all respective health and safety requirements.

DISCLOSURES REGARDING THE PROPOSED ACTION/FISCAL IMPACT

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500–17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts. There are no “state-mandated local costs” in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code (GC) or Section 6 of Article XIII B of the California Constitution.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact only new licensees that make the business decision to serve different age components under a single license. There is no requirement for licensees to serve different age components and the age components served is at the licensees’ discretion. Therefore, the proposed changes have no adverse economic impact on the businesses.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

Cost impacts on a representative private person or businesses: CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The CDSS has determined that there may be a potential cost saving on child care center businesses as a result of the proposed action. Under the Single License Child Care Center structure, Child Care Centers will pay licensing fees based on total capacity, whereas fees are currently based on capacity of children for each facility type.

SMALL BUSINESS IMPACT STATEMENT

CDSS is not aware of any cost impacts that will impact small businesses that would incur in compliance with the proposed action. The proposed regulatory action would streamline the licensure process while maintaining existing health and safety protections for infants and children of varying ages.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or

create or expand businesses in the State of California Worker safety and the state's environment will be unaffected by the proposed regulations. The benefits of the regulatory action to the health and welfare of infants and children served in child care environments are as follows: streamlines licensure and creates provider flexibility, while supporting a continuum of services to children that maintains current regulatory protections based on the ages of infants and children in care.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. A more effective, less burdensome, and/or cost-effective method to administer and regulate the single license requirement has not been communicated to the CDSS. The CDSS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AUTHORITY AND REFERENCE CITATIONS

Health and Safety (H&S) Code section 1596.951 gives CDSS the authority to develop these regulations.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person:

Tyler Penn
(916) 657-2586

Back-Up:

Oliver Chu
(916) 657-2586

TITLE 22. DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION

TRANSCATHETER AORTIC VALVE REPLACEMENT DATA ACQUISITION

TITLE 22, DIVISION 7, CHAPTER 10, ARTICLE 6.5: TAVR Data Acquisition

NOTICE IS HEREBY GIVEN that the Department of Health Care Access and Information (HCAI) proposes to add Sections 97140–97160 of Title 22 of the California Code of Regulations (CCR).

HCAI also proposes to incorporate by reference the American College of Cardiology National Cardiovascular Data Registry (NCDR®) TVT Data Release Consent Form (DRCF) for the Society of Thoracic Surgeons/American College of Cardiology Transcatheter Valve Therapy Registry (STS/ACC TVT Registry™).

I. PUBLIC HEARING

HCAI has not scheduled a public hearing. Any interested person, or his or her duly authorized representative, may submit a written request for a public hearing, pursuant to Section 11346.8(a) of the Government Code. The written request for a hearing must be received by HCAI's contact person, designated below, no later than 15 days prior to the close of the written comment period.

II. WRITTEN COMMENT PERIOD AND CONTACT PERSON

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. All comments must be received by HCAI no later than 5:00 p.m., PDT on September 26, 2022.

Inquiries and comments concerning the proposed regulations should be addressed to the primary contact person named below. Comments delivered by e-mail are preferred. Comments may also be faxed, hand delivered, or mailed to:

Nancy Coronado
Research Data Specialist, Quality Indicators
Group
Information Services Division — Healthcare
Analytics Branch
Department of Health Care Access and
Information
2020 West El Camino, Suite 1100
Sacramento, CA 95833
Telephone: (916) 326-3879, Fax: (916) 445-7534
E-mail: Nancy.Coronado@HCAI.ca.gov

Inquiries and comments may also be addressed to the backup contact person:

Holly Hoegh, Ph.D.
Manager, Quality & Performance Section
Information Services Division — Healthcare
Analytics Branch
Department of Health Care Access and
Information
2020 West El Camino, Suite 1100
Sacramento, CA 95833
Telephone: (916) 326-3868, Fax: (916) 445-7534
E-mail: Holly.Hoegh@HCAI.ca.gov

Each comment may include the author's name, U.S. Postal Service address, and e-mail address, if applicable, so that the addressee may be included in future communications if the text of the currently proposed regulations changes.

III. AUTHORITY AND REFERENCE

Authority: California Health and Safety Code, Section 128745.

Reference: California Health and Safety Code, Sections 128745 and 128748.

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. *Summary of Existing Laws and Regulations*

Health and Safety Code Section 128745 requires HCAI to publish at least one risk-adjusted outcome report for coronary artery bypass graft surgery, transcatheter aortic valve replacement (TAVR), or any type of interventional cardiovascular procedure for procedures performed in the state annually.

Health and Safety Code Sections 128745 and 128748 provide for the appointment of a Clinical Advisory Panel (CAP) to advise HCAI on aspects of cardiovascular outcomes reporting. Upon recommendation of the CAP, HCAI may add any clinical data elements included in the Society of Thoracic Surgeons' database or other relevant databases to be collected from hospitals. At the November 4, 2021 public meeting, the CAP recommended HCAI move forward with hos-

pital-level TAVR outcomes reporting and at the April 13, 2022 public meeting, recommended collection of TAVR data elements through participation in and transferring data from the STS/ACC TVT Registry™ that is part of the NCDR®.

There are currently no regulations related to TAVR data collection. These new sections will require California TAVR hospitals (current and future) to participate in the STS/ACC TVT Registry™. In addition, this section will require all California TAVR hospitals to complete, sign and submit a DRCF that directs the NCDR® to transfer their data to HCAI.

2. *Policy Statement Overview/Specific Benefits of Proposed Regulation*

TAVR is an established treatment for severe, symptomatic, aortic stenosis (AS) in patients of all risk categories and now comprises 12.5% of all aortic valve replacements. TAVR is a less invasive alternative to traditional surgical aortic valve replacement (SAVR), with equivalent or superior outcomes. The success and increase in use of TAVR are a result of advances in technology, greater operator experience, and improved outcomes. Indications have recently expanded to include patients considered to be at low risk for SAVR. In California, TAVR has expanded from 86 procedures in 2011 to 7,356 procedures in 2020.

The objective of the proposed new section of regulations is to acquire STS/ACC TVT Registry™ data for California TAVR hospitals in order to produce risk-adjusted outcomes.

The Centers for Medicare and Medicaid Services (CMS) require participation in the STS/ACC TVT Registry™ in order for hospitals to be reimbursed. Currently, more than 95% of California TAVR hospitals participate in this registry (accounting for more than 97% of California TAVR volume). Acquiring this registry data eliminates the burden to hospitals that otherwise would be required to report the same data directly to HCAI. In addition, this would yield clinical data that is more complete for accurately reporting on TAVR outcomes and accounting for underlying risk than the administrative data collected at HCAI.

3. *Determination of Inconsistency/Incompatibility with Existing State Regulations*

As required by Government Code Section 11346.5, subsection (a)(3)(D), HCAI evaluated the language contained in the proposed section. HCAI has determined that these proposed regulations are not inconsistent with or incompatible with existing state regulations.

4. *Documents Incorporated by Reference*

TAVR Data Release Consent Form revised 6/21/2022

V. DISCLOSURES REGARDING THE PROPOSED ACTION

HCAI has made the following initial determinations:

1. Mandate on local agencies and school districts: None.
2. Cost or savings to any state agency: The estimated costs to HCAI for acquiring the data and producing the report are absorbable.
3. Costs to any local agency or school district that are required to be reimbursed by the state in accordance with Government Code Sections 17500 through 17630: None.
4. Other non-discretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impact on representative private persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
7. Significant effect on housing costs: None.
8. Significant statewide adverse economic impact directly affecting business: HCAI has made an initial determination that the action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with other businesses in other states.
9. Effect on Small Business: HCAI has determined that the proposed section does not affect small business. The health care facilities affected by the action either have more than 150 beds or more than \$1,500,000 in annual gross receipts. In accordance with Government Code Section 11342.610, these health care facilities are not defined as small businesses.

VI. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

Outreach to California TAVR hospitals determined that this regulatory action will have a negligible economic impact to their programs. Over 95% of these hospitals currently participate in the STS/ACC TVT Registry™, so minimal additional data abstraction or submission will be required.

Therefore, HCAI has concluded that this regulatory action would not affect the following:

- (1) The creation of jobs within the state.
- (2) The elimination of jobs within the State of California.
- (3) The creation of new businesses within California.

- (4) The elimination of existing businesses within California.
- (5) The expansion of businesses currently doing business in the state.
- (6) The benefit to the public is using this data for outcomes reports will provide health care consumers and purchasers with a tool to assess the relative quality of health care delivered to TAVR patients. The proposed regulations are not expected to affect worker safety or the state's environment.

VII. REASONABLE ALTERNATIVES STATEMENT

In accordance with Government Code Section 11346.5, subsection (a)(13), HCAI must determine that no reasonable alternative it considered 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

VIII. AVAILABILITY OF EXPRESS TERMS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH PROPOSED RULEMAKING IS BASED

HCAI will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address given for the contact persons. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations, the initial statement of reasons, economic impact assessment contained in the initial statement of reasons, a letter from the CAP Chair and all documents incorporated by reference.

In developing these regulations, HCAI conducted webinars with affected hospitals where discussions determined that the fiscal impact to TAVR hospitals will be negligible.

IX. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL

After considering all timely and relevant comments received, HCAI may adopt the proposed regulations substantially as described in this notice. If HCAI makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to

the public for at least 15 days prior to the date HCAI adopts the regulations as revised.

Please send requests for copies of the modified text to the listed contact person. The modified text will also be available on HCAI's website at:

<https://HCAI.ca.gov/about/laws-regulations/>

HCAI will accept written comments on the modified regulations for 15 days after the date on which they are made available.

X. AVAILABILITY OF FINAL STATEMENT OF REASONS AND RULEMAKING FILE

The Final Statement of Reasons and Rulemaking File including a summary of all comments and responses will be available, after its completion, through HCAI's website at:

<https://HCAI.ca.gov/about/laws-regulations/>

The Final Statement of Reasons will also be available for review from the designated contact person.

XI. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and text of the proposed regulations in underline and strikeout can be accessed through our website at:

<https://HCAI.ca.gov/about/laws-regulations/>

CORRECTED ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

OFFICE OF ADMINISTRATIVE LAW
(Pursuant to title 1, section 270, of the California
Code of Regulations)

The Office of Administrative Law has accepted for consideration a petition challenging various provisions contained in the Department of Resources Recycling and Recovery's "Precertification Training Manual (copyright 2017)."

Please send your comments to:

Eric Partington, Senior Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Leonard Lang
1713 Mimosa Lane
Eulless, TX 76039

Agency contact:

Kris Chisholm, Attorney
CalRecycle
Legal Affairs Office
Regulations Unit
1001 I Street, MS-24B
Sacramento, Ca 95812

Please note the following timelines:

Publication of Petition in Notice Register:
7/15/2022

Deadline for Public Comments: 8/15/2022

Deadline for Agency Response: 8/29/2022

Deadline for Petitioner Rebuttal: No later than 15
days after receipt of the agency's response

Deadline for OAL Decision: 11/14/2022

PETITION DECISION

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

July 15, 2022

Leonard Lang
1713 Mimosa Ln.
Eulless, TX 76039

Via email: lang@recyclingandregulation.com

Dear Mr. Lang:

Thank you for your letter of June 15, 2022, petitioning for the amendment of regulations relating to the Beverage Container Recycling Program. The Department of Resources Recycling and Recovery, Division of Recycling (Department) rejects your petition for rulemaking under Government Code sections 11340.6 and 11340.7.

The Beverage Container Recycling and Litter Reduction Act (Act) (Pub. Res. Code, Div. 12.1, com-

mencing with § 14500) requires applicants to operate a recycling center to complete a precertification training program. (Pub. Res. Code § 14538(c)(1).) The Department's regulations establish the identification requirements, frequency, and standards of examination. (Cal. Code Regs., title 14, § 2012(e), (g), and (h).) The Department's authority to take the action requested in the petition are generally found in Pub. Res. Code sections 14530.5(b) and 14536(b).

Your petition recommends amending section 2012 of Title 14 of the California Code of Regulations to:

- (1) base the precertification training on the following regulations without interpretations:
 - a. Section 2000(a)(4) Cancellation,
 - b. Section 2000(a)(10) Commingled,
 - c. Section 2000(a)(21) Empty Container,
 - d. Section 2000(a)(35) Processor,
 - e. Section 2000(a)(36.5) Recycling Center,
 - f. Section 2000(a)(37) Redeem,
 - g. Section 2000(a)(38) Redeemable,
 - h. Section 2000(a)(40) Refund Value,
 - i. Section 2000(a)(41) Rejected Container,
 - j. Section 2000(a)(41.2) Scrap,
 - k. Section 2000(a)(42) Segregated,
 - l. Section 2000(a)(45) Shrinkage,
 - m. Section 2085 Records,
 - n. Section 2090 Reports,
 - o. Section 2110 Cancelled/Rejected Containers,
 - p. Section 2400 Processors,
 - q. Section 2401 Inspection,
 - r. Section 2500 Recycling Center,
 - s. Section 2501 Inspection,
 - t. Section 25252 Records,
 - u. Section 2530 Reporting, and
 - v. Section 2535 Payments.
- (2) hold training classes weekly and online in both English and Spanish without limits placed on attendees,
- (3) lowering the passing score to 70%,
- (4) not require an application voucher to submit an application,
- (5) permit re-training and testing without limitations,
- (6) conduct 25% of the classes with industry experts and trainers, and
- (7) permit applicants to evaluate the precertification training and trainers.

As to item 1, the Department's precertification training already includes material to teach the provisions of the regulations you identify in your petition. The Department is interested in ensuring that applicants have a good understanding of the statutory and regulatory

requirements to operate a recycling center, and how to comply with those requirements. A mere recitation of the regulatory and statutory legal language is both unhelpful and an inefficient use of the time needed to conduct the precertification training.

As to item 2, the Department's regulations regarding the frequency of training permit flexibility for the Department to ensure that the supply of classes are closely matched with the demand for classes. Since December 2020, the number of classes held by the Department is 85. That is an average of four classes per month, two in English, and two in Spanish. Since the beginning of the Precertification Training requirement the Department has held 147 classes in Spanish and 228 classes in English. In June of 2020, 10 classes were held based on demand from the Covid impacts. Adjustments are routinely made to scheduling based on demand.

Item 3 is unnecessary at this time. A passing score of 80% to successfully complete the precertification training has not yielded an unacceptable failure rate. The average test score for English speaking trainees is 89.1%. The average test score for Spanish speaking trainees is 82.7%.

Item 4 is contrary to Pub. Res. Code § 14538(a)(2) which requires the completion of the precertification program to determine whether an application is complete. Simply put, the application cannot be complete without successful completion of the precertification training as required in Pub. Res. Code §14538(c)(1).

Item 5 is already permitted in the regulations as long as the training occurred within 6 months of the request to take another examination without having to take the training. Additional limitations on re-training and re-testing include a limitation of taking the training and examination a maximum of three (3) times in a twelve (12) month period as described in subdivision (j) of section 2012 of title 14 of the California Code of Regulations. Permitting re-training and re-testing without limitation would impose incredible burdens on Department resources and staff. Less than 5 trainees have not been able to pass the exam within the mandated time frame since January 2014.

As to item 6, the Department provides its experts in conducting the precertification training program. There is no one better qualified to represent the Department's interest in ensuring that applicants are trained to comply with the law. As you know, the public's interest and trust are placed on the operators of recycling centers because they eventually draw on funds paid by the public in California.

Item 7 does not require the promulgation of regulations to introduce. If applicants have feedback or wish to convey their thoughts about the training, they have many opportunities to do so when communicating with their application specialist. Suggestions and com-

ments are always welcome as the Department wants to ensure that the primary purpose of the precertification training is met, knowledge regarding how to comply with the law.

The Department has the authority to adopt, amend, and repeal regulations related to the Act pursuant to Public Resources Code sections 14530.5 and 14536. In accordance with Government Code section 11340.7(d), a copy of this letter is being transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register. The agency contact person on this matter and the person from whom a copy of the petition may be obtained is Craig Castleton, Regulations Unit, 1001 I Street, MS-24B, Sacramento, California 95814, regulations@CalRecycle.ca.gov, (916)322-0879.

Please direct any further communications regarding this petition or other petitions for rulemaking to the Regulations Unit at regulations@calrecycle.ca.gov.

Sincerely,

Mindy McIntyre
Chief Deputy Director
Department of Resources Recycling and Recovery
(CalRecycle)

**NOTICE OF DECISION
NOT TO PROCEED**

PRISON INDUSTRY AUTHORITY

Pursuant to Government Code section 91347

**RE: INCARCERATED INDIVIDUAL
(INMATE) GRIEVANCES AND APPEALS**

Pursuant to Government Code Section 11347, the California Prison Industry Authority (CALPIA) hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register on July 16, 2021, TITLE 15. CALIFORNIA PRISON INDUSTRY AUTHORITY, Incarcerated Individual (Inmate) Grievances and Appeals — Notice File Number Z2021-0630-01. The proposed rulemaking concerns inmate grievances and appeals.

Please direct any inquiries regarding this action or questions of substance of the proposed regulatory action to:

M. Doherty, Regulatory Analyst
California Prison Industry Authority
560 East Natoma Street, Folsom, CA 95630
Telephone (916) 358-1711

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

C. Pesce, Administrative Assistant
California Prison Industry Authority
560 East Natoma Street, Folsom, CA 95630
Telephone (916) 358-1711

Date: 4/25/2022

**SUMMARY OF
REGULATORY ACTIONS**

**REGULATIONS FILED WITH THE
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

Board of Equalization
File # 2022-0707-01
Exclusion from Change in Ownership —
Intergenerational Transfers

This emergency action modifies the property tax reassessment exclusions for certain transfers between parents and their children or grandparents and their grandchildren.

Title 18
Amend: 462.520
Filed 07/18/2022
Effective 07/18/2022
Agency Contact: Honey Her (916) 274-3523

Board of Equalization
File # 2022-0707-02
Change in Ownership — Base Year Value Transfers

This emergency action amends regulations for base year value transfers.

Title 18
Amend: 462.540
Filed 07/18/2022
Effective 07/18/2022
Agency Contact: Honey Her (916) 274-3523

Department of Public Health
File # 2022-0707-04
Prenatal Screening Regulations

In this request for filing and printing pursuant to Health and Safety Code section 124977(d)(1), the Department of Public Health is adopting emergency regulations pertaining to the genetic disease testing program carried out pursuant to Chapter 1 of Part 5 of Division 106 of the Health and Safety Code.

Title 17
Amend: 6520, 6523, 6525, 6531, 6532, 6540, 6540.1, 6541, 6542, 6543, 6544, 6545, 6546, 6547, 6548
Repeal: 6529
Filed 07/18/2022
Effective 07/18/2022
Agency Contact:
Hannah Strom-Martin (279) 217-0764

Division of Workers' Compensation
File # 2022-0713-05
QME Regulations in Response to COVID-19

In this emergency action, the Division of Worker's Compensation (DWC) re-adopts an emergency regulation regarding medical-legal evaluations in response to the continuing COVID-19 pandemic. Due to the continued spread of COVID-19, the DWC adopts this emergency regulation, which is similar to section 46.2. This emergency regulation allows Qualified Medical Evaluators (QME), Agreed Medical Evaluators (AME), or other medical-legal evaluations to be performed via telehealth.

Title 08
Adopt: 46.3
Filed 07/19/2022
Effective 07/19/2022
Agency Contact:
Nicole L. Richardson (510) 286-0656

California Horse Racing Board
File # 2022-0609-04
Non-Substantive Changes to Exchange Wagering

This action repeals regulations for exchange wagering due to the January 1, 2021 repeal of Business and Professions Code sections 19604.5, 19604.6, and 19604.7.

Title 04
Amend: 1481
Repeal: 2086; 2086.1; 2086.5; 2086.6; 2086.7; 2086.8; 2086.9; 2087; 2087.5; 2087.6; 2088; 2088.6; 2089; 2089.5; 2089.6; 2090; 2090.5; 2090.6; 2091; 2091.5; 2091.6; 2092; 2092.5; 2092.6; 2093
Filed 07/18/2022
Agency Contact:
Nicole Lopes-Gravely (916) 263-6397

California Prison Industry Authority
File # 2022-0606-04
Incarcerated Individuals Pay Rates, Schedule, and Movement

CALPIA amends 15 CCR 8006 for grammar, syntax, and diction.

Title 15
Amend: 8006
Filed 07/15/2022
Agency Contact: Moira Doherty (916) 413-1140

California Prison Industry Authority
File # 2022-0607-03
Executive Staff

In this non-substantive action, the California Prison Industry Authority updates one section to correct the capitalization of the term Chief Executive Officer.

Title 15
Amend: 8100
Filed 07/13/2022
Agency Contact: Moira Doherty (916) 413-1140

California Prison Industry Authority
File # 2022-0607-04
Sensitive Positions

This change without regulatory effect filing by the California Prison Industry Authority amends section 8106 to improve grammar, syntax, and diction.

Title 15
Amend: 8106
Filed 07/18/2022
Agency Contact: Moira Doherty (916) 413-1140

Department of Toxic Substances Control
File # 2022-0603-01
Electronic Manifesting of Hazardous Waste

In this action, the Department of Toxic Substances Control adopts and amends regulations concerning hazardous waste transportation manifests to conform to the recently amended governing federal law so as to maintain federal authorization for California's Hazardous Waste Control Program under the Resource

Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

Title 22

Adopt: 66262.24, 66262.25, 66263.25

Amend: 66260.2, 662620.10, 66262.20, 66262.21, 66262.23, 66262.44, 66263.20, 66263.21, 66263.32, 66264.71, 66264.72, 66264.78, 66264.1086, 66265.71, 66265.72, 66265.78, 66265.1087

Filed 07/14/2022

Agency Contact: Jackie Buttle (916) 255-3730

State Water Resources Control Board

File # 2022-0603-03

No Regulatory Effect Changes

This action makes changes without regulatory effect to correct cross-references within the California Code of Regulations, Title 22, Division 4, Chapter 3.

Title 22

Amend: 60320.116; 60320.130; 60320.208; 60320.216

Filed 07/18/2022

Agency Contact: Sherly Rosilela (916) 341-5578

Air Resources Board

File # 2022-0603-05

Transport Refrigeration Units Airborne Toxic Control Measures Amendments

This action targets emission reductions by (1) transitioning diesel-powered truck Transport Refrigeration Units (TRUs) to Zero Emission (ZE); (2) requiring newly-manufactured TRUs to meet a particulate matter (PM) emission standard, regardless of horsepower, and to use a lower global warming potential (GWP) refrigerant; (3) requiring TRU owners to report all TRUs operating in California to the California Air Resources Board (CARB), regardless of where they are based; (4) requiring TRU owners to pay TRU operating fees and affix a CARB-issued compliance label to both sides of the TRU housing every three years; (5) requiring facility owners to register their facility with CARB and pay a registration fee every three years; and (6) requiring vehicle owners of TRU-equipped trucks or tractor-trailers equipped with a TRU to ensure the TRU is compliant and drivers to allow CARB to visually inspect TRUs.

Title 13

Adopt: 2477, 2477.6, 2477.20, 2477.21, 2477.22

Amend: 2477.1, 2477.2, 2477.3, 2477.4, 2477.5, 2477.7, 2477.8, 2477.9, 2477.10, 2477.11, 2477.12, 2477.13, 2477.14, 2477.15, 2477.16, 2477.17, 2477.18, 2477.19, 2477.20 (Renumbered 2477.23), 2477.21 (Renumbered 2477.24)

Repeal: 2477.6

Filed 07/18/2022

Effective 10/01/2022

Agency Contact: Chris Hopkins (916) 445-9564

Board of Accountancy

File # 2022-0607-01

Fees

In this rulemaking action, the Board amends its regulation to increase both the initial permit fee and the renewal permit fee from \$120 to \$280.

Title 16

Amend: 70

Filed 07/19/2022

Effective 10/01/2022

Agency Contact: Deanne Pearce (916) 651-1740

Board of Pharmacy

File # 2022-0613-04

Inventory Reconciliation

In this action the Board of Pharmacy defines “inventory activities,” and “reportable losses” for purposes of the inventory reconciliation activities required for pharmacies and clinics to prevent the loss of controlled substances. It also identifies four non-Schedule II controlled substances that will require an inventory at least once every twelve months and specify that all other controlled substances must have an inventory completed within 3 months of a discovered loss and if no loss is found at least once every two years. Additionally, this action establishes that all individuals involved in completing the inventory or preparing the report must be identified and requires a signature and date of the individual who performs the inventory. This action will allow for the use of a digital, electronic, or biometric identifier in lieu of a physical signature if a printed signed statement confirming the accuracy of the report is retained. This action also establishes the inventory requirements for an inpatient hospital pharmacy within a drug storage area under the pharmacy’s control and for the inventory of an automated drug delivery system (ADDS) within the inpatient hospital.

Title 16

Amend: 1715.65

Filed 07/20/2022

Effective 01/01/2023

Agency Contact: Lori Martinez (916) 518-3078

California Energy Commission
File # 2022-0606-01
Geothermal Delegation

This action by the California Energy Commission (Commission) amends the Commission's procedures to delegate its site certification authority over geothermal power plants to counties.

Title 20
Amend: 1802, 1862, 1863, 1864, 1867, 1868, 1869, 1870
Filed 07/13/2022
Effective 07/13/2022
Agency Contact: Corrine Fishman (916) 805-7452

Department of Food and Agriculture
File # 2022-0603-04
CEM — Importation of Equidae

This action by the Department of Food and Agriculture updates the list of approved Contagious Equine Metritis (CEM) quarantine facilities in California to add Templeton Farms — the new location of the U.C. Davis Center for Equine Health — located in Templeton, California.

Title 03
Amend: 810.1
Filed 07/14/2022
Effective 07/14/2022
Agency Contact: Angelina Velez (916) 718-8242

Department of Health Care Access and Information
File # 2022-0603-02
HCAI Patient Data Reporting Requirements

This rulemaking action by the Department of Health Care Access and Information updates patient data reporting requirements for hospitals and other covered entities to align state regulations with national standards.

Title 22
Amend: 97215, 97219, 97222, 97226, 97231, 97246, 97255, 97259, 97264
Filed 07/18/2022
Effective 07/18/2022
Agency Contact: Natasha Warrington
natasha.warrington@hcai.ca.gov

Fish and Game Commission
File # 2022-0602-01
Central Valley Sport Fishing

This action by the Fish and Game Commission sets the Chinook salmon bag and possession limits for the 2022-2023 Central Valley Sport Fishing season.

Title 14
Amend: 7.40
Filed 07/13/2022
Effective 07/16/2022
Agency Contact: Maurene Trotter (916) 653-4899

State Personnel Board
File # 2022-0609-03
Appeal of a DQ from a Failed Drug Test or Background Investigation

This action amends section 213.6(b) by clarifying the grounds for an applicant to appeal disqualification (DQ) from eligibility based on failing a drug test.

Title 02
Amend: 213.6
Filed 07/19/2022
Effective 10/01/2022
Agency Contact: Lori Gillihan (916) 651-1043

Commission on Peace Officer Standards and Training
File # 2022-0606-02
Peace Officer Selection Standards

This action implements Government Code section 1031.3 which requires that regulations and screening materials related to the emotional and mental condition of peace officers incorporate identification of explicit and implicit bias in relation to race or ethnicity, gender, nationality, religion, disability, and sexual orientation.

Title 11
Amend: 1953, 1955
Filed 07/18/2022
Effective 08/01/2022
Agency Contact: Melani Singley (916) 227-4258

**PRIOR REGULATORY
DECISIONS AND CCR
CHANGES FILED WITH THE
SECRETARY OF STATE**

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit oal.ca.gov.