

CALIFORNIA INDUSTRIAL HYGIENE COUNCIL

*Advancing public policy to improve the health and safety
of workers and the community.*

March 2, 2021

Via email: rs@dir.ca.gov

Division of Occupational Safety and Health
(DOSH)

Stakeholders Meeting

Via Zoom meeting on December 18, 2020

Subject: Emergency Temporary Standard, California Code of Regulations, Title 8,
Sections 3205; 3205.1; 3205.2; 3205.3; and 3205.4, COVID-19 Prevention

Dear Sir/Madam:

The California Industrial Hygiene Council (CIHC) appreciates the opportunity to comment on the subject Emergency Temporary Standard (ETS). We understand all of the hard work from DOSH staff on this challenging issue. The CIHC, founded in 1990, represents the industrial hygiene and the occupational and environmental health professions in California. CIHC is affiliated with the national American Industrial Hygiene Association (AIHA), an 8,000-member organization. The CIHC is formally comprised of industrial hygienists and occupational and environmental health and safety professionals who are members of the five California AIHA local sections represented by the CIHC Board of Directors. The CIHC's mission is to provide sound scientific and technological input to the regulatory and legislative processes.

The CIHC appreciates the opportunity to have participated with the Advisory Committee meetings on February 11, 12 and 16, 2021. The CIHC has reviewed the ETS in detail and has prepared a list of comments on various provisions. Please refer to the 4-page enclosure with this letter.

The CIHC welcomes the opportunity to be involved with the regulatory process. We look forward to participating in future actions regarding this subject, such as additional advisory committee meetings. Please contact me on behalf of the CIHC at (916) 712-4547 or kwa-sacramento@att.net.

Very truly yours,
California Industrial Hygiene Council



Pamela Murcell, MS, CIH
President, CIHC

Enclosure:

CALIFORNIA INDUSTRIAL HYGIENE COUNCIL

COMMENTS ON EMERGENCY TEMPORARY STANDARDS 8 CCR 3205, 3205.1, 3205.2, 3205.3, 3205.4

COVID-19 PREVENTION

General Comments:

The CIHC is in favor of incorporating an expiration date for the ETS. We suggest language such as “the provisions are in effect until the state of emergency declared by the Governor on March 4, 2020 related to the COVID-19 virus, has been lifted”.

The CIHC is of the opinion that it is premature to factor in vaccinations for setting up exemptions from following the provisions in the ETS.

The goal is to control the hazard, and minimize the risk, which is the goal with any occupational safety and health regulation. The goal is **not** to achieve zero risk or to eliminate the COVID-19 hazard. We can have robust discussions on the control strategies, but at the end of the day, it is control of the hazard and minimizing risk.

The CIHC is not in favor of mandating respiratory protection for control of COVID-19 exposure.

Global Search for Terms and Reconcile:

Replace “place(s) of employment” with “workplace(s)”.

Ensure consistent use of terms as defined in subsection (b): worksite, workplace, COVID-19 case, COVID-19 test results, COVID-19 exposure, COVID-19 hazard, exposed work group.

Use the term COVID-19 only when referring to the disease, and incorporate use of the term “corona virus” or “SARS CoV2” when referring to items relevant to the causative agent (for example, testing).

Use of the term “possible” throughout the ETS should be replaced with “practicable” or “feasible”. The terms practicable and feasible are legally defined and widely used as regulatory terms, and take into account that just because something can be done doesn’t mean it is the correct or safest approach in all situations.

The term “high risk” should be written as “high-risk” as appropriate throughout the ETS.

Related to testing, reconcile use of the terms “offer” or “offered” and “provide” for employer responsibility.

Section-specific Comments:

8 CCR 3205.

(b) Definitions. Definitions need to be added for “fixed workstation”, “workplace(s)”.

Add a note that the “worksite” definition applies to provisions for AB685 compliance/consistency.

(b)(2)(B) Delete “has a positive COVID-19 diagnosis from a licensed health care provider”. Based on the CDC “Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)”, in the section on Laboratory and Radiographic Findings: Testing for Infection, it states “diagnosis of COVID-19 requires detection of SARS-CoV-2 RNA or antigen in respiratory specimens”. According to this reference from the CDC, one cannot have a positive COVID-19 diagnosis without a test.

(b)(3) Exception: add the term...if they “correctly” wore respiratory protection in accordance with section 5144....and delete the term “required” as the phrase in this comment now shows.

New (b)(9) Define “reasonable accommodation” even if the definition is no more than a reference to or reiteration of the Americans with Disabilities Act definition.

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(c)(2)(D) This seems impossible – to identify all interactions – because for many employees, these interactions can change on a daily basis. Suggest replace “identify all interactions” with “review” areas, activities, processes....

(c)(2)(D)1. This provision to identify “times” is problematic for potential exposure locations listed such as “bathrooms, hallways, aisles, walkways, elevators...” because such areas are not necessarily used on a predictable and/or repetitive schedule. Suggest delete “times”.

(c)(2)(H) The employer shall conduct periodic inspections as needed to identify ~~unhealthy~~ conditions, work practices, and work procedures related to risks associated with COVID-19 exposure and to ensure compliance with ~~employers’~~ employer’s COVID-19 policies and procedures.

(c)(5) Training and instruction. Use the language from the Aerosol Transmissible Diseases regulation (section 5199) for this introductory/general paragraph on training.

(c)(5)(E) Hand hygiene has nothing to do with aerosol generation and particles traveling more than 6 ft. Suggest delete “hand hygiene” in this subsection.

(c)(5)(H) COVID-19 symptoms, and the importance of not coming to ~~work~~ workplace and obtaining a COVID-19 test if the employee has COVID-19 symptoms.

New (c)(6) “Controlling Hazards” or “Mitigation of COVID Hazard”. Reference 8 CCR 5141 as the approach for control strategies or mitigation, and then fold into this new subsection the current subsections (c)(6), (c)(7) and (c)(8) with modified language and numbering as appropriate.

(c)(6)(A) How does this need to be demonstrated? What if both employees working near each other, < 6 feet apart, are in respiratory protection?

(c)(6)(B) “When it is not possible to maintain a distance of at least six feet, individuals shall be as far apart as possible.” Wouldn’t this situation require the use of face coverings? This should be stated for consistency with other provisions in the ETS when the > 6-foot distance cannot be achieved.

(c)(8)(A) What if these partitions are not feasible in certain work settings where employees need to work in close proximity; for example, same laboratory on adjacent equipment? Recommend adding a PPE option if partitions are not practicable or feasible.

(c)(8)(B) For buildings with mechanical or natural ventilation, or both, employers shall maximize the quantity of outside air provided to the extent feasible, ~~except when the United States Environmental Protection Agency (EPA) Air Quality Index is greater than 100 for any pollutant or if opening windows or unless maximizing letting in outdoor air by other means would cause a hazard to employees, such as exposure to airborne contaminants in excess of applicable occupational exposure limits, from excessive heat, humidity, or cold.~~

(c)(8)(C)1. Identifying and regularly cleaning and disinfecting frequently touched surfaces and objects, such as doorknobs, elevator buttons, equipment, tools, handrails, handles, controls, bathroom surfaces, and steering wheels. ~~The employer shall inform employees and authorized employee representatives of cleaning and disinfection protocols, including the planned frequency and scope of regular cleaning and disinfection.~~

The requirement (strike out just above) to “inform” is already stated as part of the general requirements in (c), which is the written program subsection, and this provision is part of (c).

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(c)(8)(C)4. Employers shall provide and ensure use of ~~eye protection and~~ respiratory protection in accordance with section 5144 and use of eye protection when employees are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids.

As written, the language implies that use of eye protection is regulated by section 5144.

(c)(10)(A) Employers shall ensure that COVID-19 cases are excluded from the workplace until the return-to-work requirements of subsection (c)(11) are met.

(c)(10)(B) Employers shall exclude from the workplace employees with COVID-19 exposure from the workplace until the return-to-work requirements of subsection (c)(11) are met. ~~for 14 days after the last known COVID-19 exposure to a COVID-19 case.~~

We recognize that the two provisions above, (c)(10)(A) and (B), are referencing COVID-19 cases vs. COVID-19 exposure, respectively. However, on a quick read it comes across as the same requirement. Recommend combining (A) and (B) into one provision.

8 CCR 3205.1

(d)(3) The employer shall implement changes to reduce the transmission of COVID-19 based on the investigation and review required by subsections (d)(1) and (d)(2) ~~(e)(1) and (e)(2)~~. The employer shall consider changes such as 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, ~~requiring~~ respiratory protection in accordance with section 5144, ~~and~~ or other applicable controls.

8 CCR 3205.2

(b) Within this subsection (b)(A) and (b)(B) need to be numbered to (b)(1) and (b)(2).

(c)(1) Delete this paragraph. 3205.1(d)(3) already requires considering “increasing outdoor air supply” and “improving air filtration”. The prescriptive items in 3205.2(c)(1) are problematic given the wide variation of structures and ventilation systems associated with California workplaces.

8 CCR 3205.3

There was a recommendation discussed during the Advisory Committee meeting on February 16, 2021, to incorporate a “cohort” approach as a control strategy for minimizing COVID-19 exposure. The CIHC would support adding this approach as an option for exposure control.

(e)(1) Use the term “regularly” in place of the crossed out “at least once a day”, which would be consistent with 3205(c)(8)(C)1.

(g) COVID-19 testing. The employer shall establish, implement, and maintain written effective policies and procedures for COVID-19 testing of residents who had a COVID-19 exposure, who have COVID-19 symptoms, or as recommended by the local health department. The written information shall be provided for the residents in a language they understand.

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8 CCR 3205.4

There was a recommendation discussed during the Advisory Committee meeting on February 16, 2021, to incorporate a “cohort” approach as a control strategy for minimizing COVID-19 exposure. The CIHC would support adding this approach as an option for exposure control.

The scope of 3205.4 appears to have been broadened from “to and from work” to all employer-provided vehicles. As a result, the title of this section needs to be modified.

Delete (f)(4) ~~The vehicle has a cabin air filter in use and the U.S. EPA Air Quality Index for any pollutant is greater than 100.~~