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**INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: New Sections 3205, 3205.1, 3205.2, and 3205.3 of the General Industry Safety Orders**

**COVID-19 Prevention****GENERAL PURPOSE OF PROPOSED REGULATION**

Pursuant to California Labor Code (LC) section 142.3, the Occupational Safety and Health Standards Board (Board, or OSHSB) may adopt, amend, or repeal occupational safety and health standards or orders. LC 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.

From February through September 2021, the Division of Occupational Safety and Health (Division, or Cal/OSHA) held three advisory committee meetings to develop emergency and non-emergency regulations to protect workers from COVID-19 hazards.<sup>1</sup> These meetings were open to the public. Representatives from industry, labor, health and safety experts, advocacy groups, and government agencies participated and provided input. Also, from June through September 2021, the Board convened multiple subcommittee meetings, in addition to its monthly public meetings, to solicit further feedback on the proposed regulations.<sup>2</sup> Cal/OSHA

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<sup>1</sup> Cal/OSHA. Advisory Committee Meetings. COVID-19 Prevention, February 11, 12 & 16, 2021. (Agenda <https://www.dir.ca.gov/dosh/DoshReg/covid-19-emergency-standards/Agenda-2021-Feb-11,12,16.pdf>; Committee Roster <https://www.dir.ca.gov/dosh/DoshReg/covid-19-emergency-standards/Advisory-Committee-Roster-Feb-11-12-16-2021.pdf>; and DVD video recording); Cal/OSHA Advisory Committee Meeting. COVID-19 Prevention, September 23, 2021. (Agenda <https://www.dir.ca.gov/dosh/DoshReg/covid-19-emergency-standards/Agenda-2021-Sept-23.pdf>; Committee Roster <https://www.dir.ca.gov/dosh/DoshReg/covid-19-emergency-standards/Meeting-Roster-Sept-23-2021.pdf>; and video recording).

<sup>2</sup> Occupational Safety and Health Standards Board (OSHSB). COVID-19 Prevention Subcommittee meetings. June 21, 2021 (Agenda <https://www.dir.ca.gov/oshsb/documents/agendaJun212021.pdf>; Transcript <https://www.dir.ca.gov/oshsb/documents/transcriptjun212021.pdf>); July 13, 2021 (Agenda <https://www.dir.ca.gov/oshsb/documents/agendaJul132021.pdf>; Transcript <https://www.dir.ca.gov/oshsb/documents/transcriptJul132021.pdf>); July 20, 2021 (Agenda <https://www.dir.ca.gov/oshsb/documents/agendaJul202021.pdf>; Transcript <https://www.dir.ca.gov/oshsb/documents/transcriptJul202021.pdf>); August 13, 2021 (Agenda <https://www.dir.ca.gov/oshsb/documents/agendaAug132021.pdf>; Transcript <https://www.dir.ca.gov/oshsb/documents/transcriptAug132021.pdf>);

also presented multiple discussion drafts, provided opportunity for stakeholder comments, and solicited alternatives to the proposed regulation. Cal/OSHA heard in particular from many stakeholders representing both employers and workers, who shared the challenges in responding to the COVID-19 pandemic in a way that effectively protects workers from the hazards of the virus.

### **SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

The overall intent of this regulatory proposal is to reduce employee exposure to the virus that causes COVID-19 and therefore reduce COVID-19 illness and transmission. The proposed regulation sets forth requirements to protect employees not covered by existing section 5199 from COVID-19 exposure in the workplace. The proposed regulation includes additional requirements for COVID-19 outbreaks, employer-provided housing and employer-provided transportation. The Department of Industrial Relations (DIR) estimates the start date of the proposed regulation will be January 1, 2023, and the regulation will sunset after two years, except for some recordkeeping requirements. The proposed regulation sets forth compliance actions that are required for all employees in all places of employment, with exceptions for: 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 proposed regulation:

- Is based on the following authority and reference: LC section 142.3, which requires California to adopt occupational safety and health regulations that are equivalent to or more protective of worker health and safety than federal occupational safety and health regulations, and designates the Board as “the only agency in the state authorized to adopt occupational safety and health standards.” (LC section 142.3(a)(1).)
- Differs from existing federal regulations in that the federal Occupational Safety and Health laws and regulations do not include a specific and comprehensive standard to address the prevention of employee exposure to the virus that causes COVID-19 and therefore reduce COVID-19 illness in workplaces not covered by section 5199.
- Is not inconsistent or incompatible with existing state regulations. Section 3203, Injury and Illness Prevention Program (IIPP), and other existing title 8 standards applicable to

COVID-19 prevention are non-specific and not sufficient by themselves as to what employers are required to do to prevent exposure to COVID-19 during the pandemic.

- Will enhance employee safety by clarifying and making more specific requirements for addressing COVID-19 under section 3203, testing of close contacts, notice of COVID-19 cases, the provision and use of face coverings and respirators, ventilation, additional precautions to take during outbreaks, and COVID-19 prevention in employer-provided housing and transportation. Many of these requirements will be familiar to employers from the existing Emergency Temporary Standards, which will ease employer compliance.

Statement of the general need for the entire rulemaking:

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 elderly or have underlying medical conditions.<sup>3</sup> Serious symptoms of COVID-19 include shortness of breath, difficulty breathing, pneumonia, and organ failure, and COVID-19 can result in death.<sup>4</sup> The virus can damage the lungs, heart, and brain, and can cause long-term health problems.<sup>5</sup>

As of April 19, 2022, there have been 8,550,657 cases of COVID-19 and 89,054 COVID-19 deaths in California.<sup>6</sup> 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.<sup>7</sup>

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<sup>3</sup> 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>

<sup>4</sup> 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. <https://jamanetwork.com/journals/jama/fullarticle/2768391>

<sup>5</sup> CDC. Post-COVID Conditions, updated September 16, 2021. Accessed April 21, 2022. <https://web.archive.org/web/20220421223423/https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html>

<sup>6</sup> 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/>

<sup>7</sup> 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-12db1f10f535/resource/e6667716-5ec6-499f-aeab-0e085020135a/download/covid-19\\_cases\\_deaths\\_tests\\_data\\_dictionary.xlsx](https://data.chhs.ca.gov/dataset/f333528b-4d38-4814-bebb-12db1f10f535/resource/e6667716-5ec6-499f-aeab-0e085020135a/download/covid-19_cases_deaths_tests_data_dictionary.xlsx)

The SARS-CoV-2 virus that causes COVID-19 is an airborne transmissible pathogen.<sup>8,9</sup> 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.

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.<sup>10</sup> One California health officer noted that "farmworkers face the greatest infection risk not at work, but at home."<sup>11</sup> 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

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<sup>8</sup> An airborne transmissible pathogen is a pathogen transmitted through dissemination of airborne droplet nuclei, small particle aerosols, or dust particles containing the disease agent.

<sup>9</sup> 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>

<sup>10</sup> 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/>

<sup>11</sup> 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/>

positive for, COVID-19 but are unable to adequately quarantine at home.<sup>12</sup> 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 housing, and workers traveling to and from work in shared motor vehicles.<sup>13</sup>

Occupational safety and health standards within title 8 of the California Code of Regulations (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.<sup>14</sup> 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.<sup>15</sup> The risk of hospital admission, 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.<sup>16</sup>

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<sup>12</sup> State of California. Help for agricultural workers, Housing for the Harvest, updated March 22, 2022. Accessed on April 20, 2022. <https://covid19.ca.gov/housing-for-agricultural-workers/>

<sup>13</sup> CDC. Agriculture Workers and 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 December 31, 2020. Accessed on April 25, 2021.

<https://web.archive.org/web/20210425045916/https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>

<sup>14</sup> 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. doi:10.1001/jama.2021.19499. <https://jamanetwork.com/journals/jama/fullarticle/2786039>

<sup>15</sup> 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. <https://pubmed.ncbi.nlm.nih.gov/35075154/>

<sup>16</sup> 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. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8562985/pdf/193e1619.pdf>

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.<sup>17</sup> Exposure to the Omicron variant could result in “breakthrough infections” amongst vaccinated persons.<sup>18</sup> 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.<sup>19</sup>

Subvariants of Omicron, such as BA.2 and others, have been shown to be even more transmissible than the original Omicron variant.<sup>20</sup>

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.<sup>21</sup> 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.

The specific purpose and necessity of the proposed regulations are outlined below:

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<sup>17</sup> CDPH. Tracking Variants, dated February 3, 2022. Accessed on February 7, 2022.

<https://web.archive.org/web/20220207170746/https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-Variants.aspx>

<sup>18</sup> 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>

<sup>19</sup> 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.

[https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e4.htm?s\\_cid=mm7104e4\\_w](https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e4.htm?s_cid=mm7104e4_w)

<sup>20</sup> 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. <https://www.medrxiv.org/content/10.1101/2022.01.28.22270044v1.full.pdf>

<sup>21</sup> 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*. October 11, 2021; 16(10): e0258282. <https://doi.org/10.1371/journal.pone.0258282>

**New Section 3205. COVID-19 Prevention.**

**New Subsection 3205(a). Scope.**

This proposed subsection establishes the scope and application of the proposed regulation.

This subsection is necessary because the regulated community needs to know when the regulation applies to their workplace and when to take required measures to protect employees from exposure to COVID-19.

Proposed subsection (a)(1) provides that new section 3205 will expire two years after the effective date, except for the recordkeeping subsections (j)(2) through (4), which will expire three years after the effective date.

This subsection is necessary because the regulated community needs to know the time period during which the requirements of the regulation apply.

Proposed subsection (a)(2) establishes the application of the proposed regulation to all workplaces, with four exceptions.

The subsection is necessary so that employers whose workplaces are covered by the proposed action comply with the proposed regulation and take action to protect employees from exposure to COVID-19.

Proposed subsection (a)(3) establishes that nothing in this section or sections 3205.1 through 3205.3 is intended to limit more protective or stringent state or local health department mandates or guidance.

This subsection is necessary to inform the regulated community that the requirements of the proposed regulation, along with the requirements of sections 3205.1 through 3205.3, are not intended to limit more protective or stringent state or local health department mandates or guidance. State or local health department mandates or guidance may be more stringent than this section, and it is important that such mandates or guidance not be limited in any way by the provisions of this section.

**New subsection 3205(b). Definitions.**

This proposed subsection provides definitions, in subsections (b)(1) through (b)(12), for the terms “close contact,” “COVID-19,” “COVID-19 case,” “COVID-19 hazard,” “COVID-19 symptoms,” “COVID-19 test,” “exposed group,” “face covering,” “infectious period,” “respirator,” “returned case” and “worksite,” as used in sections 3205 through 3205.3.

This subsection is necessary to clarify the application and meanings of terms used in the proposed regulations. These terms have specific meanings in the proposed regulations that may differ from their meanings in other uses.

**New subsection 3205(c). Application of section 3203.**

Proposed subsection (c) deems COVID-19 to be a workplace hazard that must be addressed under section 3203, which requires employers to establish, implement, and maintain an effective, written Injury and Illness Prevention Program (IIPP). The subsection allows the employer's written COVID-19 procedures to be integrated into the employer's written IIPP required by existing section 3203, or kept as a separate document.

This subsection is necessary to clarify that COVID-19 is a workplace hazard that must be addressed under section 3203, and that employers' COVID-19 procedures must be included as part of their IIPP, to ensure that employers' COVID-19 procedures are written, effective, implemented, and maintained.

Proposed subsection (c)(1) states that an employee is potentially exposed to COVID-19 hazards when near other persons, whether or not the employee is performing an assigned work task. It also requires the employer to treat all persons as potentially infectious, regardless of symptoms, vaccination status, or negative COVID-19 test results. In addition, it requires COVID-19 to be considered a hazard specific to an employee's job assignments and job duties if those assignments and/or duties bring the employee near other persons.

This subsection is necessary to clarify that anytime an employee is near another person there is a potential for COVID-19 exposure to that employee. It is important that employers assume that all persons are potentially infectious for COVID-19, as many infectious persons have no symptoms of COVID-19, and some may test negative for the virus.

Proposed subsection (c)(2) requires that when determining measures to prevent COVID-19 transmission and to identify and correct COVID-19 hazards, employers shall review applicable orders and guidance related to COVID-19 from the State of California and the local health department with jurisdiction over the workplace. It also requires employers to treat COVID-19 as an airborne infectious disease. In addition, the proposed subsection lists some COVID-19 prevention controls applicable to the workplace.

This subsection is necessary, as it is important for employers to become familiar with the information in such orders and guidance documents to reduce the risk of transmission in the workplace. Also, treating COVID-19 as an airborne infectious disease will cause employers to use control measures appropriate for an airborne hazard. Listing some COVID-19 prevention controls ensures that employers consider these controls for their work operations.



Proposed subsection (c)(3) requires employees to receive training regarding COVID-19 in accordance with subsection 3203(a)(7).

This subsection is necessary to ensure that employees receive effective training on COVID-19 in the workplace so they understand the hazards of exposure to COVID-19 as well as the importance of control measures to minimize exposure.

Proposed subsection (c)(4) requires the employer's procedure to investigate COVID-19 illness at the workplace, as required by subsection 3203(a)(5), to include the requirements in subsections (c)(4)(A) and (c)(4)(B).

Proposed subsection (c)(4)(A) requires the employer to determine the day and time a COVID-19 case was last present and, to the extent possible, the date of the positive COVID-19 test(s) and/or diagnosis and the date the COVID-19 case first had one or more COVID-19 symptoms, if any were experienced.

This subsection is necessary to ensure that employers do a thorough investigation of any COVID-19 cases in the workplace to minimize the spread of COVID-19 in the workplace.

Proposed subsection (c)(4)(B) requires the employer to effectively identify and respond to persons with COVID-19 symptoms at the workplace. Employees shall be encouraged to report COVID-19 symptoms and to stay home when ill.

This subsection is necessary to ensure that employees and other persons at the workplace, such as independent contractors or employees of other employers, with COVID-19 symptoms are identified so that they will be treated appropriately and encouraged to stay home when ill, in order to minimize the spread of COVID-19 in the workplace.

Proposed subsection (c)(5) requires employers to have effective methods and/or procedures for responding to a COVID-19 case at the workplace that include the requirements of subsections (c)(5)(A), (c)(5)(B), (c)(5)(C), (c)(5)(D) and (c)(5)(E).

Proposed subsection (c)(5)(A) requires employers to immediately exclude from the workplace all COVID-19 cases and employees excluded under section 3205.1 (which covers COVID-19 outbreaks). The employer must demonstrate it has met the applicable requirements of subsections (c)(5)(A)1. through (c)(5)(A)4. These requirements are: COVID-19 cases who do not develop COVID-19 symptoms shall not return to work during the infectious period (subsection (c)(5)(A)1.); the specific conditions under which COVID-19 cases who develop COVID-19 symptoms shall not return to work (subsection (c)(5)(A)2.); the specific conditions under which a COVID-19 case must wear a face covering in the workplace (subsection (c)(5)(A)3.); and that the requirements in subsections (c)(5)(A)1. and (c)(5)(A)2. apply regardless of whether an employee has previously been excluded or other precautions were taken in response to an employee's close contact or membership in an exposed group (subsection (c)(5)(A)4.).

This subsection is necessary to limit transmission of COVID-19 in the workplace. Toward this end, it is important that employees who are COVID-19 cases or who are part of an exposed group in an outbreak do not come to work. Also, the use of face coverings is recommended to reduce the transmission of COVID-19.<sup>22</sup> In addition, the subsection clarifies that the requirements of subsections (c)(5)(A)1. and (c)(5)(A)2. must be followed, regardless of previous exclusions or other precautions taken.

Proposed subsection (c)(5)(B) requires employers to review current California Department of Public Health (CDPH) guidance for persons who had close contacts, including any guidance regarding quarantine or other measures to reduce transmission. Employers are also required to develop, implement, and maintain effective policies to prevent transmission of COVID-19 by persons who had close contacts.

This subsection is necessary to limit transmission of COVID-19 in the workplace. Toward this end, it is important that employees who are COVID-19 cases do not come to work, and for employers to have effective policies to prevent transmission of COVID-19 by persons who had close contacts. The standard does not make CDPH guidance binding on employers. However, the regulation requires employers to review such guidance. By directing employers to review relevant information from a credible source that regularly updates its guidance in response to changes in the pandemic, employers will be better able to develop and implement policies that are effective at reducing transmission.

Proposed subsection (c)(5)(C) requires that if an order to isolate, quarantine, or exclude an employee is issued by a local or state health official, the employee must not return to work until the period of isolation or quarantine is completed or the order is lifted.

This subsection is necessary to maintain consistency with criteria established by CDPH or the local health department and to ensure that employees do not return to work while potentially infectious.

Proposed subsection (c)(5)(D) specifies criteria under which the Division may, upon request, allow employees to return to work on the basis that the removal of an employee would create undue risk to a community's health and safety.

This subsection is necessary to ensure that control measures are in place to prevent COVID-19 transmission in the workplace before allowing employees to return to work.

Proposed subsection (c)(5)(E) requires that upon excluding an employee from the workplace based on COVID-19 or a close contact, the employer shall give the employee information

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<sup>22</sup> CDPH. Guidance for the Use of Face Masks, updated April 20, 2022. Accessed on May 20, 2022.  
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>

regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws. This includes any benefits available under legally mandated sick leave, if applicable, workers' compensation law, local governmental requirements, the employer's own leave policies, and leave guaranteed by contract.

This subsection is necessary to limit transmission of COVID-19 in the workplace. Toward this end, it is important that employees who are COVID-19 cases or excluded from the workplace because they had a close contact do not come to work. By providing employees information about benefits to which they may be entitled, these employees are more likely to report COVID-19 symptoms and exposures to COVID-19 to their employers, and to stay home from work when symptomatic.

**New subsection 3205(d). Testing of close contacts.**

Proposed subsection (d) requires employers to 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 subsection (b)(11), and provide them with the information on benefits described in subsection (c)(5)(E).

This subsection is necessary to prevent the spread of COVID-19 in the workplace when there has been a COVID-19 case present at the place of employment. Making COVID-19 testing available at no cost to employees following a potential exposure to COVID-19 in the workplace (except for certain employees who are unlikely to develop a COVID-19 illness) and providing information about benefits available to them will encourage these employees to get tested for COVID-19 and also to not report to work following a COVID-19 exposure.

**New subsection 3205(e). Notice of COVID-19 cases.**

Proposed subsection (e)(1) requires employers to 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 shall be provided as soon as possible, and in no case later than the time required to ensure that the exclusion requirements of subsection (c)(5)(A) are met.

This subsection is necessary to ensure that employees, independent contractors, and other employers are informed about potential exposure to COVID-19 during the infectious period. This is necessary to prevent the spread of COVID-19 in the workplace when there has been a COVID-19 case present at the place of employment. While this notice is currently required by Labor Code section 6409.6, this subsection is needed to ensure this notice is provided in the event that Labor Code section 6409.6 is repealed.

Proposed subsection (e)(2) requires, when Labor Code section 6409.6(a) or any successor law is in effect, the employer to provide notice of a COVID-19 case, in a form readily understandable to employees, as required by subsections (a)(1) and (a)(4) of that section. The notice shall be

given to all employees, employers, and independent contractors at the worksite during the infectious period.

This subsection is necessary to ensure that employees, independent contractors, and other employers are informed about potential exposure to COVID-19 during the infectious period. This is necessary to prevent the spread of COVID-19 in the workplace when there has been a COVID-19 case present at the place of employment. This subsection is also needed to clarify and make specific portions of Labor Code section 6409.6, and to incorporate portions of that statute within the relevant regulation.

Proposed subsection (e)(3) requires, when Labor Code subsection 6409.6(a) or any successor law is in effect, the employer to provide the notice required by Labor Code subsection 6409.6(a)(2) and (c) to the authorized representative, if any, of the COVID-19 case and of any employee who had a close contact. The employer shall also provide the notice required by Labor Code subsection 6409.6(a)(4) to the authorized representative, if any, of all employees on the premises at the same worksite as the COVID-19 case within the infectious period.

This subsection is necessary to ensure that authorized representatives, if any, of a COVID-19 case and of any employee who had potential exposure to COVID-19 during the infectious period are informed of this potential exposure. This is necessary to prevent the spread of COVID-19 in the workplace when there has been a COVID-19 case present at the place of employment. This subsection is also needed to clarify and make specific portions of Labor Code section 6409.6, and to incorporate portions of that statute within the relevant regulation.

**New subsection 3205(f). Face coverings.**

Proposed subsection (f)(1) requires employers to provide face coverings and ensure they are worn by employees when required by a CDPH regulation or order. The proposed subsection clarifies that when face coverings are required indoors, that includes spaces within vehicles, and specifies that face coverings shall be clean, undamaged, and worn over the nose and mouth.

This subsection is necessary to ensure that face coverings are provided to employees by employers and worn by employees, including employees within vehicles, when a CDPH regulation or order requires it. This is necessary to ensure that face coverings are provided and worn such that they will be effective at reducing the transmission of COVID-19 in the workplace.

Proposed subsection (f)(2) describes five exceptions to the requirement to wear face coverings under this section or sections 3205.1 through 3205.3: (A) when an employee is alone in a room or vehicle; (B) while eating or drinking at the workplace, provided employees are at least six feet apart and, if indoors, the supply of outside or filtered air has been maximized to the extent feasible; (C) while employees are wearing respirators required by the employer and used in

compliance with section 5144; (D) employees who cannot wear face coverings due to a medical or mental health condition or disability, or who are hearing-impaired or communicating with a hearing-impaired person. Such employees shall wear an effective non-restrictive alternative, such as a face shield with a drape on the bottom, if the condition or disability permits it; and (E) during specific tasks which cannot feasibly be performed with a face covering. This exception is limited to the time period in which such tasks are actually being performed.

This subsection is necessary to recognize that under the conditions specified in subsections (f)(2)(A) through (E), employees are not required to wear face coverings, either because exposure to COVID-19 is presumed to be unlikely [subsections (f)(2)(A) and (C)], or because the wearing of face coverings is incompatible with the conditions listed [subsections (f)(2)(B), (D), and (E)].

Proposed subsection (f)(3) requires that if an employee is not wearing a face covering pursuant to the exceptions in subsections (f)(2)(D) and (E), the employer must assess COVID-19 hazards and take action as necessary based on subsection (c) and on section 3203.

This subsection is necessary to ensure that procedures are in place to provide protection from COVID-19 to employees who are unable to wear a face covering, and to protect the employees working near such individuals, so as to reduce the transmission of COVID-19 in the workplace.

Proposed subsection (f)(4) prohibits employers from preventing any employee from wearing a face covering, including a respirator, when not required by this section, unless it would create a safety hazard.

This subsection is necessary to ensure that employees are permitted to wear face coverings when they choose to do so, even when not required by this section. Some employees may wish to wear face coverings where they are not mandated, including individuals with medical conditions that leave them with a greater risk of severe illness from COVID-19, or to reduce the risk of transmission both at work and to vulnerable members of their households, and/or to follow public health recommendations. This will help reduce the transmission of COVID-19 in the workplace.

#### **New subsection 3205(g). Respirators.**

Proposed subsection (g) requires employers, upon request, to provide respirators for voluntary use, in compliance with subsection 5144(c)(2), to all employees who are working indoors or in vehicles with more than one person. It also requires that when an employer makes respirators available for voluntary use, the employer must encourage their use. In addition, it requires employers to 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.

This subsection is necessary to minimize employee exposure to COVID-19 by ensuring that, upon request, respirators are provided to employees working indoors or in vehicles with more than one person; that employers encourage the use of respirators when they are provided for voluntary use by employees; that employees are provided with the correct size of respirator; and that employees receive training on basic information about their respirator and how to wear it. These requirements are necessary to prevent the spread of COVID-19 in the workplace.

**New subsection 3205(h). Ventilation.**

Proposed subsection (h)(1) requires, for indoor workplaces, employers to review guidance from CDPH and the Division regarding ventilation, including “Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments;”<sup>23</sup> 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 addition to using other methods, the employer may take one or more of the following actions to improve ventilation: maximize the supply of outside air to the extent feasible, except when the United States Environmental Protection Agency (EPA) Air Quality Index is greater than 100 for any pollutant or if opening windows or maximizing outdoor air by other means would cause a hazard to employees, for instance from excessive heat or cold [subsection (h)(1)(A)]; in buildings and structures with mechanical ventilation, filter circulated air through filters at least as protective as Minimum Efficiency Reporting Value (MERV) 13, or the highest level of filtration efficiency compatible with the existing mechanical ventilation system [subsection (h)(1)(B)]; and use High Efficiency Particulate Air (HEPA) filtration units in accordance with manufacturers’ recommendations in indoor areas occupied by employees for extended periods, where ventilation is inadequate to reduce the risk of COVID-19 transmission [subsection (h)(1)(C)].

This subsection is necessary to reduce employee exposure to COVID-19 in the workplace, and thus the risk of transmission of COVID-19 in the workplace, as increased ventilation and filtration reduce the concentration of potentially infectious material in indoor air.<sup>24</sup>

Proposed subsection (h)(2) requires employers subject to section 5142 or 5143 to review and comply with those sections, as applicable. A note provides a reminder of one of the key requirements of section 5142, namely, that heating, ventilating, and air conditioning (HVAC) systems must be operated continuously during working hours, with limited exceptions.

This subsection is necessary to ensure that where ventilation systems are in place, they are operated continuously during working hours. Ventilation reduces the concentration of

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<sup>23</sup> CDPH. Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments, Updated October 7, 2021. Accessed on June 8, 2022. <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Interim-Guidance-for-Ventilation-Filtration-and-Air-Quality-in-Indoor-Environments.aspx>

<sup>24</sup> CDC. Ventilation in Buildings, Updated June 2, 2021. Accessed on May 24, 2022. <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html>

potentially infectious material in indoor air, which in turn will reduce the risk of transmission of COVID-19 in the workplace.

Proposed subsection (h)(3) requires, in vehicles, employers to maximize the supply of outside air to the extent feasible, except when doing so would cause a hazard to employees or expose them to inclement weather.

This subsection is necessary to reduce employee exposure to COVID-19 in work vehicles, and thus the risk of transmission of COVID-19 in work vehicles, as increased ventilation reduces the concentration of potentially infectious material in indoor air, including in vehicles.

Proposed subsection (h)(4) requires that in a place of employment subject to section 3205.1, employers shall continue to comply with the ventilation requirements of subsection 3205.1(f) even after the outbreak has passed and section 3205.1 is no longer applicable.

This subsection is necessary to ensure that improvements in ventilation and air filtration required during an outbreak are continued after the outbreak has passed. This in turn will reduce the transmission of COVID-19 in workplaces that have had an outbreak.

**New subsection 3205(i). Aerosolizing procedures.**

Proposed subsection (i) requires that for employees in work settings that are exempt from section 5199 in accordance with the conditions in subsections 5199(a)(2)(A) or (B), who are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids, employers shall evaluate the need for respiratory protection to prevent COVID-19 transmission under section 5144 and shall comply with that section.

A note provides examples of work covered by subsection (i) which include, but are not limited to, certain dental procedures and outpatient medical specialties not covered by section 5199.

This subsection is necessary because when employees are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids, a respirator worn in accordance with the requirements of section 5144 may be needed to provide adequate respiratory protection. This requirement will reduce the transmission of COVID-19 in the workplace.

**New subsection 3205(j). Reporting and recordkeeping.**

Proposed subsection (j)(1) requires the employer to report information about COVID-19 cases and outbreaks at the workplace to the local health department whenever required by law, and shall provide any related information requested by the local health department. The employer shall report all information to the local health department as required by Labor Code section 6409.6. A note clarifies that in some circumstances, cases may constitute a COVID-19 outbreak

as defined by Labor Code section 6409.6 even when they do not trigger the application of title 8, section 3205.1.

This subsection is necessary to ensure that important information about COVID-19 cases in the workplace is maintained and reported to the local health department, to be used in the event that further surveillance or investigation is needed. Recordkeeping makes contact tracing possible, and contact tracing is a key component of combatting community and workplace transmission of COVID-19.

Proposed subsection (j)(2) requires the employer to keep a record of and track all COVID-19 cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of the positive COVID-19 test and/or COVID-19 diagnosis. The employer shall also keep a record of persons who had a close contact, including their names, contact information, and the date upon which they were provided notice of the close contact. These records shall be retained for two years beyond the period in which the record is necessary to meet the requirements of this section or sections 3205.1 through 3205.3.

This subsection is necessary to ensure that information that is needed to conduct contact tracing to determine which persons may have been exposed to COVID-19 is retained. This will reduce the transmission of COVID-19 in the workplace.

Proposed subsection (j)(3) requires employers to retain the notices required by subsection (e) in accordance with Labor Code subsection 6409.6(k) or any successor law.

This subsection is necessary to ensure that notices required by subsection (e), and the information contained in them, are retained as required by Labor Code subsection 6409.6(k) or any successor law. Retaining this information is important to aid in contact tracing efforts, which helps to reduce the transmission of COVID-19 in the workplace. This requirement is also necessary so that Cal/OSHA may enforce this provision of Labor Code section 6409.6.

Proposed subsection (j)(4) requires that personal identifying information of COVID-19 cases or persons with COVID-19 symptoms, and any employee medical records required by this section or by sections 3205.1 through 3205.3, shall be kept confidential unless disclosure is required or permitted by law. Unredacted information on COVID-19 cases shall be provided to the local health department with jurisdiction over the workplace, CDPH, the Division, and the National Institute for Occupational Safety and Health (NIOSH) immediately upon request, and when required by law.

This subsection is necessary to ensure that personal identifying information with regard to COVID-19 is kept confidential, as required by law, while ensuring that it is promptly available to government agencies engaged in COVID-19 response. This is necessary to reduce the spread of COVID-19 in the workplace.



**New subsection 3205(k). Orders.**

Proposed subsection (k) allows that pursuant to title 8, section 332.3, the Division may require an employer to take additional actions to protect employees against COVID-19 hazards through the issuance of an Order to Take Special Action.

This subsection is necessary to establish that additional measures may be required by the Division to reduce the transmission of COVID-19 at the workplace.

**New Section 3205.1. COVID-19 Outbreaks.**

**New subsection 3205.1(a). Scope.**

Proposed subsection (a) establishes that the proposed section will be in effect for two years.

This is necessary because the regulated community needs to know the time period during which the requirements of the regulation apply.

Proposed subsection (a)(1) establishes the application of the proposed regulation to a workplace covered by section 3205 if three or more employee COVID-19 cases within an exposed group visited the workplace during their infectious period during a 14-day period, unless a CDPH order or regulation defines outbreak using a different number of COVID-19 cases and/or a different time period, in which case this section applies when the number of cases at the worksite constitutes an outbreak under CDPH's definition.

The subsection is necessary to establish the conditions in which employers will be required to comply with the proposed regulation and to take action to reduce the further spread of COVID-19 at the workplace.

Proposed subsection (a)(2) sets forth the requirement to comply with this section until there are no new COVID-19 cases detected in the exposed group for a 14-day period.

The subsection is necessary to ensure that all COVID-19 cases associated with a COVID-19 outbreak are identified and specified actions are taken to reduce the spread of COVID-19 at the workplace, until the outbreak has been controlled.

**New subsection 3205.1(b). COVID-19 testing.**

Proposed subsection (b)(1) requires employers to make COVID-19 testing available at no cost to its employees within the exposed group immediately upon being covered by this section, regardless of vaccination status, during employees' paid time, except for returned cases and employees who were not present during the relevant 14-day period(s) under subsection (a).

The subsection is necessary to provide employees who were present during the relevant 14-day period(s) the opportunity to get tested for COVID-19 without being deterred by cost or feasibility, and for the employer to identify any additional COVID-19 cases. With testing, employees who test positive and have symptoms can get care earlier. Contacts can be traced and self-isolation or quarantine can be started sooner to help stop the spread of the virus. Exceptions to the testing requirements recognize that, for employees who have been a COVID-19 case in the previous 90 days, testing is unlikely to have benefits.<sup>25</sup>

Proposed subsection (b)(2) requires the employer to make COVID-19 testing available on a weekly basis to all employees in the exposed group who remain at the workplace.

The subsection is necessary to specify an increased testing frequency to prevent the spread of COVID-19 in the workplace when there have been three or more COVID-19 cases within an exposed group.

Proposed subsection (b)(3) establishes that employees who had close contacts must have a COVID-19 test taken within three and five days after the close contact, or must be excluded and follow the return to work requirements of subsection 3205(c)(5) starting from the date of the last known close contact.

The subsection is necessary to ensure that in an outbreak, employees who may be infectious are not present in the workplace until they test negative or the return to work requirements for COVID-19 cases are met.

#### **New subsection 3205.1(c)**

Proposed subsection (c) requires employees in the exposed group, regardless of vaccination status, to wear face coverings when indoors, or when outdoors and less than six feet from another person, unless one of the exceptions in subsection 3205(f)(2) applies.

The subsection is necessary to prevent the spread of COVID-19 during outbreaks through the use of face coverings. The subsection applies regardless of vaccination status, to address breakthrough infections that can occur in vaccinated persons. Exceptions are provided to be consistent with section 3205 and to address situations where face coverings cannot be used.

#### **New subsection 3205.1(d)**

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<sup>25</sup> CDC. Interim Guidance on Ending Isolation and Precautions for People with COVID-19, Updated January 14, 2022. Accessed on May 13, 2022. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>

Proposed subsection (d) requires employers to notify employees of their right to request a respirator for voluntary use under section 3205(g).

The subsection is necessary to ensure that employers notify employees of their right to request a respirator for voluntary use. Use of respirators will provide greater protection for the employees during an outbreak and will help prevent further transmission of COVID-19 in the workplace.

**New subsection 3205.1(e). COVID-19 investigation, review and hazard correction.**

Proposed subsection (e) requires that following a COVID-19 outbreak, the employer 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 investigation, review and changes must be documented.

The subsection is necessary to ensure that an investigation and review is conducted and COVID-19 hazards are identified and corrected to control and prevent further spread of the disease in a workplace where an outbreak has occurred.

Proposed subsection (e)(1) establishes the elements of the investigation of new or unabated COVID-19 hazards to include the employer's leave policies and practices, whether employees are discouraged from remaining home when sick, and the employer's COVID-19 testing policies. The subsection further requires the employer to identify and evaluate specific conditions in the workplace that the employer would need to control to prevent further COVID-19 transmission.

The subsection is necessary to ensure that employers review their policies and practices regarding leave, whether employees are discouraged from remaining home when sick, and COVID-19 testing policies to ensure they identify conditions that contribute to the transmission of COVID-19.

Proposed subsection (e)(2) establishes the review be updated every 30 days during which the section continues to apply, in response to new information or to new or previously unrecognized COVID-19 hazards, or when otherwise necessary.

The subsection is necessary to allow time for the employer's improvements to take effect. It is also necessary that the employer update the review after responding to any new information or to new or previously unrecognized COVID-19 hazards that an employer is likely to identify or be made aware of should an outbreak continue to occur, or when otherwise necessary.

Proposed subsection (e)(3) requires that the employers implement changes to reduce the transmission of COVID-19 based on the investigation and review required by subsection (e). The employer may consider moving indoor tasks outdoors or having them performed remotely,

increasing outdoor air supply when work is done indoors, improving air filtration, increasing physical distancing as much as feasible, respiratory protection, and other applicable controls.

The subsection is necessary to ensure that the employer implements changes for COVID-19 hazards identified by the investigation and review. The employer may consider specific measures that will help to control and prevent further COVID-19 transmission.

**New subsection 3205.1(f).**

Proposed subsection (f) specifies requirements for employers to filter circulated air with MERV-13 or higher efficiency filters, or if not compatible with the ventilation system, requires employers to use the filters with the highest compatible filtering efficiency. It also requires employers to use HEPA filtration units in accordance with manufacturers' recommendation in indoor areas occupied by employees for extended periods, where ventilation is inadequate to reduce the risk of COVID-19 transmission.

The subsection is necessary to reduce employee exposure to COVID-19 in the workplace, as filtering the air reduces the concentration of potentially infectious material in the indoor air.<sup>26</sup>

**New subsection 3205.1(g). Major outbreaks.**

Proposed subsection (g) specifies requirements the employer must comply with if 20 or more employee COVID-19 cases in an exposed group visited the workplace during their infectious period within a 30-day period.

The subsection is necessary to establish additional measures employers must take to reduce the further spread of COVID-19 during a major outbreak at the workplace.

Proposed subsection (g)(1) requires COVID-19 testing of all employees in the exposed group, regardless of vaccination status, twice a week, or more frequently if recommended by the local health department with jurisdiction over the workplace. Employees in the exposed group must be tested or be excluded and follow the return to work requirements of subsection 3205(c)(5).

The subsection is necessary to specify an increased testing frequency, and to test all employees in the exposed group, regardless of vaccination status, so infected employees can be excluded from work early to prevent the spread of COVID-19 in the workplace. Responding to a major outbreak requires complete information, which can only be acquired by testing of all employees in the exposed group. With more frequent testing, employees who test positive and

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<sup>26</sup> CDC. Ventilation in Buildings, Updated June 2, 2021. Accessed on May 24, 2022.  
<https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html>

have symptoms can get care earlier and close contacts can be traced to begin self-isolation or quarantine sooner to help stop the spread of the virus.

Proposed subsection (g)(2) requires employers to report major outbreaks to Cal/OSHA.

The subsection is necessary so that Cal/OSHA is aware of and may investigate major COVID-19 outbreaks where previous preventative measures have not been shown to be effective and further action is needed.

Proposed subsection (g)(3) requires employers to provide respirators for voluntary use in compliance with subsection 5144(c)(2) to employees in the exposed group, encourage their use, and train employees on the respirators.

The subsection is necessary to ensure that, during a major outbreak, employees in the exposed group are provided with respirators for voluntary use and are trained on the proper use and limitation of respirators. Voluntary use of respirators will provide greater protection for the employees during an outbreak and will help prevent further transmission of COVID-19 in the workplace.

Proposed subsection (g)(4) requires that any employees in the exposed group who are not wearing respirators required by the employer must be separated from other persons by at least six feet, or as far apart as feasible when it is not feasible to maintain a distance of six feet.

The subsection is necessary to establish additional measures to reduce the further spread of COVID-19 when there is a major outbreak at the workplace and employees in the exposed group are not wearing respirators provided by the employer.

## **New Section 3205.2. COVID-19 Prevention in Employer-Provided Housing.**

### **New subsection 3205.2(a). Scope.**

Proposed subsection (a) provides that new section 3205.2 will expire two years after the effective date, and establishes the application of the proposed regulation to employer-provided housing.

This subsection is necessary to inform the regulated community regarding the types of housing covered by the regulation and of the exceptions to coverage.

Proposed subsection (a)(1) creates an exemption to the applicability of the proposed regulation for the purpose of emergency response, where either subsection (a)(1)(A) the employer is a government entity; or subsection (a)(1)(B) the housing is provided temporarily by a private employer and is necessary to conduct the emergency response operations.

This exemption 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.

Proposed subsection (a)(2) creates an exemption to the applicability of the proposed regulation for employer-provided housing where the residents maintained a household together prior to residing in employer-provided housing, such as family members.

This exemption is necessary as individuals who maintain a household together are assumed to spend time in close proximity to one another within their household.

Proposed subsection (a)(3) creates an exemption to the applicability of the proposed regulation for employees covered by section 5199.

This exemption is necessary to clarify that the requirements of section 5199, rather than this section, apply to employees covered by section 5199.

Proposed subsection (a)(4) creates an exemption for employer-provided housing used exclusively to house COVID-19 cases, or where a housing unit houses one employee.

This exemption is necessary because these two housing conditions do not present potential transmission of COVID-19 to their resident(s).

Together, these subsections are necessary to specify the types of employer-provided housing for which employers will be required to comply with the proposed regulation and take action to protect employees from exposure to COVID-19. Shared worker housing presents unique challenges for preventing and controlling the spread of COVID-19. Consistent application of the proposed regulatory requirements can help reduce the COVID-19 exposure risk among workers in shared housing.

**New subsection 3205.2(b). Assignment of housing units.**

Proposed subsection (b) requires employers to reduce exposure to COVID-19 hazards, to the extent feasible, by assigning employee residents to distinct cohorts and ensuring that each cohort remains separate from other such cohorts during transportation and work. In addition, to the extent feasible, the subsection requires employers to house residents who usually maintain a household together in a single housing unit without other persons. These

requirements are consistent with CDC recommendations for preventing and controlling the spread of COVID-19 in shared worker housing.<sup>27</sup>

The subsection is necessary 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.<sup>28</sup>

### **New subsection 3205.2(c). Ventilation.**

Proposed subsection (c) requires employers to maximize the quantity and supply of outdoor air and increase filtration efficiency to the highest level compatible with the existing ventilation system in housing units. Federal OSHA recommends that employers increase ventilation rates and/or the percentage of outdoor air (as close to 100% as possible) that circulates in the system.<sup>29</sup> If there is not a MERV-13 or higher filter in use, portable or mounted HEPA filtration units must be used, to the extent feasible, in all sleeping areas.

The subsection is necessary 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.<sup>30</sup> In shared sleeping areas, where people remain for hours without face coverings, filtration is especially valuable.

### **New subsection 3205.2(d). Face coverings.**

Proposed subsection (d) requires employers to provide face coverings to all residents and provide information to residents on when face coverings should be used in accordance with state and local health department orders or guidance.

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<sup>27</sup> CDC. COVID-19 Guidance for Shared or Congregate Housing, Updated December 31, 2020. Accessed on April 25, 2021. <https://web.archive.org/web/20210425045916/https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>

<sup>28</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://web.archive.org/web/20201106163831/https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

<sup>29</sup> Federal Occupational Safety and Health Administration (Federal OSHA). Additional Considerations for Workers Who Reside in Communal Living Arrangements. Accessed on November 6, 2020. <https://www.osha.gov/SLTC/covid-19/workers-in-shared-housing.html>; Federal OSHA. Publication: COVID-19 Guidance on Ventilation in the Workplace. Accessed on November 6, 2020. <https://www.osha.gov/sites/default/files/publications/OSHA4103.pdf>

<sup>30</sup> 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>

The subsection is necessary, as the use of face coverings has been demonstrated to reduce the transmission of COVID-19.<sup>31</sup>

**New subsection 3205.2(e). Reporting symptoms.**

Proposed subsection (e) requires employers to encourage residents to report COVID-19 symptoms.

The subsection is necessary because it is important for employers to know which residents are experiencing potential symptoms of COVID-19 so the employer may effectively respond to such symptoms to prevent or reduce the risk of transmission of COVID-19 in the workplace and employer-provided shared housing units.

**New subsection 3205.2(f). COVID-19 testing.**

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 to the residents.

The subsection is necessary to minimize the transmission of COVID-19 in employer-provided housing because diagnostic testing identifies which residents are infected and in need of isolation to prevent further spread to employees and residents.

**New subsection 3205.2(g). COVID-19 cases and close contacts.**

Proposed subsection (g) requires that employers ensure that COVID-19 cases are isolated from all residents who are not COVID-19 cases, and that persons who had a close contact are effectively quarantined from all other residents in the employer-provided shared housing unit.

Proposed subsection (g)(1) requires employers to effectively isolate COVID-19 cases from all residents who are not COVID-19 cases, for the period established by subsection 3205(c)(5)(A).

Subsection (g)(1) defines effective isolation to include housing COVID-19 cases only with other COVID-19 cases, and providing COVID-19 case residents with a sleeping area and bathroom that is not shared with non-COVID-19 case residents.

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<sup>31</sup> CDC. CDC Newsroom Release: CDC calls on Americans to wear masks to prevent COVID-19 spread, dated July 14, 2020. Accessed on June 7, 2022. <https://www.cdc.gov/media/releases/2020/p0714-americans-to-wear-masks.html>; Lindsley WG, Blachere FM, Law BF, Beezhold DH, Noti JD. Efficacy of face masks, neck gaiters and face shields for reducing the expulsion of simulated cough-generated aerosols. Health Effects Laboratory Division, National Institute for Occupational Safety and Health, CDC, October 7, 2020. <https://www.medrxiv.org/content/10.1101/2020.10.05.20207241v1.full.pdf>



The subsection is necessary to limit transmission of COVID-19 in the workplace and employer-provided housing. Toward this end, it is critically important that residents who are COVID-19 cases isolate to further prevent the spread to other residents.

Proposed subsection (g)(2) requires employers to effectively quarantine residents who had a close contact from all other residents, for the time period required by subsection 3205(c)(5)(B). Subsection (g)(2) defines effective quarantine to include providing residents who had a close contact with a private bathroom and sleeping area.

The subsection is necessary to limit transmission of COVID-19 in the workplace and employer-provided housing. Toward this end, it is critically important that residents who had a close contact quarantine to further prevent the spread to other residents.

### **New Section 3205.3. COVID-19 Prevention in Employer-Provided Transportation.**

#### **New subsection 3205.3(a). Scope.**

Proposed subsection (a) provides that new section 3205.3 will expire two years after the effective date, and establishes the application of the proposed regulation to employer-provided motor vehicle transportation of an employee during the course and scope of employment.

The subsection is necessary to inform the regulated community of the type of employer-provided transportation covered by the regulation.

Proposed subsection (a)(1) creates an exemption to the applicability of the proposed regulation in employer-provided transportation where the driver is 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.

This exemption is necessary because it 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 dissimilar 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. Employees who are working on public transportation remain covered by section 3205's COVID-19 protections.

Proposed subsection (a)(2) creates an exemption to the applicability of the proposed regulation in employer-provided transportation necessary for emergency response, including firefighting, rescue, and evacuation, and support activities directly aiding response such as utilities, communications, and medical operations.

This exemption is necessary as it recognizes that the imminent risks associated with an emergency response operation supersede the risks associated with not enforcing the proposed transportation requirements in transporting employees for emergency response.

Proposed subsection (a)(3) creates an exemption to the applicability of the proposed regulation for employees covered by section 5199.

This exemption is necessary to clarify that the requirements of section 5199, rather than this section, apply to employees covered by section 5199.

These subsections are necessary to specify the types of employer-provided transportation for which employers will be required to comply with the proposed regulation.

**New subsection 3205.3(b).**

Proposed subsection (b) requires employers to comply with the requirements of section 3205 within a vehicle and shall respond to a COVID-19 case within the vehicle in accordance with the requirements of that section.

The subsection is necessary 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.

**New subsection 3205.3(c). Assignment of transportation.**

Proposed subsection (c) is to require employers to reduce exposure to COVID-19 hazards, to the extent feasible, by assigning transportation such that cohorts travel and work together, separate from other workers. In addition, to the extent feasible, the subsection requires employers to ensure that employees who usually maintain a household together must travel together.

The subsection is necessary to limit the number of different individuals who come into close contact with each other while using employer-provided transportation. It also recognizes that individuals who maintain a household together are assumed to spend time in close proximity to one another within their household.

**REFERENCE TO COMPARABLE FEDERAL REGULATION**

On June 10, 2021, federal OSHA issued emergency temporary standards (ETS) for COVID-19 in healthcare, 29 Code of Federal Regulations (CFR) 1910.502 through 1910.509. These federal emergency regulations address COVID-19 hazards in some healthcare services and healthcare support services, with specified exceptions.

These federal regulations apply to a subset of the facilities, services, and operations which California addresses under existing regulation title 8, section 5199 [Aerosol Transmissible Diseases] rather than the current proposal. There is no federal regulation governing airborne exposure to infectious disease such as SARS-CoV-2 in general industry.

On November 5, 2021, federal OSHA issued an ETS for COVID-19 vaccination, testing, and face coverings, 29 CFR 1910.501. However, effective January 26, 2022, federal OSHA withdrew the vaccination, testing, and face coverings ETS.

Federal OSHA also has the “General Duty Clause” in subsection 5(a)(1) of the Occupational Safety and Health Act of 1970. The clause states the following:

Each employer shall furnish to each of his [sic] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

The General Duty Clause is used by federal OSHA to address conditions that are not subject to other federal OSHA regulations. As such, it can be used by federal OSHA to require employers to protect employees from harmful airborne pathogens, such as SARS-CoV-2.

Other federal OSHA regulations, such as those governing respiratory protection (29 CFR section 1910.134), sanitation and washing facilities (29 CFR section 1910.141), Personal Protective Equipment (PPE) (29 CFR sections 1910.132, 1910.133, and 1910.138), and employee access to medical and exposure records (29 CFR section 1910.1020), are similar to their counterpart regulations in the CCR, title 8. 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.

The mandatory COVID-19 Health Care Emergency Temporary Standard (Healthcare ETS), which had become effective June 21, 2021 (29 CFR section 1910.502), had similarities with title 8, section 5199. On December 27, 2021, federal OSHA withdrew all but the recordkeeping provisions of the Healthcare ETS. The COVID-19 log and reporting provisions, 29 CFR sections 1910.502(q)(2)(ii), (q)(3)(ii)-(iv), and (r), remain in effect.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

No documents are incorporated by reference.

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These documents are available for review BY APPOINTMENT Monday through Friday from 8:00 a.m. to 4:30 p.m. at the OSHSB Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California. Appointments can be scheduled via email at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov) or by calling (916) 274-5721.

### **PETITION**

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.<sup>32</sup> Petitioners requested the Board provide specific protections to California employees who may have exposure to COVID-19, but who are not protected by the Aerosol 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 Cal/OSHA's 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 IIPP (section 3203), Washing Facilities (sections 1527, 3366, 3457, and 8397.4), 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 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 present increase in cases and the risk of occupational spread. Furthermore, the proposed emergency regulations introduced specific requirements, such as employer-provided testing, that are 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.<sup>33</sup> 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 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

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<sup>32</sup> 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>

<sup>33</sup> 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>

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.<sup>34</sup>

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 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 subsection 11346.1(h) and allowed a third readoption of the ETS.<sup>35</sup> The ETS was again readopted, with amendments, on April 21, 2022, with an effective date of May 5, 2022. Per Executive Order N-23-21, the third readoption of the ETS shall not remain in effect beyond December 31, 2022.

### **ADVISORY COMMITTEES**

This proposal was developed with the assistance of several advisory committees. (A list of advisory committee members, attendance sheets, and minutes are included as Documents Relied Upon.)

### **FIRE PREVENTION STATEMENT**

This proposal does not include fire prevention or protection standards. Therefore, approval of the State Fire Marshal pursuant to Government Code Section 11359 or Health and Safety Code Section 18930(a)(9) is not required.

### **SPECIFIC TECHNOLOGY OR EQUIPMENT**

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<sup>34</sup> OSHSB. Petition 583 Adopted Decision. <https://www.dir.ca.gov/oshsb/documents/petition-583-adopteddecision.pdf>

<sup>35</sup> 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>



This proposal will not mandate the use of specific technologies or equipment.

### **STANDARDIZED REGULATORY IMPACT ASSESSMENT (SRIA)**

A cost-benefit analysis cannot be used as a basis for adopting an occupational safety and health standard. In *American Textile Manufacturers Institute, Inc. v. Donovan* (1981),<sup>36</sup> the U.S. Supreme Court held that:

Congress itself defined the basic relationship between costs and benefits by placing the “benefit” of worker health above all other considerations save those making attainment of this “benefit” unachievable. Any standard based on a balancing of costs and benefits by the Secretary that strikes a different balance than that struck by Congress would be inconsistent with the command set forth in §6(b)(5) [section (6)(b)(5) of the Occupational Safety and Health Act of 1970]. (*Am. Textile Mfrs. Inst., Inc. v. Donovan* (1981) 452 U.S. 490, 509.)

LC section 144.6 is nearly identical to section (6)(b)(5) of the federal Occupational Safety and Health Act. In addition, LC section 142.3 requires California occupational safety and health regulations to be at least as effective as federal regulations, so the cost-benefit balance established by Congress must be observed in establishing California occupational safety and health regulations.

The Board is proposing new sections to the General Industry Safety Orders in title 8 for COVID-19 Prevention to provide protections for workers for exposure to COVID-19 and reduce transmission of COVID-19 in places of employment. The SRIA analyzes the economic impacts of the proposed new regulations.<sup>37</sup> The SRIA is included in the Documents Relied Upon. DIR assessed the costs and benefits of the proposed new regulations for COVID-19 Prevention (title 8 CCR sections 3205, 3205.1, 3205.2 and 3205.3) in its SRIA (DIR, 2022). The results of the analysis are detailed below, respective to requirements for the SRIA.

#### ***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

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<sup>36</sup> *American Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490 (1981). 452 U.S. 490.

<https://supreme.justia.com/cases/federal/us/452/490/>

<sup>37</sup> Department of Industrial Relations (DIR). Standardized Regulatory Impact Assessment (SRIA) of the Proposed California Regulation for COVID-19 Prevention in the Workplace. 2022.

<https://dof.ca.gov/wp-content/uploads/Forecasting/Economics/Documents/COVID-19-Prevention-SRIA-FINAL-05-2022-AF.pdf>

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 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.

***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. 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. 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 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.

***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 in order 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.

**Costs to Employers to Comply with Proposed Regulations**

The proposed standards apply to most businesses in California that have employees not covered by Cal/OSHA’s existing ATD standards in title 8, section 5199. The following businesses are exempt: businesses that are entirely remote/teleworking, whose employees do not come into contact with the public for work; businesses in which employees work alone and do not come into contact with the public for work; and facilities and services where employees are covered by section 5199.

The Board estimates that 1,632,050 establishments will be impacted by the proposed regulation. Of these, there are 1,599,910 private sector establishments.

The direct compliance costs of the proposed regulation will vary considerably across individual workplaces and industries. The direct costs to businesses include: (1) capital expenditures on ventilation, PPE, and other preventative measures (i.e., production materials and paid activities to suppliers) and (2) business productivity losses (i.e., the opportunity cost of employee and management time spent on compliance actions, such as testing and recordkeeping). The direct cost to individuals may include the loss of income due to the exclusion of COVID-19 cases and close contacts from the workplace. Employees may perceive a loss of wages or benefits due to the proposed regulation in cases where they otherwise felt healthy enough to work and were asymptomatic. In some cases, these anticipated losses would be offset by paid sick leave or vacation that employees have accrued through their employment, leaving employees no worse off financially.

Table 1 summarizes the direct costs of the proposed regulation. The primary estimate is based on projections of COVID-19 cases confirmed by a positive PCR test. The high-end estimate is based on projections of COVID-19 infections, which historically have been as much as four times as high as the number of recorded cases.

**Table 1. Direct Costs of the Proposed Regulation**

	Total Direct Costs in 2023 (\$ Millions)		Total Direct Costs in 2024 (\$ Millions)	
	Primary Estimate	High-end Estimate	Primary Estimate	High-end Estimate
Direct Costs to Businesses	\$488.8	\$1,418.7	\$197.7 to \$369.2	\$663 to \$1,299
Direct Costs to Individuals	\$53.8	\$215.1	\$26.9 to \$53.9	\$107.6 to \$215.1
<b>Total Direct Costs</b>	<b>\$542.6</b>	<b>\$1,633.9</b>	<b>\$224.6 to \$423.0</b>	<b>\$770 to \$1,514</b>

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 Employment Development Department (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, the Board estimates that there are 1,579,472 small businesses affected by the proposed regulation.

Table 2 reports the estimated average compliance costs for a small business, a typical business, and an individual. The average expected costs 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 average cost for an individual is likely to be close to zero because most workers are not expected to experience COVID-19 transmission in the workplace. Workers who are asymptomatic may experience a perceived loss of wages and/or benefits due to exclusion requirements—but existing CDPH guidelines and local public health orders require those employees take steps to prevent the spread of COVID-19, so not all of the costs of exclusion are directly attributable to the proposed regulation. Furthermore, workers who require hospitalization due to a COVID-19 infection would already be unable to work due to their illnesses and any loss of income is not directly attributable to the proposed regulation.

**Table 2. Estimated Compliance Costs by Entity Type**

Affected Entity	Average Cost in 2023		Average Cost in 2024	
	Primary Estimate	High-end Estimate	Primary Estimate	High-end Estimate
Small Business	\$280	\$850	\$110	\$400
Typical Business	\$300	\$870	\$120	\$410
Individual	\$0	\$750	\$0	\$750

The total direct compliance costs of the proposed regulation will vary across industries and based on employer size; additionally, the costs will vary over time, as many requirements contemplate upfront investments in COVID-19 prevention measures, while other requirements call for recurring investments and potential recordkeeping activities. Overall, the primary estimate of the total direct compliance costs of the proposed regulation is \$0.5 billion in 2023, and \$0.2 to \$0.4 billion in 2024.

Table 3 reports the total direct compliance costs by two-digit North American Industry Classification System (NAICS) code in 2023 and 2024. The largest costs are anticipated to be incurred in healthcare (NAICS 62), educational services (NAICS 61), and retail trade (NAICS 44-45).

**Table 3. Summary of Direct Costs to Businesses by NAICS Code**

NAICS	Description	Total Direct Costs in 2023 (\$ Millions)		Total Direct Costs in 2024 (\$ Millions)	
		Primary Estimate	High-end Estimate	Primary Estimate	High-end Estimate
11	Agriculture, Forestry, Fishing and Hunting	\$10.5	\$33.4	\$5.0 to \$8.9	\$16.5 to \$31.8
21	Mining	\$0.4	\$1.2	\$0.2 to \$0.3	\$0.6 to \$1.2
22	Utilities	\$2.3	\$7.3	\$1.2 to \$2.2	\$3.7 to \$7.1
23	Construction	\$23.3	\$66.7	\$9.2 to \$16.8	\$30.9 to \$60.2
31-33	Manufacturing	\$27.2	\$87.2	\$13.0 to \$23.9	\$43.1 to \$83.9
42	Wholesale Trade	\$14.0	\$38.0	\$5.1 to \$9.3	\$17.1 to \$33.3
44-45	Retail Trade	\$40.0	\$119.1	\$17.5 to \$32.1	\$57.0 to \$111.2
48-49	Transportation and Warehousing	\$17.4	\$54.5	\$8.1 to \$14.9	\$26.7 to \$52.1
51	Information	\$10.6	\$32.4	\$4.6 to \$8.3	\$15.5 to \$30.1
52	Finance and Insurance	\$10.8	\$28.3	\$3.8 to \$6.9	\$12.5 to \$24.3
53	Real Estate and Rental and Leasing	\$9.2	\$20.8	\$2.5 to \$4.6	\$8.3 to \$16.2
54	Professional and Technical Services	\$30.1	\$76.3	\$9.7 to \$17.7	\$32.8 to \$63.9
55	Management of Companies and Enterprises	\$3.1	\$10.5	\$1.5 to \$2.8	\$5.2 to \$10.1
56	Administrative and Waste Services	\$23.5	\$74.7	\$10.6 to \$19.3	\$36.2 to \$70.4
61	Educational Services	\$44.9	\$130.3	\$22.5 to \$42.3	\$65.3 to \$127.7
62	Health Care and Social Assistance	\$139.5	\$387.4	\$47.2 to \$91.9	\$171.1 to \$339.8
71	Arts, Entertainment, and Recreation	\$7.7	\$20.9	\$2.9 to \$5.4	\$9.5 to \$18.6
72	Accommodation and Food Services	\$38.1	\$117.1	\$17.2 to \$31.6	\$56.7 to \$110.5
81	Other Services, excluding Public Administration	\$13.7	\$34.6	\$4.5 to \$8.3	\$15.0 to \$29.2

92	Public Administration	\$22.7	\$78.0	\$11.4 to \$21.9	\$39.1 to \$77.2
	<b>TOTAL</b>	<b>\$488.8</b>	<b>\$1,418.7</b>	<b>\$197.7 to \$369.2</b>	<b>\$662.7 to \$1,299.1</b>

**Fiscal Impacts to Local and State Government**

More than 30,000 state and local government entities may be impacted—these comprise approximately two percent of all establishments affected by the proposed regulation. However, there are nearly 1.8 million state and local government employees, approximately 14 percent of the California workforce, covered by the proposed regulation.

Cal/OSHA may also incur costs related to enforcement of the proposed regulation. However, the number and length of inspections that Cal/OSHA must conduct related to COVID-19 hazards will vary based on the number of COVID-19 infections—and not necessarily due to the proposed regulatory action. Cal/OSHA safety inspectors have conducted numerous site visits and COVID-19 hazards inspections since the start of the pandemic, both under existing authorities prior to the COVID-19 ETS and since then.

Finally, state and local governments may experience additional impacts due to changes in income and sales taxes revenues as well as cost savings from potentially avoidable COVID-19 infections among public employees.

Based on information from the California EDD’s Quarterly Census of Employment and Wages (QCEW), there are approximately 13,600 state government establishments and more than 360,000 state employees covered by the proposed regulation. Table 4 reports the direct costs to state government entities in the first year of the proposed regulation by two-digit 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; they will be marginally smaller because upfront costs accounting for less than five percent of the total costs will not be incurred again. In the second notional scenario given in this SRIA, the direct costs to state government entities would decrease by approximately half in 2024 if COVID-19 infection rates fell by 50 percent.

**Table 4. Summary of Direct Costs for State Government Entities by NAICS Code**

NAICS	Description	State Government		Direct Costs in 2023 (\$ Millions)	
		Establishments	Covered Employees	Primary Estimate	High-end Estimate
51	Information	21	96	<\$0.1	<\$0.1
54	Professional and Technical Services	96	3,483	<\$0.1	\$0.3
56	Administrative and Waste Services	31	930	<\$0.1	<\$0.1

61	Educational Services	3,598	213,142	\$6.1	\$19.1
62	Health Care and Social Assistance	1,053	8,729	\$0.7	\$2.5
71	Arts, Entertainment, and Recreation	25	480	<\$0.1	<\$0.1
92	Public Administration	8,789	134,341	\$9.1	\$27.5
	<b>TOTAL</b>	<b>13,613</b>	<b>361,201</b>	<b>\$16.1</b>	<b>\$49.5</b>

Note: Totals may not sum due to rounding.

Based on information from the California EDD’s QCEW, there are approximately 19,200 local government establishments and more than 1.4 million local employees covered by the proposed regulation. Table 5 reports the direct costs to local government entities in the first year of the proposed regulation by two-digit NAICS code. The direct costs to local government entities in 2024 are anticipated to be similar to the costs in 2023 if COVID-19 infection rates remain the same; they will be marginally smaller because upfront costs accounting for less than five percent of the total costs will not be incurred again. In the second notional scenario given in this SRIA, the direct costs to local government entities would decrease by approximately half in 2024 if COVID-19 infection rates fell by 50 percent.

**Table 5. Summary of Direct Costs for Local Government Entities by NAICS Code**

NAICS	Description	State Government		Direct Costs in 2023 (\$ Millions)	
		Establishments	Covered Employees	Primary Estimate	High-end Estimate
11	Agriculture, Forestry, Fishing and Hunting	7	79	<\$0.1	<\$0.1
22	Utilities	702	38,438	\$1.0	\$3.2
23	Construction	106	8,769	\$0.2	\$0.7
44-45	Retail Trade	11	253	<\$0.1	<\$0.1
48-49	Transportation and Warehousing	440	46,100	\$1.0	\$3.6
51	Information	188	8,334	\$0.2	\$0.7
52	Finance and Insurance	29	1,955	<\$0.1	\$0.2
53	Real Estate and Rental and Leasing	63	1,379	<\$0.1	\$0.1
54	Professional and Technical Services	66	873	<\$0.1	<\$0.1
56	Administrative and Waste Services	116	3,136	<\$0.1	\$0.2
61	Educational Services	14,192	843,728	\$24.3	\$75.6
62	Health Care and Social Assistance	406	22,819	\$1.6	\$6.3



71	Arts, Entertainment, and Recreation	304	34,590	\$0.7	\$2.7
72	Accommodation and Food Services	136	22,048	\$0.5	\$1.7
81	Other Services, excluding Public Administration	257	3,320	<\$0.1	\$0.3
92	Public Administration	2,224	297,128	\$13.6	\$50.5
	<b>TOTAL</b>	<b>19,247</b>	<b>1,332,950</b>	<b>\$43.4</b>	<b>\$145.9</b>

Note: Totals may not sum due to rounding.

**Enforcement Costs**

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 existing ETS, sections 3205 through 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.

**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.<sup>38</sup>

***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).<sup>39</sup> 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 SRIA does not incorporate worker age, and thus assumes the WTP estimates for age 40 best represent the value for an average worker.<sup>40</sup> 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 employee 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.

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<sup>38</sup> CDC. 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](https://www.cdc.gov/mmwr/volumes/70/wr/mm7043e1.htm#T1_down) (accessed April 28, 2022).

<sup>39</sup> 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).

<sup>40</sup> 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).

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' (BLS) 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.<sup>41</sup> 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).<sup>42</sup> 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).<sup>43</sup> Critical cases were presumed to experience 45 days of absence, based on an 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,

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<sup>41</sup> 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).

<sup>42</sup> 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. *Lancet* 2022;399:1618-24. <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2822%2900327-0>

<sup>43</sup> 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>

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.”<sup>44</sup> 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.”<sup>45</sup> 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.

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<sup>44</sup> 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>

<sup>45</sup> 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://bmcpublihealth.biomedcentral.com/track/pdf/10.1186/s12889-021-11077-0.pdf>

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 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.<sup>46</sup>  
<sup>47</sup> 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

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<sup>46</sup> 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>

<sup>47</sup> Konda, A., Prakash, A., Moss, G.A., Schmoldt, M., Grant, G.D., Guha, S. Aerosol Filtration Efficiency of Common Fabrics Used in Respiratory Cloth Masks. *ACS Nano* 2020, 14 (5), 6339–6347.

<https://doi.org/10.1021/acsnano.0c03252>

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, 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 year.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

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.

### **REASONABLE ALTERNATIVES TO THE PROPOSAL AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

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. 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 Emergency Temporary Standard proposed by Federal OSHA, which was eventually blocked by the United States Supreme Court.<sup>48</sup> After the Supreme Court's ruling, Federal OSHA then withdrew the vaccination and testing ETS as an enforceable emergency temporary standard. Despite this, multiple Board members have urged the Division to propose vaccination or testing 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.<sup>49</sup> DIR's benefits

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<sup>48</sup> Federal OSHA. COVID-19 Vaccination and Testing; Emergency Temporary Standard. Published in the Federal Register November 5, 2021. <https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-23643.pdf>

<sup>49</sup> Federal OSHA. Analytic Spreadsheets in Support of the COVID-19 Vaccination and Testing ETS, October 2021. <https://www.regulations.gov/document/OSHA-2021-0007-0486>



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 some 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.<sup>50</sup> 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 summarizes the total costs and benefits of the proposed regulation and each alternative considered for the first 12-months after the regulation in enacted.

**Table 6. Summary of Direct Costs and Benefits of Regulatory Alternatives Compared to the Proposed Regulation, in 2023**

	<b>Proposed Regulation (\$ Billions)</b>	<b>Alternative #1 (\$ Billions)</b>	<b>Difference (\$ Billions)</b>	<b>Alternative #2 (\$ Billions)</b>	<b>Difference (\$ Billions)</b>
Benefits	\$10.51	Not quantified	--	\$2.79	-\$7.72
Costs	\$0.49	Not quantified	--	\$0.30	-\$0.19
<b>Net Benefits</b>	<b>\$10.03</b>	<b>Not quantified</b>	--	<b>\$2.49</b>	<b>-\$7.53</b>

All initial statement of reasons requirements for the proposed regulation have been satisfied.

<sup>50</sup> State of California. Statewide vaccination data as of April 22, 2022, accessed on April 22, 2022. <https://covid19.ca.gov/vaccination-progress-data/#overview>.