DEPARTMENT OF FINANCE
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Danielle Lucido
1515 Clay Street, Suite 1901
Oakland, CA 94612

June 1, 2022

Dear Ms. Lucido:

Thank you for submitting the standardized regulatory impact assessment (SRIA) and summary (Form DF-131) for COVID-19 Prevention, as required in California Code of Regulations, title 1, section 200(a)(1) for major regulations. Proposed text of the regulations were not submitted, therefore comments are based solely upon the SRIA and other publicly available information.

The proposed regulations specify COVID-19 prevention standards to reduce the transmission risk in the workplace. This proposal will make permanent (for two years following enactment) existing emergency regulations. The standards provide guidance to employers including: establishing COVID-19 procedures, providing testing, face coverings, and notification of exposure to employees, assessing indoor ventilation, and reporting and recordkeeping. The SRIA estimates that about 75 percent of California's 16.6 million workers, or 12.4 million workers, across all major sectors will be covered by the proposed regulation. However, most standards will only be triggered when there has been a positive case, close contact, or outbreak in the workplace. The first year compliance costs are estimated at $489 million, about 56 percent of which comes from the cost of excluding asymptomatic cases and close contacts from the workplace. Benefits include avoided illness transmission, and avoided lost productivity and wages, valued at $10.5 billion in the first year. Fiscal impacts reflect state and local government compliance costs, valued at $16.1 million and $43.4 million, respectively, in the first year.

Finance generally concurs with the methodology in the SRIA, with the following exceptions. First, 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. Additionally, the SRIA should discuss the potential for fewer citations and penalties if the specificity provided by the proposed regulation is expected to provide sufficient guidance to employers to reduce citable violations.

Second, the SRIA must disclose the rationale underlying any assumptions that are material to the analysis as well as the plausible range of values and impacts if they deviate from the assumed base case. The SRIA is currently lacking several disclosures including but not limited to the following issues: 1) 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. 2) 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. 3) 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.

These comments are intended to provide sufficient guidance outlining revisions to the impact assessment if a SRIA is required. The SRIA, a summary of Finance's comments, and any responses must be included in the rulemaking file that is available for public comment. Finance understands that the proposed regulations may change during the rulemaking process. If any significant changes to the proposed regulations result in economic impacts not discussed in the SRIA, please note that the revised economic impacts must be reflected on the Standard Form 399 for the rulemaking file submittal to the Office of Administrative Law. Please let us know if you have any questions regarding our comments.

Sincerely,

[SIGNATURE ON FILE]

Somjita Mitra
Chief Economist

cc: Ms. Dee Dee Myers, Director, Governor's Office of Business and Economic Development
Mr. Kenneth Pogue, Director, Office of Administrative Law
Ms. Katrina Hagen, Director, Department of Industrial Relations Division of Occupational Safety and Health