

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

Section 5193.1, General Industry Safety Orders

[Sexually Transmitted Infections](#)

**NOTICE IS HEREBY GIVEN** that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

**PUBLIC HEARING**

The Board will hold a public hearing starting at 10:00 a.m. on **May 21, 2015** in **Room 310** of the **County Administration Center, 1600 Pacific Highway, San Diego, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

**WRITTEN COMMENT PERIOD**

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **April 3, 2015**, and closes at 5:00 p.m. on **May 21, 2015**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

- By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or
- By fax at (916) 274-5743; or
- By e-mail sent to [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov).

**AUTHORITY AND REFERENCE**

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards.

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

Pursuant to California Labor Code Section 142.3, the Occupational Safety and Health Standards Board (Board) may adopt, amend, or repeal occupational safety and health standards or orders. Section 142.3 permits the Board to prescribe, where appropriate, suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and provide for monitoring or measuring employee exposure for their protection.

In December 2009, Michael Weinstein, on behalf of the AIDS Healthcare Foundation (AHF), filed Petition No. 513, requesting the Board to amend Section 5193 to specifically address hazards in the adult film industry. On March 18, 2010, the Board adopted a petition decision which requested the Division to convene an advisory committee to consider possible regulatory changes and to prepare language if appropriate. From March 2010 through June 2011, the Division held six advisory committee meetings to gather information regarding how employers can better protect employees that are exposed to sexually transmitted diseases, and to assess whether adopting new regulatory language would more specifically address those hazards. There was strong participation by employees and employers, as well as medical and public health professionals, researchers, academics, and advocacy groups. Evidence was presented by public health agencies and others that employees who engage in sexual activities in the course of their work are at significant increased risk of sexually transmitted infections (STIs) including the human immunodeficiency virus (HIV), gonorrhea and Chlamydia. Participants also complained that the language of the Bloodborne Pathogen regulation (8 CCR 5193) was not specific to their work exposures. Medical experts agreed that occupational exposure to STIs, including bloodborne and non-bloodborne pathogens, should be prevented by feasible controls mandated in a regulation. Since Section 5193 addresses only bloodborne diseases, the Board is proposing a separate Section 5193.1 to address this type of occupational exposure that includes bloodborne pathogens and other STIs. The proposed regulation would apply wherever employees, as part of their authorized work activity, engage in sexual activity with one or more other persons. Its application is not based upon the content or the intended audience of any media production, and, like the current standard, does not address any published content. The proposed regulation also provides for medical confidentiality and contains means to protect the identity of persons who take an HIV test, in order to be consistent with the requirements of the Health and Safety Code.

This proposed rulemaking action is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

This proposed rulemaking action differs from existing federal regulations, in that federal OSHA does not have a specific counterpart standard for protecting employees against occupational exposure to sexually transmitted infections.

The specific changes are as follows:

## New Section 5193.1 Sexually Transmitted Infections.

### Subsection (a) Scope and Application.

Proposed subsection (a) establishes that all workplaces, in which employees have occupational exposure to bloodborne pathogens and/or sexually transmitted pathogens due to one or more employees engaging in sexual activity with another individual, are required to comply with the provisions of this section. This includes activities that occur during the production of any film, video, multi-media or other recorded or live representation. Currently, employees who engage in sexual activity are protected by Section 5193, Bloodborne Pathogens, which requires a written program, certain engineering controls, personal protective equipment, medical services, training and record-keeping. However, Section 5193 does not specify control measures to be used in this industry and also does not address non-bloodborne sexually transmitted pathogens.

This section will apply to employers whose employees engage in sexual activity with another individual, including employees in entertainment. Employees are exposed to chronic and life-threatening illnesses when they engage in unprotected sexual activities. This places them at risk for acquiring infections with bloodborne pathogens including, but not limited to, human immunodeficiency virus (HIV), hepatitis B (HBV) and hepatitis C (HCV) infection. It also places them at risk for acquiring infections, including repeated infections, with other sexually transmitted pathogens such as human papillomavirus (HPV), Chlamydia trachomatis (CT), and Neisseria gonorrhoeae (GC), hepatitis A virus (HAV), trichomonas vaginalis, and genital herpes simplex virus (HSV). The presence of these infections may also increase the risk of acquisition of bloodborne pathogens. The risk of infection is further increased due to work practices such as multiple and concurrent sex partners over short periods with whom they engage in frequent and often prolonged sex acts, and by the infrequent use of barrier methods to prevent exposure to infectious body fluids. A number of HIV infections have been associated with this work activity. In a 2007 article, Taylor stated that in 2004 the Centers for Disease Control and Prevention (CDC) documented transmission of HIV infection from one performer to three other performers, despite industry testing protocols.<sup>1</sup> A high incidence of infection with non-bloodborne sexually transmitted pathogens has also been recorded among performers engaged in sexual activity while working in the production of “adult” entertainment. A study based on cases reported to the Los Angeles County Department of Public Health (LACDPH) found that between midyear 2004 and 2008, 2,848 sexually transmitted diseases (STDs) were diagnosed among 1,868 performers who tested at Adult Industry Medical (AIM). Chlamydia was the most frequent diagnosis (57.5% of performers), followed by gonorrhea (34.7%) and co-infection with both STDs (7.8%). The same study documented that CT and GC infections are recurrent among performers and that the reinfection rate within one year was 26.1%. Female performers were 27% more likely to be reinfected than male performers.<sup>2</sup> Approximately 70% of STIs occurred in female performers. Several cases of syphilis were also reported. The Los Angeles County Department of Public Health believes that these disease rates are significant underestimates of the true disease rates because oral and rectal anatomic sites are not routinely screened, are often asymptomatic, and are

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<sup>1</sup> Taylor M et al., Epidemiologic Investigation of a Cluster of Workplace HIV Infections in the Adult Film Industry: Los Angeles, California, 2004. HIV/AIDS, CID 2007:44(15 January).

<sup>2</sup> Goldstein, Binh et al., High Chlamydia and Gonorrhea Incidence and Reinfection Among Performers in the Adult Film Industry Sexually Transmitted Infections, July, 2011, Vol. 38. No. 7.

likely to serve as disease reservoirs for repeated infections.<sup>3</sup> HBV and HPV are recognized carcinogens.

Subsection (a)(1) establishes the scope of workplaces to be covered by the standard. The proposal identifies those workplaces which will be required to implement protective measures to reduce the incidence and control the transmission of sexually transmitted infections.

Subsection (a)(2)(A) establishes that all workers, including but not limited to performers, employees who are present when sexual activity occurs, or who are responsible for cleaning or decontaminating the work area, equipment or laundry, are covered by the requirements of the proposed section. The proposal identifies those affected employees who are at risk of contracting sexually transmitted infections.

Subsection (a)(2)(B) states that compliance with this section constitutes compliance with Section 5193 for the workplaces in which it applies. The effect is to ensure that workplaces in which employees engage in sexual activity follow the appropriate precautions to protect employees against sexually transmitted diseases. This subsection also specifies that where workplaces use sharps, other than personal care sharps, the employer must also comply with the relevant provisions of Section 5193. The effect is to ensure safe procedures for handling and disposal of sharps where they are used, and to continue to provide equivalent safety to the federal bloodborne pathogen standard, 29 CFR 1910.1030.

Subsection (a)(3) establishes that the employer shall provide all safeguards required by this section, including barriers, personal protective equipment, training, and medical services, at no cost to the employee, at a reasonable time and place for the employee, and during the employee's working hours. This is intended to provide notice to the regulated public of an existing requirement of Labor Code Section 6311, as interpreted by the courts.<sup>4</sup> The proposal will ensure that employees are not deterred by cost or logistical barriers from participating in the medical surveillance and training programs, and are provided with all necessary safeguards.

#### Subsection (b) Definitions.

The standard proposes a number of definitions that are intended to explain the terminology and concepts that have been incorporated into the text. Some of the terms have been defined to be consistent with existing definitions in other titles of the California Code of Regulations, and are intended to be interpreted consistently with their use in those sections. The proposed definitions will clarify to the employer and employees the meanings for the terms used within the context of the requirements of Section 5193.1 and help ensure compliance with this standard, and protect employees from STIs.

#### Subsection (c) Exposure Prevention and Response.

Subsection (c)(1)(A) requires that employers establish, implement, and maintain an effective Exposure Control Plan (Plan), designed to eliminate or minimize employee exposure and which is consistent with Section 3203. The proposal will ensure that employers establish, implement, and maintain a Plan; and that employers and employees follow all required control measures.

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<sup>3</sup> Goldstein, Binh, Sexually Transmitted Infections in the Adult Film Industry. Presented at Preventive Medicine 2009.

<sup>4</sup> *Bendix Forest Products Corporation* v. Division of Occupational Safety and Health (1979), 25 Cal. 3d 465

Subsection (c)(1)(B)(1-7) establishes that the Plan shall be in writing and identifies the basic elements that an employer would be responsible for incorporating into the exposure control plan. The effect of this subsection is to establish how the employer will provide the required control measures.

Subsection (c)(1)(C) requires each employer to ensure that a copy of the Plan is available at the worksite at all times that employees are present. The effect of this subsection is to enable covered employees to refer to procedures that should be followed to protect them against sexually transmitted infections.

Subsection (c)(1)(D) establishes that the Plan shall be reviewed and updated at least annually and whenever necessary, and that employees be involved in the plan review. The Division has found that periodic review of exposure control plans with the involvement of affected employees provides an important mechanism to improve the employer's health and safety program and protect workers. The effect of this provision is to require that the employer have effective procedures for reviewing the Plan and for ensuring employee participation in that review.

Subsection (c)(1)(E) requires each employer to review the Plan after each exposure incident to determine the cause of the incident and to determine whether any change in control measure is necessary. The effect of this subsection is to ensure that exposure incidents are effectively investigated and that any changes necessary to prevent future incidents are implemented in the Plan.

Subsection (c)(1)(F) requires that the employer make the Plan available to affected employees and their representatives, to the Chief of the Division of Occupational Safety and Health (Division) and to National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services (NIOSH). The intent is to provide the Plan to employees and their representatives to ensure that they can play their appropriate roles in Plan implementation, and discover any problems in the Plan. The effect is also to provide access to the Chief in order that the Division may effectively enforce this standard. It is necessary to provide access to NIOSH so that NIOSH may effectively perform its statutory role in evaluating health and safety hazards and the methods of control.

Proposed subsection (d) Methods of Compliance.

Subsection (d)(1) is intended to establish that universal precautions shall be observed to prevent contact with blood or other potentially infectious materials – sexually transmitted infections (OPIM—STI). Universal precautions is an approach to infection control which treats all human blood and certain bodily fluids as infectious, regardless of the source individual. This subsection also clarifies that under circumstances in which differentiation between bodily fluid types is difficult or impossible, all bodily fluids will be considered potentially infectious materials. This effect is to ensure that control measures are taken to protect employees against sexually transmitted infections.

Subsection (d)(2) requires that each employer 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 postproduction techniques are not used, or do not prevent all occupational exposure, additional control measures will be required. The effect is to establish that this section requires the use of engineering and work practice controls that

physically prevent infectious materials from contacting another person and to identify acceptable protective barriers and the procedures that must be followed during use, to ensure that condoms and other barriers are used effectively and that the protection that they provide is not compromised through improper use.

Subsection (d)(3) provides a list of additional prohibited practices so that that employers and employees understand which practices must be avoided to prevent disease transmission. This list is intended to reduce the risk of sexually transmitted diseases and is needed to identify which control measures should be used.

Subsection (d)(4) establishes a list of specific control measures that address contaminated items, cleaning, and decontamination. This list includes the following: (A) requirements to handle contaminated sharps; (B) requirements to handle contaminated waste; (C) requirements to address the cleaning and decontamination of the worksite; (D) requirements to provide hygiene facilities; (E) requirements applicable to the handling of contaminated laundry; and (F) requirements to address personal protective equipment (PPE). The effect is to assure that employers administer work practice controls that reduce the likelihood that individuals will be exposed to infectious materials by physically reducing the amount of infectious materials on that person, and by reducing the contact time with infectious materials that may be on the skin or mucous membranes.

Proposed subsection (e) Medical Services and Post-Exposure Follow-Up.

The purpose of proposed subsection (e) is to establish the appropriate medical services, post-exposure evaluation and follow-up that must be provided to employees who have occupational exposure. The effect is to reduce the likelihood that employees will acquire infection and develop disease by providing access to medical services, appropriate vaccination, and post-exposure evaluation and follow-up.

Subsection (e)(1) establishes general requirements to ensure access to medical services. The effect of this subsection is to ensure that employees are provided with appropriate medical services to prevent infection and that occupational injuries and illnesses are appropriately recorded and treated. The effect is also to ensure that employees do not refuse medical evaluation due to cost, confidentiality, or other concerns. The intent of this subsection is to protect employees against sexually transmitted infections, to prevent further transmission, and ensure that the Division and local health departments are able to control infectious disease hazards at places of employment covered by the standard.

Subsection (e)(2) establishes requirements for vaccinations. The effect of this subsection is to ensure that vaccines are provided in a timely manner at no cost to the employee, and to allow an employee to reconsider a decision to decline a vaccination. This is intended to assure that the number of employees who ultimately become vaccinated is maximized in order to reduce the risk of acquiring or transmitting vaccine preventable diseases.

Subsection (e)(3) establishes requirements for periodic medical services and outlines the documentation that employer shall obtain regarding the provision of these services. This proposal will ensure that employees with occupational exposure be provided confidential medical services at no cost, in accordance with Appendix C and D, to limit the spread of disease.

Subsection (e)(4) establishes requirements for post-exposure evaluation and follow-up. The intent of this subsection is to establish that following a report of an exposure incident, the employer must make immediately available to the exposed employee a confidential medical evaluation and follow-up. The effect of this subsection is to protect employees against life threatening sexually transmitted infections and to prevent further transmission. The effect of this subsection is also to ensure that employees receive medical evaluations after an incident and that necessary information is provided to the health care provider to assist that professional in the evaluation of the employee's medical status. The intent of this subsection is to protect employees against sexually transmitted infections and limit the spread of disease. This is also necessary to permit the Division and public health agencies to investigate occupational infections and take preventive action.

Subsection (e)(5) establishes requirements for information that must be provided to the Physician or other Licensed Health Care Professional (PLHCP). The effect is to ensure that the health care provider be given the information necessary to assist that professional in the evaluation of the employee's medical status and for consistency with Section 5193.

Subsection (e)(6) establishes requirements for the written opinion of the PLHCP. The intent of this subsection is to establish that the employer shall obtain and provide the employee with a copy of the evaluating healthcare professional's written opinion within 15 days of the completed evaluation. The effect of this subsection is to ensure that information necessary to the employer's program be transmitted in a timely manner, without compromising the employee medical privacy and confidentiality provisions, and for consistency with Section 5193 Bloodborne Pathogens.

Subsection (e)(7) establishes requirements regarding medical recordkeeping. The intent of this subsection is to establish that the employer shall maintain medical records in accordance with subsection (g)(1). This effect of this subsection is to ensure that employers create records which can be used to track employee medical information and which can help the Division effectively enforce this section.

#### Proposed subsection (f) Communication of Hazards to Employees.

The purpose of proposed subsection (f) is to establish the requirements for training and communicating hazards to employees. The effect of this subsection is to ensure that employees are provided with training as necessary to correctly utilize control measures and protect themselves and others from sexually transmitted infections. This is necessary because appropriate employee actions are critical to protecting their own health and preventing further transmission.

Subsection (f)(1) addresses requirements regarding labels and signs and references Section 5193(g)(1). The intent is to assure employees are effectively notified about the hazard through signage and labeling. The effect is to ensure that contaminated sharps are appropriately handled on-site, and by downstream handlers.

Subsection (f)(2) addresses requirements regarding information and training. The intent of this subsection is to ensure that employees are provided with training as necessary to correctly utilize control measures and protect themselves and others from sexually transmitted infections.

Subsection (f)(2)(A) requires that employers ensure that all employees with occupational exposure participate in a training program which must be provided at no cost to the employee and during working hours. The effect is to ensure that employees are provided with training, as necessary and at no cost to the employee, to correctly utilize control measures and protect themselves and others from sexually transmitted infections.

Subsection (f)(2)(B) provides the timeframe for required training. The effect is to ensure that employees have an adequate understanding of new exposure control measures implemented by the employer and are made aware of changes in exposure scenarios that may require additional control measures. This is intended to assure that employees can protect themselves and others from sexually transmitted infections.

Subsection (f)(2)(C) requires that annual training be provided to all employees within 12 months of the previous training. The effect is to ensure that employees are trained at least once every 12 months.

Subsection (f)(2)(D) requires that the person conducting the training be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace. The intent is to ensure that the trainer can provide information that is accurate and relevant to the site, facility, and operational procedures of the employer.

Subsection (f)(2)(E) requires that the employer conduct a safety meeting prior to any employee engaging in sexual activity. This subsection also establishes that the employer provide information to all individuals who participate in the activity or the production regarding the control measures to be used, and specific information regarding the employer's procedures for emergencies, exposure incidents, and post-exposure evaluation and follow-up. The effect is to require employers to inform employees of the specific safety measures to be used for the activities.

Subsection (f)(2)(F) requires that appropriate training materials be used. Appropriate content and vocabulary to educational level, literacy, and language of employees is needed to ensure that employees are provided with a basic understanding of the disease process and the mechanisms of transmission of STIs, which will improve their ability to recognize the diseases. The effect is to ensure that employees have sufficient knowledge to implement control measures to protect themselves against disease.

Subsection (f)(2)(G) specifies the minimum content of the training. The purpose and effect of this subsection is to ensure that employees are provided with training as necessary to correctly utilize control measures and to protect themselves and others from sexually transmitted infections.

Subsection (f)(2)(H) requires that employees be given an opportunity for interactive questions and answers with the person conducting the training session. The effect is to ensure that the employees can have questions answered by a person who is knowledgeable about the work activities and the employer's exposure control plan, and that they be provided this opportunity during the training, so that the employee can get answers to their questions as they come up and in the context of other information being provided.

Subsection (f)(2)(I) establishes that, due to the intermittent nature of employment in this industry, one or more employers may arrange to conduct training as a consortium, so long as each employer ensures that the training provided meets the requirements stated in subsection (f)(2)(G). The effect of this subsection is to provide a means by which employers can maximize training resources by consolidating general training, while still ensuring that employees are provided with the necessary training to protect themselves and others from sexually transmitted infections.

Proposed subsection (g) Recordkeeping.

Subsection (g) establishes the requirements for creating and maintaining the records that have been identified within this proposed standard. The effect is to ensure that employers create records which can be used to assess the effectiveness of the program and to track employee medical information. These records are also necessary for the Division to be able to effectively enforce this section.

Subsection (g)(1) establishes requirements for medical records. This is intended to ensure consistency with Sections 5193 and 3204, and with medical privacy provisions of California and federal law.

Subsection (g)(2) establishes requirements for training records. The effect is to clearly inform the employer of the required content of the record of training and the required time to maintain the record for each employee.

Subsection (g)(3) establishes requirements for maintaining records of the implementation of the exposure control plan. This effect is to ensure that the employer will be able to evaluate the effectiveness of its program and to demonstrate whether the control measures are working. These records are also necessary for the Division to be able to effectively enforce the provisions of this section.

Subsection (g)(4) establishes requirements for maintaining records regarding the production, sale or purchase of materials in which employees engaged in sexual activity. This subsection requires that the employer create and maintain a log for each segment of footage or other representation produced or purchased, and the required information for the log. The effect is to ensure that records are created and maintained that will permit the Division to effectively enforce the provisions of this section.

Subsection (g)(5) establishes requirements for the availability of employee medical and training records. The effect is to ensure that records will be made available to employees, employers, the Division, and public health agencies, as appropriate and consistent with other regulations and laws.

Subsection (g)(6) establishes requirements for the transfer of records. The effect of this subsection is to provide a means of notification of employees of the employer's intent to dispose of employee exposure and medical records consistent with Section 3204, require transfer of employee exposure and medical records to a successor employer, consistent with Section 3204, and provide a means by which NIOSH or the Division can request records from an employer who notifies them that the employer is ceasing to do business, and there is no successor employer.

Subsection (h) establishes that the appendices to this section are mandatory. This includes Appendices A1, A2, and A3, which contain vaccine declination statements, Appendix B, which contains specific work practice requirements for use of barrier protection, Appendix C, which contains minimum requirements for medical services, and Appendix D, which contains a declination statement for an employee who chooses not to participate in medical services. These appendices are necessary elaborations on requirements referenced in the body of the standard.

#### Appendix A1 – Hepatitis B Vaccine Declination (Mandatory)

This proposed appendix is intended to provide the appropriate language to be used in the statement that will be signed when an employee declines to accept a HBV vaccination. This declination provides specific language that ensures that the employee is aware of the nature of the vaccine, the fact that it is being provided free of charge, and the right to receive the vaccination at a later date. This declination is also intended to provide a record confirming that the vaccine was appropriately offered. The effect is to ensure that employees are aware of the risk they take by refusing an offered vaccine, and that they have a right to request the vaccine later if they continue to have occupational exposure.

#### Appendix A2 – Human Papilloma Virus Vaccine Declination (Mandatory)

This proposed appendix is intended to provide the appropriate language to be used in the statements that will be signed when an employee declines to accept HPV vaccination. This declination provides specific language that ensures that the employee is aware of the nature of the vaccine, the fact that it is being provided free of charge, and the right to receive the vaccination at a later date. This declination is also intended to provide a record confirming that the vaccine was appropriately offered. The effect is to ensure that employees are aware of the risk they take by refusing an offered vaccine, and that they have a right to request the vaccine later if they continue to have occupational exposure.

#### Appendix A3 – Hepatitis A Vaccine Declination (Mandatory)

This proposed appendix is intended to provide the appropriate language to be used in the statements that will be signed when an employee declines to accept HAV vaccination. This declination provides specific language that ensures that the employee is aware of the nature of the vaccine, the fact that it is being provided free of charge, and the right to receive the vaccination at a later date. This declination is also intended to provide a record confirming that the vaccine was appropriately offered. The effect is to ensure that employees are aware of the risk they take by refusing an offered vaccine, and that they have a right to request the vaccine later if they continue to have occupational exposure.

#### Appendix B – Use of Protective Barriers (Mandatory)

This proposed appendix is intended to identify acceptable protective barriers and the procedures that must be followed during use to comply with this section. The effect is to ensure that condoms and other barriers are used effectively, to maximize the protection they provide, and to ensure that they do not become a source of exposure.

#### Appendix C – Minimum Requirements for Medical Services (Mandatory)

This proposed appendix is intended to identify medical services and the specific testing that must be offered to an employee to detect infections, in order to provide effective treatment and prevent the spread of the disease.

**Appendix D – Declination of Periodic or Post-Exposure Medical Services (Mandatory)**

This proposed appendix is intended to provide the appropriate language to be used in the statements that will be signed when an employee declines to accept periodic or post-exposure medical services, services which play a critical role in preventing the spread of the disease. This proposal will protect the employee's health, ensure that employees are aware of the risks they take by refusing these services and prevent further transmission. It also provides a means for the Division to determine whether the services were offered as required without compromising the employee's medical privacy.

**Anticipated Benefits**

The proposal will render California general industry bloodborne pathogens and sexually transmitted infection standards clearer and easier to understand by both employers and the Division who have the responsibility to enforce the standard. It will also enhance the safety and health of employees with the implementation of engineering and work practice controls, an exposure control plan, hepatitis B, hepatitis A and human papillomavirus vaccinations, medical services, and information and training on health and safety without compromising or reducing the effectiveness of Section 5193 or the current Bloodborne Pathogens federal standard. This proposal would also provide for appropriate medical services for affected employees and will provide for medical confidentiality and protect the identity of persons who take an HIV test in order to be consistent with the requirements of the Health and Safety Code.

**DOCUMENTS INCORPORATED BY REFERENCE**

None.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

**Mandate on Local Agencies and School Districts:** None.

**Cost or Savings to State Agencies:** None.

**Cost to any Local Government or School District which must be Reimbursed in Accordance with Government Code Sections 17500 through 17630:** None.

**Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** None.

**Cost or Savings in Federal Funding to the State:** None.

**Cost Impacts on a Representative Private Person Or Business:**

Currently, employers covered by this standard are required to comply with Section 5193, which includes requirements for a written program, the use of engineering and work-practice controls, prevention of all contact with the mouth, eyes, skin, and mucous membranes with blood, semen, or vaginal secretions, use of personal protective equipment, medical services including post-exposure evaluation and follow-up, training, and record-keeping. By limiting requirements to those relevant to sexual transmission, this proposal may reduce costs to covered employers. There may be additional costs related to provision of HAV and HPV vaccine; however, those

costs will be offset by lowering the costs to employers of occupationally acquired infections. In addition, this standard provides savings by permitting the use of consortium PLHCPs and trainers.

**Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals:  
Including the Ability of California Businesses To Compete:**

The Board has made an initial determination that this proposal should not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Two factors provide the basis for the Board's determination: (1) this new standard, while more tailored to a specific industry, is based on a pre-existing national bloodborne pathogen standard that is already enforced in California; and (2) the regulated community has a unique legal status nationally, resulting in no states suitable to the relocation of the industry.

All states are covered by either 29 CFR 1910.1030 or an equivalent state standard, that would require the use of condoms or other engineering controls by employees who engage in sexual activity in the course of employment. Employers are also required to offer hepatitis B vaccine, and post-exposure follow-up, training, and other protection in all states.

Additional Vaccinations and Medical Services:

The only additional costs associated with this standard involve vaccination for HPV and HAV. Under the existing Bloodborne Pathogens standard, employers are already required to provide HBV vaccinations to all employees with occupational exposure to HBV. Section 5193.1 would expand coverage to include vaccination for HPV and HAV. According to the Center for Disease Control and Prevention, the private sector costs per dose for each vaccine are as follows:

- HAV: \$63.10, requiring two doses for a complete series.
- HPV4: \$141.38, requiring three doses for a complete series.

Therefore, in order to vaccinate one employee with a complete series for HAV and HPV4 would cost approximately \$550.34. Providing annual STD screening tests for employees should average less than \$800 per business. These costs are a small percentage of gross income per business that averages over \$100 million per year.

In addition, this standard provides cost reduction measures to covered employers, which should lower the projected vaccination costs for employers. First, Section 5193.1 allows employers to use a consortium PLHCP in order to share costs among employers. Second, some employees will either decline the vaccination or have already received the complete series. Finally, due to the intermittent nature of employment in the industry, it is anticipated that the majority of employers will only employ an individual for the duration of one shot in the series for each vaccination. These savings will offset any potential additional costs of HPV or HAV vaccine.

Finally, since employers in all states are required to bear the costs of occupational infections, generally through a workers compensation system, reducing the incidence of infection will achieve additional savings.

**Training and Written Procedures:**

Current regulations require employers to provide training and have written procedures covering bloodborne pathogens such as HIV, Hepatitis B and C. Additionally, the IIPP requires that employers implement an effective injury and illness prevention program which must include a written program, communication and training. This standard provides cost reduction measures to covered employers by permitting the use of consortium PLHCPs to train their employees. Thus, any costs regarding the additional coverage of STIs should be insignificant.

**Significant Affect on Housing Costs:** None.

**DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

**SMALL BUSINESS DETERMINATION**

The Board has determined that the proposed amendment does not affect small businesses because Government Code section 11342.610 excludes entertainment businesses from the definition of small business.

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

**BENEFITS OF THE PROPOSED ACTION**

The proposal will render California general industry bloodborne pathogens and sexually transmitted infection standards clearer and easier to understand by both employers and the Division who have the responsibility to enforce the standard. It will also enhance the safety and health of employees with the implementation of engineering and work practice controls, an exposure control plan, hepatitis B, hepatitis A and human papillomavirus vaccinations, medical services, and information and training on health and safety without compromising or reducing the effectiveness of Section 5193 or the current Bloodborne Pathogens federal standard. This proposal would also provide for appropriate medical services for affected employees and will provide for medical confidentiality and protect the identity of persons who take an HIV test in order to be consistent with the requirements of the Health and Safety Code.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than

the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) or the back-up contact person Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.