STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

NOTICE OF PROPOSED RULEMAKING

Title 8, California Code of Regulations

REGULATIONS OF THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

Chapter 3.2, Subchapter 2, Article 1.7, Section 340.70

Definition of Normal Consumption

(Published on April 15, 2022)

NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health ("the Division") within the Department of Industrial Relations proposes to adopt the foregoing provision of Title 8 of the California Code of Regulations (8 CCR) in the manner described in the Informative Digest, below.

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed amendments, on the following date:

Date: June 1, 2022
Time: 10:00 a.m. to 5:00 p.m.
Videoconference: Zoom Meeting (https://tkoworks.zoom.us/j/81346057913)
Meeting ID: 813 4605 7913
Teleconference: +1 669 900 6833 US (Direct Dial) 888 475 4499 US Toll-free
Meeting ID: 813 4605 7913

Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodations to facilitate effective communication for persons with disabilities are available upon request. Please contact the State Wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance. Accommodation requests should be made as soon as possible. Requests for an Assistive Listening System or Communication Access Realtime Translation should be made no later than five (5) days before the hearing.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to

the proposed amendments described below in the Informative Digest. The Division requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or at 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Rulemaking. Written comments, regardless of the method of transmittal, must be received by the Division by 5:00 p.m. on June 1, 2022, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: lbrokaw@dir.ca.gov. It is requested that email transmissions of comments, particularly those with attachments, contain the regulation identifier "Definition of Normal Consumption" in the subject line to facilitate timely identification and review of the comment;

2. By fax transmission to Lisa Brokaw, Staff Counsel, at (510) 286-7039;

3. By mail or hand-delivery to Lisa Brokaw, Staff Counsel, at Cal/OSHA Legal Unit, 1515 Clay Street, Suite 1901, Oakland, California 94612.

All comments, regardless of the method of transmittal, should include the commenter's name and U.S. Postal Service mailing address or e-mail address to enable the Division to provide the commenter with notice of any proposed changes to the Proposed Rulemaking on which additional comments may be solicited.

AUTHORITY AND REFERENCE

Labor Code section 60.5, subdivision (b) provides that the Division succeeds to and is vested with all of the powers, duties, purposes, responsibility, and jurisdiction of the Division of Industrial Safety.

Labor Code section 6308, provides that in enforcing occupational safety and health standards and orders and special orders, the Division may:

> (a) [d]eclare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render

the employees of every employment and place of employment safe as required by law or lawful order.

[¶] . . .[¶]

(c) Require the performance of any other act which the protection of the life and safety of the employees in employments and places of employment reasonably demands.

Authority Cited: Sections 60.5 and 6308, Labor Code.

Reference: Section 6403.3, Labor Code.

INFORMATIVE DIGEST OF PROPOSED ACTION

Policy Statement Overview

During the Covid-19 pandemic, hospitals reported that widespread shortages of personal protective equipment (PPE) put staff and patients at risk. Hospitals reported that heavier use of PPE than normal was contributing to the shortage and that the lack of a robust supply chain was delaying or preventing them from restocking PPE needed to protect staff. Hospitals also expressed uncertainty about the availability of PPE from federal and state sources and noted some vendors had sharply increased the prices of PPE.[1]

As a consequence of PPE shortages, workers wo provide direct patient care or provide services that directly support patient care experienced workplace practices that threatened their health and safety. To try to make existing supplies of PPE last, hospitals reported conserving and reusing single-use/disposable PPE, bypassing some PPE sanitation processes, and/or turning to non-medical-grade PPE, which they worried may put staff at risk.[2] As of February 24, 2022, the California Department of Public Health has reported 148,051 confirmed positive cases in health care workers and 568 deaths statewide.[3]

Labor Code section 6403.3, signed into law in September 2020, requires, among other things, that general acute care hospitals maintain an un-expired and unused stockpile of specified respirators, particulate filters or cartridges, surgical masks, isolation gowns, eye protection, and

[1] US Department of Health and Human Services. Office of the Inspector General. Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 24-27, 2020. Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 24-27, 2020 (OEI-06-20-00300; 04/20) (hhs.gov)

[2] US Department of Health and Human Services. Office of the Inspector General. Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 24-27, 2020. Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 24-27, 2020 (OEI-06-20-00300; 04/20) (hhs.gov)

[3] California Department of Public Health, "State Officials Announce Latest COVID-19 Facts," accessed February 25, 2022, https://www.cdph.ca.gov/Programs/OPA/Pages/NR22-037.aspx

shoe coverings, in "the amount equal to three months of "normal consumption." (Lab. Code § 6403.3, subd. (c)(1)). "Normal consumption" is not defined in Labor Code section 6403.3 and thus regulatory action is needed to interpret the phrase so that it is sufficiently clear and specific to allow impacted employers to properly comply with the statute's requirements. Such regulatory action is also needed so that the Division can consistently and uniformly enforce those requirements.

Hospitalizations as a result of Covid-19 are ongoing and, despite widespread use of vaccinations, variants of the virus continue to raise serious public health and safety concerns. The Delta variant created a new surge that began in July 2021 and led to over a 700% increase in hospitalizations in California over a two month time period.[4] Omicron, a subsequent variant, led to a new surge that began in December 2021. With each new surge comes upticks in hospitalizations requiring heightened levels of PPE. Furthermore, future surge events caused by illness or other health emergencies which, like Covid-19, would require adequate amounts of specified protective equipment to protect health care workers, are inevitable.

Without regulatory action, worker health may be impacted because of insufficient supplies of PPE for hospital workers. The proposed regulation will help avoid such harm by making the stockpile requirement of Labor Code section 6403.3 clear, specific and enforceable. This will help ensure that hospital workers have sufficient levels of protective equipment, particularly during periods of heightened demand, to safely perform their work, thus minimizing exposures and the potential for illness. It will also help avoid disruptions to patient care caused by the need to preserve equipment or by the absence of healthcare workers due to illness.

The specific changes are as follows:

New Section 340.70 Definition of Normal Consumption

This proposed standard, new section 340.70, would be in Subchapter 2, Regulations of the Division of Occupational Safety and Health. It would be under new Article 1.7 Definitions. The regulation would include the following provisions.

New Section 340.70(a)

Proposed subsection (a) specifies that, for purposes of the regulation, "employees" means those who provide direct patient care or who provide services that directly support patient care in a general acute care hospital and "facility" means a "general acute care hospital."

This provision is necessary for purposes of clarity, to enable affected employers to comply with the subsequent sections of the regulation that use those terms, and to ensure consistency with the

[4] California Department of Public Health, " State Public Health Officer Order of August 16, 2021, https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Hospital-and-Health-Care-System-Surge.aspx

provisions of Labor Code section 6403.3.

New Section 340.70(b)

Proposed subsection (b) defines normal consumption as the average amount of the equipment specified, for each category, type, and size of equipment, used by all employees over the previous two-year period. The equipment specified includes N95 filtering facepiece respirators, powered air-purifying respirators with high efficiency particulate air filters, elastomeric air-purifying respirators and appropriate particulate filters or cartridges, surgical masks, isolation gowns, eye protection, and shoe coverings.

This provision is necessary to establish that "normal consumption" is a projected level of demand based on an average of past consumption levels. It includes consumption by both employees who provide direct patient care and who provide services that support patient care. It also accounts not just for each category of specified equipment, which are individually set forth to provide clarity to affected employers, but the underlying types and sizes of each category used by employees as well.

This provision is necessary to establish that "normal consumption" is not a static amount based on one snapshot in time, but rather a two-year average that reflects the natural variations in consumption levels that occur over time based on fluctuations in demand. Including this variability is critical to obtaining a calculated average that is a reasonable representation of the amount of specified equipment actually used by hospital workers. This will reduce the likelihood that an employer will inadvertently underestimate the amount of equipment needed, thereby defeating the statutory purpose of maintaining a stockpile of specified equipment in order to avoid shortages.

This provision is also necessary to establish a reasonable sample period for determining the normal consumption of the equipment specified. If the sample period is too short, fluctuations in usage, which naturally occur over time depending upon need and circumstances, may create an average that is artificially high or artificially low. If the sample period is too long, data collection and retention may be impractical or overly burdensome. The two-year "look back" period is intended to strike a balance between these considerations.

New Section 340.70(c)

Proposed subsection (c) delineates how normal consumption is calculated. Subsection (c)(1) sets forth that for each year beginning April 1, the quantity of each category, type, and size of the specified equipment consumed by employees in the facility during the preceding two calendar years, from January through December, shall be added up and then divided by 8.

This provision is necessary to establish a uniform and straightforward formula that employers can use to calculate the required size of the stockpile and, for enforcement purposes, the Division can apply to determine whether an employer's stockpile is in compliance. Because section

6403.3, subdivision (c)(1) requires a stockpile in an amount equal to three months of normal consumption, the quantity of specified equipment consumed in the facility during each twenty-four-month period (January through December) is divided by 8. The calculation for each year, beginning April 1, is based on the preceding two-year period from January through December. This provides a three-month window, from January through March, for an employer to calculate normal consumption and adjust its stockpile accordingly. .

Subsection (c)(2) specifies that in calculating the normal consumption over the specified two year timeframe the quantity used to represent consumption during the *second year* shall be capped at 200% of the *first year* consumption total. The second year's capped quantity, rather than its actual quantity, shall be used as that year's consumption total for calculations in subsequent years.

This provision is necessary to account for consumption levels that may be unusually extreme or high and thus unreasonably skew the average two-year demand for equipment. The intent of the cap is to strike a balance between the need to prevent extreme deviations in usage from excessively distorting the average use or demand and the need to account for the fact that, to some extent, such deviations should not be dismissed entirely since an inherent uncertainty of actual demand does exist.

Subsection (c) contains a note that provides the following example of how the cap works when calculating three months of normal consumption for a particular type of equipment: Three months of normal consumption for the year beginning April 1, 2021, and ending on March 31, 2022, would be based on the total quantity of each category, type, and size of the specified equipment consumed during the period January 1, 2019, through December 31, 2020, divided by 8. Assume that consumption of a particular category and type of equipment, in a size medium, was 1000 pieces in 2019, 3000 pieces in 2020, and 1600 pieces in 2021. The quantity used to calculate the normal consumption for 2020 will be capped at 2000 pieces (1000 x 2). The calculation for three months of normal consumption for the year starting April 1, 2021, will thus be (1000 plus 2000)/8 = 375 pieces. The calculation for three months of normal consumption for the year starting April 1, 2022, will be (2000 plus 1600)/8 or 450 pieces.

This provision is necessary to provide clarity as to how to calculate three months of normal consumption using the cap and to illustrate precisely how the cap is applied in the following two-year period.

New Section 340.70(d)

Proposed subsection (d) sets forth four different methods by which an employer may determine consumption for each category, type, and size of equipment. These include the total quantity received in the facility from all sources for use by employees; the total quantity ordered by the facility from all sources for use by employees; the average monthly inventory, or; the quantity distributed to units in which employees provide patient care and to units providing services that directly support patient care, through all distribution methods, including separately chargeable

and non-separately chargeable items.

This provision is necessary to provide clarity and specificity as to the types of data that an employer may use to calculate its consumption rates. Many, if not most, affected employers do not maintain records of daily consumption levels for each category, type, and size of the specified equipment used by hospital workers. The options set forth in this section represent different proxies that employers may use in lieu of such data. Each of the four methods utilize types of data that different hospitals already collect in the normal course of business, allowing hospitals to easily apply pre-existing data in this context, rather than requiring the creation of new internal data collection systems.

Proposed subsection (d) also contains a note that states that an employer may use different methods of determining consumption, from among the four methods listed in the regulation, for each category and type of equipment.

This provision is necessary to address circumstances where an employer does not track each category and type of equipment in the same manner. It allows the employer the flexibility to choose which method to use for each category, so that pre-existing data can be used and new data collection systems are not required.

Federal Regulations and Statutes

No federal law or regulation exists or has been promulgated that specifically defines "normal consumption."

Evaluation Of Inconsistency/Incompatibility with Existing State Regulations

The Division evaluated the proposed regulation pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulation is not inconsistent or incompatible with any existing state regulations.

Forms Incorporated By Reference

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

Local Mandate

The Division has determined that the proposed regulation does not impose a mandate on local agencies or school districts requiring reimbursement by the State pursuant to Part 7 of Division 4 of the Government Code (commencing with section 17500).

Cost or Savings to State Agencies

The California Department of State Hospitals oversees five state hospitals in California. These hospitals are not general acute care hospitals and thus are not subject to the requirements of Labor Code section 6403.3. They would not incur any costs or savings as a result of the proposed regulation.

The California Department of Developmental Services (DDS) operates the Porterville Developmental Center (the Center). The Center has an Acute Medical Services Program and is subject to the requirements of Labor Code section 6403.3. The Acute Medical Services Program serves individuals from all residential units at the Center that become ill and require short-term acute or critically ill services. On an annual basis, the number of individuals served by the Acute Medical Services Program is a very small percentage of the Center's overall residential population. The Center already maintains an inventory of the types of equipment specified by Labor Code 6403.3(c) needed for Center-wide employee use, which far exceeds the small amount consumed by employees providing services in the Acute Medical Services Program. It would not incur any additional costs or savings as a result of the proposed regulation.

The Division is already required to enforce Labor Code section 6403.3, and incur any costs associated therewith, and would not incur any additional costs as a result of this proposed regulation.

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

There are approximately fifty four (54) city, county and district general acute care hospitals in the state.

As of April 1, 2021, Labor Code section 6403.3(c)(1) required each such hospital to maintain a stockpile of seven specified types of equipment in an amount equal to three months of normal consumption. If they did not have existing stockpiles of this volume, the hospitals incurred costs to come into compliance with the statute. Such costs were incurred under the statutory stockpile requirement.

The only potential economic impact this regulation would have would be the difference between the costs of a hospital's pre-existing statutorily required stockpile, created in the absence of a definition of "normal consumption," and the costs of a stockpile amassed using the proposed regulatory definition of "normal consumption," to the extent those amounts may differ. Such costs may include not only the cost of additional equipment needed to bring a stockpile inventory into compliance, but also costs related to additional space needed to store such equipment, depending on the employer's degree of non-compliance.

In order to calculate the foregoing, with the assistance of the California Hospital Association, the Division issued an anonymous survey to general acute care hospitals, requesting 2019 and 2020 consumption totals pertaining to the seven specified categories of equipment required to be stockpiled under the statute, as well as existing stockpile inventory amounts. Complete data was received from a sample of 55 general acute care hospitals.

Using the 2019 and 2020 consumption totals provided, the Division calculated the stockpile size that each respondent would be required to maintain, for each category of specified equipment, under the regulatory definition of normal consumption. The Division then compared that amount to the amount of each category of specified equipment that each respondent had actually stockpiled in the absence of a regulatory definition, to determine the total additional amount of each specified category of equipment that would be needed to bring the stockpile amounts into compliance. The totals, in each category of specified equipment, were extrapolated to a sample size of 415 hospitals, to determine the total amount of additional equipment that would be required by the state's total general acute care hospital population and a sample size of 360 hospitals, to determine the total amount of additional equipment that would be required by the state's private general acute care hospital population.

The difference between those two amounts is the amount of additional equipment that would be required by the state's city, county and district general acute care hospital population.

Additional Units of Specified Equipment Required (Total for 54 Local General Acute Care Hospitals)

N95s: 13,722
Powered Air-purifying Respirators: 165
Elastomeric Respirators: 57
Surgical Masks: 179,872
Isolation Gowns: 259,521
Eye Protection: 2,154
Shoe Covers: 84,352

Calculation of Equipment Costs:

The Division conducted market research into the cost of the seven (7) categories of specified equipment required to be maintained in each stockpile.[5] Based on research into a minimum of two types of each equipment, based on popularity and market availability, and the price that they were being sold at 3-5 businesses, the estimated cost per item was determined to be as follows, as of mid-February 2022:

[5] N95 filtering facepiece respirators, powered air-purifying respirators with high efficiency particulate air filters, elastomeric air-purifying respirators and appropriate particulate filters or cartridges, surgical masks, isolation gowns, eye protection, and shoe coverings.

N95s: $1.12
Powered Air-purifying Respirators: $1100.60
Elastomeric Respirators: $17.88
Surgical Masks: $0.50
Isolation Gowns: $1.76
Eye Protection: $5.77
Shoe Covers: $0.38

Based on the estimated cost per item of specified equipment and the number of additional units of specified equipment that the population of 54 local hospitals would be required to amass to bring their stockpile into compliance under the regulatory definition, the total additional costs of equipment that would be incurred by local government to bring its general acute care hospitals into compliance under the regulatory definition would be $789,163.00.

Cost Adjustment to Reflect Potential 2021 Consumption Total Increase:

Because the foregoing calculations were based on 2019 and 2020 consumption totals and thus reflect the costs that employers would incur to bring their stockpiles into compliance under the regulatory definition in year 2021, the estimated cost was adjusted to account for the fact that the costs that employers will incur to bring their stockpiles into compliance at the time that the proposed regulation would go into effect, Fall 2022, may be higher if a hospital's consumption totals increased in 2021.

Under the proposed regulation, because of the 200% cap on 2nd year consumption totals, the most that a stockpile can increase from year to year is by 150%. The Division took the most conservative approach and assumed the maximum 150% increase from 2020 to 2021.

Assuming a 150% increase in consumption totals in each category of specified equipment in 2021, the total cost of the additional amounts of the seven categories of specified equipment required to bring all 54 local general acute care hospitals into compliance under the proposed regulation in the year 2022 would be $1,183,745.00.

Calculation of Storage Costs:

In addition to the cost incurred by an employer for additional equipment needed to bring its stockpile into compliance under the regulatory definition, local hospitals may also incur costs to store the additional equipment.

The exact storage capacity of individual hospitals is unknown. Where additional storage space of 60 square feet or less would be required for the additional equipment procured to bring a stockpile into compliance under the proposed regulation, it is presumed that, particularly given the size of the facilities at issue and the amount of storage required to store the facility's pre-existing equipment stockpiles, the amount of additional space needed was marginal and could be accommodated by the facility's existing storage capacity.

Where more than 60 additional square feet would be required, although facilities of these sizes would like be able to accommodate that need with existing resources, the Division nevertheless calculated the yearly cost of a storage facility for the additional equipment.

The total additional storage costs per year for local general acute care hospitals would be approximately $13,728.00.[6]

Future Annual Costs:

If consumption totals remain stable or decline, an employer will not incur additional equipment costs under the proposed regulation because if the annual consumption totals do not increase, neither will the overall required size of the stockpile under the regulatory definition. Once the stockpile is brought into compliance, it must be "maintained" at that level, pursuant to the requirements of Labor Code 6403.3(c). The costs to an Employer to maintain its stockpile at existing levels would only include the replacement costs that would arise depending upon equipment usage rates. Such replacement costs would be incurred under the statutory stockpile requirement, regardless of the instant proposed regulation. Thus, under circumstances were consumption levels have not increased beyond the totals from the preceding year, the only costs an affected employer would incur under the proposed regulation would be continuing storage costs, if any.

The Division cannot predict future consumption levels, however, with regard to the current Covid-19 pandemic, it is reasonable to expect that consumption levels will likely stabilize, yet remain elevated in amounts consistent with 2021 consumption levels, in 2022. For this reason, the Division built into its calculations the 150% cost increase described above.

It is also reasonable to expect that beginning in 2023 and beyond, consumption totals will likely remain stable, as the current pandemic shifts into an endemic phase, or begin to decrease towards pre-pandemic levels. Because it is not expected that consumption totals will continue to increase

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[6] All package dimensions and number of units per equipment package type were provided by the Division of Occupational Safety and Health's Calibration and Inventory Control (CALICO) Laboratory. In each category, the number of additional units of each equipment category that was required was divided by the number of units per package, to determine the number of packages needed. That total was then multiplied by the square footage of the package to determine total square footage needed. Those amounts were then multiplied by 150% to determine the highest amount of square footage that would be needed in the year 2022, when the regulation would go into effect.

Based on data received from a consulting firm hired by the Division to do market research on the cost of storage space in various locales, the estimated average offsite storage costs in the state was $13 per square foot.

after the year 2022, the additional equipment costs incurred by affected employers under the proposed regulation after that year would be de minimus. The only continuing costs would be the storage costs, if any, required to accommodate the additional equipment amounts described above.

The total costs that would be incurred by local government would be an initial cost of $1,197,473.00, with ongoing costs of $13,728.00 per year.

Cost Impact on A Representative Private Person or Business:

The proposal does not impose any costs on private persons who are not employers.

Using the cost estimates for each specified category of equipment and the average amount of additional equipment in each category required per hospital, by capacity, described in detail above, the average additional equipment costs that a representative private general acute hospital would incur to bring its statutory stockpile into compliance under the regulatory definition is $16,920.00.[7] Average estimated storage costs for a representative private general acute hospital would be $318.00.

The proposed regulation would result in an initial annual cost of approximately $17,238.00 for a representative private general acute care hospital with ongoing annual costs of approximately $318.00.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including The Ability Of California Businesses To Compete:

The Division has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The proposed regulation is not a new requirement but rather defines a term used in an existing obligation. The scope of businesses potentially economically impacted by the regulation is very narrow – approximately 415 general acute care hospitals. The hospitals affected by this regulation are already required to stockpile specified equipment in compliance with Labor Code section 6403.3(c). The average costs that would be incurred per hospital are approximately $17,238.00. Generally speaking, the additional costs incurred by each hospital is proportionate to its size, with smaller hospitals incurring lower additional equipment and storage costs and vice versa. For each hospital, such costs are marginal in comparison to the costs incurred for daily PPE usage, let alone total operational costs of the business. As such, the Division does not believe that the additional costs created by the proposed regulation will adversely economically impact these businesses or impact their ability to compete.

[7] This amount includes the 150% adjustment factor to account for the potential increase in consumption totals in 2021.

Results of Economic Impact Assessment:

The Division has estimated that the costs to private business, to bring statutory stockpiles into compliance under the regulatory definition of "normal consumption," would be approximately $7,862,535.00. The annual cost for a typical private general acute care hospital would be $17,238.00 in the first year and $318.00 in continuing annual costs. For the discrete category of businesses affected by this proposed regulation, general acute care hospitals, these costs are marginal compared to not only the overall costs of PPE required for daily use, but hospital operations as a whole. As such, the proposed regulation should not result in any changes to hiring practices within existing companies or to the number or size of businesses in the state. The Division does not anticipate that there would be sufficient economic impact to reduce the number of general acute care hospitals in the state or to create new businesses to address requirements created by the proposal.

The total statewide savings that would result from the proposed regulation cannot be quantified. If healthcare workers have sufficient levels of protective equipment, there will be fewer disruptions to patient care caused by the need to preserve equipment or by the absence of healthcare workers due to illness. The number, frequency and extent of future surge events, however, are unknown and there is little data distinguishing deaths/illnesses of healthcare workers from occupational exposure as opposed to exposures from other sources. Although the benefits cannot be quantified, ensuring sufficient protective equipment is available in the event of a surge event, whether created by an illness or otherwise, will result in improved health for California health care workers and reduce the financial costs caused by medical care and lost workdays, costs which may be borne by employees, their families, employers, insurers and public benefits programs.

Benefits Of The Proposed Action

The regulation will provide employers with clear direction as to what their obligations are under the Labor Code 6403.3(c) stockpile requirement, so that they can in turn satisfy that requirement, and it will enable the Division to consistently and uniformly enforce the requirement. This will result in heightened occupational safety and health for impacted hospital workers.

The regulation will help ensure that healthcare workers have sufficient levels of protective equipment, particularly during periods of heightened demand, to safely perform their work, thus minimizing exposures and the potential for illness. It will also help avoid disruptions to patient care caused by the need to preserve equipment or by the absence of healthcare workers due to illness. This will reduce the financial costs caused by medical care and lost workdays.

Additionally, minimizing exposures and resulting illnesses of healthcare workers will help reduce transmissions in the workplace, including transmissions between healthcare workers and patients and between healthcare workers and their families, friends, and members of the public. Thus, this proposed regulation, by promoting the health and safety of healthcare workers, will

mean more effective containment of Covid-19 or any subsequent infectious disease for the public at large.

This regulation is expected to be neutral to and will provide neither a benefit nor a detriment to the state's environment.

Cost or Savings in Federal Funding to the State: None.

Significant Effect on Housing Costs: None.

Small Business Determination:

California Government Code section 11346.3 defines small businesses as businesses that are independently owned and operated, not dominant in their field of operation, and have fewer than 100 employees. Specifically excluded from the definition are entities organized as non-profits and health care facilities that exceed 150 beds or one million five hundred thousand dollars ($1,500,000) in annual gross receipts.

The Division is not aware of any general acute care hospitals operating in the state that meet this definition.

Business Report:

The proposed regulation would not subject affected businesses to a reporting requirement.

ALTERNATIVES STATEMENT

In accordance with Government Code section 11346.5, subdivision (a)(13), the Division must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the proposed 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 than the proposal described in this Notice.

The Division 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.

CONTACT PERSONS

Non-substantive inquiries concerning the Proposed Rulemaking, such as requests for copies of the text of the proposed amendments, and the location of public records, may be directed to Mary Ann David at (510) 286-7348 or mdavid@dir.ca.gov. Inquiries regarding the substance of the

proposed amendments may be directed to Lisa Brokaw at (510) 286-6958 or lbrokaw@dir.ca.gov.

AVAILABILITY OF TEXT OF PROPOSED REGULATION, INITIAL STATEMENT OF REASONS, AND RULEMAKING FILE

The full text of the Proposed Rulemaking, and all information upon which the Proposed Rulemaking is based, are available upon request from the contact persons named in this Notice.

As of the date of publication of this Notice, the rulemaking file for the Proposed Rulemaking consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulation, and the Economic and Fiscal Impact Statement (Form 399). As public comments are received during the rulemaking process, they will be added to the rulemaking file.

The Division's rulemaking file of the Proposed Rulemaking is available for inspection and copying throughout the rulemaking process, Monday through Friday, from 9:00 a.m. to 5:00 p.m., at 1515 Clay Street, Suite 1901, Oakland, CA 94612. The full text of the Proposed Rulemaking, and all information upon which the Proposed Rulemaking is based, also may be accessed through the agency's Internet website at Cal/OSHA - Proposed Regulations (https://www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html).

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

After considering all timely and relevant comments received, the Division may adopt the Proposed Rulemaking substantially as described in this Notice. If the Division 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 it adopts the amendments as revised. Any such modifications also will be posted on the Division's website.

Please send requests for copies of any modified amendments to the attention of Mary Ann David at the above telephone number or e-mail address. The Division 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 Mary Ann David at the above telephone number or e-mail address. The Final Statement of Reasons may also be accessed on the Division's website at: Cal/OSHA - Proposed Regulations (https://www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html). If adopted, the Proposed Rulemaking will appear in Title 8, California Code of Regulations, Sections 340.70.