

CALIFORNIA INDUSTRIAL HYGIENE COUNCIL

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

October 4, 2021

Via email: OSHSB@dir.ca.gov

Ms. Christina Shupe
Executive Director
Occupational Safety and Health Standards Board
Sacramento, CA

Subject: Comments on Proposed Language for Permanent COVID-19 Prevention Regulations

Dear Ms. Shupe:

The California Industrial Hygiene Council (CIHC) appreciates the opportunity to comment on proposed language for permanent COVID-19 Prevention regulations (8 CCR 3205 et seq). We appreciate the challenges this issue has presented, and the hard work and countless hours from Board staff and DOSH staff on this issue. CIHC represents Occupational Health and Safety Professionals in California and works to enhance their professional practice.

The version of the COVID-19 Prevention Emergency Temporary Standard (ETS) that went into effect on June 17, 2021 is the version that should be allowed to play itself out as an emergency standard without further changes, or being adopted as a permanent regulation. A second readoption is allowed under the emergency regulation process, and if that is approved, presumably at the December 16, 2021 monthly Standards Board meeting, it is our understanding that the ETS would be in effect until April 2022 before it expires.

Changes to the ETS would only add further employer and employee confusion on what is required in the work environment. In addition to compliance with the ETS, employers are allowed to establish policies that are in the best interest of their employees and their specific work environment, and per 8 CCR 3205(a)(2) “Nothing in this section (3205) is intended to limit more protective or stringent state or local health department mandates or guidance.” There are numerous guidance documents available to assist employers in such decisions.

The Standards Board and the Division would better serve their stakeholders by simply providing FAQs and compliance assistance on the ETS, and moving expeditiously with a path forward to permanently address worker protection in all industries from infectious diseases. This would be a better use of valuable resources rather than further attempts to regulate protections and prevention measures for COVID-19.

We appreciate the opportunity to participate with the September 23, 2021, COVID-19 Advisory Committee meeting. As a follow-up to verbal comments provided at that time, CIHC is providing this more detailed set of written comments on the proposed permanent regulation language.

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General Comments:

CIHC does not support a permanent COVID-19 Prevention regulation. However, with that said, the proposed language is a much more palatable approach than the ETS. The performance standard concept is more amenable to the variations in work environments. We also support the addition of a sunset clause; specifically, two years after the initial effective date.

References to CDPH need to be clear as to whether the reference is to a CDPH “order” vs. “guidance”. It may be helpful to add definitions to 3205(b).

There needs to be a search and replace throughout the proposed language for the newly defined term “infectious period” to replace the term “high exposure period”.

3205(a):

Recommend adding some language that reminds employers of their obligation to continue to monitor cases and close contacts even after the regulation sunsets.

3205(c):

State specifically that a written plan for COVID-19 prevention/protection is required.

3205(c)(2):

It appears to be causing confusion that “when determining measures” is an employer responsibility, and further that “review” does not mandate following “applicable orders and guidance”. Perhaps reword to say “Employers shall review applicable orders and guidance from the State of California and the local health department when evaluating measures to prevent COVID-19 transmission and evaluating measures for identifying and controlling COVID-19 hazards.”

3205(c)(3):

Training content needs to be specified. Recommend incorporating a version of the training content in the ETS [3205(c)(5)(A)-(J)] as an appendix to the permanent regulation.

3205(f)(1):

Recommend adding to “Employers shall provide face coverings **at no cost to the employees...**”. Also, recommend adding to “...when required by CDPH or **local health department.**”

3205(g):

Recommend adding to “Respirators **such as** an N95 respirator...”.

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3205.1(d)(3):

Recommend stating this provision as “Any changes implemented to reduce the transmission of COVID-19 based on the investigation and review.” This is supposed to be a performance standard; therefore, we further recommend removing the specifics stated in this provision, and moving the specifics to an appendix that lists options of control measures. This appendix should also be referenced in 3205(c)(2).

3205.1(e):

Recommend reinstate “evaluate” portable filtration as opposed to “require”.

3205.1(f):

Recommend restoring this subsection to 3205.2 “Major Outbreaks”, and using the June 17, 2021 ETS language of 3205.2.

3205.3:

Clarify when this section applies to employer provided transportation. Recommend using the June 17, 2021 ETS language of 3205.4.

We appreciate that an advisory committee is being convened to consider necessary changes to the ATD regulation to assure clarity that prevention and protection measures included in the ATD regulation are applicable to COVID-19, and we appreciate being invited to participate as a member of this advisory committee. We look forward to the participation.

CIHC looks forward to further COVID-19 Advisory Committee participation to assist the Board and the Division with a path forward on permanent regulation for infectious disease protection, and again we encourage expediting this approach.

Thank you for your time and consideration. 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