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Occupational Safety and Health Standards Board  
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**FINDING OF EMERGENCY  
GOVERNMENT CODE SECTION 11346.1  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
PROPOSED EMERGENCY REGULATION  
TITLE 8, CALIFORNIA CODE OF REGULATIONS  
GENERAL INDUSTRY SAFETY ORDERS  
CHAPTER 4, SUBCHAPTER 7, NEW SECTIONS  
3205; 3205.1; 3205.2; 3205.3; and 3205.4**

**COVID-19 Prevention**

The objective of the proposed emergency standard is to reduce employee exposure to the virus that causes COVID-19 and therefore reduce COVID-19 illness and transmission.

Government Code (GC) section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subdivision (a) of section 11346.5 and a description of the specific facts demonstrating the existence of an emergency and showing the need for immediate action.

GC section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulation to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GC section 11349.6(b), unless the emergency situation clearly poses such an immediate serious harm that delaying action to allow public comment would be inconsistent with the public interest.

The Occupational Safety and Health Standards Board (Board) finds that the adoption of this proposed emergency standard is necessary to address an emergency pursuant to GC section 11346.1(b)(1). The Board finds that immediate action must be taken to avoid serious harm to the public peace, health, safety, or general welfare, for the reasons stated below.

## **FINDING OF EMERGENCY**

### **Basis for the Finding of Emergency**

1. On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California in response to the outbreak of respiratory illness due to the novel coronavirus, known as COVID-19<sup>1</sup>.
2. 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>2</sup> Serious symptoms of COVID-19 include shortness of breath, difficulty breathing, pneumonia, and organ failure, and can result in death.<sup>3</sup> The virus can damage the lungs, heart and brain and can cause long-term health problems.<sup>4</sup>
3. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a stay-at-home order to protect Californians and slow the spread of COVID-19. The order prohibited operations at all but essential businesses and workplaces.<sup>5</sup>
4. As of May 4, 2020, Governor Newsom allowed a number of lower-risk business sectors to reopen.<sup>6</sup>
5. On May 6, 2020, Governor Newsom issued Executive Order N-62-20<sup>7</sup>, which provides that under certain circumstances it is presumed that workers who contract a COVID-19-related illness between March 19, 2020, and July 5, 2020, have done so at work and are thus eligible

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<sup>1</sup> Gavin Newsom, Governor of California; Proclamation of a State of Emergency; March 4, 2020.

<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

<sup>2</sup> CDC. Evidence used to update the list of underlying medical conditions that increase a person's risk of severe illness from COVID-19. Accessed on October 15, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/evidence-table.html>

<sup>3</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. 2020; 324(8):782–793.

doi:10.1001/jama.2020.12839. <https://jamanetwork.com/journals/jama/fullarticle/2768391>

<sup>4</sup> World Health Organization. What we know about Long-term effects of COVID-19. September 9, 2020.

[https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update-36-long-term-symptoms.pdf?sfvrsn=5d3789a6\\_2](https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update-36-long-term-symptoms.pdf?sfvrsn=5d3789a6_2)

<sup>5</sup> Gavin Newsom, Governor of California; Executive Order N-33-20; March 19, 2020.

<https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

<sup>6</sup> Gavin Newsom, Governor of California; Update on California's Reopening; May 4, 2020.

<https://www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/>

<sup>7</sup> Gavin Newsom, Governor of California; Executive Order N-62-20; May 6, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>

for workers' compensation benefits. The Executive Order declares that "employees who report to their places of employment are often exposed to an increased risk of contracting COVID-19, which may require medical treatment, including hospitalization" and that "employees who report to work while sick increase health and safety risks for themselves, their fellow employees, and others with whom they come into contact."

6. There has been an overrepresentation of migrant temporary farmworkers testing positive for COVID-19 in California compared to workers in any other industry.<sup>8</sup> Many of these workers live in compact, dorm-like housing facilities provided by employers.<sup>9</sup> One California health officer noted that "farmworkers face the greatest infection risk not at work, but at home."<sup>10</sup> Indeed, in Ventura County, almost 190 workers living in employer-provided housing tested positive for COVID-19 out of 216 people tested.<sup>11</sup> In recognition of the need to control against the spread of COVID-19 among farmworkers, on July 24, 2020, Governor Newsom unveiled the Housing for the Harvest program, which provides 14 paid days of temporary hotel rooms for California farmworkers who have been exposed to, or tested positive for, COVID-19 but are unable to adequately quarantine at home.<sup>12</sup> In addition, the federal Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control (CDC) have 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>

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<sup>8</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/>

<sup>9</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>10</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/>

<sup>11</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>12</sup> California Department of Food and Agriculture, et al. Housing for the Harvest – Program Overview, dated July 29, 2020. Accessed on November 6, 2020. [https://files.covid19.ca.gov/pdf/Housing\\_for\\_the\\_Harvest-Program\\_Overview.pdf](https://files.covid19.ca.gov/pdf/Housing_for_the_Harvest-Program_Overview.pdf)

<sup>13</sup> 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>; CDC. Agriculture Workers & Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>; CDC. COVID-19 Guidance for Shared or Congregate Housing, Updated Aug. 22, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>

7. As of October 2020, the majority of California workplaces are allowed to engage in on-site work operations despite the continuing spread of COVID-19. Millions of California workers face potential exposure to COVID-19 on the job.
8. Clusters and outbreaks of COVID-19 have occurred in workplaces throughout California, including in food manufacturing, agricultural operations, and warehouses.
9. As of October 14, 2020, there have been 858,401 cases of COVID-19 infection and 16,757 deaths reported in California.<sup>14</sup> Data for the number of cases of COVID-19 infection and number of deaths attributable to workplace exposure to COVID-19 is not currently available; however, the numbers are likely substantial, particularly among essential workers, due to workers' exposure to persons outside of those in one's household, along with the close proximity between persons required in some industries.
10. 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.
11. Emergency rulemaking is required to address the immediate threat to employees from COVID-19. The nature of the threat has been characterized by the occupational health and medical community as both acute and chronic adverse health effects which can manifest as serious illness, permanent incapacitation, or death. Regular rulemaking cannot be completed in time to address these significant and ongoing risks to workers presented by the COVID-19 pandemic.
12. The Division of Occupational Safety and Health's (Division) Aerosol Transmissible Diseases standard, title 8, section 5199, provides important protections to workers in specified work settings from exposure to novel pathogens, including COVID-19, particularly in health care and corrections. However, the scope of section 5199 is limited. Thus, the majority of California workers are not covered by the protections afforded by section 5199.
13. During its September 17, 2020, meeting, the Board considered Petition 583, which requested an emergency rulemaking to address the potential harm posed to workers by COVID-19. 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.

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<sup>14</sup> CDPH. COVID-19 by the Numbers; accessed October 15, 2020.  
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers>

14. 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 the Division draft an emergency rulemaking proposal to protect all workers not covered by section 5199 from COVID-19 exposure in the workplace, for consideration no later than the November 19, 2020, Board meeting.<sup>15</sup>
15. Between February 1, 2020, and September 27, 2020, the Division received over 6,937 complaints alleging inadequate protections for and potential exposure to COVID-19 in workplaces.
16. 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 infectious diseases such as COVID-19.
17. Guidance currently exists from a number of different authorities—including the federal CDC, federal OSHA, the California Department of Public Health (CDPH) and the Division—on how employers can best protect workers from COVID-19. However, guidance varies between federal and state agencies and contains some contradictory information. Employers and employees would benefit from a specific set of regulations related to COVID-19 prevention in all workplaces.
18. Adoption of the proposed emergency action is necessary to preserve worker safety and health by making existing general requirements, such as sections 3203, 3362, 3366, 5141, and 5144, specific to COVID-19 and easy to understand.
19. The proposed emergency action is necessary to combat the spread of COVID-19 in California workers. The proposed regulation would significantly reduce the number COVID-19 related illnesses, disabilities and deaths in California’s workforce.
20. Adoption of the proposed emergency regulation is necessary to strengthen the Division’s enforcement efforts related to the hazard of COVID-19 in workplaces, through regulatory mandates specific to preventing the spread of the virus.

### **AUTHORITY AND REFERENCE CITATIONS**

These regulations are submitted pursuant to the Occupational Safety and Health Standards Board's authority under Labor Code section 142.3.

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<sup>15</sup> Occupational Safety and Health Standards Board; Petition File No. 583; Adopted Decision; September 17, 2020.  
<https://www.dir.ca.gov/oshsb/documents/petition-583-adopteddecision.pdf>

California Labor Code section 142.3 establishes that the Board may adopt, amend, or repeal occupational safety and health standards or orders. 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.

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

Authority: Labor Code section 142.3.

Reference: Labor Code sections 142.3 and 144.6.

## **INFORMATIVE DIGEST OF PROPOSED ACTION/ POLICY STATEMENT OVERVIEW**

### **Summary of Existing Regulations and the Effect of the Proposed Regulation**

Labor Code (LC) sections 60.5 and 6308 provide that the Division is charged with the administration and enforcement of the provisions of the California Occupational Safety and Health Act, commencing with LC section 6300, as well as other provisions of law affecting the health and safety of employees in the State of California.

Existing law, title 8, section 342, “Reporting Work-Connected Fatalities and Serious Injuries,” requires employers to report immediately to the Division any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment.

Existing law, title 8, section 3203, “Injury and Illness Prevention Program,” establishes a general framework for the identification, evaluation, and correction of unsafe or unhealthy work conditions and practices; communication with employees; and employee safety and health training.

Existing law, title 8, section 3380, “Personal Protective Devices,” contains general requirements for personal protective equipment (PPE). Requirements for specific types of PPE are given in existing law, title 8, sections 3381 (Head Protection), 3382 (Eye and Face Protection), 3383

(Body Protection), 3384 (Hand Protection), and 3385 (Foot Protection). However, none of these sections require PPE to help prevent the transmission of COVID-19.

Existing law, title 8, section 5140, “Definitions,” states that a “harmful exposure” is an “exposure to dusts, fumes, mists, vapors, or gases” which are either “(a) In excess of any permissible limit prescribed by section 5155; or (b) Of such a nature by inhalation as to result in, or have a probability to result in, injury, illness, disease, impairment, or loss of function.” There is no permissible exposure limit prescribed by section 5155 for SARS-CoV-2, the virus that causes COVID-19; however, inhalation of the virus does have a probability to result in injury, illness, disease, impairment, or loss of function. Exposure to COVID-19 is considered a harmful exposure, as exposure to aerosols (in the breath of infected persons) containing SARS-CoV-2 has the probability to result in illness, disease, impairment, or loss of function.

Existing law, title 8, section 5141, “Control of Harmful Exposure to Employees,” lists the hierarchy of controls that employers shall follow to address employee exposure to harmful air contaminants. Employers shall first rely on engineering controls whenever feasible, but if engineering controls are not feasible or do not achieve full compliance, administrative controls shall be implemented “if practicable.” When engineering and administrative controls fail to achieve full compliance, then respiratory protective equipment shall be used.

Existing law, title 8, section 5144, “Respiratory Protection,” requires respirators be used to protect the health of employees when effective engineering controls to prevent harmful atmospheres are not feasible.

Existing law, title 8, section 5199, “Aerosol Transmissible Diseases,” requires specific protections for novel pathogens such as COVID-19; however, it does not protect all workers. Its scope is limited to work in specified health care facilities, services, or operations, as well as in specified non-health care facilities, services, or operations. The majority of workers not covered by section 5199 are at risk for COVID-19 infection.

Existing law, title 8, section 3350, “Labor Camp Permits,” requires that every employer operating a labor camp under the provisions of the California Employee Housing Act obtain a valid permit issued by the Department of Housing and Community Development or by a local governmental agency authorized to issue such permits by the Department. The employer shall either post or have available a valid and current permit.

Existing law, title 8, section 3362, “General Requirements” (Sanitation), requires that workplaces are kept in a clean and sanitary condition. It also requires that buildings be cleaned and maintained to prevent harmful exposures (defined in section 5140 – see above).

Existing law, title 8, section 3366, “Washing Facilities,” requires that washing facilities be reasonably accessible to all employees. However, the section does not specifically require measures to ensure that employees are able to maintain personal hygiene, such as allowing time for employee handwashing, and the provision of hand sanitizer by the employer.

### **Federal Regulations and Statutes**

While there is no federal regulation governing airborne exposure to infectious disease such as SARS-CoV-2, federal OSHA has the “General Duty Clause” in section 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 Code of Federal Regulations (CFR) section 1910.134), sanitation and washing facilities (29 CFR section 1910.141), and PPE (29 CFR sections 1910.132, 1910.133, and 1910.138), are similar to their counterpart regulations in the CCR, title 8, discussed above. 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, discussed above.

No federal law or regulations exist or have been promulgated that specifically address occupational exposure to COVID-19.

### **Amended Section 3205. COVID-19 Prevention.**

This proposed emergency regulation would amend section 3205, which has a current title of “Shall” and “Should.” [Repealed], by replacing the current title with a new title of “COVID-19 Prevention.” It would be in Subchapter 7. General Industry Safety Orders; Introduction; directly after section 3204. Access to Employee Exposure and Medical Records. The regulation would include the following specific requirements.

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

Proposed subsection (a)(1) establishes the application of the proposed regulation to all workplaces, with three exceptions: (A) places of employment with one employee who does not



have contact with other persons; (B) employees working from home; and (C) employees when covered by section 5199.

The subsection is necessary to establish the places of employment for which employers will be required to comply with the proposed regulation and take action to protect employees from exposure to COVID-19.

Proposed subsection (a)(2) clarifies that nothing in this section is intended to limit state or local health department mandates or guidance that are more protective or stringent than this section.

This subsection is necessary because state or local health department mandates or guidance may be more stringent than this section, and it is important that such mandates or guidance are not in any way limited by the provisions of this section.

#### **New Subsection 3205(b). Definitions.**

Proposed subsection (b) provides definitions for the terms “COVID-19,” “COVID-19 case,” “COVID-19 exposure,” “COVID-19 hazard,” “COVID-19 symptoms,” “COVID-19 test,” “exposed workplace,” “face covering,” and “high-risk exposure period,” as used in sections 3205 through 3205.4.

The subsection is necessary to clarify the application and meanings of terms used in the proposed regulations.

#### **New Subsection 3205(c). Written COVID-19 Prevention Program.**

Proposed subsection (c) requires employers to establish, implement, and maintain an effective, written COVID-19 Prevention Program (Program). The subsection allows the written Program to be integrated into the employer’s written Injury and Illness Prevention Program (IIPP), required by section 3203, or kept as a separate document. Subsection (c) establishes the basic elements that an employer is responsible for including in their Program. They are as follows:

#### **New Subsection 3205(c)(1). System for communicating.**

Proposed subsection (c)(1) requires employers to take the actions described in subsections (c)(1)(A) through (c)(1)(D). These actions are designed to ensure that employers have methods in place, and use those methods, to exchange information with employees about COVID-19. Subsection (c)(1)(A), asks employees to provide information to their employers about COVID-19 symptoms, possible COVID-19 exposures, and possible COVID-19 hazards at the workplace without the fear of reprisal. Subsection (c)(1)(B) would require employers to provide information to its employees about accommodating employees with medical or other conditions that put them

at increased risk of severe COVID-19 illness. Subsection (c)(1)(C) would require employers to provide information about access to COVID-19 testing. If testing is required under this section, section 3205.1, or section 3205.2, the employer shall inform affected employees of the reason for the testing and the possible outcome of a positive test. Subsection (c)(1)(D) would require employers to communicate information about COVID-19 hazards to employees and to other employers, persons, and entities in or in contact with the employer's workplace, along with the employer's COVID-19 policies and procedures.

These subsections are necessary, as communicating information, from employees to their employers, and from employers to their employees and others, is critical in preventing the spread of COVID-19 in workplaces.

**New Subsection 3205(c)(2). Identification and evaluation of COVID-19 hazards.**

Proposed subsection (c)(2) requires employers to take the actions described in subsections (c)(2)(A) through (c)(2)(H). These actions are designed to ensure that employers have methods in place, and use those methods, to identify and evaluate COVID-19 hazards.

The subsection is necessary, as identifying and evaluating COVID-19 hazards in the workplace is critical in preventing the spread of COVID-19 in workplaces.

Proposed subsection (c)(2)(A) requires employers to allow employees and authorized employee representatives to participate in the identification and evaluation of COVID-19 hazards.

This subsection is necessary because it is important to include employees and employee representatives in the process of identifying and evaluating COVID-19 hazards, due to their intimate knowledge of specific work practices and workplace conditions.

Proposed subsection (c)(2)(B) requires employers to develop and implement a process for screening employees for and responding to employees with COVID-19 symptoms. It allows the employer to ask employees to evaluate their own symptoms before reporting to work. If the employer conducts the screening at the workplace, the employer must ensure that face coverings are used during screening by both screeners and employees and, if temperatures are measured, that non-contact thermometers are used.

This subsection is necessary, as it is important for employers to have a process to screen employees for potential symptoms of COVID-19, and effectively respond to those symptoms, to prevent or reduce the risk of transmission of COVID-19 in the workplace. Allowing employers to ask employees to evaluate whether or not they have symptoms of COVID-19 before reporting would prevent ill employees from coming to work, thus reducing the potential spread of COVID-19. Requiring the use of face coverings and non-contact thermometers during screening would

minimize possible exposure to COVID-19 to screening employees and employees being screened.

Proposed subsection (c)(2)(C) requires employers to develop policies and procedures to effectively respond to individuals at the workplace who are a COVID-19 case.

This subsection is necessary, as it is important for employers to effectively respond to individuals at the workplace who are COVID-19 cases, to prevent or reduce the risk of transmission of COVID-19.

Proposed subsection (c)(2)(D) requires employers to conduct a workplace-specific identification of all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards. The proposed subsection requires employers to treat all persons, regardless of symptoms or negative COVID-19 test results, as potentially infectious. Proposed subsection (c)(2)(D)1. requires employers to include in their workplace assessment the identification of places and times when people may congregate or come in contact with one another, regardless of whether employees are performing an assigned work task or not. Proposed subsection (c)(2)(D)2. requires an evaluation of employees' potential workplace exposure to all persons at the workplace or who may enter the workplace. Further, it requires employers to consider how employees and other persons enter, leave, and travel through the workplace, in addition to addressing fixed work locations.

These subsections are necessary, as conducting a thorough evaluation and identifying and evaluating COVID-19 hazards is critical in preventing the spread of COVID-19 in the workplace. It is important to 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)(E) requires, for indoor locations, the employer to evaluate how to maximize the quantity of outdoor air and whether it is possible to increase filtration efficiency to the highest level compatible with the existing ventilation system.

This subsection is necessary as increased ventilation in indoor locations and increased filtration of indoor air dilutes the concentration of any infectious COVID-19 virus in the air, thus reducing the potential for employee exposure to the virus.

Proposed subsection (c)(2)(F) requires employers to review applicable orders and guidance from the State of California and the local health department related to COVID-19 hazards and prevention.

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.

Proposed subsection (c)(2)(G) requires employers to evaluate existing COVID-19 prevention controls at the workplace and the need for different or additional controls.

This subsection is necessary as it is important to evaluate COVID-19 prevention controls to determine if they are effective at minimizing employee exposure to COVID-19 in the workplace.

Proposed subsection (c)(2)(H) requires employers to conduct periodic inspections to identify unhealthy conditions, work practices, and work procedures related to COVID-19, and to ensure compliance with employers' COVID-19 policies and procedures.

This subsection is necessary to evaluate conditions that may change over time, and to identify and correct situations where employers' policies and procedures are not adhered to.

**New Subsection 3205(c)(3). Investigating and responding to COVID-19 cases in the workplace.**

Proposed subsection (c)(3) requires employers to take the actions described in subsections (c)(3)(A) through (c)(3)(D). These actions are designed to ensure that employers have methods in place, and use those methods, to investigate and respond to COVID-19 cases in the workplace.

The subsection is necessary, as investigating and responding to COVID-19 cases is critical in preventing the spread of COVID-19 in the workplace.

Proposed subsection (c)(3)(A) requires employers to have effective procedures to investigate COVID-19 cases in the workplace. This includes procedures for verifying COVID-19 case status, receiving information regarding COVID-19 test results and onset of COVID-19 symptoms, and identifying and recording COVID-19 cases.

This subsection is necessary, as it is important to have procedures in place to gather information needed to investigate and respond to COVID-19 cases in the workplace.

Proposed subsection (c)(3)(B) requires employers to take specified actions when there has been a COVID-19 case at the place of employment. These actions include: 1. determining the day and time the COVID-19 case was last at work, and, to the extent possible, the date of the positive test(s) and/or diagnosis, and the date the COVID-19 case first had one or more COVID-19 symptoms, if any; 2. determining who may have had a COVID-19 exposure; 3. giving notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any

personal identifying information of the COVID-19 case, to specified individuals; 4. offering testing at no cost during the employee's working hours to all employees who had potential COVID-19 exposure in the workplace, and providing employees with information on benefits described in subsections (c)(5)(B) and (c)(10)(C); and 5. investigating whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.

This subsection is necessary to ensure that employers do a thorough investigation of any COVID-19 cases in the workplace and to ensure that employees, independent contractors and other employers are informed about potential exposure during the high-risk exposure period. Offering COVID-19 testing at no cost to employees following a potential exposure to COVID-19 in the workplace 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. These steps are 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.

Proposed subsection (c)(3)(C) requires employers to keep personal identifying information of COVID-19 cases or persons with COVID-19 symptoms confidential. All COVID-19 testing or related medical services provided by the employer under sections 3205 through 3205.4 shall be provided in a manner that ensures the confidentiality of employees. An exception is given for information on COVID-19 cases provided to the local health department, CDPH, the Division, and the National Institute for Occupational Safety and Health (NIOSH), or as otherwise required by law immediately upon request.

This subsection is necessary to ensure that personal identifying information with regard to COVID-19 is kept confidential, as required by various state and federal regulations. Proposed subsection (c)(3)(D) requires employers to ensure that all employee medical records required by sections 3205 through 3205.4 are kept confidential and not disclosed or reported without the employee's express written consent to any person within or outside the workplace. Exceptions are given for medical records provided to the local health department, CDPH, the Division, or NIOSH; or if the records do not contain individually identifiable medical information.

This subsection is necessary to ensure that employees' medical records are kept confidential, as required by various state and federal regulations.

**New Subsection 3205(c)(4). Correction of COVID-19 hazards.**

Proposed subsection (c)(4) requires employers to implement effective policies and/or procedures to correct unsafe or unhealthy conditions, work practices, and procedures related to COVID-19 in a timely manner based on the severity of the hazard.

The subsection is necessary, as correcting unsafe or unhealthy conditions, work practices, and procedures related to COVID-19 in a timely manner is critical in preventing the spread of COVID-19 in the workplace.

**New Subsection 3205(c)(5). Training and instruction.**

Proposed subsection (c)(5) requires employers to provide training and instruction to employees on the topics described in subsections (c)(5)(A) through (c)(5)(H). Required topics include the employer's COVID-19 policies and procedures to protect employees from COVID-19 hazards (subsection (c)(5)(A)); information on benefits to which an employee may be entitled (subsection (c)(5)(B)); how COVID-19 is spread, and that an infectious person may have no symptoms (subsection (c)(5)(C)); methods of physical distancing of at least six feet and the importance of combining physical distancing with the wearing of face coverings (subsection (c)(5)(D)); that particles containing the virus can travel more than six feet, especially indoors, so physical distancing must be combined with other controls, including face coverings and hand hygiene to be effective (subsection (c)(5)(E)); information about hand washing and using hand sanitizer (subsection (c)(5)(F)); proper use of face coverings (subsection (c)(5)(G)); and COVID-19 symptoms, and the importance of not coming to work and obtaining a COVID-19 test, if the employee has COVID-19 symptoms (subsection (c)(5)(H)).

The subsection is necessary, as providing employees with knowledge about the hazards of exposure to COVID-19, including how it is spread, along with methods used in the workplace to minimize exposure to COVID-19, and the importance of not coming to work and obtaining a COVID-19 test, if the employee has COVID-19 symptoms, is critical in preventing the spread of COVID-19 in the workplace.

**New Subsection 3205(c)(6). Physical distancing.**

Proposed subsection (c)(6) requires employers to take the actions described in subsections (c)(6)(A) and (c)(6)(B).

These actions are designed to ensure that employees maintain a minimum distance between themselves and others in the workplace.

Proposed subsection (c)(6)(A) requires that all employees in the workplace be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not possible and except for momentary exposure while persons are in movement. The subsection includes a listing of some methods of physical distancing.

This subsection is necessary to ensure that exposure to COVID-19 is minimized through adequate physical distancing between employees and others in the workplace. In particular, ensuring that employees are separated, when feasible, by at least six feet from other persons is critical in preventing the spread of COVID-19 in the workplace.

Proposed subsection (c)(6)(B) requires that when it is not feasible to maintain a distance of at least six feet, individuals shall be as far apart as possible.

This subsection is necessary to ensure that even when it is not feasible to maintain a distance of at least six feet between individuals, exposure to COVID-19 is minimized by maintaining the greatest physical distance possible between employees and others at the workplace.

### **New Subsection 3205(c)(7). Face coverings.**

Proposed subsection (c)(7) requires employers to take the actions described in subsections (c)(7)(A) through (c)(7)(F). These actions are designed to ensure that employees are provided with and use face coverings in the workplace.

The subsection is necessary, as the use of face coverings is recommended to reduce the transmission of COVID-19<sup>16</sup>.

Proposed subsection (c)(7)(A) requires employers to ensure that employees wear clean and undamaged face coverings over the nose and mouth when they are indoors, when they are outdoors and less than six feet away from another person, and where required by orders from CDPH or local health department. The subsection states that face shields are not a replacement for face coverings, but may be worn with face coverings for additional protection. The subsection also provides exceptions to the requirements given in subsection (c)(7)(A). The exceptions to the requirements are given for conditions under which the risk of transmission of COVID-19 is minimal; the wearing of a face covering is incompatible with the employee wearing respiratory protection; the employee has a medical or mental health condition, disability or is hearing impaired or communicating with a hearing-impaired person; or specific tasks cannot feasibly be performed while the employee is wearing a face covering. Under this last exception, the unmasked employee shall be at least six feet away from all other persons, unless unmasked employees are tested at least twice weekly for COVID-19.

This subsection is necessary, as it sets parameters for when face coverings are required, and also takes into account the increased likelihood of transmission of COVID-19 in indoor spaces compared to outdoor spaces. Evidence exists that infectious virus particles can travel more than

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<sup>16</sup> CDPH; Face Covering Guidance issued on June 18, 2020, available at: [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings\\_06-18-2020.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf)

six feet through the air<sup>17</sup>, and face coverings reduce the amount of particles that are emitted into the air from an infected person.<sup>18</sup>

Proposed subsections (c)(7)(B) addresses situations where an employee is unable to wear a face covering, e.g., due to a medical condition.

This subsection is necessary to ensure that procedures are in place to provide adequate protection from COVID-19 to employees working in an area where another employee is unable to wear a face covering.

Proposed subsections (c)(7)(C) requires that any employee not wearing a face covering or an acceptable alternative shall be at least six feet apart from all other persons unless the unmasked employee is tested at least twice weekly for COVID-19. It also states that COVID-19 testing cannot be used as an alternative to face coverings.

This subsection is necessary to ensure that procedures are in place to provide adequate protection from COVID-19 to employees who are unable to wear a face covering.

Proposed subsection (c)(7)(D) explicitly prohibits employers from preventing any employee from wearing a face covering 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.

Proposed subsection (c)(7)(E) requires employers to implement measures to communicate to non-employees the requirements for the use of face coverings on their premises.

This subsection is necessary to ensure that non-employees are made aware of the requirements to wear face coverings when in the particular workplace. The required communication with non-employees will minimize COVID-19 exposure to employees by increasing the likelihood that non-employees will wear face coverings when in the workplace.

Proposed subsection (c)(7)(F) requires that when there may be a person not wearing a face covering, including a member of the public, in the workplace, the employer shall have policies

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<sup>17</sup> CDC; How COVID-19 Spreads, Updated October 28, 2020. Accessed on November 6, 2020.  
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

<sup>18</sup> 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>



and procedures to minimize employee exposure to COVID-19 hazards originating from that person.

This subsection is necessary to ensure that procedures are in place to provide adequate protection from COVID-19 to employees working in an area where another person is not wearing a face covering.

**New Subsection 3205(c)(8). Other engineering controls, administrative controls, and personal protective equipment.**

Proposed subsection (c)(8) requires employers to take the actions described in subsections (c)(8)(A) through (c)(8)(E). These actions are designed to ensure appropriate control measures are implemented to minimize employee exposure to COVID-19 hazards in the workplace.

The subsection is necessary, as the implementation of control methods is important in minimizing employee exposure to COVID-19.

Subsection (c)(8)(A) requires employers to install cleanable solid partitions at fixed work locations where it is not possible to maintain the physical distancing requirement at all times that effectively reduce aerosol transmission between the employee and other persons.

The subsection is necessary to reduce employee exposure to potentially infectious material that may contain the virus that causes COVID-19. Potentially infectious material most commonly results from person(s) exhaling, vocalizing, coughing, or sneezing.

Subsection (c)(8)(B) requires employers to maximize the quantity of outside air provided to the extent feasible, for buildings with mechanical or natural ventilation, except in cases when the United States EPA Air Quality Index is greater than 100 for any air pollutant, or if letting in outdoor air would cause a hazard to employees.

This subsection is necessary to reduce employee exposure to COVID-19 in the workplace, as increased ventilation reduces the concentration of potentially infectious material in the indoor air.

Subsection (c)(8)(C) requires employers to implement cleaning and disinfecting procedures in their workplace.

This subsection is necessary to reduce employee exposure to COVID-19, as potentially infectious material may be present on surfaces that have not been cleaned and disinfected. The provisions of this subsection are designed to reduce transmission of COVID-19 that may occur after an employee touches a contaminated surface, then touches their eyes, nose, or mouth.

Subsection (c)(8)(D) requires employers to evaluate its handwashing facilities and policies.

This subsection is necessary to protect employees from COVID-19 hazards by encouraging and allowing time for employee handwashing, and providing employees with hand sanitizer. The provisions of this subsection are designed to reduce transmission of COVID-19 that may occur after an employee touches a contaminated surface, then touches their eyes, nose, or mouth.

Proposed subsection (c)(8)(E) requires employers to take the actions described in subsections (c)(8)(E)1. through (c)(8)(E)4. These actions are designed to ensure that appropriate PPE is made available and used to minimize employee exposure to COVID-19 hazards in the workplace.

Subsection (c)(8)(E)1. requires employers to evaluate the need for PPE to protect employees from exposure to COVID-19, and provide such equipment as needed. Subsection (c)(8)(E)2. requires employers to evaluate the need for respiratory protection in accordance with section 5144 when the physical distancing requirements in subsection (c)(6) are not feasible or are not maintained. Subsection (c)(8)(E)3. requires employers to provide and ensure the use of respirators in accordance with section 5144 when deemed necessary by the Division through Issuance of Order to Take Special Action, in accordance with section 332.3. Subsection (c)(8)(E)4. requires employers to provide and ensure use of eye protection and respiratory protection in accordance with section 5144 when employees are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids.

These subsections are necessary to minimize employee exposure to COVID-19 by ensuring appropriate PPE will be provided and used, and respirators are provided and used when required by this subsection. As described in this subsection, PPE is designed to protect employees from exposure to potentially infectious material they may come into contact with, either on surfaces or in the air, while respirators are designed to protect employees from potentially infectious material in the air they breathe. 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 is needed to provide adequate respiratory protection.

**New Subsection 3205(c)(9). Reporting, recordkeeping, and access.**

Proposed subsection (c)(9) requires employers to take the actions described in subsections (c)(9)(A) through (c)(9)(E). These actions are designed to ensure that employers report information about COVID-19 cases at the workplace to the local health department (subsection (c)(9)(A)), and serious illnesses from COVID-19 to the Division, as required (subsection (c)(9)(B)). In addition, subsection (c)(9)(C) requires employers to maintain records of the steps taken to implement the written COVID-19 Prevention Program in accordance with section 3203(b), while subsection (c)(9)(D) requires the COVID-19 Prevention Program to be made available at the worksite to employees, authorized employee representatives, and to representatives of the Division immediately upon request. Finally, subsection (c)(9)(E) requires

the employer to keep a record of and track all COVID-19 cases at the workplace, including specified information about the employee and their presence at the worksite. The subsection requires medical information to be kept confidential, and to be made available upon request to employees, their designated representatives, and the local public health department, with identifiable medical information removed.

These subsections are necessary to ensure that important information about COVID-19 cases in the workplace is maintained and reported to the appropriate agency, to be used in the event that further surveillance or investigation is needed. In addition, access to employees and employee representatives to information on COVID-19 cases, as well as to the employer's written COVID-19 Prevention Program is important to ensure that employers are taking the steps needed to minimize employee exposure to COVID-19 in the workplace.

**New Subsection 3205(c)(10). Exclusion of COVID-19 cases.**

Proposed subsection (c)(10) requires employers to take the actions described in subsections (c)(10)(A) through (c)(10)(D). These actions are designed to ensure that per subsection (c)(10)(A), COVID-19 cases are excluded from the workplace until the return to work requirements of subsection (c)(11) are met, and that per subsection (c)(10)(B), employees with COVID-19 exposure are excluded from the workplace for 14 days after the last known COVID-19 exposure to a COVID-19 case. Subsection (c)(10)(C) requires that for employees excluded from work under subsection (c)(10) and otherwise able and available to work, employers maintain an employee's earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job. Exception 1 to subsection (c)(10)(C) does not apply to any period of time during which the employee is unable to work for reasons other than protecting persons at the workplace from possible COVID-19 transmission. Exception 2 to subsection (c)(10)(C) does not apply where the employer demonstrates that the COVID-19 exposure is not work related. Subsection (c)(10)(D) does not limit any other applicable law, employer policy, or collective bargaining agreement that provides for greater protection. In addition, subsection (c)(10)(E) requires that at the time of exclusion, the employer shall provide the employee the information on benefits described in this section. An exception to subsection (c)(10) allows that employees who have not been excluded or isolated by the local health department need not be excluded by the employer, if they are temporarily reassigned to work where they do not have contact with other persons until the return to work requirements of subsection (c)(11) are met.

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 had exposure to COVID-19 do not come to work. Maintaining employees' earnings and benefits when they are excluded from the workplace is important in ensuring that employees will notify their employers if they

test positive for COVID-19 or have an exposure to COVID-19, and stay away from the workplace during the high-risk exposure period when they may be infectious.

**New Subsection 3205(c)(11). Return to work criteria.**

Proposed subsection (c)(11) specifies when employees who are COVID-19 cases, with or without symptoms, may return to work. Specifications are given in subsections (c)(11)(A) through (c)(11)(E).

The subsection is necessary to inform employers and employees of the conditions under which an employee may return to work following exclusion, and to ensure that employees do not return to work until they do not pose a significant risk of exposing others to COVID-19 in the workplace.

Proposed subsection (c)(11)(A) specifies three criteria that must be met before a COVID-19 case with COVID-19 symptoms may return to work.

This subsection is necessary to maintain consistency with criteria established by CDPH.

Proposed subsection (c)(11)(B) specifies criteria that must be met before a COVID-19 case who tested positive but never developed COVID-19 symptoms may return to work.

This subsection is necessary to maintain consistency with criteria established by CDPH.

Proposed subsection (c)(11)(C) clarifies that a negative COVID-19 test shall not be required for an employer to return to work.

This subsection is necessary because polymerase chain reaction (PCR) tests can remain positive long after an individual is no longer infectious, so proof of a negative test must not be required prior to an individual returning to the workplace after a documented COVID infection. Requiring a negative test before returning to work could impermissibly discriminate against employees who have previously tested positive for COVID-19.

Proposed subsection (c)(11)(D) specifies criteria that must be met before an employee who was issued an order to isolate or quarantine for COVID-19 may return to work.

This subsection is necessary to maintain consistency with criteria established by CDPH.

Proposed subsection (c)(11)(E) 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 any such employees to return to work.

**New Section 3205.1. Multiple COVID-19 Infections and COVID-19 Outbreaks.**

This proposed emergency regulation, new section 3205.1, would be in Subchapter 7. General Industry Safety Orders; directly after proposed section 3205. COVID-19 Prevention. The regulation would include the following specific requirements.

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

This proposed subsection (a)(1) establishes the application of the proposed regulation to a workplace covered by section 3205 if the local health department has identified it as a location of a COVID-19 outbreak or when there are three or more COVID-19 cases in an exposed workplace within a 14-day period.

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 workplace 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 reported to the local health department.

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

Proposed subsection (b)(1) requires employers to provide COVID-19 testing to all employees at the exposed workplace. An exception is provided for employees who were not present during the period of an outbreak identified by a local health department or the relevant 14-day period(s) under subsection(a). It further establishes that COVID-19 testing be provided at no cost to employees during employees' working hours.

The subsection is necessary to provide employees who were present during the period of an outbreak identified by a local health department or 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 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.

Proposed subsection (b)(2) establishes specific timeframes for which all employees covered by this section are tested. In proposed subsection (b)(2)(A), it provides that all employees in the exposed workplace are immediately tested upon being covered by this section, and then again one week later. It further establishes that negative COVID-19 test results of employees with COVID-19 exposure shall not impact the duration of any quarantine period required by orders issued by the local health department.

The subsection is necessary to ensure that employers follow the specific instructions of their local health department on managing the COVID-19 outbreak.

Subsection (b)(2)(B) establishes that after the first two COVID-19 tests required by (b)(2)(A), employers provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or more frequently if recommended by the local health department, until this section no longer applies pursuant to subsection (a)(2). Further, subsection (b)(2)(C) requires employers to provide additional testing when deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8 section 332.3.

The subsection is necessary to ensure that employers provide all additional COVID-19 testing as instructed by the local health department and the Division.

**New Subsection 3205.1(c). Exclusion of COVID-19 cases.**

This proposed subsection establishes the requirement that employers exclude from the workplace COVID-19 cases and employees who had COVID-19 exposure in accordance with subsections 3205(c)(10) and (c)(11), and in accordance with any applicable local health officer orders.

The subsection is necessary to make sure employees who are COVID-19 cases and employees who had COVID-19 exposure do not remain at work and will therefore help prevent further spread of COVID-19 in the exposed workplace.

**New Subsection 3205.1(d). Investigation of workplace COVID-19 illness.**

This proposed subsection requires that the employer immediately investigate and determine possible workplace related factors that contributed to the COVID-19 outbreak in accordance with subsection 3205(c)(3).

The subsection is necessary to ensure the employer follows its procedures for verifying COVID-19 case status, receiving information regarding COVID-19 test results and onset of symptoms, and identifying and recording COVID-19 cases.

**New Subsection 3205.1(e). COVID-19 Investigation, review and hazard correction.**

This proposed subsection 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 subsection is necessary to ensure that a thorough investigation is conducted and review of COVID-19 hazards are identified and corrected to control and prevent further spread of the disease in the exposed workplace.

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 exposed workplace that the employer would need to control to prevent further COVID-19 transmission.

This subsection is necessary to ensure that employers review their leave policies and practices and working environment to ensure they identify conditions that contribute to the transmission of COVID-19.

Subsection (e)(2) establishes the review be updated every thirty days that the outbreak continues, 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.

Subsection (e)(3) establishes that the employers implement changes to reduce the transmission of COVID-19 based on the investigation and review required by subsections (e)(1) and (e)(2). The employer shall 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 possible, respiratory protection, and other applicable controls.

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

**New Subsection 3205.1(f). Notifications to the local health department.**

Proposed subsection (f)(1) establishes the requirement of the employer to contact the local health department immediately but no longer than 48 hours after the employer knows, or with diligent inquiry would have known, of three or more COVID-19 cases for guidance on preventing the further spread of COVID-19 within the workplace.

The subsection is necessary so that the employer is provided guidance and is made aware about the local health department's requirements for isolation or quarantine, possible testing, and when it is appropriate for COVID-19 cases to return to work.

Proposed subsection (f)(2) further requires the employer to provide to the local health department the total number of COVID-19 cases and for each COVID-19 case, the name, contact information, occupation, workplace location, business address, the hospitalization and/or fatality status, and North American Industry Classification System (NAICS) code of the worksite of the COVID-19 case, and any other information requested by the local health department. It also requires the employer to continue to give notice to the local health department of any subsequent COVID-19 cases at the worksite. Subsection (f)(3) sets forth January 1, 2021, as the effective date the employer shall provide all information to the local health department required by Labor Code section 6409.6.

These subsections are necessary to ensure that employers meet their reporting obligations to the local health department and are intended to be consistent with Labor Code section 6409.6.

**New Section 3205.2. Major COVID-19 Outbreaks.**

This proposed emergency regulation, new section 3205.2, would be in Subchapter 7. General Industry Safety Orders; Introduction; directly after proposed section 3205.1. Multiple COVID-19 Infections and COVID-19 Outbreaks. The regulation would include the following specific requirements.

**New Subsection 3205.2.(a). Scope.**

This proposed subsection (a)(1) establishes the application of the proposed regulation to a workplace covered by section 3205 when there are 20 or more COVID-19 cases in an exposed workplace within a 30-day period.

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 during a major outbreak 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 workplace for a 14-day period.

The subsection is necessary to ensure that all COVID-19 cases associated with a major COVID-19 outbreak are identified and reported to the local health department.

**New Subsection 3205.2(b). COVID-19 testing.**

This proposed subsection requires employers to provide twice a week COVID-19 testing, or more frequently if recommended by the local health department, to all employees present at the exposed workplace during the relevant 30-day period(s) and who remain at the workplace. This subsection additionally requires employers to provide COVID-19 testing at no cost to employees during employees' working hours.

The subsection is necessary to provide employees who were present during the relevant 30-day period(s) the opportunity to get tested for COVID-19 without being deterred by cost or feasibility and for the employer to identify 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.

**New Subsection 3205.2(c). Exclusion of COVID-19 cases.**

This proposed subsection establishes the requirement that employers exclude from the workplace employees who are COVID-19 cases and employees with COVID-19 exposure in accordance with subsections 3205(c)(10) and (c)(11) and any relevant local health department orders.

The subsection is necessary to make sure employees who are COVID-19 cases and employees with COVID-19 exposures do not remain at work and, will therefore help to prevent further spread of COVID-19 in the exposed workplace.

**New Subsection 3205.2(d). Investigation of workplace COVID-19 illnesses.**

This proposed subsection establishes the requirement the employer comply with section 3205(c)(3), which is to immediately investigate and determine possible worksite related factors that contributed to the outbreak.

The subsection is necessary to ensure the employer follow its procedures for verifying COVID-19 case status, receiving information regarding COVID-19 test results and onset of symptoms, and identifying and recording COVID-19 cases.

**New Subsection 3205.2(e). COVID-19 hazard correction.**

This proposed subsection requires that in addition to the requirements of subsection 3205(c)(4) to investigate and respond to COVID-19 cases in the workplace, the employer take specific actions to correct hazards during a major COVID-19 outbreak.

Proposed subsection (e)(1) sets forth the requirement that in buildings or structures with mechanical ventilation, employers filter recirculated air with Minimum Efficiency Reporting Value (MERV)-13 or higher efficiency filters if compatible with the ventilation system. If MERV-13 or higher filters are not compatible with the ventilation system, employers shall use filters with the highest compatible filtering efficiency. Employers shall also evaluate whether portable or mounted High Efficiency Particulate Air (HEPA) filtration units or other air cleaning systems would reduce the risk of transmission and shall implement their use to the degree feasible.

Proposed subsection (e)(2) sets forth the requirement that the employer determine the need for a respiratory protection program or changes to an existing respiratory protection program under section 5144 to address COVID-19 hazards.

Proposed subsection (e)(3) sets forth the requirement for the employer to evaluate whether to halt some or all operations at the workplace until COVID-19 hazards have been corrected.

Proposed subsection (e)(4) sets forth the requirement that the employer implement any other control measures deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8 section 332.3.

These subsections are necessary to establish additional measures employers will be required to comply with in order to reduce the further spread of COVID-19 at the workplace.

**New Subsection 3205.2(f). Notifications to the local health department.**

This proposed subsection requires employers to comply with the notification requirements of section 3205.1(f), which is to contact the local health department immediately but no longer than 24 hours after the employer knows or with diligent inquiry would have known of three or more COVID-19 cases within the workplace. It establishes that the employer provide to the local health department the total number of COVID-19 cases and for each COVID-19 case, the name, contact information, occupation, workplace location, business address, and the hospitalization and/or fatality status, and NAICS code of the workplace of the COVID-19 case, and any other information requested by the local health department. It further requires the employer to continue to give notice to the local health department of any subsequent COVID-19 cases at the workplace. The subsection sets forth January 1, 2021, as the effective date the employer shall provide all information to the local health department required by Labor Code section 6409.6.

The subsection is necessary so that, during a major COVID-19 outbreak, the employer is provided guidance and is made aware about the local health department's requirements for isolation or quarantine, possible testing, and when it is appropriate for COVID-19 cases to return to work.

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

This proposed emergency regulation, new section 3205.3 would be in Subchapter 7. General Industry Safety Orders; Introduction; directly after section 3205.2. Major COVID-19 Outbreaks. The regulation would include the following specific requirements.

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

Proposed subsection (a) establishes the application of the proposed regulation to employer-provided housing.

The purpose of the definition is to inform the regulated community of the type of housing covered by the regulation.

The purpose of subsection (a)(1) is to exempt the applicability of the proposed regulation for the purpose of emergency response, where either (A) the employer is a government entity; or (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.

The purpose of subsection (a)(2) is to exempt the applicability of subsections (c), (d), (e), (f), and (h) to employer-provided housing where the occupants maintained a household together prior to residing in employer-provided housing, such as family members, when no other persons outside the household are present. 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.

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 3205.3(b). Assignment of housing units.**

The purpose of the proposed subsection is to establish a prioritization order for employers to use when assigning employees to shared housing units. The prioritization order is necessary to limit the number of persons coming in contact with employees residing in employer-provided housing, and is consistent with CDC recommendations for preventing and controlling the spread of COVID-19 in shared worker housing.

The purpose of proposed subsection (b)(1) in requiring employers to first prioritize shared-housing units by assigning residents who usually maintain a household together outside of work, such as family members, to the same housing unit without other persons is to limit the number of persons coming in contact with employees residing in employer-provided housing, and is necessary to reduce the spread of COVID-19.

The purpose of proposed subsection (b)(2) in requiring employers to next prioritize shared-housing units by assigning residents who work in the same crew or work together at the same worksite to the same housing unit without other persons is to limit the number of persons coming in contact with employees residing in employer-provided housing, and is necessary to reduce the spread of COVID-19.

The purpose of proposed subsection (b)(3) is to provide employers with an option to assign employees who do not usually maintain a common household, work crew, or worksite to the same housing unit in situations where no other housing alternatives are possible. This subsection is necessary to ensure housing for all employees requiring shared housing.

The above subsections governing housing assignment prioritization are 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>19</sup>

**New Subsection 3205.3(c). Physical distancing and controls.**

Proposed subsection (c) requires employers to take the actions described in subsections (c)(1), (c)(2) and (c)(3).

These actions are designed to ensure that resident employees maintain a minimum distance between themselves and others in the employer-provided shared housing unit, and maximize the quantity and supply of outdoor air and increase the filtration efficiency to the highest level compatible with the existing ventilation system to minimize resident employee exposure to COVID-19 hazards.

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<sup>19</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

Proposed subsection (c)(1) requires employers to ensure that the premises of employer-provided shared housing units are of sufficient size and layout to permit at least six feet of physical distancing between residents in housing units, common areas, and other areas of the premises.<sup>20</sup>

This subsection is necessary to ensure that exposure to COVID-19 is minimized through adequate physical distancing between resident employees in employer-provided shared housing units. Evidence exists that infectious virus particles can travel more than six feet through the air.<sup>21</sup>

The purpose of proposed subsection (c)(2) is to require employers to ensure beds in employer-provided shared housing units are spaced at least six feet apart in all directions and positioned to maximize the distance between sleepers' heads and prohibits the use of bunk beds.<sup>22</sup>

This subsection is necessary to ensure that employee exposure to COVID-19 is minimized through adequate physical distancing between residents in the employer-provided shared sleeping quarters. Evidence exists that infectious virus particles can travel more than six feet through the air.<sup>23</sup>

The purpose of proposed subsection (c)(3) is to require employers to maximize the quantity and supply of outdoor air and increase the filtration efficiency to the highest level compatible with the existing ventilation system.

This 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, when used along with the other control measures required in this section, such as physical distancing, face coverings, and cleaning, can reduce risk from airborne transmission of COVID-19.<sup>24</sup> Federal OSHA recommends that employers work with building maintenance staff to determine if the building ventilation system can be modified to increase

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<sup>20</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>; CDC. Living in Shared Housing, Updated October 28, 2020. Accessed on November 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/shared-housing/index.html>

<sup>21</sup> CDC. How COVID-19 Spreads, Updated October 28, 2020. Accessed on November 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

<sup>22</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

<sup>23</sup> CDC. How COVID-19 Spreads, Updated October 28, 2020. Accessed on November 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

<sup>24</sup> 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 October 29, 2020. Accessed on November 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>

ventilation rates and/or the percentage of outdoor air (as close to 100% as possible) that circulates in the system.<sup>25</sup>

#### **New Subsection 3205.3(d). Face coverings.**

The purpose of this proposed subsection is to require employers to provide face coverings to all residents and provide information to residents on when they should be used in accordance with state or local health officer orders or guidance.

The subsection is necessary, as the use of face coverings has been demonstrated to reduce the transmission of COVID-19.<sup>26</sup>

#### **New Subsection 3205.3(e). Cleaning and disinfecting.**

This proposed subsection requires employers to implement cleaning and disinfecting procedures in their employer-provided shared housing units. Transmission of COVID-19 may occur after an employee touches a contaminated surface, then touches their eyes, nose, or mouth.

Proposed subsection (e)(1) requires employers to ensure shared housing units, kitchens, bathrooms, and common areas are effectively cleaned and disinfected at least once a day to prevent the spread of COVID-19. Such cleaning and disinfecting shall be done in a manner that protects the privacy of residents.

Proposed subsection (e)(2) requires employers ensure that unwashed dishes, drinking glasses, cups, eating utensils, and similar items are not shared.

These subsections are necessary to reduce employee exposure to COVID-19, as potentially infectious material may be present on surfaces that have not been cleaned and disinfected.<sup>27</sup>

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<sup>25</sup> 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>; OSHA. Publication: COVID-19 Guidance on Ventilation in the Workplace. Accessed on November 6, 2020. <https://www.osha.gov/Publications/OSHA4103.pdf>

<sup>26</sup> CDC. CDC Newsroom Release: CDC calls on Americans to wear masks to prevent COVID-19 spread, dated July 14, 2020. Accessed on November 6, 2020. <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>

<sup>27</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>; CDC; Considerations for Restaurants and Bars, updated October 29, 2020. Accessed on October 15, 2020 and November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>

**New Subsection 3205.3(f). Screening.**

This proposed subsection requires employers to encourage residents to report COVID-19 symptoms.

This subsection is necessary, as 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 3205.3(g). COVID-19 testing.**

This proposed subsection requires employers to establish, implement and maintain effective policies and procedures for COVID-19 testing of occupants who had a COVID-19 exposure, who have COVID-19 symptoms, or as recommended by the local health department.

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 3205.3(h). Isolation of COVID-19 cases and persons with COVID-19 exposure.**

Proposed subsection (h) requires that employers ensure that COVID-19 cases are isolated from all occupants who are not COVID-19 cases, and that persons with COVID-19 exposure are effectively isolated from all other occupants in the employer-provided shared housing unit.

Proposed subsection (h)(1) requires employers to effectively isolate COVID-19 exposed residents from all other occupants. Subsection (h)(1) defines effective isolation to include providing COVID-19 exposed residents with a private bathroom, sleeping area, and a cooking and eating facility.

Proposed subsection (h)(2) requires employers to effectively isolate COVID-19 cases from all occupants who are not COVID-19 cases. Subsection (h)(2) defines effective isolation to include housing COVID-19 cases only with other COVID-19 cases, and providing COVID-19 case occupants with a sleeping area, bathroom, cooking and eating facility that is not shared by non-COVID-19 case occupants.

These subsections are necessary to limit transmission of COVID-19 in the workplace and employer-provided housing. Toward this end, it is critically important that employees who are

COVID-19 cases or who had exposure to COVID-19 isolate to further prevent the spread to other employees and residents.

Proposed subsection (h)(3) requires employers to keep confidential personal identifying information regarding COVID-19 cases and persons with COVID-19 symptoms in accordance with subsections 3205(c)(3)(C) and 3205(c)(3)(D).

This subsection is necessary to ensure compliance with state and federal privacy laws.

Proposed subsection (h)(4) requires employers to end isolation in accordance with subsections 3205(c)(10) and (c)(11) and any applicable local or state health officer orders.

This subsection is necessary to limit transmission of COVID-19 in the workplace and employer-provided housing. Toward this end, it is critically important that employees who are COVID-19 cases or who had exposure to COVID-19 do not expose other residents.

**New Section 3205.4. COVID-19 Prevention in Employer-Provided Transportation to and from Work.**

This proposed emergency regulation, new section 3205.4 would be in Subchapter 7. General Industry Safety Orders, Introduction; directly after section 3205.3. COVID-19 Prevention in Employer-Provided Housing.

The regulation would include the following specific requirements.

**New Subsection 3205.4(a). Scope.**

Proposed subsection (a) establishes the application of the proposed regulation to employer-provided motor vehicle transportation to and from work.

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

Proposed subsection (a)(1) exempts the applicability of the proposed regulation in employer-provided transportation where the driver and all passengers are from the same household outside of work, 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)(2) exempts the applicability of the proposed regulation in employer-provided transportation when necessary for emergency response, including firefighting, rescue, and evacuation, and support activities directly aiding response such as utilities, communications, and medical operations.

This exemption 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.

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 3205.4(b). Assignment of transportation.**

This proposed subsection establishes a prioritization order for employers to use when assigning employees to shared vehicles.

Proposed subsection (b)(1) requires employers to first prioritize shared-transportation by assigning employees residing in the same housing unit to the same shared vehicle.

The prioritization order is necessary to reduce the number of persons coming in contact with employees, and thus, reduce employee exposure to COVID-19. The proposed prioritization order is consistent with CDC recommendations for preventing and controlling the spread of COVID-19 in employer-provided transportation.<sup>28</sup>

Proposed subsection (b)(2) requires employers to next prioritize shared transportation by assigning employees who work in the same crew or worksite to the same shared vehicle.

The prioritization order is necessary to reduce the number of persons coming in contact with employees, and thus, reduce employee exposure to COVID-19. The proposed prioritization order is consistent with CDC recommendations for preventing and controlling the spread of COVID-19 in employer-provided transportation.<sup>29</sup>

Proposed subsection (b)(3) requires employers to assign employees who do not share the same household, work crew, or worksite to the same shared vehicle only when no other transportation alternatives are possible. This last option is necessary to ensure employees receive safe transportation to and from work when no other alternatives are available.

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

<sup>29</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

The above subsections are necessary to reduce the spread of COVID-19 transmission in the workplace by minimizing the number of different individuals who come into close contact with each other while using employer-provided transportation.<sup>30</sup>

**New Subsection 3205.4(c). Physical distancing and face coverings.**

Proposed subsection (c) requires employers to take the actions described in subsections (c)(1), (c)(2) and (c)(3).

These actions are necessary to ensure that employees use face coverings and maintain a minimum distance between themselves and others in employer-provided shared transportation to minimize employee exposure to COVID-19 hazards.

Proposed subsection (c)(1) requires employers to ensure that physical distancing and face covering requirements of subsection 3205(c)(6) and (c)(7) are followed for employees waiting for transportation.

This subsection is necessary to minimize employee exposure to COVID-19 while waiting for transportation through adequate physical distancing between employees and the use of face coverings. Evidence exists that infectious virus particles can travel more than six feet through the air.<sup>31</sup>

Proposed subsection (c)(2) requires employers ensure the vehicle operator and any passengers are separated by at least three feet during the operation of the vehicle, regardless of the vehicle's normal capacity.

This subsection is necessary to minimize employee exposure to COVID-19 in employer-provided transportation through adequate physical distancing between passengers.

Proposed subsection (c)(3) requires employers ensure the vehicle operator and any passengers are provided and wear face coverings in the vehicle as required by subsection 3205(c)(7).<sup>32</sup>

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<sup>30</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

<sup>31</sup> CDC. How COVID-19 Spreads, Updated October 28, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

<sup>32</sup> CDC. Agriculture Workers and Employers, Updated November 6, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

The subsection is necessary, as the use of face coverings has been demonstrated to reduce the transmission of COVID-19.<sup>33</sup>

**New Subsection 3205.4(d). Screening.**

This proposed subsection requires employers to develop, implement, and maintain effective procedures for screening and excluding drivers and riders with COVID-19 symptoms prior to boarding shared transportation.

This subsection is necessary, as it is important for employers to screen drivers and riders of employer-provided transportation for potential symptoms of COVID-19, and effectively respond to those symptoms to prevent or reduce the risk of transmission of COVID-19 in the workplace.

**New Subsection 3205.4(e). Cleaning and disinfecting.**

This proposed subsection requires employers to implement cleaning and disinfecting procedures in employer-provided transportation. Transmission of COVID-19 may occur after an employee touches a contaminated surface, then touches their eyes, nose, or mouth.

Proposed subsection (e)(1) requires employers to ensure that all high-contact surfaces (door handles, seatbelt buckles, armrests, etc.) used by passengers are cleaned and disinfected before each trip.

Proposed subsection (e)(2) requires employers to ensure that all high-contact surfaces used by drivers, such as the steering wheel, armrests, seatbelt buckles, door handles and shifter, are cleaned and disinfected between different drivers.

Proposed subsection (e)(3) requires employers to provide sanitizing materials and ensure that they are kept in adequate supply.

These subsections are necessary to reduce employee exposure to COVID-19, as potentially infectious material may be present on surfaces that have not been cleaned and disinfected.<sup>34</sup>

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<sup>33</sup> CDC. CDC Newsroom Release: CDC calls on Americans to wear masks to prevent COVID-19 spread, dated July 14, 2020. Accessed on November 6, 2020. <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>

<sup>34</sup> CDC; Cleaning and Disinfection for Non-emergency Transport Vehicles; Accessed on October 15, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/disinfecting-transport-vehicles.html>

### **New Subsection 3205.4(f). Ventilation.**

This proposed subsection requires employers to ensure, that when transporting employees, the vehicle windows are kept open, and the ventilation system is set to maximize outdoor air rather than to recirculate air.

Proposed subsection (f)(1) exempts the applicability of the proposed regulation in employer-provided transportation when the vehicle has functioning air conditioning in use and the outside temperature is greater than 90 degrees Fahrenheit.

Proposed subsection (f)(2) exempts the applicability of the proposed regulation in employer-provided transportation when the vehicle has functioning heating in use and the outside temperature is less than 60 degrees Fahrenheit.

Proposed subsection (f)(3) exempts the applicability of the proposed regulation in employer-provided transportation when protection is needed from weather conditions, such as rain or snow.

Proposed subsection (f)(4) exempts the applicability of the proposed regulation in employer-provided transportation when the vehicle has a cabin air filter in use and the United States EPA Air Quality Index for any pollutant is greater than 100.

These subsections are necessary to reduce employee exposure to COVID-19, as increased ventilation has been demonstrated to reduce the concentration of potentially infectious material in the indoor air.<sup>35</sup> The exemptions are necessary to relieve an employer from compliance with subsection (f) when weather and/or air quality hazards pose a greater and immediate risk to employee health than the transmission of COVID-19.<sup>36</sup>

### **New Subsection 3205.4(g). Hand hygiene.**

This proposed subsection requires employers to provide hand sanitizer without methyl alcohol in each vehicle and ensure that all drivers and riders sanitize their hands before entering and exiting the vehicle.

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<sup>35</sup> U.S. EPA. Ventilation and Coronavirus (COVID-19). Accessed on November 6, 2020. <https://www.epa.gov/coronavirus/ventilation-and-coronavirus-covid-19>; CDC. Protect Yourself When Using Transportation, Updated October 21, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html>

<sup>36</sup> CDC. COVID-19 Considerations for Cleaner Air Shelters and Cleaner Air Spaces to Protect the Public from Wildfire Smoke, Updated May 1, 2020. Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/php/cleaner-air-shelters.html>; CDC. Employer Information for Heat Stress Prevention during the COVID-19 Pandemic, Updated August 26, 2020; Accessed on November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/heat-stress-employers.html>

This subsection is necessary to protect employees from COVID-19 hazards by providing drivers and riders with hand sanitizer and requiring them to sanitize their hands before entering and exiting shared vehicles. Hand hygiene has been demonstrated to reduce the transmission of COVID-19 and is an important part of the United States response to the international emergence of COVID-19.<sup>37</sup>

### **Policy Statement and Anticipated Benefits**

The Board is proposing these emergency regulations, title 8, new sections 3205 through 3205.4, to preserve worker health and safety and to clarify employers' existing obligations, making compliance easier and more straightforward.

Emergency rulemaking is required in this matter to address the immediate potential threat to employees from exposure to COVID-19. Infection with COVID-19 may result in a serious illness that can include difficulty breathing, pneumonia, and hospitalization. In some cases, the disease can progress, and organ failure and death may result. COVID-19 symptoms can sometimes persist for months. The virus can damage the lungs, heart, and brain, which increases the risk of long-term health problems. Regular rulemaking, which requires a fiscal analysis and approval from the Department of Finance, cannot be completed in time to address the risks to workers presented by the current pandemic.

As COVID-19 continues to infect workers, the proposed regulation will reduce the number of COVID-19 infections in the workplace. This in turn will reduce the financial costs caused by medical care and lost workdays, costs that may be borne by employees, their families, employers, insurers, and public benefits programs.

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

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

These emergency regulations are also proposed in response to the Board's September 17, 2020, Petition Decision to partially grant Petition 583, to protect employees from exposure to COVID-19.

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<sup>37</sup> CDC. Hand Hygiene Recommendations, Updated May 17, 2020; Accessed on October 15, 2020 and November 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>

Current regulations are not sufficiently specific as to what employers are required to do during the COVID-19 pandemic. This results in confusion on behalf of both employers and employees, leaving many employees unprotected.

This confusion also causes the Division to expend staff resources to respond to questions that would be answered by title 8, new sections 3205 through 3205.4.

Controlling the spread of COVID-19 is a challenge. A person who is infected with COVID-19 may have no obvious symptoms, or no symptoms at all, yet still be infectious to others<sup>38</sup>. Therefore, the proposed regulations require, in some cases, employers to implement multiple methods of protection from exposure to COVID-19 at its workplace. These include identifying and controlling COVID-19 hazards in the workplace; investigating and responding to COVID-19 exposures and illnesses; training its employees; ensuring physical distancing and the use of face coverings; implementing engineering and administrative controls; providing and ensuring the use of PPE; and excluding COVID-19 cases from the workplace.

Many public health jurisdictions require that face coverings be worn when it is not possible to maintain a distance of at least six feet from another person. Evidence exists, however, that infectious virus particles can travel more than six feet through the air<sup>39</sup>. Further, there is an increased likelihood of transmission of COVID-19 in indoor spaces compared to outdoor spaces<sup>40</sup>. Therefore, proposed section 3205(c)(7)(A) requires employers to ensure that employees wear face coverings when they are indoors (with several exceptions), or outdoors and less than six feet from other persons.

The emergency regulations, COVID-19 Prevention, title 8, new sections 3205 through 3205.4, will provide clear and specific requirements to employers so that they may better protect employees from the harmful effects of COVID-19.

Following the adoption of these emergency regulations, at the direction of the Board, the Division will convene a representative advisory committee to review the emergency COVID-19 rulemaking(s), for the purpose of establishing if there exist any reasonable and necessary improvements to the emergency regulation required to avoid serious harm, as further guidance on the prevention of workplace transmission and exposure of COVID-19 becomes available.

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<sup>38</sup> Furukawa NW, Brooks JT, Sobel J. Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic. *Emerging Infectious Diseases*. July, 2020. <https://doi.org/10.3201/eid2607.201595>

<sup>39</sup> Setti L, Passarini F, De Gennaro G, et al. Airborne Transmission Route of COVID-19: Why 2 Meters/6 Feet of Inter-Personal Distance Could Not Be Enough. *Int J Environ Res Public Health*. 2020;17(8):2932. April 23, 2020. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7215485/pdf/ijerph-17-02932.pdf>

<sup>40</sup> Hiroshi Nishiura, Hitoshi Oshitani, Tetsuro Kobayashi, Tomoya Saito, Tomimasa Sunagawa, Tamano Matsui, Takaji Wakita. MHLW COVID-19 Response Team, Motoi Suzuki. Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19). doi: <https://doi.org/10.1101/2020.02.28.20029272>

### **Evaluation of Inconsistency/Incompatibility with Existing State Regulations**

Under California Labor Code 142.3, the Occupational Safety and Health Standards Board is the only agency in the state authorized to adopt occupational safety and health standards. The Board has reviewed existing regulations on this topic and has concluded that the proposed regulations are not inconsistent or incompatible with existing state regulations.

### **DOCUMENTS INCORPORATED BY REFERENCE**

None.

### **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON**

The Board has relied upon the following documents as part of this emergency action:

1. Gavin Newsom, Governor of California; Proclamation of a State of Emergency; March 4, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>
2. Gavin Newsom, Governor of California; Executive Order N-33-20; March 19, 2020. <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>
3. Gavin Newsom, Governor of California; Update on California's Progress Toward Stage 2 Reopening; May 4, 2020. <https://www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/>
4. Gavin Newsom, Governor of California; Executive Order N-62-20; May 6, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>
5. Occupational Safety and Health Standards Board; Petition File No. 583; Adopted Decision; September 17, 2020. <https://www.dir.ca.gov/oshsb/documents/petition-583-adopteddecision.pdf>
6. Division of Occupational Safety and Health's Evaluation of Petition 583; July 30, 2020. <https://www.dir.ca.gov/oshsb/documents/petition-583-dosheval.pdf>
7. California Department of Public Health (CDPH); COVID-19 by the Numbers; accessed October 15, 2020. <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers>
8. European Centre for Disease Prevention and Control; Transmission of COVID-19. Accessed on October 14, 2020. <https://www.ecdc.europa.eu/en/covid-19/latest-evidence/transmission>



9. Wei WE, Li Z, Chiew CJ, Yong SE, Toh MP, VJ. L. Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020. ePub: April 1, 2020. MMWR Morb Mortal Wkly Rep. 2020. <http://dx.doi.org/10.15585/mmwr.mm6914e1>
10. Kim YI, Kim SG, Kim SM, Kim EH, Park SJ, Yu KM, Chang JH, Kim EJ, Lee S, Casel MAB, Um J, Song MS, Jeong HW, Lai VD, Kim Y, Chin BS, Park JS, Chung KH, Foo SS, Poo H, Mo IP, Lee OJ, Webby RJ, Jung JU, Choi YK. Infection and Rapid Transmission of SARS-CoV-2 in Ferrets. *Cell Host Microbe*. 2020 May 13;27(5):704-709.e2. doi: 10.1016/j.chom.2020.03.023. Epub April 6, 2020. PMID: 32259477; PMCID: PMC7144857. <https://pubmed.ncbi.nlm.nih.gov/32259477/>
11. Centers for Disease Control and Prevention (CDC); When to Quarantine Stay home if you might have been exposed to COVID-19. Updated on October 27, 2020. Accessed on October 14, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html#:~:text=You%20should%20stay%20home%20for,after%20exposure%20to%20the%20virus>
12. Setti L, Passarini F, De Gennaro G, et al. Airborne Transmission Route of COVID-19: Why 2 Meters/6 Feet of Inter-Personal Distance Could Not Be Enough. *Int J Environ Res Public Health*. 2020;17(8):2932. April 23, 2020. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7215485/pdf/ijerph-17-02932.pdf>
13. Bourouiba L. Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19. *JAMA*. 2020;323(18):1837–1838. doi:10.1001/jama.2020.4756. <https://jamanetwork.com/journals/jama/fullarticle/2763852>
14. Shen Y, Li C, Dong H, et al. Community Outbreak Investigation of SARS-CoV-2 Transmission Among Bus Riders in Eastern China. *JAMA Intern Med*. Published online September 1, 2020. doi:10.1001/jamainternmed.2020.5225. <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2770172>
15. Guo Z, Wang Z, Zhang S, et al. Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020. *Emerging Infectious Diseases*. 2020;26(7):1583-1591. doi:10.3201/eid2607.200885. [https://wwwnc.cdc.gov/eid/article/26/7/20-0885\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0885_article)
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18. Renyi Zhang, Yixin Li, Annie L. Zhang, Yuan Wang, Mario J. Molina. Identifying airborne transmission as the dominant route for the spread of COVID-19. *Proceedings of the National Academy of Sciences*, June 2020, 117 (26) 14857-14863. <https://www.pnas.org/content/pnas/117/26/14857.full.pdf>



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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 Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. Appointments can be scheduled via email at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov) or by calling (916) 274-5721.

### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Board has determined that proposed sections 3205 through 3205.4 do not impose a mandate on local agencies or school districts requiring reimbursement by the State pursuant to Part 7 of Division 4 of the Government Code (commencing with section 17500).

### **COST ESTIMATES OF PROPOSED ACTION**

#### **Costs or Savings to State Agencies**

The majority of the requirements in the proposal are consistent with guidance and orders from the CDPH and are thus already followed by state employers. For all parts of this analysis, the Division has used the average wage for the first quarter of 2020, the most recent data available. According to EDD, this wage is \$30.22 per hour.<sup>41</sup>

#### **Subsection 3205(c) [Written COVID-19 Prevention Program]**

Under existing section 3203, employers in California are already required to have a written and effective Injury and Illness Prevention Plan that expressly requires, among other things, a system for ensuring that employees comply with safe and healthy work practices; a system for communicating with employees on matters relating to occupational safety and health; procedures for identifying and evaluating workplace hazards including scheduled periodic inspections; a procedure to investigate and respond to occupational injury or occupational illness; methods and/or procedures for correcting unsafe or unhealthy conditions; and training and instruction.

All these requirements already apply to the hazard of COVID-19; indeed, the Division has issued COVID-19-related citations to employers based on section 3203. The Division has also issued guidance and done outreach to warn employers that COVID-19 is a workplace hazard under section 3203.

Proposed section 3205(c) provides information about how to apply section 3203 in the specific context of COVID-19. Much of that subsection makes explicit actions that are already required by existing section 3203, such as creating COVID-19 prevention policies, and/or includes

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<sup>41</sup> EDD, Occupational Employment (May 2019) & Wage (2020 1st Quarter) Data, released June 2020, available at <https://www.labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html#OES> (State of California 2020 1st Quarter).



requirements which are already mandated by local government entities. Additional quantified and unquantified costs have been identified as follows.

Reviewing and updating written COVID-19 Prevention Program for the elements below: The Division believes that all state agencies already have comprehensive written COVID-19 prevention programs, which are very unlikely to need revision as a result of this regulation. Executive Orders issued by Governor Newsom order all residents to follow the guidance of state and local health officials, which in turn require such plans.

The proposed section 3205 corresponds to public health orders and guidance, thus it should require no alteration of state entity employers' written policies.<sup>42</sup>

Nonetheless, state employers will likely review their plans to ensure compliance with this regulation, but this cost cannot be quantified. The speed of review will vary significantly depending on the size of the state workforce covered by a particular program, the nature of the state entity's operations, and what units within the entity (if any) have their own distinct policies and plans. To provide some idea of the number of establishments involved, in the first quarter of 2020 there were 13,607 state entity establishments, according to EDD.<sup>43</sup> However, in all or nearly all cases, changes to the actual policies should not be required.

Subsections 3205(c)(1) [System for communicating] and (c)(2) [Identification and evaluation of COVID-19 hazards]

The proposal requires employers to allow employees and their authorized representatives to participate in the identification and evaluation of COVID-19 hazards. The particular hazard of an infectious virus requires employee participation in order to be addressed effectively. This should not be a significant issue for state employers; they have unionized workplaces and therefore already have methods of allowing employee participation in safety and health matters.

The remaining requirements in these subsections should already be provided by the employer under existing section 3203(a)(3) and (a)(4), including the most time-intensive tasks such as the worksite specific evaluation of COVID-19 hazards and updating written policies and procedures. It is not possible to evaluate COVID-19 hazards, as required by section 3203, without doing so in a manner specific to the employer's operations at the worksite, after reviewing government-provided information about the virus. Similarly, the items in the proposed 3205(c)(1) are necessary in order to have an effective "system for communicating with employees," about COVID-19 as required by existing section 3203(a)(3). A virus, unlike some safety hazards, requires communication about matters beyond the existence of the hazard and how to avoid it—

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<sup>42</sup> Executive Order N-25-20 (March 4, 2020) <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>, and Executive Order N-33-20 (March 19, 2020) <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

<sup>43</sup> EDD; Quarterly Census of Employment and Wages, California – Statewide, 2020 – First Quarter, accessed 10/13/20 from <https://www.labormarketinfo.edd.ca.gov/qcew/qcew-select.asp>

for instance, communication would not be “effective” if employees at particular risk of severe illnesses were unaware of what they should do, or if workers did not know how to get tested.

State entities are already reviewing public health orders and guidance in compliance with “California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe,” also titled the “Blueprint for a Safer Economy.”<sup>44</sup>

Employers are required to evaluate how to maximize outdoor air and use any existing filtration system for indoor workplaces most efficiently, but they are not required to update any ventilation systems. This will simply mean opening windows and confirming that the filters being used in any existing systems are the correct type and properly maintained/replaced as appropriate. This minimal evaluation is already required by the existing section 3203. As for screening, this regulation allows employers to ask employees to evaluate their own symptoms before reporting to work, which should have minimal cost. To the Board’s knowledge, this is already being performed by state agencies.

Subsection 3205(c)(3) [Investigating and responding to COVID-19 illness in the workplace]

The California Department of Public Health (CDPH) data from October 14, 2020 shows that there have been 675,889 confirmed cases among Californians over 18 and under 65.<sup>45</sup> Although people outside this age range certainly work, the CDPH category for people “65+” has not been included because the high proportion of retirees within that group makes it less representative of the working population. DOF population estimates for 2020 show 24,854,968 residents in the selected age group.<sup>46</sup> Dividing cases by population, that gives a confirmed COVID-19 case rate of about 0.02719.

Please note that past infections are not necessarily a reflection of future infections. Among many factors, a vaccine may be developed, broad population testing and contract testing may increase or decrease, compliance with protective measures within the general population may change, and aspects of the virus itself might lead to spikes or declines. This number of past cases also reflects a period of less than twelve months. However, given that the Division cannot predict the course of the virus, this provides a basis for estimating COVID-19 cases among employees in the coming year.

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<sup>44</sup> See Statewide Public Health Officer Order, August 28, 2020, available at [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20\\_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf).

<sup>45</sup> CDPH “California COVID-19 By the Numbers,” October 15, 2020, numbers as of October 14, 2020, accessed from <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers> on October 15, 2020.

<sup>46</sup> DOF, “Total Estimated and Projected Population of California by Age: July 1, 2010 to July 1, 2060 in 1-year Increments,” available at <http://www.dof.ca.gov/forecasting/demographics/Projections/>, accessed Oct. 2020.

According to EDD data, in the first quarter of 2020 (the last quarter available), there were 476,242 employees working in state government in California.<sup>47</sup> The following state employees were likely not covered the proposal:

State Government Employees Not Covered by Proposal

NAICS	Industry	Employees, Q1 2020	Assumed % not covered by proposal	Reasoning	Employees not covered
54	Professional and Technical Services	4,229	50%	Remote or solo work during pandemic	2,115
62	Healthcare and Social Service <sup>48</sup>	65,392	80%	Covered by 5199	52,314
921	Executive, Legislative, & Gen Government	34,590	15%	Remote or solo work during pandemic	5,189
922	Justice, Public Order, and Safety Activities <sup>49</sup>	71,780	70%	Covered by 5199	50,246
923	Administration of Human Resource Program	33,876	20%	Remote or solo work during pandemic	6,775
925	Community and Housing Program Admin	962	10%	Covered by 5199	96
926	Administration of Economic Programs	43,250	20%	Remote or solo work during pandemic	8,650
				<b>TOTAL</b>	<b>125,385</b>

Subtracting the total number of state government employees not covered by the proposal, 125,385, from a total of 476,242 state government employees shows that **350,857 state government employees are covered by the proposal**. Applying the estimated COVID-19 rate for persons 18-64 of 0.02719 (as described above), this provides an estimate of 9,540 cases.

The existing section 3203 already requires effective procedures to investigate workplace illnesses. In the case of COVID-19, this necessarily requires employers to determine the infected

<sup>47</sup> EDD projections for 2021, used elsewhere in this analysis, could not be used for this purpose or for state cost estimates, because they did not include sufficient detail about public employment. See footnote 42 for source.

<sup>48</sup> Of these, 56,428 work in hospitals.

<sup>49</sup> Of these, 48,805 work in correctional institutions.



person’s exposure to other people at the worksite, alert all potentially exposed persons so that they can take the necessary precautions, and investigate whether any workplace condition contributed to the illness. Without these steps, an investigation will not be adequate because it will not aid the employer in its efforts to arrest the spread of the virus.

With regard to the notice requirements for people exposed to COVID-19, in addition to existing requirements under section 3203 and local government requirements, starting January 1, 2021, AB 685 will require employers to give notice of COVID-19 cases to employees, including employees of subcontractors, those employees’ exclusive representatives (i.e. unions), and other employers onsite.<sup>50</sup>

Furthermore, a statewide order of the Public Health Officer requires counties to adhere to “California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe,” also titled the “Blueprint for a Safer Economy, which includes the CDPH document “Responding to COVID-19 in the Workplace for Employers.”<sup>51</sup> To the Division’s knowledge all local jurisdictions have requirements consistent with, or more stringent than, the requirements set forth in that document. It requires “contract tracing...of close contacts of confirmed cases,” notification to workers who may have been exposed, and maintenance of confidentiality for employees with known or suspected COVID-19 cases.<sup>52</sup>

Proposed subsection (c)(3) primarily describes how to perform this investigation and contact tracing effectively, rather than add new requirements—for example, an effective investigation cannot be performed without determining when/where the COVID-19 case was present and which individuals may have been exposed. However, the Division recognizes that employers may become more systematic in their investigations as a result of the specificity of the proposed subsection, which will slow down their investigations slightly to ensure that all of the activities of the person with COVID-19 have been considered, all potentially exposed persons have been given notice, etc. To account for the specificity of 3205(c)(3), the Division estimates that **each confirmed case will require an additional .5 work hours** under the proposal. This does not mean that each investigation will require only half an hour, rather that the proposed subsection may increase the level of detail during investigations that should already be occurring under existing law.

This subsection also requires employers to offer testing to COVID-19 exposed employees. This should already be covered by public employees’ workers’ compensation insurance or their health insurance. Nonetheless, the Division requested information about testing costs from the CDPH

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<sup>50</sup> Labor Code 6409.6 (added by AB 685, chaptered 9/17/20, effective 1/1/21). The Division cannot determine the exact extent to which the statute will overlap with the proposed regulation, because the statute refers to CDPH definitions that have not been promulgated by that agency by regulation. However, the Division believes its proposal is currently consistent with definitions published by CDPH. Please note that the statute imposes some requirements not included in the proposed regulation. These include requiring employers to provide notice of COVID-19 cases *in writing*.

<sup>51</sup> Statewide Public Health Officer Order, August 28, 2020, available at [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20\\_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf). “Responding to COVID-19 in the Workplace for Employers,” released June 16, 2020, revised September 18, 2020, available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Employer-Guidance.aspx>.

<sup>52</sup> The CDPH uses “close contacts” in a manner consistent with “COVID-19 exposure” as defined in this proposal.

Occupational Health Branch, in October 2020. The Division was told that, based on information from the CDPH Testing Task Force, the cost of a PCR testing for SARS-CoV-2 can range from \$80 - \$250 per person, depending on the test. The cost of antigen testing can range from \$5 - \$40 per person. The proposed regulation does not specify PCR or antigen testing.

To the extent that a state agency incurs some part of these costs, that cannot be quantified. Even if the above estimate of future infections turned out to be correct, there is no way to estimate the number of individuals who might be exposed, as defined in this proposal, for every given confirmed case. A COVID-19 case will generate few exposures if the infected person is able to practice physical distancing at work. But if the infected person regularly spends 15 minutes or more within six feet of a large number of different people, perhaps because they work in a small space with many other individuals or travel to multiple workstations where physical distancing is impossible, then more potential exposures will result. The Division is unaware of any estimate of how many close contacts of this kind occur to the average state worker or workers in general, since the number will vary by workplace and may even change from day to day.

Subsection 3205(c)(4) [Correction of COVID-19 hazards]

Correction of unsafe or unhealthy conditions is already expressly required by existing section 3203(a)(6).

Subsection 3205(c)(5) [Training and instruction]

Employers are already required to provide training and instruction regarding COVID-19 hazards and prevention under section 3203(a)(7), and the specifics listed in the proposed subsection can be incorporated into employers' existing COVID-19 related training. The Division believes that most employers are already implementing all or most of the training requirements, such as handwashing and face covering information. Because employers will have to have specific benefits information on hand in order to meet the requirements of Labor Code section 6409.6(a)(3) on January 1, 2021, and must provide that information to employees as specified in that section, compiling that information will not incur any additional costs for the purposes of this regulation.

Subsections 3205(c)(6) [Physical distancing] and (c)(7) [Face coverings]

Based on its COVID-19 inspections and related research, the Division believes that all counties already require face coverings and social distancing of at least six feet when it is possible to do so, and that state entities are following these requirements both under local requirements and in accordance with CDPH guidance and the Blueprint for a Safer Economy.

3205(c)(8) [Other engineering controls, administrative controls, and personal protective equipment]

This subsection requires cleanable solid partitions when physical distancing cannot be maintained. Evaluating the need for such partitions is already required under section 3203, and many state employers will have sufficient space for physical distancing and will not need any partitions. Though state agencies are likely to have already installed partitions where necessary, for those that have not, the cost of installation cannot be determined. This is a performance

standard; employers are free to determine the size/shape/material best suited to their business, so the ease of installation will depend on each individual workplace. Even if it were possible to establish an average cost, the Division is not aware of any basis for determining the total number of work areas in state places of employment in which it is impossible to maintain six feet of distance, or the number of employees working under those conditions.

Counties already require the handwashing and cleaning/disinfection protocols required here, including the prohibition on sharing personal items such as gloves, goggles, and other personal protective equipment, and state agencies should be in compliance.

This subsection requires employers to maximize the quantity of outside air unless it creates a hazard or is above a certain pollution level. This essentially mean keeping windows open more often and/or continuing to use existing ventilation systems, so the Division has not estimated additional costs.

For the requirement related to aerosolizing activities, the majority of such activities are covered by the existing section 5199 and therefore exempt from proposed section 3205. This provision mainly applies to dental offices that meet the requirements necessary to be exempt from 5199. Such offices are already required to provide the specified respiratory protection under existing section 5144, but this subsection allows all COVID-19 requirements to be located in the same part of Title 8.

Subsection 3205(c)(9) [Reporting, recordkeeping and access]

Reporting to CDPH and the Division will not take more time than existing requirements that employers take to report to those agencies.

Existing section 3203 already requires employers to maintain illness records and records of steps taken to implement COVID-19 hazard correction. Because this proposed subsection specifies particular information to be collected by the employer, employers will have to ask for and record additional information such as the workers' last day at the site and the date of any positive COVID-19 test. This does not require extensive questions, but since it will require a few more questions and some additional data entry, the Division estimates that will require **an additional .2 hours per COVID-19 case**, as indicated in the table below.

Subsections 3205(c)(10) [Exclusion of COVID-19 cases] and (c)(11) [Return to work criteria]

Exclusion of confirmed cases in accordance with accepted medical and public health practices is necessarily required under existing section 3203 in order to correct a significant occupational hazard, namely transmission of COVID-19 between employees. Although the proposed subsection provides for pay for excluded workers who are otherwise able to work, the cost of this cannot be determined because the Division cannot determine how many excluded state employees are likely to have exhausted all available paid time off related to COVID-19. Nothing

in this provision prevents employers from requiring employees to exhaust existing leave during the exclusion period.

Ensuring that employees are excluded pursuant to this subsection is a performance standard but presumably requires alerting employees to the fact that they cannot immediately return to work, which will sometimes require a phone call, email, or some other kind of communication to the infected person. Employers will also have to provide the excluded employee with the required information regarding benefits (which, as described above, employers must compile for reasons other than the proposed regulation). Although employers can meet these obligations with a quick email, the Division recognizes that, in many cases, employers will spend a few minutes discussing these issues with the employee, especially given the potential seriousness of a COVID-19 illness. The Division has therefore estimated an **average cost of .3 employee hours per COVID-19 case.**

Sections 3205.1 [Multiple COVID-19 Infections and COVID-19 Outbreaks] and 3205.2 [Major COVID-19 Outbreaks]

This section applies to employers covered by proposed section 3205 only when there are three or more infections in a 14-day period within a workplace. CDPH informed the Division that, as of September 30, 2020, the department was aware of nearly 400 COVID-19 outbreaks in settings in California that were not covered by existing section 5199. This is likely an undercount, since CDPH relied on reporting from other entities, including heavily burdened local health departments, and the fact that employers in some counties were not obliged to report outbreaks to their local health department until September 18, 2020.<sup>53</sup>

The Division is aware that the government employers most likely to experience “major COVID-19 outbreaks” as defined in this proposal are hospitals, residential nursing centers (including those for the elderly), other medical facilities, homeless shelters, and correctional facilities. These are circumstances covered by section 5199 and would be exempt from this proposal. Major outbreak costs have thus not been estimated for state or local government entities.

The information provided by CDPH did not distinguish between public and private employers. Thus, for incidents involving three COVID-19 cases in 14 days (i.e. a COVID-19 outbreak) and meeting the requirements of proposed section 3205.1, the Division does not have information about how many state entities have had such an incident. In the absence of evidence, the Division will err on the side of overestimating these incidents by presuming that 10 is a reasonable estimate, each one requiring ten hours of response. Given that only 400 outbreaks not covered by existing section 5199 have been recorded by CDPH for the entire state, 10 is likely an

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<sup>53</sup> “Responding to COVID-19 in the Workplace for Employers,” released June 16, 2020, revised September 18, 2020, available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Employer-Guidance.aspx>.

overestimate, given that the majority of outbreaks in state workplaces have occurred in situations covered by 5199.

In locations covered by this proposed section, the employer would have to provide additional COVID-19 testing, the cost of which cannot be quantified (see above), and additional review/correction of its COVID-19 policies and prevention methods, which is estimated to require 10 hours per outbreak.

It is possible that a state entity employer could have to repeat this reevaluation, if the outbreak continued for more than 30 days. However, the Division cannot presently quantify this cost, because the agency lacks data about the length of outbreaks. Though CDPH has provided information about the number of outbreaks to which this section would apply, it did not provide information about the number of days each incident continued to qualify as an outbreak.

Sections 3205.3 [COVID-19 Prevention in Employer-Provided Housing] and 3205.4 [COVID-19 Prevention in Employer-Provided Transportation]

No housing or transportation costs have been estimated. The Division is aware that the Department of Forestry and Fire Protection (CalFire) maintains employer-provided housing, but that housing is exempted, along with transportation to and from such locations, since that housing and transportation serves firefighting purposes.

Quantifiable annual costs of proposal (State Government)

Subsection 3205(c)(3): Employer response to COVID-19 cases in the workplace (\$30.22 * .5 hours * 9,540 cases)	\$144,149
Subsection 3205(c)(9): Recordkeeping for COVID-19 cases (\$30.22 * .2 hours * 9,540 cases)	\$57,660
Subsection 3205(c)(10): Exclusion of employees with COVID-19 cases (\$30.22 * .3 hours * 9,540 cases)	\$86,490
Section 3205.1: Multi-infection incidents (\$30.22 * 10 hours * 10 cases)	\$3,022
<b>Total</b>	<b>\$291,321</b>

As described in detail above, please note that **these are only the quantifiable costs.**

The primarily savings to state agencies would come from reduced COVID-19 occupational transmission and thus fewer COVID-19 illnesses. The amount of this reduction is unknown and depends on the course of the pandemic. The proportion of any future reduction that could be attributed to the proposal, as opposed to other state or local mandates, cannot be determined in advance.

Savings would result not only from improved health among state employees, but also from an overall reduction in the statewide COVID-19 transmission rate, which would lead to a reduction in the costs associated with publicly-provided medical care and benefits.

The benefit from reduced COVID-19 infections is unquantifiable, but could result in fewer deaths, hospitalizations, and long-term injuries including harm to patients' pulmonary systems, respiratory systems, and neurological function.

A reduction in the spread of COVID-19 will also allow for increased reopening of businesses and public services. This would increase employment and the overall economy.

The Division expects that it would receive fewer queries about COVID-19 if proposed sections 3205 through 3205.4 are enacted. The proposed regulations would also make it easier and faster for Division staff to respond to questions. However, this is unlikely to lead to any fiscal savings. Those staff who have been diverted from their usual duties in response to COVID-19-related issues would simply be returned to their usual enforcement activities.

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

None.

**Other Nondiscretionary Cost or Savings Imposed on Local Agencies:**

The above analysis for state agencies' costs and savings applies to local agencies as well. Costs have been estimated in the same manner as above.

Given that local government entities are particularly likely to be aware of—and comply with—the requirements of their own counties, the Division does not believe that changes are likely to be needed in local government entities' current COVID-19 prevention policies. As described above with regard to state employers, the Division is aware that local entities will still review their existing COVID-19 prevention programs to ensure compliance with this regulation, but the time required will vary dramatically between public agencies and cannot be quantified. The speed of review will depend on the size of the agency, the nature of its operations, and what units within the entity (if any) have their own distinct policies and plans. To provide some idea of the number of establishments involved, there were 19,380 local government establishments in the first quarter of 2020, according to EDD.<sup>54</sup>

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<sup>54</sup> EDD Quarterly Census of Employment and Wages, California – Statewide, 2020 – First Quarter, accessed 10/13/20 from <https://www.labormarketinfo.edd.ca.gov/qcew/qcew-select.asp>.

According to EDD data, in the first quarter of 2020 (the last quarter available), there were 1,829,639 employees working in local government in California.<sup>55</sup> The following local government employees were likely not covered the proposal:

Local Government Employees Not Covered by Proposal

NAICS	Industry	Employees, Q1 2020	Assumed % not covered by proposal	Reasoning	Employees not covered
488	Support Activities for Transportation	11,787	5%	Remote or solo work during pandemic	589
51	Information	14,495	30%	Remote or solo work during pandemic	4,349
52	Finance and Insurance	3,810	30%	Remote or solo work during pandemic	1,143
54	Professional and Technical Services	1,430	50%	Remote or solo work during pandemic	715
62	Health Care and Social Assistance <sup>56</sup>	114,367	80%	Covered by 5199	91,494
921	Executive, Legislative, & Gen Government	182,635	15%	Remote or solo work during pandemic	27,395
922	Justice, Public Order, and Safety Activities <sup>57</sup>	186,011	70%	Covered by 5199	130,208

<sup>55</sup> EDD projections for 2021, used elsewhere in this analysis, could not be used for this purpose or for state cost estimates, because they did not include sufficient detail about public employment. See footnote 42 for source.

<sup>56</sup> Of these, the majority (95,567) worked in hospitals.

<sup>57</sup> This includes police, corrections, and public health administration, among other things. The exact amount of corrections-related employment is suppressed from public EDD data, but it reasonably assumed that this constitutes a significant portion of this category.

923	Administration of Human Resource Program	98,016	20%	Remote or solo work during pandemic	19,603
925	Community and Housing Program Admin	5,460	10%	Covered by 5199	546
926	Administration of Economic Programs	15,964	20%	Remote or solo work during pandemic	3,193
				<b>TOTAL</b>	<b>279,235</b>

Subtracting the total number of local government employees not covered by the proposal, 279,235 from 1,829,639 local government employees in the first quarter of 2020 gives a total of **1,550,404 local government employees covered by the proposal**. Applying the estimated COVID-19 rate for persons 18-64 of 0.02719 (as described above), this provides an **estimate of 42,155 cases**.

Local government employers most likely to experience “major COVID-19 outbreaks” as defined in this proposal are hospitals, residential nursing centers (including those for the elderly), other medical facilities, homeless shelters, and correctional facilities. These are circumstances covered by section 5199 and would be exempt from this proposal. Major outbreak costs have thus not been estimated for local government entities.

As described above, CDPH information on the 400 outbreaks not covered by 5199 does not distinguish between public and private employers. In the absence of data, the Division has estimated 30 such outbreaks would be covered by the proposed section 3205.2 for local entities, even though that is likely to be a significant overestimate.

Local government employers have been exempted from the employer-provided housing and transportation requirements while conducting emergency operations. For instance, public employers may create temporary housing sites and provide transportation during wildland firefighting operations. Outside of those circumstances, the Division is not aware of any public provision of housing/transportation which would be covered by this proposal.



Quantifiable annual costs of proposal (Local Government)

Subsection 3205(c)(3): Employer response to COVID-19 cases in the workplace (\$30.22 * .5 hours * 42,155 cases)	\$636,962
Subsection 3205(c)(9): Recordkeeping for COVID-19 cases (\$30.22 * .2 hours * 42,155 cases)	\$254,785
Subsection 3205(c)(10): Exclusion of employees with COVID-19 cases (\$30.22 * .3 hours * 42,155 cases)	\$382,177
Section 3205.1: Multi-infection incidents (\$30.22 * 10 hours * 30 cases)	\$9,066
<b>Total</b>	<b>\$1,282,990</b>

As described in detail above, please note that **these are only the quantifiable costs.**

Annual savings for local government employers cannot be determined; please see the section on savings for state entities, above.

**Costs or Savings in Federal Funding to the State:**

None.