OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb

# FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: New Section 5193.1
of the General Industry Safety Orders

## Sexually Transmitted Infections

## MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive and/or sufficiently related modifications that are the result of public comments and Board staff evaluation.

Subsection (b)
The revision was made to the definition of STI in response to comments from employer representatives who recommended deleting the word AIDS as confusing and an unneeded duplication of HIV.

Subsection (e)(1)(D)
The revision was made in response to comments to add greater clarity and to encourage employees to participate in the medical services by being offered a different PLHCP if they do not consent to using the initial one offered by the employer.

Subsection (e)(2)
The revision was made in response to comments to make sure the employer does not make participation in a prescreening program a prerequisite for receiving any vaccine and to make more specific under what medical conditions vaccines need not be provided.

Subsection (e)(5)
The revision was made to make an editorial change.

Appendix A2
The revision was made to make an editorial change.

Appendix C
The revision was made in response to comments to allow the opportunity to discuss the use of HIV pre-exposure prophylaxis (PrEP) and encourage employee participation in the employer provided medical services.

Summary and Response to Oral and Written Comments:

I. Written Comments

**1. Joseph Dunsay, e-mail dated April 6, 2015**

Comment #JD1: The Commenter strongly opposes the proposed regulation and states it will prohibit certain types of sexual activities, would be a violation of a worker's right to choose and lacks scientific data to justify a ban. If the AIDS Health Foundation was truly worried about protecting actors from HIV and followed the best science available, it would push for a ban on some types of sexual activities, not a condom mandate. The Commenter urges the Board to oppose this proposal.

Response: The Board notes it is not the intent of this proposal to prohibit certain types of activities, rather this is a performance oriented regulation that will ensure employees exposed to chronic and life-threatening illnesses be protected while engaging in activities that occur during the production of any film, video, multi-media or other recorded or live representation. It is the employer's responsibility to provide a safe work environment for their employees and employees do not have the right to refuse the employer's workplace protections. The Board cannot allow an employer being regulated to disregard worker protection standards any more than to allow voluntary use of safeguards (such as guards on saws or fall protection). These comments are not specific to the proposed text and the Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Dunsay for his comments and acknowledges his participation in the rulemaking process.

**2. Jeffrey Klausner, Professor of Medicine and Public Health-University of California, Los Angeles (UCLA), letter dated May 12, 2015**

Comment #JK1: The Commenter is in strong support of the proposed regulation and states employees in the adult film industry are exposed to serious workplace hazards, numerous adult film studios fail to develop and implement effective controls and that adult film performers are directly exposed to blood or OPIM and are rarely provided required workplace protections.

Response: The Board acknowledges the Commenter's support for this proposed regulation and agrees with his assessment that adult film workers are exposed to serious hazards and are rarely provided with required workplace protections.

Comment #JK2: The Commenter states peer-reviewed scientific research studies have demonstrated that Performer Availability Scheduling Services (PASS) is not an effective tool in the prevention of workplace exposures to HIV and sexually transmitted infections and adds the Division's comprehensive testing requirements improve upon the adult film industry existing standards that fail to test all anatomical sites.

Response: The Board agrees with Dr. Klausner's evaluation that PASS is not an effective tool in the prevention of workplace exposures to HIV and STIs.

Comment #JK3: The Commenter concurs with the Board that the proposed Section 5193.1 specifically includes workplace safety requirements that directly apply to workers in the adult film industry and this proposal comprehensively addresses both bloodborne pathogens and sexually transmitted pathogens.

Response: The Board agrees with Dr. Klausner's assessment.

Comment #JK4: The Commenter notes that presently, adult film industry employers require employees to pay out of pocket up to $300 per month for limited HIV/STI testing, and commends the Division for emphasizing in the proposal that adult film employers are required to pay for all costs of testing, treatment and vaccinations that protect adult film employees. The proposal will ensure employees not only receive necessary care at no cost, but also receive care that is more comprehensive than the adult film industry's standard.

Response: The Board agrees with Dr. Klausner's evaluation.

Comment #JK5: The Commenter notes abrasions and rashes that may be attributed to condoms are in actuality indicative of the type of sexual acts adult film performers engage in: multiple partners over extended periods of time and adds that lubricated condoms, as required in the proposed Section 5193.1 would provide significant protection for adult film performers who engage in these types of sexual acts.

Response: The Board agrees with Dr. Klausner's assessment.

Comment #JK6: The Commenter supports the proposed requirement to provide non-latex condoms which alleviates the concern regarding latex allergies.

Response: The Board agrees with Dr. Klausner's assessment.

Comment #JK7: In the Commenter's opinion, the Division comprehensively addresses all concerns raised by the adult film industry and recommends the Standards Board approve proposed Section 5193.1 in order to ensure adult film employers comply with an appropriate and essential standard.

Response: The Board thanks Dr. Klausner for his comments and support and acknowledges his participation in the rulemaking process.

**3. Paula Tavrow, Director, Bixby Program in Population and Reproductive Health, Fielding School of Public Health-UCLA, letter dated May 14, 2015**

Comment #PT1: The Commenter is in strong support of the proposed regulation and states it is important to extend labor protections to performers in the adult film industry so they do not risk acquiring STDs and that condoms are the best form of protection. She notes that to require condoms is akin to requiring construction workers wear hard hats or nurses wear gloves and

workers in entertainment have the right to the same protections as workers in other industries. The commenter adds that if the industry wishes, it can use transparent condoms, simulations, and digital post-production techniques to create a film in which the consumer will not view condoms and one adult film company has successfully used post-production techniques to remove condoms digitally. Testing alone cannot protect performers against disease, because there are "window periods" for many diseases when a person will still test negative but could be able to transmit the disease to someone else.

Response: The Board acknowledges the Commenter's support for this proposed regulation and agrees with her assessment that techniques are available for creating a film in which the consumer will not view condoms.

Comment #PT2: With regard to Section 5193.1(e)(2), the Commenter notes the proposed comprehensive series of vaccines are in the best interest of the employees and it is justified that the costs be incurred by employers.

Response: The Board acknowledges Ms. Tavrow's support for this proposal and concurs with her assessment.

Comment #PT3: With regard to Section 5193.1(e)(4)(B), the Commenter states she participated in a study published in 2012, that indicated that adult film workers have significantly higher rates of STDs than the general public and much of this disease may not be captured through the industry's urine test, which is the current standard. She agrees with the proposed requirement that STI testing in the adult film industry include urine as well as oral and rectal swabbing as it is more comprehensive than the industry's current approach and likely to capture significantly more disease.

Response: The Board acknowledges Ms. Tavrow's support for this proposal and agrees adult film workers must be tested for STIs at all exposed sites.

Comment #PT4: With regard to Section 5193.1(d)(1)(C) and Appendix (B)(4), the Commenter notes some performers have argued against condom use in porn, because they claim it leads to vaginal abrasions or so-called "condom rash." She adds lubrication of condoms greatly reduces any risk of trauma to the vaginal and rectal mucosa and for those adult studios where performers are currently required to wear condoms there are no complaints of any injury related to condom use.

Response: The Board thanks Ms. Tavrow for her support.

Comment #PT5: The Commenter states proposed Section 5193.1 will fill an important need, it provides clear and specific guidance and it also specifically includes the range of STIs performers can contract on set. Condoms are an inexpensive and effective mechanism to prevent disease.

Response: The Board thanks Ms. Tavrow for her comments and acknowledges her participation and support in the rulemaking process.

**4. Kevin Sherin, Deputy Director, Center for Chronic Disease Prevention and Health Promotion, California Department of Public Health (CDPH), letter dated May 13, 2015**

Comment #KS1: The Commenter states the CDPH supports the promulgation of a comprehensive and specific standard to prevent STIs among performers in the adult film industry.

Response: The Board acknowledges the Commenter's support for this proposed regulation.

Comment #KS2: CDPH recommends all persons at risk of acquiring HIV or other STIs, including adult film performers and other employees: (1) consistently and correctly use condoms; (2) get tested for HIV and other STIs at all exposed sites; (3) receive vaccination against hepatitis A, hepatitis B, and human papilloma virus as recommended by CDC; and (4) discuss the use of HIV PrEP, a daily oral medication that can prevent HIV-negative individuals from acquiring the virus, with their health care provider. All employers, including those in the adult film industry (AFI), should provide safeguards to assure safe and healthy work environments for their employees. AFI employers should require condom use and provide condoms and lubricant, HIV and other STI testing, and hepatitis A, hepatitis B and human papilloma virus vaccination for all employees who engage in sexual activity as part of their work at no cost to the employee.

Response: The Board acknowledges the Commenter's support for the requirement to use condoms, get tested for STIs at all exposed sites and receive vaccinations. As for the recommendation to require workers to discuss the use of HIV PrEP with their health care provider, the Board agrees that the clarification to allow the opportunity to discuss the use of PrEP would be of great benefit to the employees; thus the proposal has been amended to reflect this comment.

Comment #KS3: CDPH states a 2014 CDPH investigation of HIV transmission among adult film performers highlights the limitations of relying only on testing to prevent transmission. On December 29, 2014, CDPH posted an Occupational Health Alert (submitted along with comments) describing their investigation of an adult film performer who recently had a negative HIV-1 RNA nucleic acid amplification test (NAAT) but was in fact newly HIV-infected and transmitted HIV to a second adult film performer during filmed condomless sex. Phylogenetic analysis confirmed transmission with highly related HIV-1 subtype B sequences. CDPH's investigation revealed the first performer was infected at the time of the negative NAAT, but was in the "window period" during which his HIV infection could not be detected; this performer subsequently transmitted HIV to the second performer and a non-work related sexual partner. Condom use could have prevented these HIV infections.

Response: The Board acknowledges the Commenter's support for the requirement to use condoms and agrees with his evaluation and assessment that testing is not prevention. Testing alone cannot protect performers against disease because there are "window periods" for many diseases when a person will still test negative and can develop and/or transmit the disease to someone else. The proposal provides minimum requirements and as such, employers are not prohibited from supplementing the use of condoms with testing.

Comment #KS4: CDPH requests technical clarifications to subsection (e)(2)(C) Vaccinations of the proposed regulation. Suggested revisions to address the following clarification were enclosed:

(C)(i) HAV vaccine need not be provided if serological testing reveals that the employee is immune.
(ii) HBV vaccine need not be provided if ~~serological~~ testing reveals that the employee is
• immune after documented receipt of a complete HBV vaccine series of 3 or more doses; or
• immune after infection with HBV, as indicated by adequate serologic response to surface antigen and core antigen; or
• chronically infected with HBV.
(iii) ~~However, t~~ The employer shall not make participation in a prescreening program a prerequisite for receiving HAV, HBV or HPV vaccine.

Response: The Board agrees additional clarification would benefit this subsection, thus the proposal has been amended to reflect this comment.

Comment #KS5: CDPH notes the word "cervix" is misspelled in the HPV vaccine declination form on page 19.

Response: The Board agrees and will make the editorial change. The Board thanks CDPH for their comments, support and acknowledges their participation in the rulemaking process.

**5. Deborah Gold, letter dated May 18, 2015**

Comment #DG1: The Commenter appreciates the opportunity to submit comments based on the Commenter's significant experience with the people and hazards in the adult film industry. The Commenter notes STDs are not adequately addressed by existing regulations. Employees who perform sexual acts as part of their employment, such as performers in the adult film industry, are exposed to pathogens classified as bloodborne, such as HIV, hepatitis B, and hepatitis C, which are generally addressed by Section 5193. They are also exposed to diseases spread by genital fluids such as chlamydia, gonorrhea, and trichomoniasis, to genital ulcer diseases such as syphilis and genital herpes, and to human papillomavirus. The proposed regulation addresses these additional issues by requiring specific control measures for high risk tasks, and by requiring employers to provide confidential appropriate medical services to employees for all STDs, both periodically and as a result of follow-up for an exposure incident.

Response: The Board acknowledges the Commenter's support and agrees with the assessment that adult film workers are at risk of acquiring HIV and other STIs and these exposures are not adequately addressed by existing regulations. Workers need to be protected from all STIs and confidential medical services must be offered at no cost to employees.

Comment #DG2: The Commenter states current industry practices in portions of this industry include mandatory HIV testing of performers at their own expense. Employees must waive their rights to confidentiality of HIV testing in order to obtain employment, permitting themselves to be listed as "available" for employment due to negative HIV and other STD tests within a set time period. This practice is used instead of following universal precautions (required by Title 8) to protect employees against contact with blood, semen and vaginal secretions no matter the test status of an individual.

Response: The Board acknowledges the Commenter's support and agrees with the assessment these existing industry practices do not offer medical confidentiality and place the burden of cost on the employees.

Comment #DG3: The "availability" testing system (called PASS) discriminates unlawfully against persons with HIV. The industry and individual employers cannot justify this discrimination as necessary, when the reasonable accommodation of using condoms or other barrier protection, and prohibiting ejaculation onto mucous membranes, eyes, and skin would protect employees against infection.

Response: The Board acknowledges the Commenter's support and agrees the industry and individual employers can utilize simulations, condoms or other barrier protection and digital post-production techniques to protect workers against exposure, avoid discrimination and create a film in which the consumer will not view condoms.

Comment #DG4: Medical services beyond those required by Section 5193 are necessary as shown by the rate of repeated infections in performers in this industry as mentioned in the Goldstein study (document relied on #7). Providing employer-paid, voluntary, confidential medical services should decrease infections in this population. The proposed standard establishes a system whereby the only information available to an employer in regard to periodic or post-exposure medical services would be whether or not an employee had declined all services. Only the physician or other PLHCP and the employee would know what tests had been provided, and the results of those tests. This, and vaccine status or declination, would also be the only information available to the Division as an employee medical record.

Response: The Board acknowledges the Commenter's support and agrees the proposal protects employee privacy and ensures confidentiality of medical records.

Comment #DG5: The Commenter states the proposed regulation was developed through six public advisory meetings, and supplemented by the Division's enforcement experience, and many verbal and written statements by employees, employers, producers, public health agencies,

medical and nursing professionals, and organizations. Unfortunately the sixth advisory meeting (June 2011) was disrupted by a planned action by a small group of self-described performers who prevented others from discussing many issues on the agenda.

Response: The Board acknowledges the Commenter's support and agrees that multiple meetings were held which afforded all interested parties ample opportunity to provide input.

Comment #DG6: PrEP is not an alternative to condom use. At best it reduces the risk of HIV infection, if employees take the medication regularly as directed, even during periods in which they are not employed. The CDC recommends users of PrEP use condoms as well. HIV PrEP does not reduce the risk of transmission of any other STD. However, PrEP can be considered as a medical service to be offered and paid for by the employer, and added to Appendix C.

Response: The Board acknowledges the Commenter's support and agrees with the assessment that HIV PrEP does not reduce the risk of transmission of any other STD and is not an alternative to condom use. The Board also notes these proposed regulations are minimum requirements and as such, employers are not prohibited from offering and providing PrEP to employees as a supplement to condom use, to further minimize the risk for acquisition of HIV infections. See response to #KS2.

Comment #DG7: In regard to "voluntary" condom use, or providing a "choice," the Commenter's personal experience with investigations in this industry is performers who would have chosen to use condoms either in the specific circumstance, or in general, have not done so for fear of losing their livelihood. Some performers have stated they choose not to use condoms. Others have stated when they did request condom use, they were no longer employed in adult film. Others have described having no problem in getting condoms used in scenes in which they perform. The Board must not put individual performers in the position of having to insist on condom use or other protections, any more than the Board should allow voluntary use of guards on saws, or fall protection.

Response: The Board acknowledges the Commenter's support and agrees it is the employer's responsibility to provide a safe work environment for their employees and as such an employer cannot disregard worker protection standards. Likewise, employees cannot choose to follow or refuse the employer's workplace protections. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #DG8: Condom use and other barrier protections and control measures required by this proposal are feasible in sex work including adult film, and were used for many years in both the heterosexual and gay male sides of the adult film industry. Condom breakage is a rare occurrence when they are used appropriately, which includes the use of lube, appropriate sizes, and changing when moving between anatomical sites or partners. The study "Condom Use among Female Commercial Sex Workers in Nevada's Legal Brothels" (submitted into the record) by Albert, found that condom breakage was "negligible" in experienced sex workers during a prospective study. If a condom were to fail, it would be considered an exposure

incident which would lead, under the proposed standard, to post-exposure medical follow-up and include appropriate prophylaxis if necessary.

Response: The Board acknowledges the Commenter's support and agrees condom use is feasible.

Comment #DG9: The proposal could be amended to permit employee choice in physician or other PLHCP for vaccination, periodic medical services and post-exposure follow-up. The current draft requires an employer to provide a "different" physician or other PLHCP upon request for periodic or post-exposure medical services rather than a consortium PLHCP. This proposed provision could be changed to reflect the employee be able to select an appropriate PLHCP, so long as that professional can provide the necessary services, such as timely post-exposure prophylaxis. Other Title 8 standards, including Section 5198, Lead, and Section 5207, Cadmium, permit employee choice of a physician to provide a second medical opinion as part of the "multiple physician review mechanism." The Commenter thanks the Board for their consideration of these comments.

Response: The Board agrees employees should have a choice to select an appropriate PLHCP, thus the proposal has been amended to reflect this comment. The Board thanks Ms. Gold for her comments and acknowledges her participation in the rulemaking process.

**6. David Shiraishi, Area Director, Occupational Safety and Health Administration, U.S. Department of Labor, letter dated May 21, 2015**

Comment #OSHA1: As requested, Mr. Shiraishi completed the review of the proposed standard Section 5193.1 Sexually Transmitted Infections and states the proposed occupational safety and health standard appears to be commensurate with the federal standard.

Response: The Board thanks Mr. Shiraishi for his comments and support and acknowledges their participation in the rulemaking process.

**7. Whitney Engeran-Cordova, AIDS Healthcare Foundation (AHF) letter dated May 21, 2015**

Comment #AHF1: The Commenters strongly urge the Standards Board to support proposed Section 5193.1 and note representatives from the adult film industry will argue the proposed regulation is not appropriate for adult films. The Commenters are confident the language as it is written will provide a sufficient minimum standard of protection for the adult film industry. For nearly three decades, employers in the adult film industry have ignored workplace hazards. Section 5193.1 will finally place safety and health at the forefront of this legal California industry.

Response: The Board acknowledges the Commenter's support for this proposed regulation.

Comment #AHF2: The adult film industry representatives argue the proposed regulation violates medical privacy laws. However, adult film industry employers currently violate medical confidentiality and willfully discriminate against HIV-positive employees. The FSC-PASS scheme recommends employees to waive their rights to confidentiality and discloses whether an employee receives an HIV test and publishes whether that HIV test was negative for all employers to see. Based on the proposed language found in subsections (e)(3) and (e)(4), employees are allowed to decline all medical services. If the employee accepts medical services, then the physician's documentation that is provided to both the employer and employee must be strictly limited to 1) vaccination information, 2) a statement the employee has been informed of medical evaluation results, and 3) whether the employee has been notified of any medical conditions resulting from a workplace exposure. All medical findings and diagnoses are to remain confidential and not be included in any written report. Not only does the proposed regulation ensure medical privacy better than the adult film industry's FSC-PASS scheme, employee confidentiality is further protected by subsections (e)(3)(B)2 and (e)(4)(G). For example, an employee can choose to decline any medical test, including a test for HIV, and that information remains strictly with the medical provider (Appendix C). The proposed regulation language is comprehensive, consistent with confidentiality provisions in the Health and Safety Code and does not discriminate against employees. Adult film industry employers currently exclude workers who do not test negative. The proposed regulation includes language that requires employers to offer and pay for these medical services, but the details and results of the services are not provided to the employer. It is not within the jurisdictional scope of Cal/OSHA to prohibit discrimination on the basis of HIV status. HIV protections are already written into anti-discrimination laws, such as the Americans with Disabilities Act. Condom use and other control measures written in the proposed regulation ensure there is no basis for discrimination against HIV-positive employees.

Response: The Board acknowledges the Commenter's support for this proposed regulation.

Comment #AHF3: Adult film industry representatives have made false claims that they were not active participants in the drafting of the proposed regulation. This claim is not only false, there is documented evidence Cal/OSHA held six stakeholder meetings between June 2010, and June 2011, where adult film experiences and views from employees were expressed. It is unfortunate that at the June 2011, meeting a small organized group of self-described performers and producers chose to disrupt the meeting and intimidate a number of others who were present. In conclusion, the Commenters strongly urge the Standards Board to support the proposed regulation. Section 5193.1 adequately addresses all concerns raised by adult film industry representatives, includes meaningful input from the adult film industry, and most importantly protects legal California employees from contracting serious and lifelong diseases.

Response: The Board acknowledges the Commenter's support and agrees multiple meetings were held which afforded all interested parties ample opportunity to provide input. The Board thanks AIDS Healthcare Foundation for their comments and acknowledges their participation in the rulemaking process.

**8. Adam Cohen, AIDS Healthcare Foundation, documents submitted via e-mail on May 21, 2015**

Comment #AHF4: The Commenter submitted multiple documents where the Los Angeles County Board of Supervisors discussed health and safety in the adult film industry with the Los Angeles County Department of Public Health, and requests they be considered part of the public record and integrated into the rulemaking package.

Response: The Board acknowledges the receipt, review and inclusion of these documents into the rulemaking record. The Board thanks Mr. Cohen for his participation in the rulemaking process.

**9. Diane Duke- Free Speech Coalition, San Francisco AIDS Foundation, Chicago AIDS Foundation, CHEST NYC, Woodhull Sexual Freedom Alliance, The Thrive Tribe Foundation, Being Alive Los Angeles, The Wall Las Memorias Project, Adult Performer Advocacy Committee, Free Speech Coalition, Adult Film Industry Trade Association, Exhibit 5 lists Organizations Supporting their Recommendations, letter/binder submitted May 21, 2015**

Comment #FSC1: The Coalition welcomes Cal/OSHA's dedication to ensure workplace safety for employees in the industry but states rather than making a collaborative effort to identify rational and practical solutions, advisory committee meetings were conducted excluding a representative variety of concerned parties. As a result, the coalition is deeply concerned about the effect of the proposed regulation's overreaching nature. The Cal/OSHA proposal seemingly ignores best practices and self-regulated efforts and the coalition is concerned employee protection will be diminished, not strengthened.

Response: The Board notes multiple meetings were held which afforded all interested parties ample opportunity to provide input. Please see responses and comments #DG5 and AHF3. The Board acknowledges the Coalition's active participation and their input throughout this entire process. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC2: The Coalition states Cal/OSHA has not demonstrated the need for expanding the regulatory framework; it has to consider current conditions, medical science and knowledge, and there is an absence of any indication a problem has arisen that is directly related to each proposed rule change.

Response: The Board disagrees and believes its efforts to address employee occupational exposure to chronic and life-threatening sexually transmitted infections are appropriate and the requirements of the Labor Code and the Government Code have been met with respect to this rulemaking process. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC3: The Coalition states the proposal excludes prevention options currently available to the regulated community, requires utilization of condoms as the sole and only method of prevention available and invalidates testing protocols that were created by industry and which are compliant with Federal and State medical privacy laws. Furthermore, the proposal ignores recent advances (such as Pre-Exposure Prophylaxis for HIV and other STIs) and blocks the possibility of incorporating new development in biomedical and other prevention options. There is no accommodation for the incorporation of medical advances.

Response: The Board notes PASS is not an effective tool in the prevention of workplace exposures to HIV and sexually transmitted infections and cannot protect performers against disease because there are "window periods" for many diseases when a person will still test negative but can develop and transmit the disease to someone else (see the December 2014, California Department of Public Health Occupational Alert). PrEP, as in the case of Truvada/HIV PrEP is also not an alternative to condom use as it does not reduce the risk of transmission of any other STD aside from HIV and this only when employees take the medication regularly as directed, even during periods in which they are not employed. With regard to incorporating new developments, the Board notes these proposed regulations are minimum requirements and as such, employers are not prohibited from offering employees, and providing as a supplement to condom use, STI Testing at all exposed sites and/or PrEP. The Board is confident the requirements of the Labor Code and the Government Code have been met with respect to this rulemaking process. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC4: The Coalition states the proposal creates traps for employees and employers, that it lacks coherence, medical understanding and clarity, impeding the employees' and employers' ability to understand and comply with its requirements. The Coalition also states it is in direct conflict with the Administrative Procedures Act criteria, which require clarity, justification of necessity and threatens protection of personal privacy and medical confidentiality. The Coalition suggests a more organized and orderly presentation of the proposed requirements, as well as a clarification of them.

Response: The Board disagrees and believes its efforts to address employee's occupational exposure to chronic and life-threatening sexually transmitted infections are appropriate and the requirements of the Labor Code and the Government Code have been met with respect to this rulemaking process. The Board disagrees that the proposal needs reorganization or further clarification. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC5: The Coalition states the proposal lacks consistency with existing regulatory language (definitions, responsibilities, etc.) and submitted recommendations including amended definitions. The Coalition notes that narrowing existing Cal/OSHA regulations complicates established enforcement practices and is inconsistent with regulatory principles for other industries. Proposed changes such as OPIM-STI are derogatory in nature and discriminatory toward performers and employees in the industry, which can be understood as being politically

motivated. The Coalition also submitted multiple exhibits for consideration which do not specifically address the proposed language (such as Exhibit 5 which includes a list of supporting organizations, Exhibit 6 related to the California Legislative Analyst Office Fiscal Impact Analysis regarding Adult Film Industry, exhibit 12 Los Angeles County Department of Public Health-current rates of STDs are undetermined, exhibit 16 PASS Overview, exhibit 17 curriculum vitaes) and which have now been included in the record. Additionally, the Coalition submitted additional comment letters (e.g. Exhibit 7 AIDS Project Los Angeles-Craig Pulsipher, Exhibit 8 California Senator-Mark Leno and San Francisco Supervisor Scott Wiener, Exhibit 11, Los Angeles County Commission on HIV).

Response: With regard to proposed changes such as OPIM-STI, the Board notes this term is not less effective than existing regulations and it is necessary to make existing terms clearer and more applicable to the body fluids that this particular industry deals with. This term is not derogatory or discriminatory. Under existing regulations, universal precautions are intended to prevent exposure and, as such, blood and body fluids of all persons or performers are considered potentially infectious. The Board notes all recommendations submitted were reviewed; please see responses to each individual suggestion made. Additionally, all Coalition's exhibits were reviewed for consideration, but no changes are needed in response to these exhibits. With regard to the additional comment letters submitted, the Board responded to each letter individually unless they were duplicate of letters already reviewed. Thus, the Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC6: The Coalition recommends the title of the proposed regulation be amended as follows:

Section 5193.1. Risk Reduction in the Adult Film Industry ~~Sexually transmitted infections~~.

Response: The Board notes the title for the proposal reflects the occupational hazards to which employees are exposed and which are being addressed and not the workplace or industries where the exposure occurs. Thus, the Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC7: The Coalition recommends an exception be added to the Scope and Application paragraph (a)(2):

> (2)(C) Exception: This section does not apply to employers who have no direction and control over the creation of a production.

Response: The Board notes it is the employer's responsibility to provide a safe work environment for their employees and as such, the Board cannot allow an employer being regulated to disregard worker protection standards any more than to allow voluntary use of safeguards (such as guards on saws or fall protection). Thus, the Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC8: The Coalition recommends deleting the proposed requirements to provide barriers and equipment from subsection (a)(3) and recommends the following additional modifications:

(3) The employer shall provide all safeguards required by this section, including ~~barriers,~~ personal protective options (such as condoms, testing, etc.) ~~equipment~~, training, and post-exposure follow-up medical services, at no cost to the employee, at a reasonable time and place for the employee, and during the employee's working hours.

Response: The Board notes testing does not provide equivalent safety protection to condoms or other barriers and as such is not an alternative to condoms use. Testing alone cannot protect performers against disease, because there are "window periods" for many diseases when a person will still test negative and as such can develop and transmit the disease to someone else. The Board also notes these proposed regulations are minimum requirements and as such, employers are not prohibited from offering employees and providing as a supplement to condom use, STI Testing on all exposed anatomical sites to further minimize the risk for acquisition of STI. As for the recommendation to limit medical services to post-exposure follow-up, the Board notes medical services beyond post-exposure follow-up play a critical preventive role. Providing access to medical services (like vaccinations) reduces the likelihood that employees will acquire an infection; likewise, the rate of repeated infections in performers in this industry as mentioned in the Goldstein study (document relied on #7) make the requirement for access to medical services essential to capturing these diseases early. Providing employer-paid, voluntary, confidential medical services should decrease infections in this population. Thus, the Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC9: The Coalition has concerns related to clarity, consistency and non-duplication and recommends deleting several definitions from the proposal, including but not limited to "Barrier," "Genital Herpes" and "Sexually Transmitted Pathogens."

Response: The Board notes these definitions are necessary, do not lack clarity and are consistent with existing State and Federal Regulations. The definition for genital herpes identifies the causative agent which is not included in its abbreviation. The definition for barrier clarifies the appropriate precautions required to protect employees against sexually transmitted diseases. Similarly, the term sexually transmitted pathogen identifies the various infectious pathogens which can cause illness or disease among this workforce.

Comment #FSC10: The Coalition has concerns related to authority, clarity, consistency and lack of necessity and recommends deleting the proposed definition for "Consortium PLHCP." The Coalition notes that Consortium PLHCP do not exist and are not mandated in any other Cal OSHA regulation thus compromising consistency. They add that mandating it would compromise existing Workers Compensation insurance protocols and procedures with treating physicians and designated healthcare providers and it would be unclear and unnecessary to compel out-of-state performers to choose a California provider.

Response: The Board disagrees this definition or requirement lacks authority, clarity, necessity or is inconsistent with existing regulations. Cal/OSHA has many regulations that require employers provide employees with occupational exposure, vaccines and pre and post-medical tests at no cost to the employee. This proposal is performance oriented and gives the employer options to use a PLHCP or a consortium PLHCP. Additionally, the proposal has been amended to allow an employee to select a PLHCP (see response to comment #DG9). With regard to the concern this requirement would conflict with Workers Compensation, this too is incorrect. Workers Compensation does not provide preventive services. This insurance benefits the worker once a disease or illness has developed and been confirmed as occupationally related. Employees that worked in the state of California, regardless of the length of work or whether or not they came from out of state, have to be provided these services at no cost. Again, it is up to the employer as to where these services will be provided, as long as they are provided at no charge to the employee.

Comment #FSC11: The Coalition recommends deleting the definition for "universal precautions" and state it is not applicable in light of and subject to defined methods of compliance regarding the variety of contact that results from the performance of an employee's duties.

Response: The Board disagrees the term or requirement for universal precautions should be deleted; first, this elimination would render this regulation less effective than existing state and federal regulations, and second, none of the recommendations submitted by the Coalition (e.g. testing, PrEP, etc.) provide equivalent safety. Universal precautions are intended to prevent exposure and, as such, blood and body fluids of all persons or performers are considered potentially infectious. Thus, the Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #FSC12: The Coalition recommends deleting the reference to "STI (sexually transmitted infection)" which is associated with the definition and use of OPIM-STI in this subsection and in multiple paragraphs throughout the proposal. The Coalition notes the term "other potentially infectious materials" is adequate and the addition of STI insinuates all employees in adult film carry infection, which is derogatory in nature and unnecessary.

Response: The Board disagrees the complete reference to OPIM-STI is unnecessary or derogatory and notes that universal precautions are intended to prevent exposure and as such blood and body fluids of all persons or performers are considered potentially infectious. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC13: The Coalition recommends amending the definitions for "engineering controls," "exposure incident" and "occupational exposure" for the purpose of consistency and clarity. The coalition notes the term "reduce" needs to be added to the definition of "engineering controls" as condoms can never fully isolate or remove exposure hazards. Exposure incident and occupational exposure should be modified to limit it to "when personal protective options were

not used or have been compromised" in light of the variety of contact that results from the performance of an employee's duties.

Response: The Board disagrees these definitions need to be amended or they lack clarity or are inconsistent with existing regulations. First, the Coalition's modification would render this regulation less effective than existing state and federal regulations, and second, the Board believes employers can use controls such as elimination (i.e. acting) or substitution of the hazard (simulate ejaculate) which do not have deleterious effects on performers' eyes, body or their health. Additionally, condom or other barrier protection use is feasible and employers can use transparent condoms and/or digital post-production techniques to create a film in which the consumer will not view condoms. Likewise, exposure is regardless of the use of personal protective equipment and to limit their applicability to when PPE was not used or has been compromised would make this proposed regulation less effective than current standards. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC14: The Coalition recommends amending the definition for "genitals," and states the proposed definition is inaccurate and proposes the words "and mucous membranes" be removed for clarity and consistency.

Response: The Board notes this definition is necessary to identify the activities which may expose employees to sexually transmitted infections and as such has more specificity than the generally used term. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC15: The Coalition recommends amending the definition for "personal protective equipment" and replacing it instead with definitions for "personal protection options," "personal protective equipment," and "personal protective procedures" to clarify options such as procedures, testing protocols and bio-medical prevention are permitted. The coalition states the alteration of Cal/OSHA's existing definition is unnecessary and compromises consistency and clarity of established regulatory language.

Response: The Board disagrees with the recommendation to replace personal protective equipment with options or that the proposed definition is unnecessary, inconsistent or unclear. Testing or bio-medical prevention (such as PrEP) are not an alternative to condom use. Please see responses to #FSC3 and #FSC8. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC16: The Coalition has concerns with clarity, consistency and necessity and recommends amending the proposed definitions for "Sexually transmitted infection" to remove the words AIDS, genital herpes and human papilloma virus, and "work practice controls" to expand and include testing protocols. The coalition notes AIDS and Genital Herpes are both caused by infection HIV/HSV respectively and therefore unnecessary and confusing and human papillomavirus should be removed as this infection is also transmissible by skin to skin contact.

Response: The Board does not agree these definitions are confusing, lack clarity, are inconsistent or unnecessary and notes they are needed to identify sexually transmitted infections. Although some of these diseases can be transmitted via other routes, they still can be transmissible through sexual contact and as such are included in the definition. Additionally, different subsections of this proposal raise awareness on the mode of transmission via training as well as cleaning and decontamination. With regard to the issue of testing protocols, please see response to comments #FSC3, #FSC8 and #FSC15. The Board agrees the word AIDS is not necessary, so the proposal has been amended to reflect this comment.

Comment #FSC17: The Coalition has concerns with clarity, authority and necessity and recommends the following additions be made to the proposal:

"Producer" means the employer who has direction and control over the creation of a production.

"Testing" is a personal protective procedure and refers to health screenings according to Appendix C of this section.

"Testing Protocols" refers to Appendix C of this section that significantly reduce the risk of STI transmission.

Response: The Board notes the definitions for testing and testing protocols are unnecessary and would only serve to cause confusion since they are not an alternative to condoms. Please see response to comments #FSC3, #FSC8 and #FSC15. With regard to the recommendation to create a new definition for producer, the Board notes it is the employer's responsibility to provide a safe work environment for their employees and as such, the Board cannot allow an employer being regulated to disregard worker protection standards. Producers are not the only employers that exercise direction and control over the employee. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC18: The Coalition recommends subsection (c)(1)(B) be modified for clarity and consistency as follows:

(B) The Plan shall be in writing and shall contain at least the following elements:
1. An exposure determination that includes the following:
a. A list of the tasks or activities that involve or may involve occupational exposure to blood or OPIM~~—STI~~ if control measures are not implemented. This determination shall be made without regard to the use of personal protective equipment ~~or personally worn barrier protection~~, such as condoms or personal protective procedures such as testing protocols.
*****
2. The selection of control measures that will be used for each task or activity, or group of similar tasks or activities, as required by subsection (d).

Response: The Board disagrees that the proposal lacks clarity or consistency and notes these modifications would make the proposal less effective than existing regulations; particularly

given testing protocols are not an alternative to condom use. Please see responses to comments #FSC3, #FSC8 and #FSC15. With regard to the OPIM-STI term, please see response to comments #FSC5 and #FSC12. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC19: The Coalition recommends proposed subsection (c)(1)(B)(4) be modified, and states the requirement for provision of vaccination is impracticable since performers work for multiple directors, producers and/or themselves:

4. The schedule and method of implementation for medical services and information, including ~~provision of~~ vaccinations, medical tests and examinations, and post-exposure evaluation as required by subsection (e).

Response: The Board notes under existing regulations employers are already required to provide HBV vaccinations and responsible employers are already providing vaccinations, not just information, at no cost to the employee. The only modification, given the risk of acquiring or transmitting vaccine preventable diseases, is to also provide vaccinations for Hepatitis A and HPV. The Board understands the complexities of multiemployer situations, but this is nothing new and adds the cost of immunization is low relative to the cost of disease. Providing these vaccinations permits the employer to reduce the susceptibility of its workforce to diseases like Hepatitis B, Hepatitis A and HPV. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC20: The Coalition recommends proposed subsection (d)(1) "Universal Precautions" be deleted, given the variety of contact that results from the performance of an employee's duties.

Response: The Board notes that this is an existing requirement and its elimination will make this regulation less effective than existing state and federal standards. Please see response to comments #FSC11 and #FSC12. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC21: The Coalition recommends modifying proposed subsection (d)(2) for necessity, consistency and clarity. Remove "using acting" which is redundant for simulation. Additionally, the Coalition recommends adding personal protective procedures to include testing protocols and other procedures and to replace "prevent all" with minimize or eliminate the risk as absolute prevention is impossible due to the form of interaction in this industry:

> (1)~~(2)~~ General Control Measures. Each employer is required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or OPIM-~~STI~~. When simulation of sexual activity ~~using acting~~, production, and post-production techniques, and/or personal protective procedures are ~~is~~ not used, or do~~es~~ not ~~prevent all~~ minimize or eliminate the risk of occupational exposure, all of the following control measures are required:

(A) Ejaculation onto surfaces other than the genitals, eyes, mouth or other mucous membranes or non-intact skin of another person;
*****
(D) Provision of and required use of condoms or other protective barriers to prevent genital contact with the blood or OPIM—~~STI~~ of another person;

Response: The Board does not agree that acting is redundant and notes that acting is only one of the options employers can use to simulate sexual activity; other options are the use of simulated fluids during production or using post-production techniques to create a film in which consumers will not view condoms. With regard to the additional recommendations, the Board notes that they would make this regulation less effective than existing regulations. Please see also responses to comments #FSC3, #FSC8, #FSC15 and #FSC18. With regard to OPIM-STI please see response to comment #FSC5 and #FSC12. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC22: The Coalition recommends for consistency proposed subsection (d)(3)(B) be modified as follows:

(B) Where Personal Protective Options have not been implemented, o~~O~~bjects that have become contaminated with blood or OPIM—~~STI at one anatomic site~~ shall not be reused ~~on another anatomic site, or~~ on another person, unless the object has been appropriately decontaminated.

Response: The Board does not agree the proposed regulation is inconsistent and notes the Coalition's recommendations would make it less effective than current regulations. Please see response to comments #FSC3, #FSC8, #FSC15 and #FSC18. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC23: The Coalition recommends for consistency that proposed subsection (d)(4)(D)(2) be modified to limit its application to when personal protective options have not been implemented and add that cleaning body areas between sexual acts with the same person is unnecessary.

(4) Specific Control Measures. (D) Hygiene.
2. Where Personal Protective Options have not been implemented, t~~T~~he employer shall establish work practices to ensure that body areas contaminated with blood or OPIM—~~STI~~ are cleaned between sexual acts with ~~the same or~~ different persons.

Response: The Board does not agree this is inconsistent or unnecessary and notes that to limit its applicability to only when personal protective options have not been implemented would make this proposal less effective than existing State and Federal regulations. See response to comments #FSC3, #FSC8, #FSC15 and #FSC18. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC24: The Coalition recommends for clarity and consistency, expanding proposed subsection (d)(4)(F), which they identify as (d)(5), to include:

~~(4) Specific Control Measures. (F)~~ (5) Personal Protective ~~Equipment~~ Options. Employees shall have the choice of Personal Protection Options to protect their sexual health. They may choose either Personal Protective Equipment or Personal Protective Procedures or both to significantly reduce the risk of STI transmissions. Condoms will be made available on all sets at no cost to employees.
(A) Personal Protective Equipment.

Response: The Board does not agree the proposed regulation lacks clarity or is inconsistent with existing state and federal standards and notes the Coalition's recommendations do not provide equivalent safety to current regulations. Please see response to comments #FSC3, #FSC8, #FSC15 and #FSC18. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC25: The Coalition recommends for clarity and consistency that proposed subsection (d)(4)(F) be further expanded to include options that are not covered in the definition of personal protective equipment and to allow for future, potentially more effective developments to ensure effective compliance:

(B) Personal Protective Procedures.

1. Testing Protocols, as detailed in Appendix C, significantly reduce the risk of transmission of all STIs defined in this section to acceptable levels where additional personal protective equipment may be recommended, but is not required.
2. If performers choose to utilize personal protective equipment during anal and/or vaginal intercourse, but not during oral intercourse testing protocols must at least significantly reduce the risk of transmission of gonorrhea, chlamydia, trichomoniasis, syphilis.
3. If the performers choose bio-medical protective procedures, health screenings must first confirm same sero-status or that no acute or untreated STIs are present.
4. If not all performers in a scene have chosen the same personal protective procedures, then all performers participating in the same scene shall use personal protective equipment.

Response: The Board does not agree the proposed regulation lacks clarity or is inconsistent with existing state and federal standards and notes the Coalition's recommendations do not provide equivalent safety to current regulations. Please see response to comments #FSC3, #FSC8, #FSC15 and #FSC18. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC26: The Coalition recommends for consistency and clarity proposed subsection (e)(1) be amended to state that medical services are only necessary when an exposure incident occurred and when personal protection options were not used or may have been compromised.

The Coalition recommends also deleting the remaining language as employers have no control or authority over the PLHCP and because patient-physician confidentially may be compromised. Additionally, the Coalition recommends subsections (e)(1)(B) to (D) be deleted as they are unnecessary due to the infringement of patient-physician confidentiality and are duplicative of legal requirements already in place for providers to report communicable diseases. The word Post-exposure is being added to subsection (e)(1)(E) as the employer may not control the employee choice of PLHCP or the PLHCP's choice of laboratory for testing protocols.

Response: The Board disagrees the proposed regulation lacks clarity, is duplicative or inconsistent with existing standards, and notes medical services beyond those required by Section 5193 are necessary as shown by the rate of repeated infections in performers in this industry. Medical services play a critical preventive role; providing employer-paid, voluntary, confidential medical services should decrease infections in this population. Please see also response to comment #FSC8. As for the concern regarding infringement of patient confidentiality, the proposed standard establishes a system whereby the only information available to an employer in regard to periodic or post-exposure medical services would be whether or not an employee had declined all services. All medical findings and diagnoses are to remain confidential and not be included in any written report. Only the physician or PLHCP and the employee would know what tests had been provided, and the results of those tests. This, and vaccine status or declination, would also be the only information available to the Division as an employee medical record. The Board also notes the proposal has been amended to permit employee choice in physician, please see response to comment #DG9.

Comment #FSC27: The Coalition has authority, duplicity and clarification concerns and recommends proposed subsection (e)(2) be revised to clarify the employer's responsibility to provide information only concerning access to vaccines. Additionally, they recommend the remaining requirements be deleted and note that there is no way to guarantee or control that the performer has completed the vaccine cycles.

Response: The Board disagrees the proposed regulation lacks authority, clarity or is duplicative and notes that vaccinations play a critical preventive role. Please see response to comment #FSC19. The Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC28: The Coalition has concerns with regard to authority and clarity and recommends proposed subsection (e)(3) Periodic Medical Services be deleted, as most performers can work for more than one producer in a day and multiple producers and/or themselves numerous times within the scope of a month. They believe that it would be impossible to determine under whose authority a performer's test lies. Additionally, the proposed language would create a conflict with the state workers compensation system.

Response: The Board understands the complexities of multiemployer situations, but notes it is the employer's responsibility to provide a safe work environment for their employees regardless of the length of employment, and as such, the Board cannot allow an employer being regulated to

disregard worker protection standards. It is up to the employer to choose how they want to provide these medical services and whether or not they want to use a consortium or designate a list of medical professionals at no cost to the employee. Periodic medical surveillance can reduce the impact of disease by providing early detection and treatment. Cal/OSHA has many regulations requiring employers to provide employees with medical services including vaccines and pre and post-medical tests at no cost to the employee. With regard to the concern about possible conflict with Workers Compensation, please see response to comment #FSC10.

Comment #FSC29: The Coalition provided language to amend proposed subsection (e)(4) to clarify the role of the producer to ensure cooperation, payment and information be provided to support the physician. Additionally, the Coalition recommends the remaining language of this subsection be deleted to acknowledge the physician is the appropriate authority to determine what is medically necessary for follow-up.

Response: The Board disagrees the proposed regulation lacks authority, clarity or necessity and notes employers are already required to provide Post-Exposure Evaluation and Follow-up. Post-exposure Evaluation and Follow-up plays a critical role in providing early detection and treatment and the Coalition's recommendations do not provide equivalent safety to existing regulations. Additionally, it is not the intent of the proposal for an employer to make medical decisions for an exposed employee. The Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC30: The Coalition has concerns with regard to authority, duplication and recommends proposed subsections (e)(5), (e)(6) and (e)(7) be deleted. The Coalition states it is the PLHCP who determines what information is medically necessary and believes the producer has no authority to access, store or maintain employee medical records. Additionally, due to HIPAA, ADA compliance and patient privacy, medical records are between the PHLCP and the patient. Information is provided to the employer with permission of the patient only when medically necessary.

Response: The Board notes many existing standards mandate recordkeeping requirements and disagrees this requirement lacks authority, is duplicative or would break medical confidentiality. The Coalition's recommendation does not provide equivalent safety to existing State and Federal regulations. With regard to medical confidentiality see also response to comment #FSC26. With regard to who makes medical decisions, please see response to comments #FSC28 and #FSC29. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC31: The Coalition has concerns with regard to clarity and consistency and recommends proposed subsection (f)(2)(A) be amended to remove the requirement that training be provided during working hours and be documented. They state performers do not have regular working hours.

Response: The Board notes these are existing requirements and disagrees it lacks clarity or is inconsistent with current mandates. The Coalition's recommendation does not provide

equivalent safety to existing State and Federal regulations. Training plays a critical role in protecting the life and health of an employee. This proposal does not dictate the employee's working hours be regular, only that the employer provide training to the employee(s) during whatever hours they work and that it be documented.

Comment #FSC32: The Coalition recommends for clarity and consistent with their previous recommendations, that proposed subsections (f)(2)(G)(7) and (f)(2)(G)(10) be amended as to change "personal protective equipment" to "personal protective options" and to replace the requirement that the vaccines be offered free of charge with information only on how and where vaccinations can be obtained.

Response: The Board disagrees the proposed regulation lacks clarity or is inconsistent with existing regulations and notes the Coalition's recommendations do not provide equivalent safety to existing standards. With regard to personal protective options, please see response to comments #FSC3, #FSC8, #FSC15 and #FSC18. With regard to vaccinations, please see response to comments #FSC19 and #FSC27. The Board does not believe further modifications are necessary as a result of this comment.

Comment #FSC33: The Coalition recommends that all recordkeeping requirements, with the exception of Records of Implementation of the Exposure Control Plan (g)(3), be deleted. They state the requirements for medical records, including confidentiality requirements, training, scene-logs, availability and transfer be removed as these are already covered in Section 3204 or 3203 and the expansion and duplication is unnecessary.

Response: The Board disagrees the proposed regulation is duplicative, unnecessary or inconsistent with existing regulations and notes the Coalition's recommendations do not provide equivalent safety. Recordkeeping is necessary to ensure employers are complying, exposure incidents are investigated and employees are provided essential medical services in order to protect them against sexually transmitted infections. All medical findings and diagnoses are to remain confidential and not be included in any written report. Please see also responses to comments #FSC26, #FSC30, #AHF2 and #DG4.

Comment #FSC34: The Coalition recommends the proposed mandatory Appendices A1-Hepatitis B, A2-Human Papilloma Virus, A3-Hepatitis A vaccine declinations be amended so employers will only be required to provide information about vaccinations.

Response: The Board notes this recommendation does not provide equivalent safety to existing State and Federal Regulations. Please see response to comments #FSC19 and #FSC27.

Comment #FSC35: The Coalition has concerns with regard to clarity, consistency, and believes the title "Protective Barriers" clearly describes condoms as personal protective equipment. They recommend omitting the words "protective barriers" and "mandatory," as condoms are just one of the viable choices in the personal protective options.

Response: The Board disagrees the requirement to provide protective barriers or condoms lacks clarity or is inconsistent with existing State and Federal regulations. Please see response to comments #FSC3, #FSC8, #FSC15 and #FSC18.

Comment #FSC36: The Coalition has concerns about consistency and authority and recommends the proposed mandatory Appendix C Minimal Requirements for Medical Services, be deleted. They state most performers are independent contractors who can work for multiple producers and/or themselves numerous times within the scope of a month and it would be impossible to determine under whose authority a performer's test lies. They recommend Appendix C be replaced with regulations for testing protocols.

Response: The Board disagrees the proposed regulation lacks authority or clarity or is inconsistent with existing regulations and notes medical services beyond those required by Section 5193 are necessary as shown by the rate of repeated infections in performers in this industry. The Coalition's recommendations do not provide equivalent safety. Please see response to comments #FSC26, #FSC8 and #FSC28.

Comment #FSC37: The Coalition recommends that the proposed mandatory Appendix D Declination of Periodic or Post-Exposure Medical Services, be amended to reflect that only the provision of post-exposure follow-up medical services are the responsibility of the producer.

Response: The Board notes this recommendation does not provide equivalent safety to existing State and Federal Regulations. Please see response to comments #FSC8, #FSC26 and #FSC28. The Board thanks the Coalition for their comments and acknowledges their participation in the rulemaking process.

**10. Jeffrey Parsons, Department of Psychology and Public Health, David Holland, Assistant Professor of Medicine, Infectious Diseases, Robert Grant, Assistant Professor of Medicine, Infectious Diseases, Jack Carrel, Health Education, HIV/AIDS Prevention, Kimberly Sommers, Infectious Diseases, Peter Miao, Infectious Diseases, by letter submitted in Coalition-Binder Exhibit 4, dated May 21, 2015**

Comment #PHGCSM1: The Commenters support the Coalition's position and share similar concerns about proposed Section 5193.1 with regard to their belief that the creators of this proposal made little effort to cooperate with performers and production companies to produce industry appropriate regulations. They state this proposal shows signs of conflict with medical science, disregards advances in medical science, public health practices and poses serious threat to sexual, mental and behavioral health of a stigmatized minority population.

Response: Please see response to comments #FSC1 through #FSC37.

Comment #PHGCSM2: The Commenters have serious concerns with regard to patient-provider confidentiality and that the proposed regulation calls for and/or enables employer involvement in the employee's choice of which provider to access, calls for employers to hold, access and be

involved with medical records of employees. They add that common business practice is for employees to have free choice of provider, except in cases of work related post-exposures medical care or occupational injuries.

Response: Please see response to comments #AHF2, #DG4, #FSC26, #FSC30 and #FSC33.

Comment #PHGCSM3: The Commenters have concerns about prevention being based exclusively on the use of condoms. Condoms are only one of the options and limits choice and control over personal prevention options. They add the actual effectiveness of condoms in preventing infections is far from perfect, female performers have testified that their use can lead to abrasion, which makes them more susceptible to STIs. CDC in their High Impact Prevention Program prioritizes using combinations of scientifically proven, cost-effective interventions targeted to the right populations to increase the impact of HIV prevention efforts. Prevention methods such as PrEP have shown to reduce HIV incidence by 99% among men who have sex with men and transgender women when taken daily.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #FSC18. With regard to abrasion(s), the Division has proactively alleviated this concern by including a requirement to provide condom-safe water-based or silicone-based lubricants to facilitate the use of condoms. Thus, the Board does not believe further modifications are necessary as a result of this comment.

Comment #PHGCSM4: The Commenters note universal precautions are intended for occupational environments where work practices can be implemented to reduce contact with potentially infectious bodily fluids and these methods have not been employed in intimate connections such as sexual contact and sexual practices. To focus on universal precautions would make this occupation impossible; rather they recommend training participating individuals so risk can be significantly reduced through personal protective options.

Response: The Board disagrees that personal protective options provides equivalent safety to existing State and Federal Regulations. Please see response to comments #FSC11, #FSC12 and #FSC20.

Comment #PHGCSM5: The Commenters have concerns HPV and HSV are not only transmissible through sexual contact, but through other routes as well and state these STIs should be best educated about and discussed between employees and their chosen primary care physician. They also fear that since the vaccination for HPV is currently only recommended through the age of 26, performers who refused or aged out of vaccination would be excluded.

Response: The Board notes it is the intent of the proposal that medical services be provided by employers by following CDC guidelines. Even under the existing Bloodborne Pathogens Regulation employees have the right to decline a vaccination and the Division is not aware of any discrimination or refusal to allow an employee to work. With regard to HPV and HSV, please see response to comment #FSC16.

Comment #PHGCSM6: The Commenters state these four infections (Gonorrhea, Chlamydia, Trichomoniasis and Syphilis) are treatable with antibiotics and note that regular testing which leads to detection and treatment is a key strategy to preventing these infections since condom use during oral sex is a highly unlikely and uncommon method of prevention even though recommended. While industry testing protocols do not block transmissions physically, they do offer a significant risk reduction due to the regularity of testing and treatment when infections are identified.

Response: The Board does not agree medical treatment equates to prevention and disagrees that the pre-treatment with antibiotics; given their unwanted side-effects and causal association with the increase of antibiotic resistant strains, provides equivalent safety. Please see response to comments #FSC3, #FSC8, #FSC11, #FSC15 and #DG6.

Comment #PHGCSM7: The Commenters state vaccines for Hepatitis A and B are available and highly recommended, but these vaccines should be discussed between the individual and their primary care physician. Mandating employer control over this could potentially be challenging for the recommended continuity of vaccination. They also note Hepatitis A and B are not only transmissible through sexual contact, but through other routes as well. With regard to Hepatitis C, they state that the extent to which this disease is sexually transmitted is unclear but new therapies are available which have cure rates about 90%.

Response: The Board notes the provision of Hepatitis B vaccine is already an existing requirement and the Division is not aware of any problems with employers or workers refusing to continue vaccinations. The Board also does not agree that it is acceptable to expose employees to Hepatitis C even if a cure were to exist. Although pathogens such as Hepatitis A, B and C can be transmitted via other routes, they are also transmitted by sexual contact. Please see response to comments #FSC19, #FSC27 and #FSC16.

Comment #PHGCSM8: The Commenters are opposed to referring to the infection as HIV/AIDS, they note it is unnecessarily stigmatizing and recommend deleting the word AIDS used within the definition of Sexually Transmitted Infection. With regard to HIV testing, they state HIV RNA tests such as the Aptima HIV1 RNA test has the shortest window period (approximately eight to ten days) and the testing protocols in the Adult Film Industry require HIV RNA testing within 14 days of a shoot. Effective treatment can reduce the infectiousness of the virus and PrEP as currently approved with daily doses of Truvada can significantly reduce the risk of transmission. They believe effective testing reduces the chance of an infection being present, which in turn significantly reduces the risk of transmission depending on the interval of testing.

Response: Please see response to comments #FSC11, #FSC3, #FSC8, #FSC15, #DG6 and #PHGCSM6.

Comment #PHGCSM9: The Commenters state current medical studies are evaluating the efficacy of a doxycycline PrEP for bacterial STIs such as Gonorrhea, Chlamydia, Trichomoniasis

and Syphilis and recommend Cal/OSHA make it possible to include such advances in the regulation. They add medical studies have confirmed a high efficacy of HIV prevention based on HIV PrEP with Truvada with high adherence to the daily regimen and recommend Cal/OSHA make it possible to include such advances in the regulation. Lastly, they urge Cal/OSHA strongly consider draft revisions presented by performers and producers, which incorporate and endorse the above comments.

Response: Please see response to comments #FSC1, #FSC2, #FSC3, #FSC8, #FSC15, #DG6 and #PHGCSM6. The Board appreciates the Commenters' remarks and acknowledges their participation in the rulemaking process.

**11. California Senator Mark Leno and San Francisco Supervisor Scott Wiener, by letter submitted in Coalition Binder, Exhibit 8, dated May 20, 2015**

Comment #MLSW1: The Commenters urge the Board to reject the proposed regulations unless amended as they believe these are not based on sound public health principles, will not reduce HIV infections, and will do nothing more than drive the adult film industry out of California or underground. The Commenters add that they both represent the Castro and other neighborhoods which include a large population of HIV-positive residents, they have lost friends and loved ones to the virus, that San Francisco has long been at the cutting edge of HIV prevention and their efforts have resulted in a dramatic reduction in new infections. Their approach is to not demand people order their sexual lives the way they might want them to, but to recognize the reality of people's sexual practices and tailor prevention to how people are actually living their lives.

Response: The Board disagrees the proposal is not based on science and notes it is the employer's responsibility to provide a safe work environment for their employees. The Board cannot allow an employer being regulated to disregard worker protection standards any more than to allow voluntary use of safeguards (such as guards on saws or fall protection). This is nothing new; under existing standards, employers are already required to protect employees against all bloodborne pathogens and not just HIV. The intent of this proposal is to expand its protection to all sexually transmitted infections.

Comment #MLSW2: The Commenters reiterate this proposal is not science-based as it assumes barriers such as condoms are the only real approach to HIV prevention. While condoms continue to be an important prevention tool they are not the only such tool and it is inconsistent with modern prevention approaches to suggest that they are. They add robust testing and pre-exposure prophylaxis (PrEP) are also key roles, that the proposed regulation does not recognize this reality and will not increase condom usage in adult films and will not reduce HIV infections, rather it will cause the adult film industry and the thousands of California jobs it produces, to leave the state or go underground. Since Los Angeles County's passage of a ballot measure mandating condoms in adult films they've already seen the start of an exodus of the industry to other states. As long as there is demand for adult films without condoms and other barriers, film without condoms will be produced. While condoms played a crucial role in reducing HIV infections, even after 30 years, 85% of gay men did not consistently use condoms and new HIV

infections persisted; that is why their HIV prevention approach includes not just condoms but also testing, PrEP and quickly connecting newly infected individuals to anti-retroviral therapy. Adopting the proposed regulations will not improve public health, reduce infections or change how adult films are made. They believe the regulations will achieve the opposite effect by pushing more filming underground and to states that do not have strong public health infrastructure. Thus, they urge the Board to reject these regulations.

Response: The Board notes testing and/or PrEP are not an alternative to condom use. These proposed regulations are minimum requirements and as such, employers are not prohibited from offering employees and providing as a supplement to condom use, STI Testing at all exposed sites and/or PrEP. Please see response to comments #FSC3, #FSC8, #FSC15, #DG6 and #PHGCSM6. The Board thanks Senator Leno and Supervisor Wiener for their comments and acknowledges their participation in the rulemaking process.

**12. Robert Grant, Professor of Medicine at the University of California in San Francisco, letter submitted as Coalition Exhibit 9**

Comment #RG1: The Commenter states that no protective method works unless it is used consistently and providing options allows people to choose methods for protection which in turn increases uptake and adherence. There are many different proven prevention methods available to significantly reduce risks. For example, antiretroviral medications have a potent protective effect on preventing HIV transmission. PrEP is proven to be safe and effective, was approved by FDA and CDC has endorsed its use to prevent HIV infections. The benefits of PrEP were greater among people using condoms the least, highlighting that PrEP works to prevent HIV infection in a manner that is independent of condom use. Additionally, the Commenter says new PrEP medications are in development and in the coming years, anticipates there will be several PrEP products available. Another proven way to prevent HIV transmission is called Treatment as Prevention. Post exposure prophylaxis (PEP), is also highly effective for sexual exposure, and occupational needlestick exposure, and these services should be available to sexually active people. PEP and PrEP are highly effective for HIV prevention, although they do not prevent syphilis or gonorrhea and chlamydia. The Commenter's main strategy for preventing the transmission of all STIs is frequent testing and prompt treatment of any positive results. The practice of frequent and confidential laboratory testing prior to any work that may involve genital or oral contact offers the advantage of detecting sexually transmitted infections. Furthermore, condom use has limited value for preventing infections that involve skin to skin contact, rather than sharing bodily fluids. For example, syphilis, herpes and human papilloma virus are transmitted by skin to skin such that condoms have more limited value as a personal protective process. Frequent testing for syphilis and prompt treatment is the mainstay of syphilis control. Vaccination of youth for human papilloma virus is the mainstay for preventing that infection.

Response: The Board notes the issues related to the basis of selection of PPE and STIs mode of transmission are addressed in other parts of the proposal, including employee training and cleaning and decontamination. With regard to the issue of treatment as prevention, PrEP and testing, please see response to comments #FSC3, #FSC8, #FSC15, #DG6 and #PHGCSM6.

Comment #RG2: The Commenter states sexual health requires a careful conversation with a trusted and culturally competent physician and limiting prevention options to only one and removing personal control and confidentiality is antithetical to good medical practice and the public's health. The Commenter recommends reviewing the available data about the effectiveness of diverse HIV prevention strategies and the value of frequent testing and treatment. The Commenter adds there are options available, people will protect themselves if given the chance to use an acceptable option and biomedical prevention options are valid and important prevention options that should be included as personal protective options.

Response: The Board understands the importance of accessing medical services and notes this proposal requires employers provide these services at no cost to the employee. With regard to the issue of HIV prevention and testing, please see response to your comment above. The Board thanks Mr. Grant for his comments and acknowledges his participation in the rulemaking process.

**13. Bernard Branson, letter submitted as Coalition Exhibit 10**

Comment #BB1: The Commenter states the testing protocol, the Performer Availability Screening Services (PASS), requires negative tests for HIV and STIs within 14 days before a performer engages in sexual contact as part of a shoot. To date, the testing has included a blood test for HIV RNA, genital nucleic acid tests for gonorrhea and chlamydia and an antibody test for syphilis. Additional tests are conducted for hepatitis B and C and trichomonas vaginalis. To protect the performers' confidentiality and to comply with the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), performers with a positive result on any of these tests and those performers who have not been tested are listed as "unavailable." For PASS compliance, all performers must be certified as available in order to participate in a shoot.

Response: Please see response to comments #FSC3, #FSC8, #FSC15 and #DG3.

Comment #BB2: The Commenter notes there are several alternatives available to prevent transmission of STIs and HIV (such as condom use, periodic testing to ensure sexual contact occurs only with uninfected partners, and medication to prevent acquisition of infections but that all require consistent adherence. No prevention method is completely foolproof and none has been studied systematically in the unique context of the adult film industry in which performers may have multiple and prolonged sexual encounters with one or more sex partners involving one or more anatomical sites. Each prevention method also has disadvantages. Mathematical modeling suggests frequent testing to ensure the absence of infection can achieve levels of prevention effectiveness of 95% or greater. However, STI testing must also be conducted at extragenital sites where infections can occur are often asymptomatic. To date, the effectiveness of PrEP has only been demonstrated for HIV infection, which has achieved reductions in HIV acquisition among persons who took the medication consistently. The effectiveness of any alternative for preventing transmission of STIs depends on consistent use, which in turn depends on acceptability to the intended users. Performers should receive accurate information about the

advantages, disadvantages and potential effectiveness of the available alternatives, and be allowed to select an option with which they are most likely to comply. Periodic testing every 14 days is a sound strategy that can minimize the possibility of HIV transmission, reduce the incidence of STIs and promptly identify persons in need of treatment for infections acquired either on or off the set. Use of this strategy alone or in conjunction with condom use can substantially reduce the risks for acquisition of infections by adult film performers.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG3, #DG6 and #PHGCSM6. The Board thanks Mr. Branson for his comments and acknowledges his participation in the rulemaking process.

**14. Jack Carrel, letter submitted as Coalition Exhibit 10**

Comment #JCA1: The Commenter is opposed to the Division's proposal and fully supports and is in agreement with all the issues addressed and suggested revisions submitted by the Coalition. He also would like to focus on the importance of fully educating individuals about their options and preserving individual freedom of choice. The Commenter adds when individuals are not given free choice, they often are less likely to adopt risk reduction methods. The current proposal does not offer choices and the one method chosen (condoms) is just one of a range of more effective methods that offer individuals alternatives that complement or enhance each other. Additionally, new prevention methods are rapidly emerging and are continuing to be added to their prevention tool kit. So the proposed regulations have the potential to put them at increased risk and take away choices to utilize more effective methods.

Response: With regard to support for the Coalition's comments, please see response to comments #FSC1 through #FSC37. With regard to the concern of individual choices, please see response to comment #MLSW1.

Comment #JCA2: The Commenter is concerned about ensuring confidentiality of private information. He notes the current proposal require medical providers to give personal medical information to employers, information which employers have no right or need to know. In addition, employers who are asked to retain this information do not have the infrastructure to ensure protection of this information. When individuals do not feel confident their information will be held private, they will not seek help when needed. The current proposal also hinders the patient/medical provider relationship which is crucial to providing appropriate medical advice and care.

Response: The Board notes several current standards require access to medical services and the Division is not aware of any situation where a patient/medical provider relationship has been hindered. Please see response to comments #AHF2, #DG4, #FSC26 and #FSC30. The Board thanks Mr. Carrel for his comments and acknowledges his participation in the rulemaking process.

**15. Lawrence Mayer, Assessment of the Presentations of Drs. Kim-Farley and Kerndt, submitted as Coalition Exhibit 13**

Comment #LM1: The Commenter reviewed three PowerPoint presentations concerning sexually transmitted diseases in the adult film industry and states they are fundamentally flawed, poorly documented, without basis in science and recommends that these presentations be discarded. He adds the figures are gross estimates of the number of adult film performers, lack transparency and are based on the false assumption performers are never re-infected or re-tested within any one year. The Commenter disputes the prevalence calculations and states the reports are not only inaccurate, but misleading and inflammatory toward the risk of contracting an STD in the adult film industry.

Response: The Board notes these studies speak to the fact that adult film performers are exposed to STDs and agrees with the Commenter on the importance of taking into consideration re-infection, which is indicative of an ongoing risk of acquiring a sexually transmitted infection. The Board thanks Mr. Mayer for his comments and acknowledges his participation in the rulemaking process.

**16. Karen Tynan, Legal Analysis Regarding Aspects of Proposed Cal OSHA Regulation, letter submitted as Coalition Exhibit 15 dated May 21, 2015**

Comment #KT1: The Commenter states the proposed regulation is fatally flawed and does not enhance worker safety, but instead conflicts with present workers' compensation regulations and long standing Health and Safety Code laws protecting privacy of individuals who test for HIV. The workers' compensation system requires "medical provider networks" (MPN) be utilized to provide medical care for employees. The regulations and laws that codify the MPN system have been completely ignored by the Division, specifically the creation of a consortium physician as well as the reporting of that physician and the medical services provided by that physician as provided for in Section 5193.1(e). MPN have very specific requirements and are formed to provide medical care to workers. Workers compensation insurance for production companies have not been consulted or utilized as a resource to create appropriate regulations for medical care of performers. Additionally, the Commenter enclosed a copy of the Superior Court Case of "Patient Zero v. CA Division of Occupational Safety and Health, et. Al." in which the Division was restrained from compelling or seeking to compel the disclosure of confidential medical records, HIV test information and personal identifying information of Plaintiff and other patients of Adult Industry Medical Healthcare Foundation without the specific written authorization of such patients.

Response: The Board is confident its efforts to address employee's occupational exposure to chronic and life-threatening sexually transmitted infections are appropriate and the requirements of the Labor Code and the Government Code have been met with respect to this rulemaking process. With regard to the concern about conflict with workers compensation, please see response to comments #FSC10 and #FSC28. The Superior Court case submitted has been reviewed and has now been included in the rulemaking package. With regard to the concern of

confidentiality, please see response to comments #AHF2, #DG4, #FSC26 and #FSC30. The Board thanks Ms. Tynan for her comments and acknowledges her participation in the rulemaking process.

**17. Anonymous Performer, e-mail dated May 20, 2015**

Comment #AP1: The Commenter is an adult performer and notes that currently a lot of high profile homosexual performers are HIV positive thus the backlash for mandatory minimum testing. The Commenter is concerned about Appendix C because it notes that "An employee may decline any or all of these services" since it suggests if someone knows they have HIV they can decline testing and continue to perform with a condom. The Commenter is opposed to this and proposes at a minimum, the following standard should be followed (at no cost to the employee):

(a) Mandatory testing and performing with barriers;
(b) Specimen for testing collected within 90 days prior to production where test panel is at least as effective as:
(1) testing of the urine or vaginal fluids, and/or by swabbing of the pharynx and rectum for chlamydia and gonorrhea;
(2) testing of the blood for human immunodeficiency and hepatitis C viruses and antibodies, and for syphilis;
(3) for employees who have not been vaccinated against HBV, testing of the blood for HBV surface antigen; (4) provisions of HAV, HBV, HPV vaccine, unless the employee is already fully vaccinated or immune, or another dose is not indicated at the time or declines by signing appendix A1, A2, A3;
(5) employees will also be required to use barrier protection which will be provided at no cost to the employee.

Response: The Board understands the importance of providing access to medical services at no cost to the employees and notes these proposed regulations are minimum requirements and as such, employers are not prohibited from offering employees and providing as a supplement to condom use STIs testing at all exposed sites. With regard to the employee's choice to decline these services, this option currently exists in several Cal OSHA regulations and the Board will not be making an exception in this case.

Comment #AP2: The Commenter states if the producer decides they would like to shoot without condoms this should be an option. The Commenter believes there is substantial evidence to show the current testing protocol is not only at least as safe as a condom, but in fact much safer. As a performer, the Commenter believes there should be an option to shoot without condoms, as it is safer to perform with someone who does not have HIV without a condom than to perform with someone who might, or does, have HIV with a condom.

Response: The Board notes that it is the employer's responsibility to provide a safe work environment for their employees and the Division cannot allow an employer being regulated to

disregard worker protection standards. With regard to testing protocols, please see response to comments #FSC3, #FSC8, #FSC15, #DG3 and #PHGCSM6.

Comment #AP3: The Commenter believes that with regard to Personal Protective Procedures, the minimum requirements should be as follows and must come at no cost to the employee:
(a) Specimen for testing collected within 14 days prior to production where test panel is at least as effective as:
(1) Provisions of HAV, HBV, HPV vaccine, at no cost to the employee, unless the employee is already fully vaccinated or immune, or another dose is not indicated at the time or declines by signing Appendix A1, A2, A3;
(2) HIV (by "PCR RNA" Aptima);
(3) Hep B (surface Antigen) or appropriate vaccination and PLHCP approval;
(4) Heb C (Antibodies);
(5) Syphilis (TREP-SURETM) cascading to RPR. Performers who have had syphilis in the past RPR with PLHCP approval after reviewing titers;
(6) Gonorrhea (by "ultra-sensitive DNA amplification");
(7) Chlamydia (by "ultra-sensitive DNA amplification");
(8) Trichomonas Vaginalis.

Response: Please see response to comments #AP1 and #AP2.

Comment #AP4: The Commenter also believes that having producers require better training for the performers is a great idea and thinks it should be standard to know your risk before entering the set. The Commenter notes that allowing a single location, like a testing facility, to offer standardized training material at the time of an employees' first test would be a great option too and adds the only way to functionally provide training material is to require it from a testing facility, who is associated with a PLHCP, before that performer does a scene. The Commenter states the current draft seems to have good intentions but not a complete understanding of how the adult industry functions and urges the Division to learn from active adult performers, so proper regulations are put in place.

Response: The Board understands the importance of training and notes this is a performance oriented standard. As such, employers have options as to the location, facility or trainer as long as training is provided at no cost to the employees and during working hours. The Board thanks the Commenter and acknowledges their participation in the rulemaking process.

**18. Ring LeSable and Renae Sable, e-mail dated May 20, 2015**

Comment #RS1: The Commenters state they have issues with the proposed regulation, more specifically subsection (d)(2)(A) General Control Measures. The Commenter notes this makes facials a thing of the past and if appropriate safety measures are not used, then the person cannot ejaculate on the face or genitals. They add while it is commendable that measures are placed to ensure aftercare and post-exposure clean up, restricting facials will have a detrimental effect on

marketability as this action makes a video a prime seller, its endemic to the industry and would place an unreasonable restriction to an accepted practice within this entertainment form.

Response: The Board notes it is the employer's responsibility to provide a safe work environment for their employees and the Division cannot allow an employer being regulated to disregard worker protection standards. It is not the intent of this proposal to prohibit certain activities; employers have options, so long as they protect employees from exposure to sexually transmitted infections.

Comment #RS2: The Commenters states they also have issues with subsection (d)(2)(B) because condoms become a permanent requirement and condoms are an issue for many performers because they cause friction and abrasions. It is difficult to use condoms as often as many performers work and current condom material technology is wholly inadequate to the demands of adult video production. They do not hold up to the friction, they create discomfort and irritation in performers, and the paying crowd of consumers most often just do not want to see them. The issue is physiological marketability and they request this particular rule be stricken.

Response: The Board notes the Division has proactively alleviated this concern by including a requirement to provide condom-safe water-based or silicone-based lubricants to facilitate the use of condoms. With regard to deleting this requirement, please see response to your comment above.

Comment #RS3: The Commenters states they also have issues with subsection (d)(4)(F) Personal Protective Equipment and states this rule would require the use of safety glasses or face shields if facials are portrayed. This is an unreasonable restriction on an accepted practice, endemic to the entertainment form, and potentially a serious financial detriment to the industry in all of its facets. They add this proposal does not reflect the realities of this industry and OSHA needs to have a better understanding of how they do this job. This regulation is not applicable to this industry and keeps them from being able to perform.

Response: Please see response to your comment #RS1. The Board thanks the Commenters and acknowledges Mr. and Mrs. Sable's participation in the rulemaking process.

**19. Mia Li, performer, e-mail dated May 21, 2015**

Comment #ML1: The Commenter states she is opposed to the proposed changes to Title 8 that will mandate barrier protection on set. As individuals and professionals they have the right to choose what is best for their bodies and adds the changes will infringe upon their medical privacy and bodily autonomy.

Response: Please see response to comments #FSC1 through #FSC37 and #RS1. The Board thanks Ms. Li for her comments and acknowledges her participation in the rulemaking process.

**20. Will McDonald, e-mail dated May 21, 2015**

Comment #WM1: The Commenter inquires as to what the OSHSB hopes to achieve by further regulating an industry that is already highly regulated.

Response: The Board thanks Mr. McDonald for his comments but notes the comments are not specific to the proposed text. Thus, the Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks the Commenter and acknowledges his participation in the rulemaking process.

**21. Lorelei Lee, performer, e-mail dated May 21, 2015**

Comment #LL1: The Commenter notes she has been a performer in the adult industry for fifteen years and fully supports the Adult Performer Advocacy Committee and the Free Speech Coalition's proposal. It is imperative that any regulation put into place prioritize performers' autonomy over their own bodies. Giving them the choice to use condoms or the equally effective PASS testing system is the only way to ensure their safety while also protecting privacy and dignity as workers.

Response: Please see response to comments #FSC1 through #FSC37 and #RS1.

Comment #LL2: Though mandated condoms seem like a simple solution, such proposed mandates do not consider the ways that an interaction on a porn set differs from interactions people have at home in their bedrooms. At home, most people's sexual encounters last a maximum of fifteen minutes, while on set it can take two hours of penetration to film a single scene. Condoms are not designed for this kind of industrial use. On set, when they use condoms, they encounter problems. First, because of the increased friction, condoms on set are much more likely to break than they do at home - and a broken condom protects no one. Second, female performers have experienced something on set that they call "condom rash" - abrasions caused by the increased friction a condom can create. These abrasions, besides being painful, increase their risk of contracting an STI off set, in their personal lives where their partners do not necessarily use the same strict testing protocol their onscreen partners do.

Response: Please see response to comments #JK5 and #RS2.

Comment #LL3: Some performers want to use condoms - and their choice to do so should absolutely be protected. Their jobs are not uniform - some work for studios, some webcam, some perform only a few times a month and others perform every day. They are a diverse group of workers with diverse needs. The only way to protect their safety is to have options that address their actual lived experiences and actual needs. When they have multiple, equally effective ways to protect themselves on set, they need to be allowed to access the ways that actually work for them. It is imperative to protect performers' choices to use condoms or to use other, equally effective protection methods such as the PASS testing protocol. They will not be safe unless they have options that truly work for them.

Response: Please see response to your comments above #LL1 and #LL2.

Comment #LL4: This industry has often been shunned and hidden. As a porn performer, the Commenter is used to her voice and the voices of coworkers being dismissed by those with the authority to regulate their lives and livelihoods, being told that she doesn't know what's best for her, that she must not care about her own health, or that she is being exploited. The Commenter notes she is a worker in this industry because doing this job has been the best choice for her; she cares deeply about her own health as well as the health of her coworkers. After fifteen years in this industry, the only time she feels like her own power over her body is threatened is when she hears of another proposed condom mandate, or testing mandate, or any proposed regulation that treats her as uniform stereotypes rather than individual people. The Commenter thanks the Board for taking the time to listen, and for considering their needs while creating a regulation that deeply affects their lives.

Response: Please see response to your comments above. The Board thanks Ms. Lee for her comments and acknowledges her participation in the rulemaking process.

**22. Dana Van Gorder, Executive Director Project Inform, letter dated May 20, 2015**

Comment #DVG1: The Commenter strongly supports workplace safety but is concerned the proposed regulations overlook entirely recent developments in HIV biomedical prevention, and could serve to undermine voluntary efforts to monitor health and safety in the adult film industry. They have seen many scientific advances in the field of HIV prevention and treatment in recent years. There are now effective treatments that lengthen and improve the quality of life for people living with HIV, and successfully treated people living with HIV have a nearly normal life expectancy. In addition to condoms, the use of which the Commenter strongly encourages, there are a number of additional, evidence-based HIV prevention interventions which greatly reduce the likelihood of transmission. Studies have indicated consistent use of condoms results in 80% reduction in HIV incidence. Current science indicates biomedical prevention methods, including antiretroviral therapy (ART) for individuals who are HIV-positive and PrEP for individuals who are HIV-negative, can reduce the risk of HIV transmission by 96%. Treating individuals who are HIV-positive to reduce the risk of transmission refers to the use of ART to suppress HIV viral load to undetectable levels, thereby decreasing the risk of transmitting the virus to others. Studies have demonstrated strict adherence to ART reduces the risk of transmitting HIV to an uninfected partner by 96%. PrEP is an HIV prevention method in which HIV-negative individuals take a daily medication to reduce their risk of becoming infected with HIV. When taken consistently, PrEP has been shown to reduce the risk of HIV infection in people who are at high risk by up to 96%. PrEP is a focus of HIV prevention efforts nationwide and critical to any discussion of adult performer safety. Given the high efficacy of treatment of HIV-positive individuals and PrEP in preventing HIV infection, we urge the Standards Board to include additional language in its proposed regulations that specifically addresses access to and utilization of these interventions in addition to condoms.

Response: Please see response to comments #FSC3, #FSC8 and #PHGCSM6.

Comment #DVG2: The Commenter notes they believe that there is no documented evidence that the adult film industry is a major vector for HIV infection, and the voluntary testing protocols currently in place have been largely successful at screening adult performers for HIV and other sexually transmitted infections (STIs). The Free Speech Coalition, the trade association of the adult film industry in the United States, currently provides adult film industry producers and performers with a protocol and database for STI testing called PASS. The PASS system appears to be effective in that no documented case of on-set transmission of HIV among PASS compliant producers has occurred for more than 10 years. All efforts should be made to assure all producers of adult films made in California are using a sound testing protocol.

Response: Please see response to comments #FSC1 through #FSC37 and #PHGCSM6. The Board thanks Ms. Van Gorder for her comments and acknowledges her participation in the rulemaking process.

**23. Craig Pulsipher, on behalf of AIDS Project Los Angeles, American Civil Liberties Union of California, Equality California, Gay Men's Health Crisis, Los Angeles HIV Law and Policy Project, Los Angeles LGBT Center and Transgender Law Center, letter dated May 20, 2015**

Comment #CP1: The Commenters strongly support workplace safety but are concerned the proposed regulations overlook entirely recent developments in HIV biomedical prevention, may add to the stigmatization of people living with HIV, and could serve to undermine voluntary efforts to monitor health and safety in the adult film industry. There are now effective treatments that lengthen and improve the quality of life for people living with HIV, and successfully treated people living with HIV have a normal life expectancy. There are also a number of evidence-based HIV prevention interventions that greatly reduce the likelihood of transmission, of which condoms are only one option among the many effective means of preventing the spread of the virus. Current science indicates biomedical prevention methods, including ART for individuals who are HIV-positive and PrEP for individuals who are HIV-negative, can reduce the risk of HIV transmission by 96%. In contract, studies have indicated consistent use of condoms results in 80% reduction in HIV incidence. Treating individuals who are HIV-positive to reduce the risk of transmission – also known as Treatment as Prevention – refers to the process of using ART to suppress HIV viral load to undetectable levels thereby decreasing the risk of transmitting the virus to others. Studies have demonstrated that strict adherence to ART reduces the risk of transmitting HIV to an uninfected partner by 96%. PrEP is an HIV prevention method in which HIV-negative individuals take a daily medication to reduce their risk of becoming infected with HIV. When taken consistently, PrEP has been shown to reduce the risk of HIV infection in people who are at high risk by up to 96%. PrEP is a focus of HIV prevention efforts nationwide and critical to any discussion of performer safety. Given the high efficacy of both Treatment as Prevention and PrEP, they urge the Standards Board to include additional language in the proposed regulations that specifically addresses access to and utilization of these interventions in preventing HIV transmission.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG6 and #PHGCSM6.

Comment #CP2: Stigma towards people living with HIV remains high. They encourage the Standards Board to adopt regulations based on evidence-based prevention methods rather than outdated, fear-based stigmas surrounding HIV. Stigmatization of people living with HIV may contribute to increased HIV infection as people seek to hide their HIV status, while decreasing stigmatization around HIV encourage people to learn their HIV status and access treatment that reduces the risk of transmission.

Response: Please see response to comments #FSC5 and #MLSW1.

Comment #CP3: There is no documented evidence the adult film industry is a major vector for HIV infection, and the voluntary testing protocols currently in place have been largely successful at screening adult performers for HIV and other STIs. The Free Speech Coalition currently provides adult film industry producers and performers with a protocol and database for STI testing PASS. According to the Free Speech Coalition, the PASS system has proven extremely effective and there has not been a single documented on-set transmission of HIV among PASS compliant producers for more than 10 years. Given their support of increasing voluntary testing for HIV and other STIs, and the proven benefits of such testing to the broader public health, they strongly urge the Standards Board to consider the comments submitted by the Free Speech Coalition with regard to testing protocol. Given the success of this particular strategy, it would be practical to consider standardizing testing practices industry-wide. This would ensure the proposed regulations serve to fully promote workplace safety and protect the health of adult film performers. Taking into account the concerns identified by adult film producers and performers and reducing any unnecessary burden on the industry would have the added benefit of preventing production from going underground, or to places that do not honor any testing protocols and offer fewer protections to workers.

Response: Please see response to comments #DG3, #FSC3, #FSC8 and FSC15. The Board thanks Mr. Pulsipher for his comments and acknowledges his participation in the rulemaking process.

**24. Fred Wyand, Director of Communications, American Sexual Health Association/National Cervical Cancer Coalition, email submitted May 21, 2015**

Comment #FW1: The American Sexual Health Association (ASHA) strongly supports amending Section 5193 to specifically address sexually transmitted health risks of workers in the adult film industry and urges the California Occupational Safety and Health Standards Board to adopt the proposed standard for the adult film industry. ASHA first recognized the sexual health risks to workers in this industry and in March of 2010, called for regulation to protect workers (document attached). The proposed revision of Section 5193.1 appropriately provides critically needed guidelines specific to the adult film industry. Surveillance by public health of reportable STIs has documented high rates of STIs and repeat infections among workers in this industry.

ASHA agrees screening for STIs alone is inadequate to protect workers from exposure to, and infection with, an STI and barrier methods such as condoms should be required and are the best method to reduce the risk of acquiring or transmitting an STI.

Response: The Board acknowledges the Commenter's support for this proposal and agrees with his evaluation and assessment that STI testing is not an alternative to condom use.

Comment #FW2: The proposed standard requires adult film industry employers to provide condoms for all vaginal and anal sex acts. In addition, employers must have exposure control and injury and illness prevention plans and provide comprehensive employee education, comprehensive STI testing and medical evaluation at no expense to the worker including testing of genital and extragenital sites for chlamydia and gonorrhea. ASHA strongly supports the proposed standard that requires condoms, STI testing and the requirement to provide Hepatitis A, Hepatitis B, and HPV vaccinations, as appropriate.

Response: The Board acknowledges the Commenter's support for this proposal.

Comment #FW3: ASHA urges immediate enactment of this standard specific to the industry and enforcement of the regulation. This standard, which uses proven methods to reduce the risk of STI transmission, will protect the health of adult film industry employees while also promoting the well-being of their communities.

Response: The Board acknowledges the American Sexual Health Association/National Cervical Cancer Coalition's support for this proposal and acknowledges their participation in this rulemaking process.

**25. Joseph Reeves Jr, Performer, e-mail dated May 21, 2015**

Comment #JR1: The Commenter notes that the adult entertainment talent pool should have a strong influence on any and all regulations set to protect the adult entertainment talent pool and adds all talent in this group only work sexually on camera with other talent that have been tested under the strict testing protocol set forth. He stated the individuals his fellow performers contracted HIV from were not tested under the same protocol the adult entertainment talent pool agreed group was and is tested under. Since he has been part of the adult entertainment talent pool no one in the agreed group has ever contracted HIV on camera (at work). The testing protocol works and should be met with high praise. Using condoms as an alternative to the testing protocol is a grossly insufficient substitute, irresponsible and an unfair compromise to their health and wellbeing as adult entertainment performers. AIDS Healthcare Foundation has no business trying to influence any regulations for the adult entertainment talent pool.

Response: Please see response to comments #FSC3, #FSC8, #FSC15 and #DG3. The Board thanks Mr. Reeves for his comments and acknowledges his participation in the rulemaking process.

**26. William Smith, Executive Director, National Coalition of STD Directors, email dated May 21, 2015**

Comment #NCSD1: After passing a Policy Statement on Worker Health and Safety in the Adult Film Industry in 2010 (2010 resolution attached), NCSD continues to be concerned about insufficient STD and HIV prevention efforts within the adult film industry. This industry creates between 4,000-11,000 films each year with gross revenue of $9-13 billion annually. Yet evidence suggests the industry fails to take the necessary steps to ensure its thousands of workers are protected from acquiring STDs, including HIV. The Los Angeles Department of Public Health reports adult film workers are ten times more likely to have a STD compared to the general population. In addition, a 2010 study of adult film actors in Los Angeles County found 28 percent of actors tested positive for gonorrhea and/or chlamydia. These statistics are too disparate to ignore.

Response: The Board acknowledges the Commenter's support for this proposal and agrees with his evaluation and assessment that adult film workers are at high risk of acquiring sexually transmitted infections.

Comment #NCSD2: Everyone deserves a safe workplace. Because of the unique nature of the adult film industry, NCSD believes a special effort is needed to keep its actors healthy. To reduce the epidemic of STDs in the adult film industry, NCSD supports policy efforts that require: *(1) Performers undergo regular, confidential STD and HIV testing at employer expense:* Regular testing helps workers know their STD and HIV statuses, get tested, and prevent further STD/HIV transmission to other performers. Requiring employers to pay for those tests eliminates the cost barrier associated with STD and HIV testing and treatment and increases testing compliance.

Response: The Board acknowledges the Commenter's support for this proposal and agrees workers need to be provided access to medical services at the employer's expense.

Comment #NCSD3: NCSD also supports policy efforts that require *(2) Actors use condoms in adult film production:* Testing alone is not enough to prevent the spread of HIV and other STDs among adult film workers. Conducting enough testing to ensure all performers are STD and HIV free is almost impossible given the frequency of sex as part of adult film work. Similarly, the incubation time for HIV and other STDs can make detecting infections difficult soon after exposure. Performers should also wear condoms to add another safeguard and prevent transmission of all STDs, including HIV.

Response: The Board acknowledges the Commenter's support for this proposal and agrees with his evaluation and assessment that testing alone is not an alternative to condoms. Please see also the response to your comment above.

Comment #NCSD4: NCSD supports policy efforts that require *(3) Workers receive health training about condom use for the prevention of HIV and other STDs:* When adult film workers

know how to properly use condoms, the benefits of regular testing for HIV and other STDs and where and how to obtain treatment, they have the tools needed to make informed decisions about their personal health. Moreover, they possess the tools to prevent potential transmission.

Response: The Board acknowledges the Commenter's support for this proposal and agrees on the importance of employee training. This proposal has several training requirements, from mode of transmission to the basis for the selection of personal protective equipment that will address these concerns. Thus, the Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #NCSD5: NCSD supports policy efforts that require *(4) Health Departments are Partners in Prevention:* The appropriate health jurisdiction can only ensure all adult film makers are indeed adhering to code and promoting activities that decrease all STDs, including HIV, among actors if they are seen as partners. Collaboration is essential between adult film producers and health departments in jurisdictions where adult films are produced. Additionally, health departments in jurisdictions where adult film production is significant need dedicated resources and other supports to carry out regular investigation and oversight.

Response: The Board acknowledges the Commenter's support for this proposal and agrees with the need for PHCLP to work in conjunction with the Local Health Public Officer.

Comment #NCSD6: After reviewing the proposed regulation by the California Occupational Safety and Health Standards Board, NCSD believes this regulation is in line with the above statements and NCSD's Policy Statement on Worker Health and Safety in the Adult Film Industry. By requiring the items above, we can greatly reduce HIV and other STDs in the adult film industry and ensure a healthy work environment for its performers.

Response: The Board acknowledges the National Coalition of STD Directors' support for this proposal and acknowledges their participation in this rulemaking process.

**27. Michael Johnson and Ricky Rosales, Los Angeles County Commission on HIV, letter dated May 18, 2015, and Dawn McClendon, Copy of Motion submitted as part of Coalition's Exhibit 11 and Transcript of County of Los Angeles Commission on HIV Draft Proposed Regulation 5193.1 Coalition Exhibit 14**

Comment #LACC1: The Commenters are opposed to the proposed State Standard unless amended. They believe the proposed standard compromises privacy of records, medical services and patient choice; promotes stigma; and does not adequately incorporate the use of biomedical interventions, including PrEP. They recommend that it be opposed unless it is amended to reflect the following: (1) Clarifying language that guarantees employers will not have access to employees' private medical records - especially records that indicate employees' HIV status.

Response: Please see response to comments #FSC1 through #FSC37.

Comment #LACC2: That it be amended to include: (2) Specific protections that ensure people living with HIV/AIDS are in no way subject to employment discrimination.

Response: The Board notes it is not the intent of this proposal to discriminate against persons with HIV. Please see response to comments #DG2 and #DG3.

Comment #LACC3: (3) Incorporation of meaningful stakeholder input that reflects the experiences and views of the employees of the industry.

Response: Please see response to comment #FSC1 and #FSC2.

Comment #LACC4: (4) Provisions to ensure that employees have unencumbered choices in accessing culturally competent medical care; and

Response: Please see response to comments #RG2 and #PHGCSM2.

Comment #LACC5: (5) Additional language that specifically addresses access to and utilization of biomedical prevention methods, including testing, Treatment as Prevention, PEP and PrEP to reduce risk of exposure.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG3, #DG6 and #PHGCSM6. The Board thanks the LA County Commission on HIV for their comments and acknowledges their participation in the rulemaking process.

**28. David Holland, Assistant Professor, Emory University, letter received at Public Hearing May 21, 2015**

Comment #DH1: The Commenter (Curriculum vitae included) is opposed to the Division's proposal and supports the revisions contained in the Coalition's proposal. The Commenter states the risks of HIV are well defined, details various activities with different risks of transmission and deduces that protecting oneself from HIV is relatively straightforward. He notes condoms work but they may not be the only option or the best one at preventing HIV transmission. The Commenter says a few of the other strategies that can effectively be used to prevent transmission of HIV and STIs include the PASS system of frequent testing. He states in regard to HIV infection, the most serious infection they are trying to prevent, the PASS system incorporates HIV viral load testing every two weeks. He adds that viral load testing is the most sensitive test available for HIV and becomes positive eight to ten days after the initial infection and there is no window period during which patients are infections but test negative on a viral load test. In the past, transmissions have occurred on set when performers had HIV infection missed by viral load testing but in those instances the testing was done at much longer intervals than in the current system. Additionally, to answer the question as to whether or not testing every two weeks is enough to catch newly-infected performers, they developed a mathematical model to compare the PASS testing strategy with one in which performers use standard testing but use condoms on set. They concluded both condoms and the PASS testing strategy reduced HIV transmissions by

approximately the same amount and believe the PASS system would be at least as effective as condoms and would be a safe option for performers for preventing HIV infection. The Commenter concludes testing is prevention and by identifying performers who become infected in the community they can interrupt transmission and protect other performers.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG3 and #PHGCSM6.

Comment #DH2: The Commenter states their model does not address other sexually transmitted infections but they assume the same principles apply. Condoms have limited efficacy in preventing some STIs such as herpes, HPV, and syphilis and adds gonorrhea and chlamydia are easily detected and treated and suggest frequent testing for these conditions with treatment would also reduce the risk of on-set transmission.

Response: Please see response to comment #PHGCSM6 and to your comment above.

Comment #DH3: One of the other effective methods for prevention of transmission is PrEP. The Commenter adds PrEP for HIV infection has been demonstrated to be extremely effective in preventing HIV transmission and has been endorsed by the CDC.

Response: Please see response to comments #FSC3, #DG6 and your comments above.

Comment #DH4: The Commenter wants to raise some concerns about the report by Javan Bakht and others which claims a large number of missed STIs among adult film performers. He notes the study was enriched for individuals with active STIs and therefore overestimates the numbers of infections and adds the study was done during a period where old testing algorithms were used. The Commenter states the PASS testing strategy not only calls for more frequent testing but also tests all three anatomical sites of infection (oral cavity, urethra and rectum), so there will be fewer missed infections. The Commenter summarizes current science offers multiple options at least as effective as condoms for the prevention of HIV and STI transmission and encourages the Board to consider including these choices in the regulations so performers can choose the one that works best for them.

Response: The Board believes the commenter is referring to the article submitted by Dr. Peter Kerndt (as no article was submitted) and notes this reference study speaks to the occupational exposure to sexually transmitted infections that adult film workers face. Please see response to your comments above. The Board thanks Mr. Holland for his comments and acknowledges his participation in the rulemaking process.

**29. Peter Kerndt, MD, document received at Public Hearing May 21, 2015**

Comment #PK1: The Commenter requested the following article: "Sexually Transmitted Infection Testing of Adult Film Performers: Is Disease Being Missed?" by Christina Rodriguez-Hart and others (including the Commenter) be accepted into the rulemaking records.

Response: The Board acknowledges the receipt and inclusion of this peer-reviewed article into the rulemaking record. The Board thanks Dr. Peter Kerndt for his participation in the rulemaking process.

**30. Sable Renae, Performer, Second e-mail comment dated May 21, 2015**

Comment #2ndSR1: The Commenter attended the May 21, 2015, hearing and heard multiple speakers mention they were not protected by government or adult industry professionals. The Commenter believes that as adults the individuals are responsible for self-protection and as adult entertainment professionals, part of their self-protection is that their voices be more deeply integrated into the decision processes.

Response: Please see responses to #FSC1 through #FSC37.

Comment #2ndSR2: The Commenter notes every proponent of AHF's proposal took the position that the "Industry" wanted only profit without oversight. The Free Speech Coalition has drafted an alternate proposal with strong deference to the needs and desires of the industry performers and the Free Speech Coalition has recognized that without cooperation from performers, the producers have no one to shoot. By giving due credence to performers' voices, they have protected multiple interests. No one speaking today tried to sell the idea of reduced preventative measures. What was heard from APAC and FSC was a demand for more control placed into the hands of the performers and producers, whom are the most directly impacted. AHF's Section 5193.1 does not give enough control where it belongs, as it was written mostly by people not in its target profession with little credence, if any, paid to the realities of working on a film set.

Response: Please see response to your comment above. The Board thanks Ms. Renae for her comments and acknowledges her participation in the rulemaking process.

**31. Jorge Cabrera, Southern California Coalition for Occupational Safety and Health (SoCalCOSH), email submitted May 21, 2015**

Comment #JC1: The Commenter states that very serious hazards exist in the adult film industry that are seriously harming workers. Research shows workers in this industry are at high risk of contracting STIs, mainly chlamydia, gonorrhea, and HIV. Specifically, adult film workers are 64x more at-risk for gonorrhea and 34x more at-risk for chlamydia than the general Los Angeles County population. Latest statistics show 2,633 cases of chlamydia and/or gonorrhea in just a three year period (2004-2007). What is even more alarming is these documented cases emerge out of a Los Angeles County adult film workforce numbering at 1,849. All of these STIs are devastating on the body and mind of workers who are afflicted. Not only do they make workers ill, but they also kill them, as is the case with HIV. There is a very simple solution: enforcing the use of condoms. The right type of condoms are effective in preventing the transmissions of STIs among sexual partners. This view is supported by some of the most recognized and trusted public health and medical, including the California Division of Occupational Safety and Health.

Unfortunately, STIs are not covered under the protections of Section 5193. Therefore, they implore the Cal-OSHA Standards Board to adopt the proposed changes to Section 5193.

Response: The Board acknowledges the Commenter's support for this proposed regulation and agrees with their assessment that sexually transmitted infections can be devastating on the body and mind of workers. The Board thanks SoCalCOSH for their comments and acknowledges their participation in the rulemaking process.

**32. Cameron Adams, Former Adult Film Industry Employee, letter dated May 21, 2015**

Comment #CA1: The Commenter is in full support of proposed Section 5193.1 and notes the adult film industry has caused enough damage to workers' lives so it is finally time for this legal industry to protect performers on set. Proposed Section 5193.1 is appropriate, comprehensive, and most importantly a promise by the Division that future adult film performers will never have to experience the pain she suffered. The Commenter is a former adult film performer who contracted HIV in 2013, as a result of performing on an adult film set where untested members of the public participated and condoms were not provided. She was blacklisted from the industry because of her HIV status. The adult film studio denied her worker's compensation claim. She was discarded and humiliated by the same industry that promised to protect her. The Commenter notes proposed Section 5193.1 addresses three important aspects that were denied to her when she was an adult film employee: (1) Workers are required to wear lubricated condoms for vaginal and anal sex. (2) Workers are offered regular STD and HIV testing, which is paid for by the employers. Free testing is crucial because adult film employers currently force employees to pay for STD and HIV tests, which cost $300 per month. (3) The required STD and HIV testing is more comprehensive than the adult film industry's current testing scheme by ensuring all anatomical sites are tested for chlamydia and gonorrhea. In contrast, the $300 monthly testing lauded by the adult film industry misses rectal and oral infections.

Response: The Board acknowledges the commenter's support for this proposal and agrees workers need to be provided access to medical services at the employer's expense.

Comment #CA2: The Free Speech Coalition, the adult film industry's lobbying group, will argue the adult film industry's testing scheme is more effective than proposed Section 5193.1. FSC does not fight for the needs of the performers and is a producers' organization. As a producer's organization, the FSC pushes its profitable testing scheme agenda because "Testing is really to protect the companies from lawsuits not performers from diseases." Condoms and testing are a minimum standard of protection, yet adult film employers fight against them under the excuse of profit and free speech. Thousands of adult film workers have been infected as a result of performing in the adult film industry, and the only consequence seen is increased profits for the industry's leaders. As an HIV-positive woman undergoing physical and emotional complications as a result of her HIV status, she urges the Standards Board and the Division to ensure proposed Section 5193.1 is added to the California Code of Regulations.

Response: The Board acknowledges Ms. Adams' support for this proposal and acknowledges her participation in the rulemaking process.

**33. Derrick Burts, Former Adult Film Industry Employee, letter dated May 21, 2015**

Comment #DB1: The Commenter is in full support for proposed Section 5193.1, which will ensure adult film employers finally comply with the California Code of Regulations. He was a performer in the adult film industry for seven months and in the first month, he contracted chlamydia, gonorrhea, and herpes. By the seventh month, he contracted HIV. When he started performing, adult film industry representatives promised he would be regularly tested at a clinic established by the industry to protect him from infectious disease. However, he would have to pay for all tests out of his own pocket. In addition, the tests provided at the industry-approved clinics were not comprehensive. Adult film producers are profiting from infectious disease, and proposed Section 5193.1 will finally put an end to that.

Response: The Board acknowledges the Commenter's support for this proposal.

Comment #DB2: According to proposed Section 5193.1, condoms are specifically cited as a barrier protection for vaginal and anal sexual acts. When he worked as an adult film performer, he rarely saw a condom on set. Adult film producers told him condoms were not required. He only wishes this proposed regulation existed before he contracted HIV.

Response: The Board thanks Mr. Burts for his comments and his support for this proposal.

Comment #DB3: It is also notable to mention the testing requirements outlined in proposed Section 5193.1. According to the language, adult film employers will be required to pay for all testing and treatment. In addition, the testing outlined in the proposed section is more comprehensive than the adult film industry's current testing scheme.

Response: The Board acknowledges the Commenter's support for this proposal.

Comment #DB4: The language drafted in proposed Section 5193.1 is commendable. The Division has taken a challenging task to address an industry that consistently refuses to comply with workplace safety and health. The language is clear and demonstrates a necessary standard of protection to ensure all workers in the adult film industry are protected on set.

Response: The Board thanks the Commenter for his support for this proposed regulation and acknowledges his participation in the rulemaking process.

**34. Edward Klinenberg, President California Industrial Hygiene Council (CIHC), letter dated May 19, 2015**

Comment #CIHC1: The CIHC believes the proposed regulation has merit in California and applauds Cal/OSHA for its continued effort in the prevention of work-related illnesses. They support the efforts of AHF to have Cal/OSHA include language regarding the use of condoms in

the adult film industry. The use of condoms is the primary PPE that can be used in the adult film industry to attempt to control the spread of sexually transmitted diseases between actors. If this were any other industry and the use of a simple piece of PPE could not only prevent the spread of occupational diseases (in this instance syphilis, chlamydia, gonorrhea, etc.) but a disease that has the ability to completely destroy the immune system and kill anyone infected (AIDS), there would be a thunderous public outcry if the industry was not regulated to protect their employees and subcontractors (and potentially the public) from the spread of these diseases. The spread of sexually transmitted diseases in the adult film industry is an industrial hygiene issue. The hierarchy of controls of occupational stressors and diseases starts with engineering the hazard out of the job, then the use of administrative controls to reduce the exposure below occupational exposure limits, and if all else fails, the use of PPE.

Response: The Board thanks CIHC for their support for this proposed regulation and acknowledges their participation in the rulemaking process.

**35. James Deen, e-mail dated May 21, 2015**

Comment #JDN1: The Commenter submits a news article entitled, "Unlikely Model in H.I.V. Efforts: Sex Film Industry" to support the Coalition's proposal and to be included into the rulemaking record.

Response: The Board acknowledges the receipt and inclusion of this news article into the rulemaking record. The Board thanks Mr. Deen for his participation in the rulemaking process.

**36. Sofia Delgado, Former Adult Film Industry Employee, letter dated May 21, 2015**

Comment #SD1: The Commenter, a former adult film industry worker states she began shooting in adult productions in June 2013, her career totaled two months and in that time she performed six times. When she became a performer she was comforted by the adult film industry's testing scheme and felt safe working with her seasoned colleagues. At barely 20 years old, she was diagnosed with HIV. Although being tested was helpful in diagnosing her with HIV, it was not prevention. Testing is not prevention. Condoms are prevention. The sad reality is, if a performer requests a condom before or on set, they are intimidated, hassled, charged fees, replaced, fired, and at times blacklisted. Producers tell performers to perform without barrier protections and to trust in the adult film industry's testing scheme. However, the adult film industry's current testing scheme is not comprehensive. The tests do not detect infections in all anatomical sites. To make matters worse, adult film employers require performers to pay out of pocket for the industry's testing scheme. At the end of the day, it is the worker who suffers. For all the people entering or already in adult productions, she strongly supports proposed Section 5193.1. The proposed regulations would not only require condoms in all adult films, they would also require comprehensive testing and treatment paid for by the producers. For the sake of all workers in the adult film industry, she hopes the Division and the Standards Board will protect them better than she was protected.

Response: The Board acknowledges Ms. Delgado's comments and support for this proposal and acknowledges her participation in this rulemaking process.

**37. Darren Edwards, Former Adult Film Industry Employee, letter dated May 21, 2015**

Comment #DE1: The Commenter is in full support for proposed Section 5193.1, which will ensure adult film employers finally comply with the California Code of Regulations. In 2004, he contracted HIV on set and he cannot bear to see any more performers go through the same tragedy. He has spoken out in support of adult film workplace safety and health regulations for many years. The proposed language in Section 5193.1 is not only appropriate, it also sends a necessary and powerful message to adult film employers that workers deserve to be protected. Do not let adult film industry representatives fool you into believing everything is fine. Organizations like the FSC have only one job: to help employers make more money. Workers move quickly in and out of the adult film industry like a revolving door. It is no wonder workers have the quietest voice when it comes to their basic human rights. The FSC claims condoms violate free speech, performers are independent contractors, and the industry's testing scheme protects performers. These claims are not only far-fetched, they are entirely wrong. Condoms are not protected free speech, adult film workers are considered employees under the Division's eyes, and the industry's testing scheme has failed thousands of performers. On the other hand, the proposed language in Section 5193.1 ensures all performers are treated as employees, provides them with condoms at no cost, and guarantees comprehensive HIV and STD testing paid for by producers. These requirements are essential and will ensure all workers in the adult film industry are protected. It is time to end the tragedies he has experienced and witnessed in the past decade. It is time for the Division and the Standards Board to usher in a new decade of safety and health in the adult film industry.

Response: The Board acknowledges Mr. Edward's comments and support for this proposal and acknowledges his participation in this rulemaking process.

**38. Joshua Rodgers, Former Adult Film Industry Employee, letter dated May 21, 2015**

Comment #JRG1: The Commenter is in full support of the proposed Section 5193.1 and states adult film industry employers encourage workers to engage in sexual activities that are highly likely to spread bloodborne pathogens in the workplace. Despite citations issued by Cal/OSHA investigators, employers continue to argue the existing regulations do not apply to them. As a former performer who contracted HIV as a result of working in the adult film industry, he expresses his support for proposed Section 5193.1 and notes the new standard will ensure the adult film industry complies with regulations without question by addressing two important aspects of safety and health in the industry: condoms and testing. The adult film industry claims their testing scheme prevents on-set infections. However, as a performer who worked for both heterosexual and gay studios, he notes the adult film industry's testing scheme is not the same across the board. Many studios that produce gay adult films do not require any testing for infectious disease, and many studios that produce heterosexual films do not require STD testing for all anatomical sites, such as the mouth and rectum. These discrepancies lead to high rates of

infectious disease among adult film performers. Proposed Section 5193.1 not only requires testing for all adult film performers, it also requires comprehensives testing that includes all anatomical sites. Adult film industry employers must be held accountable for their workers' safety and health. FSC was not created to defend the rights of employees; the FSC defends the rights of pornographers. The Division and the Standards Board have a responsibility to protect workers, and proposed Section 5193.1 will ensure the FSC and all pornographers finally take workplace safety and health seriously.

Response: The Board acknowledges Mr. Rodgers' comments and support for this proposal and acknowledges his participation in this rulemaking process.

**39. Ring (xsfrring), e-mail dated May 21, 2015, (duplicate of #22 Renae Sable e-mail)**

Comment #RX1: This Commenter provided the same e-mail as Commenter Sable-#22.

Response: Please refer to responses to comments #2ndSR1 and #2ndSR2.

## II. Oral Comments

Oral comments received at the May 21, 2015, Public Hearing in San Diego, California.

**1. Diane Duke, FSC (the following individuals support FSC's revised regulation: Chanel Preston, Five Star, Alex Chance, Mo Reese, Ariel Lex, Dirk Caber, Daniel Robison, April Flores, Brock Doom, Craig Pulsipher, Jack Carrel, David Holland, Ella Darling, Veruca James, Conrad Leavy, Lotus Lain, Karen Tynan, Matresse Madeline Malone, and Bryan Sevilla)**

Comment #DD1: The Commenter stated her organization is strongly opposed to this proposal, and submitted revised regulations that were created by a coalition of businesses, organizations, and professionals. Her organization is disappointed that input from the adult film industry was diminished and ignored and instead the Division chose to have a performer who has not worked in the industry for several years represent performers on the committee. The revised regulations she is submitting today are based on science and the health and well-being of performers and employees in the industry, rather than political motivation. Board member Stock asked questions to clarify three issues with Ms. Duke; what the possibility of infection transmission is within the two week period of the tests, whether or not participation in the PASS system is voluntary and if there are any producers that are not using the PASS system. Ms. Duke replied that doctors would testify later about the first issue; she confirmed that the PASS system is voluntary and noted that any producer who is not using the PASS system is probably not complying with any other regulations.

Response: Please see response to comments #FSC1 through #FSC37. The Board concurs with Ms. Duke that the PASS system is voluntary and is not utilized by all producers. With regard to Board member Stock's questions on the effectiveness of the PASS system, please see response to

comments #JK2, #PT1, #KS3 and #FSC3. No further modifications to the proposal are necessary as a result of these comments.

Comment #DD2: The Commenter also explained the PASS system and said it was developed in 2010, and over 6,600 people have used it. It is free for performers and producers to use and tells them whether or not a performer is clear and available to work. Performers are tested every 14 days and the HIV test and the syphilis test is done using tests which are much more sensitive, specific, accurate, and require a smaller time window than tests done at a doctor's office. The testing facility puts the results into the PASS system by entering the date the test was done, and if the results come back clear, they mark the box in the system to indicate the performer is clear. When a producer or performer logs into the PASS system and searches for a certain performer, the system only tells them whether or not the performer is clear and available to work, as well as the date the performer must be tested again. It does not disclose why the performer is not clear and available to work, which keeps the performer's medical records confidential. The PASS system allows producers to print out a performer's results in the system to keep in the performer's file as proof they have been tested. This system is robust, very effective, and as a result, there has not been an on-set transmission of HIV in over 10 years. **Craig Pulsipher, AIDS Project Los Angeles, echoed this comment.** The Commenter requested the Board consider the revised regulations they submitted.

Response: Please see response to comments above and with regard to PASS, see #FSC3, #FSC8, #FSC15, #DG3 and #PHGCSM6. The Board thanks the Coalition for their comments and participation in this rulemaking process.

2. **Denise Bleak, Beyond AIDS**

Comment #DBL1: The Commenter stated her organization supports the proposal. She has treated STDs and seen firsthand the effects of not taking proper precautions to protect oneself from these diseases, and planning for safety can occur and is very important in the workplace. Many hazards can come from routinely using antibiotics. The current mechanisms for protection are not being enforced, and mechanisms for protection can be creatively developed and calculated to reduce the risk of infection transmission.

Response: The Board thanks Ms. Bleak for her support of this proposed regulation and agrees with her assessment that mechanisms for protection can be integrated into the workplace to reduce the risk of acquiring infections. The Board acknowledges Ms. Bleak's participation in the rulemaking process.

3. **Chanel Preston, Adult Performer Advocacy Committee**

Comment #CP1: The Commenter stated this proposal has no input from active performers, does not consider how the industry works, and puts performers at greater risk for sexually transmitted infections. It hinders their performance, does not increase safety, and it compromises a performer's medical privacy. Adult film needs to be recognized as a unique industry with

applicable regulations that allow performers to do their jobs, and this proposal does not provide them with the best options.

Response: Please see response to comments #FSC1 through #FSC37. The Board thanks Ms. Preston and acknowledges her participation in the rulemaking process.

4. **Layla Price, Adult Performer**

Comment #LP1: The Commenter stated in January of 2015, she was a subpoenaed witness for a case regarding a serious violation of Section 5193, and Division attorneys received and used her legal name on the record during the hearing, even though she asked that they use her stage name instead. The judge finally struck her legal name from the record and replaced it with her stage name. Her personally identifiable information was not protected by the Division, and it was very frightening and dangerous that the Division received her personal and confidential information and used it in the hearing, disregarding her safety and privacy. She asked the Board to not give the Division unfettered access to performers' confidential records and to not require producers to maintain broad categories of medical records or other personally identifiable information for performers. **Brock Doom, Adult Performer,** echoed Ms. Price's comment.

Response: Please see response to comments #AHF2, #DG4, #FSC26 and #FSC30. The Board thanks Ms. Price and Mr. Doom and acknowledges their participation in the rulemaking process.

**5. Ring LeSable, Cameraman**

Comment #RLS1: The Commenter stated subsection (d)(1)(A) regarding methods of compliance and general control measures would make a "facial" act impossible. The "facial" act is important to the industry and is an act the purchasing public wants to see. Performers who perform this act know what they need to do to protect themselves, and this regulations takes away the performer's choice on how to do it.

Response: Please see response to comment #RS1.

Comment #RLS2: He also said subsection (D)(1)(B) would make condoms a permanent requirement by not allowing any unprotected sex to occur. Condoms cause friction and abrasions on a performer's genitals and only reliably prevent pregnancy, not STI's. It is difficult to use condoms as often as many performers work, condom material technology is wholly inadequate to meet the demands of the industry's production, and condoms do not hold up during prolonged sexual activity, creating discomfort and irritation for the performer.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG3, #DG6 and #PHGCSM6. The Board thanks Mr. LeSable and acknowledges his participation in the rulemaking process.

**6. Five Star, Cinematographer, Director, and Video Editor**

Comment #FS1: The Commenter stated it is unreasonable, and not feasible for adult film content, to assume that personal protective devices, such as condoms, gloves, and goggles, can be shot around or digitally removed. No technology exists that can automatically remove condoms from films, so it must be done manually, which requires additional expertise and exponentially longer editing times. Her company can turn around a video in two to three days. If her company had to edit out condoms frame by frame, it would take 1,800 hours of labor per one hour of finished video, as well as 75 visual effects artists for each one-hour movie to achieve the same turnaround time, which would increase editing costs from $500 to $63,000 per film. She also stated that her company publishes 23 one-hour videos per week, and editing out condoms would bring her company's post-production monthly budget to $5.8 million. For more realistic and believable removal of condoms from the film, her company would have to hire rotoscopers at the price of $2 per frame, which comes out to about $216,000 per film, and close to $20 million a month. Digital removal of condoms is not practicable and would place a severe financial burden on adult film companies.

Response: The Board notes that it is the employer's responsibility to provide a safe work environment for their employees and the Division cannot allow an employer being regulated to disregard worker protection standards. It is not the intent of this proposal to dictate what post-production technique to use; employers have options, so long as they protect employees from exposure to sexually transmitted infections. The Board thanks Ms. Star and acknowledges her participation in the rulemaking process.

7. **Alex Chance, Adult Performer**

Comment #AC1: The Commenter stated performers can work for several different producers or directors each week, which would make it impossible to determine who should pay for which vaccine. Several performers participate in "content trade" with other performers, which further complicates the issue because it cannot be determined who the producer is. This situation could force her to be saddled with paying the cost of vaccinations for the other performers that she participates in "content trade" with, which does not make sense. This regulation is unnecessary and impractical.

Response: The Board understands the complexities of multiemployer situations, but this is nothing new. Under existing regulations, employers are already required to provide a safe work environment for their employees. With regard to vaccinations, please see response to comments #FSC19 and #FSC27. The Board thanks Ms. Chance and acknowledges her participation in the rulemaking process.

**8. Mo Reese, Freelance Production Manager in the Adult Film Industry**

Comment #MFPM1: The Commenter stated that the proposal requires producers to arrange for performers to get tested and vaccinated before they do a shoot. Some of these vaccinations require six months to complete the cycle, and it is impossible to schedule shoots six months in advance in order to comply with the vaccination requirements. The producer does not have a way to follow the performer through his or her vaccination cycle, especially if they perform only once for a company. If a performer becomes ill during a shoot, this regulation does not allow them to be replaced with another performer because they will not be able to hire from the existing pool of performers that have been vaccinated, which will cause everyone involved to lose work and money.

Response: The Board notes this is nothing new. Under the existing Bloodborne Pathogens regulation, employers are already required to provide Hepatitis B vaccinations for all employees that are currently under their employment. Nothing in the proposal or the existing regulation prohibits replacing an ill performer or hiring from a pool of vaccinated performers. Additionally, please see response to comments #FSC19 and #FSC27. The Board thanks Mr. Reese and acknowledges his participation in the rulemaking process.

**9. Ariel Lex, Adult Performer**

Comment #AL1: The Commenter stated she has concerns regarding the creation of a consortium PLHCP. This type of entity has not been created in other industries and should not be created in the adult film industry. Performers often fly in from other states to do specific shoots, and the consortium PLHCP requirement would pose an extreme geographic hardship on them. A consortium PLHCP would inject producer and employer involvement into a performer's choice of healthcare provider, and would also disclose the performer's personal medical information to them. A performer's medical information, decisions, and choice of medical provider should only belong to the performer.

Response: Please see response to comment #FSC10, #FSC30, #FSC33, #RG2 and #PHGCSM1. The Board thanks Ms. Lex and acknowledges her participation in the rulemaking process.

**10. Sofia Delgado, AIDS Healthcare Foundation**

Comment #SD1: The Commenter stated that she performed in adult films for two months in 2013, before being diagnosed HIV positive. The industry's testing was helpful in diagnosing her HIV positive, but it was not prevention. Condoms are prevention. Performers who request to use condoms are often intimidated, hassled, charged fees, replaced, fired, or even blacklisted, and performers pay for testing out of their own pocket. The industry's testing system is not comprehensive and does not detect infection at all anatomical sites. She supports the proposal because it requires condoms to be used in all films and makes producers pay for comprehensive medical testing for performers.

Response: The Board thanks Ms. Delgado for her comments and support and acknowledges her participation in the rulemaking process.

**11. Cameron Adams, AIDS Healthcare Foundation**

Comment #CA1: The Commenter stated that she was not protected by the adult film industry or the PASS system and ended up contracting HIV in 2013. A producer received her positive HIV test results before she did and called her about it. She stated a reporter contacted her agent to verify that the test results were positive before she was informed of the results. There were occasions where untested members of the public performed with her on set, and no condoms were available to use, even when one performer cut his genitals. After she tested positive for HIV, she was blacklisted by the industry and tormented to the point she had to hide in another state for a year, and when she tried to file for workers' compensation with the film studio, it was denied. It is time to protect performers both on and off the set, and she asked the Board to adopt the proposal immediately.

Response: The Board thanks Ms. Adams for her comments and support and acknowledges her participation in the rulemaking process.

**12. Rod Daily, AIDS Healthcare Foundation**

Comment #RD1: The Commenter stated this proposal will ensure that the adult film industry complies with the current regulations without question and that condoms will be used. The industry's testing scheme has failed to protect workers, and testing is not the same across the board. Film studios that produce gay films do not require any STI testing, and film studios that produce heterosexual films do not require testing for all STI's, including gonorrhea of the throat and herpes. This proposal will require employers to pay for STI testing, and the testing requirements in this proposal are better than those in the industry's testing scheme.

Response: The Board thanks Mr. Daily for his comments and support and acknowledges his participation in the rulemaking process.

**13. John Smith, Adult Performer**

Comment #JS1: The Commenter stated that condoms prevent him from doing his job effectively. Male condoms fail 18% of the time, and his performance also affects the efficacy of a condom. The CDC's recommended testing for STI's does not make him feel safe because it uses outdated technology and the length of time between tests is lax. The PASS system's testing uses current technology and is much better.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG3 and #PHGCSM6. The Board thanks Mr. Smith and acknowledges his participation in the rulemaking process.

**14. Dr. Jeffrey Klausner, UCLA**

Comment #DJK1: The Commenter stated there are over 100 different infections that can be sexually transmitted. Hepatitis B and HPV can cause cancer, and more than 20% of cancers are caused by sexually transmitted infections. The proposal is reasonable and evidence-based. The FDA has approved condoms for STI prevention and the CDC endorses condoms and other barrier protections to prevent STI's. The proposal contains a comprehensive plan that includes education and training for both employers and employees, as well as regular testing for STI's and a post-exposure plan. The vaccination requirements are reasonable and recommended by the CDC. There is a provision in the proposal that allows new recommendations by the CDPH and CDC to be added to the plan, allowing it to change as new information becomes available, and the provisions to protect privacy are consistent with federal and state standards.

Response: The Board thanks Dr. Klausner for his comments in support of this proposal.

Comment #DJK2: The Commenter recommended changing the frequency of cervix screenings required in Appendix C, Section 2, Line E to an annual basis instead of every three months.

Response: The Board continues to rely on the expertise of the medical subcommittee which arrived at the frequency interval and does not see any rationale provided by the Commenter to make the change. The Board thanks Dr. Klausner for his support and acknowledges his participation in the rulemaking process.

**15. Peter Kerndt, USC/UCLA**

Comment #PK1: The Commenter stated this proposal will go a very long way in making this industry safe and will protect performers. This industry has always ignored what is required of them in the Labor Code, which has resulted in exposure, infection, and life-altering morbidity, and this industry needs to be regulated in a way that requires them to play by the rules. Testing is not prevention because it only tells when prevention has failed, and testing cannot replace personal protective equipment such as condoms. This proposal will protect confidentiality and will set a standard for the nation to follow to protect workers in this industry. Subsection (e)(4)(f) will allow monitoring and enforcement by implementing reporting requirements that employers must follow. Enough is known about STI's and their incubation periods that those records can tell when and where an exposure occurred, and to develop and implement corrective measures that can be applied in the future to prevent it from happening again.

Response: The Board thanks Mr. Kerndt for his comments and support and agrees with his assessment that testing is not prevention. The Board acknowledges Mr. Kerndt support and participation in the rulemaking process.

**16. Derrick Burts, AIDS Healthcare Foundation**

Comment #DB5: The Commenter stated when he began performing in the adult film industry, the industry assured him that testing would protect him from STI's. He rarely saw condoms used on the set because they were not required to be used. However, he contracted chlamydia and gonorrhea in his first month of work, and a few months later, he got herpes and HIV. Upon being diagnosed with HIV, he contacted the Adult Industry Medical Foundation for assistance. The Adult Industry Medical Foundation told him to delete his social media accounts, leave town, and not talk to anyone, and then they would help him receive follow-up care. He did not receive follow-up care for two months until he contacted his agent and an attorney who got him the care that he needed. The industry was more worried about its own image than it was about caring for him. His healthcare is paid for by the state, not the industry. This proposal will put an end to producers profiting from infectious diseases because it provides a minimum standard of protection that will ensure all performers are protected on the set.

Response: The Board thanks Mr. Burts for his comments and support and acknowledges his participation in the rulemaking process.

**17. Adam Cohen, AIDS Healthcare Foundation**

Comment #ACAHF1: The Commenter stated he is very impressed with the proposal because it is succinct, comprehensive, simple, powerful, and assures that adult film workers are protected. He is excited to see how this proposal will empower workers by no longer subjecting them to substandard testing that they must pay for out of their own pocket. Adult film workers will finally get the necessary healthcare that they have been promised for decades. He asked the Board to move this proposal forward.

Response: The Board thanks Mr. Cohen for his comments and support and acknowledges his participation in the rulemaking process.

**18. Dirk Caber, Adult Performer**

Comment #DC1: The Commenter stated this proposal will not increase protection for performers and will take away the performer's control over their body and sexual health. This proposal makes adult performers look like they are not able to make their own informed decisions. The industry educates performers regarding the risks that performers take, and the industry has its own regulations that it has developed to best suit the needs of adult performers. When he performs, he knows the risks and discusses them with his fellow performers so that they all know what they are dealing with, and performers do have a say regarding what happens on the set, who they will and will not perform with, and what activities they will participate in. He has performed with people who are HIV positive, and he has always had the option to use a condom for protection, followed by the PREP system for post-exposure control. The medical records requirement infringes on a performer's right to privacy, and the performer should be able

to choose their own medical provider, not a consortium doctor, for medical care. Performers should be able to choose a medical provider that they feel comfortable with and who will understand what they are going through, especially if they are HIV positive or part of the LGBT community.

Response: Please see response to comments #FSC1 through #FSC37. The Board thanks Mr. Caber and acknowledges his participation in the rulemaking process.

**19. Daniel Robison, Being Alive L.A.**

Comment #DR1: The Commenter stated employers should not interfere with an employee's medical decisions, and having employers control doctors and an employee's medical decisions is dangerous. Adult performers deserve healthcare that is unbiased, comfortable for them, and culturally competent to address their needs. Confidentiality and comfort are critical for the patient to have so that they can discuss their sexual health without fear of shame or stigma. This regulation is negative and misinformed and will have a very negative effect on the mental and sexual health of the adult performer community.

Response: Please see response to comments #FSC1 through #FSC37. The Board thanks Mr. Robinson and acknowledges his participation in the rulemaking process.

**20. Motor Monster Johnson, Adult Performer**

Comment #MMJ1: The Commenter stated he performs in adult films in L.A., and during his first eight months filming in L.A., he caught his first STD, but that was because of activity that he did off-camera. It should be his choice whether or not to use a condom when he is on-camera and off-camera. He gets to choose who he performs with, and he chooses to perform only with girls who have been recently tested to reduce his risk of catching an STI.

Response: Please see response to comments #FSC1 through #FSC37. The Board thanks Mr. Johnson for his comments and acknowledges his participation in the rulemaking process.

**21. Craig Pulsipher, AIDS Project Los Angeles**

Comment #CPAPLA1: The Commenter stated this proposal overlooks several recent developments in HIV biomedical prevention, such as ARV therapy (also known as Treatment as Prevention) for those who are HIV positive and PREP for those who are HIV negative. These biomedical preventions can reduce HIV transmission by 96%, where as a recent meta-analysis found that condoms only reduce the risk by 80%. This proposal is not based on science and evidence-based interventions, which would contribute to HIV stigma and misinformation.

Response: Please see response to comments #FSC3, #DG6 and #PHGCSM6.

Comment #CPAPLA2: This proposal could undermine the voluntary efforts to monitor safety that are currently in effect in the industry, such as the PASS system. He asked the Board to adopt a standard that is based on all evidence-based prevention methods and takes into account the concerns of both producers and performers so that production does not go underground or to other places where there are not testing protocols or other protections in place for workers.

Response: Please see response to your comment above and comments #FSC8, #FSC15, #DG3 and #MLSW1. The Board thanks Mr. Pulsipher for his comments and acknowledges his participation in the rulemaking process.

**22. Eric Leue, Sexual Health and Advocacy**

Comment #EL1: The Commenter read letters into the record from Dr. Robert Grant of UCSF and Dr. Bernard Branson. [Please see the file copy of the Board packet to view these letters].

Response: Please see response to the written letters for Mr. Grant and Mr. Branson. The Board thanks Mr. Leue and acknowledges his participation in the rulemaking process.

**23. Jack Carrel**

Comment #JC1: The Commenter stated this proposal does not offer choices of protection methods to performers. Condoms are only one effective choice of protection among many others that are available and provide alternatives that complement and enhance each other. This proposal puts performers at increased risk by taking away their choice to utilize more effective prevention methods recommended by the CDC and other organizations.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG3, #DG6 and #PHGCSM6.

Comment #JC2: The Commenter is also concerned about the fact that this proposal requires medical providers to give personal medical information to employers. This is information that employers have no right to have, nor do they need to know, and if they did receive it, they do not have the infrastructure to protect that confidential information properly. It is important to inform performers about all of their options for protection and let them utilize what fits their needs the best. He also read a letter into the record from a group of medical and public health professionals and advocates. [Please see the file copy of the Board packet to view this letter].

Response: Please see response to your comment above and to the written letter submitted. With regard to patient confidentiality, please see response to comments #AHF2, #DG4, #FSC26 and #FSC30. The Board thanks Mr. Carrel and acknowledges his participation in the rulemaking process.

**24. David Holland, Emory University**

Comment #DH1: The Commenter stated condoms do work, but they are not always the best option, and they have limited efficacy in preventing herpes, HPV, and syphilis. There are other strategies to prevent transmission of STI's on set. The PASS system provides the most sensitive test available (viral load testing) to detect HIV, requires that testing be performed on a performer every 14 days, which is a much shorter interval than the antibody testing that is usually used, and requires that testing be done at all 3 anatomical sites (oral cavity, urethra, and rectum), which results in many fewer missed infections. This test can detect if a performer is positive for HIV within 8 to 10 days after infection. To see if 14 days is enough time to catch a newly infected performer before they pass on the infection on set, his organization developed a mathematical model that compared the PASS system to the standard testing scheme with condoms used on set. The results prove that the PASS system and condoms reduced HIV transmission by the same amount, and the risk is extremely low. The results show that PASS is at least as effective as condoms in preventing HIV transmission. Current science offers multiple options for STI prevention that are at least as effective as condoms, and new strategies are being developed every year. He asked the Board to consider including these options in the regulation so that performers can choose the one that works best for them.

Response: Please see response to comments #FSC3, #FSC8, #FSC15, #DG3, #DG6 and #PHGCSM6. The Board thanks Mr. Holland and acknowledges his participation in the rulemaking process.

**25. Dr. Sarah Melancon, Melonson Adult**

Comment #SM1: The Commenter stated mandatory condom use infringes on her right to bodily autonomy, free speech, and freedom of expression. It compromises her personal experience, as well as her health due to friction from extended use of condoms. She opposes the use of the Gardasil vaccine because it is not safe or effective. It is only 17 to 44% protective against HPV and the rate of serious adverse effects associated with it is 2.5 times higher than the rate of cervical cancer. Gardasil can cause various neurological conditions, and when someone who is infected with HPV is vaccinated with Gardasil, it makes the existing infection worse.

Response: The Board notes that it is the employer's responsibility to provide a safe work environment for their employees and the Division cannot allow an employer being regulated to disregard worker protection standards. This proposal does not force an employee to get a vaccine; what is required is that employers offer them and provide them free of charge to all exposed employees. The Board thanks Dr. Melancon and acknowledges her participation in the rulemaking process.

**26. Conrad Leavy, Adult Performer Advocacy Committee**

Comment #CL1: The Commenter stated there is contradictory language in the proposal in relation to the Americans with Disabilities Act and HIV. If condoms work and are the best form of prevention, then an HIV positive person does not pose a risk to anyone else, and demanding that a person undergo an HIV test would violate their ADA rights in relation to HIV. Requiring both condom use and testing together violates ADA laws, and if condoms cause workplace issues, such as those described by other performers today, then requiring testing only in the absence of condoms would not violate ADA laws. Performers need to have at least two options or more to choose from when it comes to protection, otherwise it violates their basic human rights, and the regulation will be gutted by lawsuits.

Response: The Board disagrees that this proposal is discriminatory or violates ADA laws. Please see response to comments #DG2, #DG3, MLSW1 and #PHGCSM8.

Comment #CL2: He also stated Appendix C does not indicate what would happen to an employee who declines to participate in testing or services. There are no standards for reasonable work accommodation for people with HIV in accordance with the ADA when it comes to working in the adult film industry, which will continue to marginalize performers with HIV.

Response: Please see response to your comment above and to comments #DRSM1, #DG2, #DG3 and #PHGCSM8. The Board thanks Mr. Leavy and acknowledges his participation in the rulemaking process.

**27. Lotus Lain, Adult Performer**

Comment #LL1: The Commenter stated performers should be able to visit their medical providers without having to fear that their medical information will be disclosed to their employer. This proposal would make performers participating in "content trade" into producers, and therefore, they would have to keep medical records of other performers that they participated in "content trade" with. Performers do not have the HIPAA training or the resources, that are required to protect this medical information properly

Response: Please see response to comments #AC1 and #AL1. With regard to patient confidentiality, please see response to comments #AHF2, #DG4, #FSC26 and #FSC30. The Board thanks Ms. Lain and acknowledges her participation in the rulemaking process.

**28. Karen Tynan, Attorney**

Comment #KT2: The Commenter stated there is a permanent injunction currently in effect against the Division that restrains them from compelling, or seeking to compel, disclosure of a performer's medical records, HIV test information, or personally identifiable information

without the performer's written consent. This injunction has been in place since the "Patient Zero" case in 2009, where a judge determined that Health and Safety Code Section 120975 applies to performers' medical records because they have a legal privacy interest in those records. This proposal flies in the face of the protections that this injunction puts in place.

Response: Please see response to written comment #KT1.

Comment #KT3: This proposal conflicts with the worker's compensation system. The sections of the proposal concerning physicians and consortium physicians are in direct conflict with the Medical Provider Network regulations in Title 8, Sections 9767.1 through 9767.2, and the proposed procedures for performer medical treatment conflict and contradict the regulations already in place for worker's compensation and treatment of workplace injuries and illnesses. The requirements that require employers to establish a system of medical services conflicts with the worker's compensation regulations that set up the MPN, and this proposal seeks to create a system that is parallel to the worker's compensation system that will not legally stand if this proposal is passed. She asked the Board to give performers the medical and informational privacy that they deserve.

Response: Please see response to written comments #FSC10 and #FSC28. The Board thanks Ms. Tynan and acknowledges her participation in the rulemaking process.

**29. Matresse Madeline Malone, Adult Performer**

Comment #MMM1: The Commenter stated the performer logs that this proposal requires producers to keep are problematic and possibly dangerous. Many shoots are done in people's homes with small budgets and production staff, and requiring them to create and maintain a log of each and every sexual act for each and every performer in a shoot will be extremely burdensome on them. Small production companies lack the infrastructure to keep these records for the length of time that the proposal requires, and these records compromise the performer's safety and security because this proposal does not provide sufficient security to keep it safe.

Response: Please see response to written comments #FSC30 and #FSC33. Also see the initial statement of reasons sections on cost and small business impacts. The Board thanks Ms. Malone and acknowledges her participation in the rulemaking process.

**30. Murrugun the Mystic, Adult Performer**

Comment #MTM1: The Commenter stated he supports having a law that makes condom use optional. Making condoms mandatory violates a performer's civil rights. In addition to trusting the industry to protect them from STI's, they need to do their own research on who they are performing with to keep themselves safe.

Response: Please see response to comments #MLSW1, #AC1, #AL1 and #LL1. The Board thanks Mr. Murrugun and acknowledges his participation in the rulemaking process.

**31. Bryan Sevilla, Adult Performer Advocacy Committee**

Comment #BS1: The Commenter stated his organization stands behind the proposal that has been submitted by the Free Speech Coalition because it provides adequate post-exposure help to performers, it provides medical testing to performers at no cost, makes vaccines optional, provides support and training options, and it also understands the unique needs of the adult film industry.

Response: Please see response to comments #FSC1 through #FSC37. The Board thanks Mr. Sevilla and acknowledges his participation in the rulemaking process.

**32. Dave Cummings, Adult Performer**

Comment #DC1: The Commenter urged the Board to work with adult film performers and give them more involvement in revising this proposal, and to fix it in coordination with the comments and revised proposal Ms. Duke submitted.

Response: Please see response to comments #FSC1 through #FSC37. The Board thanks Mr. Cummings and acknowledges his participation in the rulemaking process.

**33. Kevin Bland, Free Speech Coalition**

Comment #KB1: The Commenter stated that the Free Speech Coalition's proposal requires employers to have condoms available on set for performers to use if they choose to. The testing requirements in their proposal are more stringent than those being proposed by the Division, and it addresses the privacy issues that performers face. The Division's proposal needs a lot more work, and the voices of all of the affected parties need to be heard in the process.

Response: Please see response to comments #FSC1 through #FSC37. The Board thanks Mr. Bland and acknowledges his participation in the rulemaking process.

**Board member statements**

**1. Board member Smisko**

Statement: The member would like for the proposal to clarify the employer's responsibilities and the individual's rights, as well as the conditions under which someone is working for an employer and when they are not. She would like to see the proposal specifically address who pays for the protective equipment and testing, as well as protecting confidentiality and privacy of medical information. The proposal needs to incorporate options for new protocols that become available for testing and prevention of STI's. She would like to receive more information about PrEP.

Response: The Board notes that it is the employer's responsibility to provide a safe work environment for their employees and the Division cannot allow an employer being regulated to disregard worker protection standards. This is nothing new, under the existing Bloodborne Pathogens regulation, employers are already required to protect employees against Bloodborne Pathogens and as such employers are required to provide protective equipment and medical services, such as vaccination at no cost to the employee. With regard to new protocols, STI testing and PrEP, please see response to comments #FSC3, #FSC8, #FSC15, #DG3, #DG6 and #PHGCSM6. The Board thanks Ms. Smisko and acknowledges her participation in the rulemaking process.

**2. Board member Jackson**

Statement: On page nine of the text, subsection (e)(1) will require employers to follow the recommendations of the CDC and CDPH that are "current at the time these evaluations are taking place," and he feels that that is inconsistent with what the Board has done in the past. In the past, the Board has incorporated someone else's requirements by reference and has always adopted ones that are date-specific to comply with the Office of Administrative Law's requirements. This regulation will require people to not only be familiar with California's requirements, but also with the recommendations of an agency that is outside of the Board's purview.

Response: The Board is confident that its efforts to address employee's occupational exposure to chronic and life-threatening sexually transmitted infections are appropriate and that the requirements of the Labor Code and the Government Code have been met with respect to this rulemaking process. The Board also notes that it is not the first time that proposed regulations reference current CDC guidelines. Similar CDC references are listed in existing regulations such as Section 5193, Bloodborne Pathogens and Section 5199, ATD. The Board thanks Mr. Jackson and acknowledges his participation in the rulemaking process.

**3. Board chairman Thomas**

Statement: The chairman would like to get more information on PrEP. Employers should pay for the testing, just like they would for employee drug testing in other occupations.

Response: Please see response to comments #FSC3, #DG6, #PHGCSM6 and #MSK1. The Board agrees with Mr. Thomas that it is the employer responsibility to provide medical services and protective equipment to all exposed employees. The Board thanks Mr. Thomas and acknowledges his participation in the rulemaking process.

**4. Board member Quinlan**

Statement: The member stated situations such as "content trade" need to be addressed in this proposal. It needs to clarify who is the employer and what their responsibilities are.

Response: The Board notes the intent of the requirement for a log is to specifically address multiemployer situations. With regard to delineating when the existence of an employer-employee relationship is present, this needs to be evaluated on a case by case basis as it is the norm during the Division's investigations. The Board notes that the issue of determining the existence of an employer-employee relationship is not specific or applicable only to this regulation and as such declines to make further modifications. The Board thanks Ms. Quinlan and acknowledges her participation in the rulemaking process.

MODIFICATIONS AND RESONSE TO COMMENTS RESULTING FROM THE 15-DAY NOTICE OF PROPOSED MODIIFICATIONS

No further modifications to the information contained in the Initials Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on October 14, 2015.

**Summary and Response to Written Comments:**

1. **David Shiraishi, Area Director Occupational Safety and Health Administration, letter dated October 22, 2015**

Comment #OSHA1: As requested, Mr. Shiraishi completed the review of the notice of proposed modifications to Title 8, General Industry Safety Orders, New Section 5193.1 Sexually Transmitted Infections and states that the proposed occupational safety and health standard appears to be commensurate with the federal standard.

Response: The Board thanks Mr. Shiraishi for his comments and support and acknowledges his participation in the rulemaking process.

2. **Chanel Preston, Adult Performers Advocacy Committee (APAC) and Diane Duke- Free Speech Coalition (FSC), letter dated November 3, 2015**

Comment #CAPAC-FSC1: The Commenters expressed their shock and disappointment for the disregard of their testimony, facts and information and note that there is no rational basis for the proposed regulations. The Commenters reiterated the number of testimonies and written statements in support of the PASS program and FSC's suggested changes submitted by various professionals and organizations. The amendments made to the regulation appear to rely on the input of the retired industrial hygienist Deborah Gold, who has an apparent bias against the Adult Film Industry. Industry stakeholders attended advisory meetings and did their best to participate in a hostile environment but the process was derailed and no further progress was made. The Division is mandated to provide a safe workplace, not to take on the fight of special interest groups such as Aids Healthcare Foundation. The Commenters stated that the voices of the actual workers were not considered or included in the proposed regulations and question the bias, substance, caliber and quality of the advisory meetings. The Commenters do not understand how

the Board weighs the opinion of one retired, biased industrial hygienist against the majority of HIV and LGBT organizations and leading medical professionals. The Commenters also note the following: the "sex worker" study has no bearing on the issue and that comparing the two (adult film production and the Nevada brothel) not only makes no sense, but also shows a serious and worrisome lack of understanding of adult film production sets; both condoms and the PASS testing strategy reduce HIV transmission by approximately the same amount; under both systems the rates of HIV transmission are extremely low and the PASS system would be at least as effective as condoms and a safe option for performers to prevent infections. Additionally, the Commenters note that the FSC commissioned an analysis from a Johns Hopkins epidemiologist, Dr. Mayer, who dismissed data presented by Kerndt and Farley.

Response: These comments are outside the scope and not specific to the changes proposed in the 15-Day notice. With regard to Ms. Deborah Gold, former Deputy Chief of Health, the Board references her article due to her extensive expertise and familiarity with this industry and the hazards faced by these workers. The Board acknowledges the Commenters' active participation and input throughout this entire process. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #CAPAC-FSC2: The Commenters have an issue with the "Occupational Health Alert" of December 2014 and note that it appears to be another politically motivated maneuver at the expense of the performers and professionals in adult production. They point out that the incident in question did not happen in the state of California, was on a set that did not utilize industry standards and protocols or the PASS program, and drew questionable conclusions about transmission. The Commenters note the then Director of the California Department of Public Health (CDPH) (Ron Chapman) retired and the current Director are not included, and they question whether the letter is an official position of the CDPH and will thus need clarification.

Response: The CDPH is devoted to improving worker health and safety through prevention activities. The Standards Board notes that the published reference reaffirms the negative outcomes when employers disregard existing state and federal occupational health and safety laws and do not provide safeguards to assure safe and healthy work environments to their employees. The Board does not agree that further clarification is needed and notes that the retirement of the CDPH Director does not negate CDPH's findings and recommendations. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment #CAPAC-FSC3: The Commenters note that the individuals and organizations providing written and in-person testimony in favor of the changes submitted by FSC and APAC did so voluntarily and without compensation, and that conversely, the performers testifying on AHFs behalf were well compensated for their testimony. They further note that no medical

professional and/or infectious disease specialist gave the Standards Board any reason to misclassify all STIs listed as chronic and life threatening and urge the Board to request all medical professionals in favor of this regulation to take a position on cited facts. They add that at the Standards Board public hearing, the room was filled with performers, adult production staff, workers, and business owners standing in unity and solidarity to oppose this regulation, and that they participated in the process that was supposed to be just, fair and unbiased. Again, they voice their shock and disappointment for the blatant disregard of the factual information and input from the actual stakeholders and urge the Board to vote no to the proposed regulations.

Response: These comments are outside the scope and not specific to the changes proposed in the 15-Day notice. The Board thanks the Adult Performers Advocacy Committee and Free Speech Coalition for their comments and acknowledge their participation in the rulemaking process.

## ADDITIONAL DOCUMENTS RELIED UPON

1. California Department of Public Health**:** *Occupational Health Alert: Occupational HIV Transmission in the Adult Entertainment Film Industry*. CDPH, December 2014.
2. Deborah Gold (2015) An Industrial Hygienist Looks at Porn, Journal of Occupational and Environmental Hygiene, 12:8, 184-190, DOI: 10.1080/15459624.2015.1053895
3. National Cancer Institute, Human Papillomavirus (HPV) Vaccines (reviewed as of February 19, 2015).
4. Centers for Disease Control and Prevention, "HPV Vaccine Information for Young Women" (as of March 26, 2015), replacing Initial Statement of Reasons Document Relied Upon incorrectly dated January 21, 2015.
5. National Cancer Institute, National Institute of Health, *HPV and Cancer*, <http://www.cancer.gov/cancertopics/factsheet/Risk/HPV#r7> (reviewed February 19, 2015), replacing Initial Statement of Reasons Document Relied Upon entitled National Cancer Institute, National Institute of Health, HPV and Cancer Fact Sheet (as of March 15, 2012), incorrectly linked to the above-named document.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Drive, Suite 350, Sacramento, California.

## ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

## DETERMINATION OF MANDATE

This standard does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

## ALTERNATIVES DETERMINATION

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board (1) would be more effective in carrying out the purpose for which the action is proposed; (2) would be as effective as and less burdensome to affected private persons than the adopted action; or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.