FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

REGARDING THE
CALIFORNIA MECHANICAL CODE AND CALIFORNIA PLUMBING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PARTS 4 & 5

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The Office of Statewide Health Planning and Development (OSHPD) finds that there are no revisions to the Initial Statement of Reasons. The Initial Statement of Reasons includes the following:

- **TITLE 24, PART 4, CALIFORNIA MECHANICAL CODE**

Section 217.0 –O- Definitions
This creates the classification of OSHPD 3SE to specify OSHPD 3 clinics that can be granted special exemptions from existing code requirements. This brings the requirements for OSHPD3SE clinics closer to those of less restrictive model code in order to reduce costs to clinics while ensuring patient safety. Additional description is added to assist code users in understanding the OSHPD 3SE facility type.

Section 407.4.1.4
This amendment allows OSHPD 3SE clinics to utilize air plenums. Use of air plenums will result in reduced construction costs.

Table 4-A Pressure Relationship and Ventilation Requirements for General Acute Care Hospitals, Skilled Nursing Facilities, Intermediate Care Facilities, Correctional Treatment Centers, Outpatient Facilities, and Licensed Clinics
The amendments to this table are consistent with the California Building Code in listing spaces that the code requires and specifying HVAC parameters for those spaces.

Table 4-B Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Acute Care Hospitals, Outpatient Facilities, and Licensed Clinics
The purpose of this modification is to include the new OSHPD 3SE category and specify the required filtration for it.

Section 602.1 General
This amendment allows OSHPD 3SE clinics to utilize air plenums. Use of air plenums will result in reduced construction costs.

Section 602.3.1 Flexible Ducts
This amendment exempts OSHPD 3SE facilities from the requirement that flexible duct have a maximum allowable length of 10 feet. Allowing OSHPD 3SE facilities to use flexible ductwork per the model code will result in reduced construction costs while maintaining appropriate patient safety, as well as, reducing barriers for conversion of existing structures to this facility type.

- **TITLE 24, PART 5, CALIFORNIA PLUMBING CODE**

Section 217.0 – O - Definitions
This creates the classification of OSHPD 3SE to specify OSHPD 3 clinics that can be granted special exemptions from existing code requirements. This brings the requirements for OSHPD3SE clinics closer to those of less restrictive model code in order to reduce costs to clinics while ensuring patient safety. Additional description is added to assist code users in understanding the OSHPD 3SE facility type.

Section 604.1
An amendment is added to permit OSHPD 3 facilities to use CPVC in domestic water systems. Allowing CPVC, results in cost savings for construction of OSHPD 3SE clinics, as well as, reducing barriers for conversion of existing structures to this facility type.

Section 609.9 Disinfection of Potable Water System
The amendment provides for potable water system disinfection measures for OSHPD 3SE clinics in conformance with model code. This will reduce construction costs for these facilities.

Section 612.0 Domestic Hot-Water Distribution Systems for Health Facilities and Clinics
This originally proposed amendment is being removed. It was erroneously located in the prior 45-day notice express terms.

Section 612.2 This amendment removes the requirement for redundant hot water heating equipment for OSHPD 3SE facilities. This will result in a cost savings in construction and maintenance. Note: The amendment is relocated from previous proposal

Section 701.1.2.1 This amendment allows ABS and PVC in sanitary sewer piping for OSHPD 3 (including OSHPD 3SE) facilities. Allowing the code permitted materials, results in cost savings for construction of OSHPD 3 clinics, as well as, reducing barriers for conversion of existing structures to this facility type.

Section 906.2.1 This amendment exempts OSHPD 3SE facilities from the requirement that each vent pipe shall terminate not less than 25 feet (7260 mm) from any air intake or vent shaft. This change will reduce construction costs for OSHPD 3SE facilities, as well as, reducing barriers for conversion of existing structures to this facility type.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Office of Statewide Health Planning and Development has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).

TITLE 24, PART 4, CALIFORNIA MECANICAL CODE
Public comments received during the 1st 45-Day Public Comment Period from August 24, 2012 to October 8, 2012.

Commenter: Ginger Smith, California Primary Care Association (CPCA)

- **Part 4, Section 217.0 Definitions-OSHPD 3SE (2)**

The commenter expresses that CPCA is in strong support of the proposed new subcategory for clinics – OSHPD 3SE and that CPCA is very grateful for the work of OSHPD staff in developing this subcategory and supports its implementation. The following comments were submitted regarding OSHPD 3SE proposed regulations:

The commenter states, “CPCA supports the 3SE classification to include primary care clinics. There is no reason or credible evidence offered to justify the exclusion of primary care clinics that do provide abortion services from the benefits of the 3SE clinic classification for primary care clinics. There is no evidence to support that services provided by primary care clinics that do provide abortion services are any more

invasive or risky to public health and safety than routine services normally provided in primary care clinics that do not provide abortion services."

- **Part 4, Section 602.3.1**

The commenter suggested that OSHPD add the following text: "Exception: OSHPD 3SE clinics may utilize flexible ducts for their entire facility and are not required to utilize rigid ducting at all." The commenter cited Criteria #6 – The exception is vague. The commenter stated, "The current wording could be misinterpreted to mean that OSHPD 3SE clinics are not allowed to use flexible ducting at all. We are recommending that additional wording be added to clarify the intent; that OSHPD 3SE clinics are not limited to 10 feet of flexible ducting for connection purposes."

OSHPD Response to Comments: Ginger Smith, California Primary Care Association (CPCA)

- **Part 4, Section 217.0 Definitions-OSHPD 3SE (2)**

The commenter states, "There is no reason or credible evidence offered to justify the exclusion of primary care clinics that do provide abortion services from the benefits of the 3SE clinic classification for primary care clinics. There is no evidence to support that services provided by primary care clinics that do provide abortion services are any more invasive or risky to public health and safety than routine services normally provided in primary care clinics that do not provide abortion services." In fact, such evidence does exist. JAMA reported:

> Complications following abortions performed in free-standing clinics is one of the most frequent gynecologic emergencies . . . encountered. Even life-endangering complications rarely come to the attention of the physician who performed the abortion unless the incident entails litigation. The statistics presented by Cates represent substantial under- reporting and disregard women's reluctance to return to a clinic, where, in their mind, they received inadequate treatment.(1)

In order to evaluate the commenter's comments one must first realize that OSHPD is not changing or increasing HVAC or plumbing requirements for abortion clinics. In the public interest we are leaving in place requirements that have been proven and supported in national standards to provide sufficient protection for patients (ASHRAE 170 and Guidelines for Design and Construction of Health Care Facilities). OSHPD is proposing to reduce some requirements for some clinics that, typically, provide primary care (basic exams, etc). The new proposed amendments were written after OSHPD received input from industry that having primary care clinics comply with the same requirements that hospitals do is costly and in need of modification. Some, but not all, clinics may be able to employ cost-reducing measures from these new amendments. The exclusion of clinics that perform abortions from 3SE is not an addition of any requirements.

2010 Guidelines for Design and Construction of Health Care Facilities defines *invasive procedure* as, "…any procedure that penetrates the protective surfaces of a patient's body (i.e., skin, mucous membrane, cornea) and that is performed within an aseptic field (procedural site). Not included in this category are placement of peripheral intravenous needles or catheters, dialysis, bronchoscopy, endoscopy (e.g., sigmoidoscopy), insertion of urethral catheters, and similar procedures."

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(1) L. Iffy; *Second Trimester Abortions,* JAMA, vol. 249, no. 5, Feb. 4, 1983, p.588.

- **Part 4, Section 602.3.1**

Criteria #6 does not apply because the proposed amendment to Title 24, Part 4, Chapter 6, Section 602.3.1 changes the minimum requirements for ductwork for OSHPD 3SE to those of model code with a simple exemption. To add verbiage, "OSHPD 3SE clinics may utilize flexible ducts for their entire facility and are not required to utilize rigid ducting at all" would conflict with long-established model code requirements such as California Mechanical Code, Section 604.3. Section 604.3 prohibits the use of factory-made air ducts as risers serving more than two stories. Therefore, exempting the use of rigid ductwork throughout any medical facility, or any other type of facility, would violate existing model code. It would also diminish the integrity and safety of the ductwork system by allowing flexible ductwork in areas typically subject to higher mechanical forces. In addition to this, there are other areas where flexible, non-sheet metal duct is not applicable – such as penetrations through fire rated construction.

Commenter: Essie Santana Tuttle, La Clinica de La Raza, Inc.

- **Part 4, Section 217.0 Definitions-OSHPD 3SE**

The commenter expressed support for the new category of OSHPD 3SE, stating that it will allow community clinics to build appropriate facilities for primary care services. This will exempt clinics from the more expensive existing HVAC and plumbing requirements.

OSHPD Response to Comments: Essie Santana Tuttle, La Clinica de La Raza, Inc.

- **Part 4, Section 217.0 Definitions-OSHPD 3SE**

OSHPD appreciates the support from Ms. Tuttle, La Clinica de La Raza, Inc. in regard to this amendment.

Commenter: Thomas A. Enslow, Join Committee on Energy and Environmental Policy

- **Part 4, Section 602.3.1**

The commenter suggested that OSHPD "keep existing California Mechanical Code, Section 602.3.1 OSHPD amendment applicable to OSHPD 3SE occupancies." The reason the commenter gave is Criteria #3 (public interest) and Criteria #4 (unreasonable, arbitrary, unfair & capricious).

OSHPD Response to Comments: Thomas A. Enslow, Join Committee on Energy and Environmental Policy

- **Part 4, Section 602.3.1**

OSHPD agrees with commenter that flexible duct that is not installed in a stretched condition results in a greater pressure drop and, therefore, more energy consumption than sheet metal ductwork. However, the data included by the commenter in Figure 6.1-1 demonstrates that the energy loss from properly installed, stretched flexible duct is insignificant. This indicates that the energy loss problems with flexible duct are caused mainly from poor installation, a lack of education with installers, and poor inspection.

One must realize that the OSHPD 3SE facilities that the Code Section addresses are often clinics with limited budget that are locating into existing, light-commercial buildings. Such buildings typically are equipped with flexible ductwork throughout as per model Code requirements. The Amendment in question would allow OSHPD 3SE clinics to install ductwork per model Code. It would not result in energy consumption beyond what is allowed for any other commercial building, in relation to airflow pressure loss. OSHPD 3SE, with the allowance for flexible ductwork, is a step forward in bringing accessible health care to more communities in California.

A calculation of two different configurations was performed by OSHPD. The first configuration was of the current code-compliant section of 90 feet of 10" round sheet metal duct with 10 feet of 10" flexible duct, delivering 400 cfm. The second configuration was of 100 feet of 10" flexible duct (per model code), also delivering 400 cfm. We used the Air Conditioning Contractors of America (ACCA) calculator for wire helix flexible duct for the flexible duct, and the Trane Ductilator for the sheet metal duct. Both of these are accepted in industry as design tools. The air power difference between the two configurations was calculated at 3 Watts. Assuming an energy cost of 15-cents per kWh, running continuously, the 100-foot section of flexible duct costs $3.94 more per year to operate than the duct section constructed per current OSHPD requirements. Per data in Figure 6.1-1 of the commenter's supporting document, there would be no more energy or utility cost using the flexible duct installed in a stretched condition.

The commenter included reference material that suggests flex duct lengths should be shorter than length of 10 feet that OSHPD currently allows. There was internal discussion on the establishment of this dimension at OSHPD and comments from the public in the past. The 10 foot length was determined to be necessary in order to allow for installation in plenum spaces that are more crowded than those of non-medical facilities. OSHPD suggests that, since model code already allows what we are proposing for OSHPD 3SE facilities, and that medical buildings make up a small percentage of buildings within the State, that the commenter approach California Building Standards Commission to suggest the limitation of flex duct for all buildings in California. If this argument has merit it should be suggested for all construction.

Commenter: Jeffrey F. Piepert, MD, PhD, Washington University in St. Louis

- **Part 4, Section 217.0 Definitions-OSHPD 3SE**

The commenter stated various arguments supporting his position that, "any differential treatment of health clinics that perform abortions makes no clinical sense in terms of infection risk."

OSHPD Response to Comments: Jeffrey F. Piepert, MD, PhD, Washington University in St. Louis

- **Part 4, Section 217.0 Definitions-OSHPD 3SE**

In his letter, Mr. Piepert points out that plumbing and ventilation have had no causal effect on infections after an abortion or uterine evacuation. The commenter states that the "use of unsterile instruments" and that "poor (lack of sterile) technique" are risk factors. This argument assumes that the sterilization of instruments and technique are unrelated to the environment.

The letter states: "Airborne infections (due to inadequate ventilation) are not the mechanism of infection. I can think of no reason that plumbing would have any effect on infection risk." In reality, there have been numerous studies linking poor air quality and plumbing to infection. What the commenter fails to address is that the proposed amendments to the CMC for OSHPD 3SE do not change "ventilation" requirements. The proposed amendments do reduce filtration requirements for clinics that fall in the definition of 3SE. This has a direct relationship on the amount of airborne pathogens. However, the types of clinics selected for inclusion into 3SE are chosen because the expected occupants are not typically immunosuppressed and the practices performed in those clinics do not expose the patient to pathogen dose high enough to justify hospital-like HVAC and plumbing requirements.
The third paragraph states, "As an expert in family planning and risks for female genital tract infection, it is my belief that there is **no evidence** that plumbing and ventilation impact infection risk." There is a plethora of evidence that plumbing and ventilation impact infection risk. (1)(2)(3)Etc. What this argument is lacking is examples of abortions being performed in less-stringent environments without additional complications. JAMA reported:

> Complications following abortions performed in free-standing clinics is one of the most frequent gynecologic emergencies . . . encountered. Even life-endangering complications rarely come to the attention of the physician who performed the abortion unless the incident entails litigation. The statistics presented by Cates represent substantial under- reporting and disregard women's reluctance to return to a clinic, where, in their mind, they received inadequate treatment.(4)

State of California has established HVAC and plumbing codes that provide an adequate level of protection from infection. In order to evaluate the commenter's statements one must first realize that OSHPD is not changing or increasing HVAC or plumbing requirements for abortion clinics. We are leaving in place requirements that have been proven effective and are supported in national standards to provide sufficient protection for patients (ASHRAE 170 and Guidelines for Design and Construction of Health Care Facilties). OSHPD is proposing to reduce some requirements for some clinics that, typically, provide primary care (basic exams, etc). The new proposed amendments that the commenter is addressing were written after OSHPD received input from industry that having primary care clinics comply with the same requirements that hospitals do is costly and in need of modification. Some, not all, clinics may be able to employ cost-reducing measures from these amendments. This is not an increase of requirements on clinics that perform abortions.
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(1) W.J. Kowalksi, PE; William Bahnfleth, PhD, PE; *Airborne Respiratory Diseases and Mechanical Systems for Control of Microbes,* HPAC, July 1998.
(2) Yuguo Li, PhD; Peter V. Nielsen, PhD; Mats Sandberg, PhD; *Displacement Ventilation in Hospital Environments*, ASHRAE Journal, June 2011.
(3) Susy Hota, MD; Jahir Hirji, MHSc; Karen Stockton, MHSc; Camille Lemieux, MD, LLB; Helen Dedier, MLT; Gideon Wolfaardt, PhD; Michael A. Gardam, MD, MSc; *Outbreak of Multidrug-Resistant Pseudomonas aeruginosa Colonization and Infection Secondary to Imperfect Intensive Care Unit Room Design, Infection Control and Hospital Epidemiology*, Junuary 2009, Vol. 30, No 1.
(4) L. Iffy; *Second Trimester Abortions,* JAMA, vol. 249, no. 5, Feb. 4, 1983, p.588.

Commenter: Mary Crosby, Attorney, American Civil Liberties Union of Northern California

The commenter suggests that these building standards limit access to abortions.

OSHPD Response to Comments: Mary Crosby, Attorney, American Civil Liberties Union of Northern California
In order to evaluate the commenter's comments one must first realize that OSHPD is not changing or increasing HVAC or plumbing requirements for abortion clinics. In the public interest we are leaving in place requirements that have been proven and supported in national standards to provide sufficient protection for patients (ASHRAE 170 and Guidelines for Design and Construction of Health Care Facilties). OSHPD is proposing to reduce some requirements for some clinics that, typically, provide primary care (basic exams, etc). The new proposed amendments were written after OSHPD received input from industry that having primary care clinics comply with the same requirements that hospitals do is costly and in need of modification. Some, but not all, clinics may be able to employ cost-reducing measures from these new amendments. This is not an application of special burdens on abortion providers.

The commenter states, "If these building supplies were necessary to protect the health of women obtaining early abortions, private patients would have experience injuries and the state would have imposed these regulations." JAMA reported:

> Complications following abortions performed in free-standing clinics is one of the most frequent gynecologic emergencies . . . encountered. Even life-endangering complications rarely come to the attention of the physician who performed the abortion unless the incident entails litigation. The statistics presented by Cates represent substantial under- reporting and disregard women's reluctance to return to a clinic, where, in their mind, they received inadequate treatment.(1)

The OSHPD-specific amendments apply to facilities that are to be licensed. So the use of the term "these regulations" references code that does not apply to all facilities as some may not be licensed.
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(1) L. Iffy; *Second Trimester Abortions,* JAMA, vol. 249, no. 5, Feb. 4, 1983, p.588.

Commenter: Roger Richter, California Hospital Association
Part 4, Section 217.0 Definitions-OSHPD 3SE
The commenter expressed support of the new OSHPD 3SE subcategory stating "the OSHPD 3SE subcategory maintains a quality of care physical environment while reducing expensive mechanical requirements where they are not needed.

OSHPD Response to Comments: Roger Richter, California Hospital Association
OSHPD appreciates the support of the California Hospital Association regarding the OSHPD 3SE subcategory.

TITLE 24, PART 4, CALIFORNIA MECANICAL CODE
Public comments received during the 2nd 45-Day Public Comment Period from August 24, 2012 to October 8, 2012.

Commenter: Elizabeth C. Saviano, on behalf of the California Primary Care AssociationCalifornia

The commenter agrees with adoption of the proposed standards and suggests additional language be included in the definition of OSHPD 3SE.

OSHPD Response to Comments: Elizabeth C. Saviano, on behalf of the California Primary Care Association California
The language addition proposed by the commenter is contrary to the basis of substantiation for the OSHPD 3SE category of facility resulting in the proposal not meeting nine point criteria elements 1, 3, 4, 6 and 7.

Commenter: Josh Rosa, California Association of Sheet Metal and Air Conditioning Contractors' National Association

The commenter presents multiple concerns based on health risks and a lack of cost savings resulting in opposition to these proposed modifications to the OSHPD amendments.

OSHPD Response to Comments: Josh Rosa, California Association of Sheet Metal and Air Conditioning Contractors' National Association
The commenter lists the concerns of Allowing Plenum Air Returns, Allowing Longer Flex Duct and Reducing Air Filtration Requirements for OSHPD 3SE facilities While the listed basis for the concerns appears to be valid in the vast majority of health facility settings, OSHPD based on national standards for small primary care neighborhood outpatient facilities, does not agree that these allowances will pose a significant risk to health and safety based on the very limited focus of the OSHPD 3SE category.

Commenter: Thomas A. Enslow, Adams Broadwell Joseph & Cardozo, along Joint Committee on Energy and Environmental Policy

OSHPD Response to Comments: Thomas A. Enslow, Join Committee on Energy and Environmental Policy
Partial responses to the comments are provided above under the 1st 45-Day Public Comment Period from August 24, 2012 to October 8, 2012. Additional response to comments regarding a required CEQA review in order to allow continued use of UMC/CMC code approved materials for non-residential commercial buildings subject to local jurisdictional approval is not provided. A number of other contentions put forward in provided comments are not factually correct.

Commenter: Roger Richter, California Hospital Association
The commenter expressed support of the new OSHPD 3SE subcategory stating "the OSHPD 3SE subcategory maintains a quality of care physical environment while reducing expensive mechanical requirements where they are not needed.

OSHPD Response to Comments: Roger Richter, California Hospital Association
OSHPD appreciates the support of the California Hospital Association regarding the OSHPD 3SE subcategory.

Commenter: Deepak Dandekar AIA, UCSF Medical Center
The commenter expressed support of the new OSHPD 3SE subcategory .

OSHPD Response to Comments: Deepak Dandekar AIA, UCSF Medical Center
OSHPD appreciates the support of the UCSF Medical Center regarding the OSHPD 3SE subcategory.

TITLE 24, PART 5, CALIFORNIA PLUMBING CODE
Public comments received during the 1st 45-Day Public Comment Period from August 24, 2012 to October 8, 2012.

Commenter: Ginger Smith, California Primary Care Association (CPCA)

- **Part 5, Section 217.0 Definitions-OSHPD 3SE (2)**

The commenter expresses that CPCA is in strong support of the proposed new subcategory for clinics – OSHPD 3SE and that CPCA is very grateful for the work of OSHPD staff in developing this subcategory and supports its implementation. The following comments were submitted regarding OSHPD 3SE proposed regulations:

The commenter states, "CPCA supports the 3SE classification to include primary care clinics. There is no reason or credible evidence offered to justify the exclusion of primary care clinics that do provide abortion services from the benefits of the 3SE clinic classification for primary care clinics. There is no evidence to support that services provided by primary care clinics that do provide abortion services are any more invasive or risky to public health and safety than routine services normally provided in primary care clinics that do not provide abortion services."

OSHPD Response to Comments: Ginger Smith, California Primary Care Association (CPCA)

- **Part 5, Section 217.0 Definitions-OSHPD 3SE (2)**

The commenter states, "There is no reason or credible evidence offered to justify the exclusion of primary care clinics that do provide abortion services from the benefits of the 3SE clinic classification for primary care clinics. There is no evidence to support that services provided by primary care clinics that do provide abortion services are any more invasive or risky to public health and safety than routine services normally provided in primary care clinics that do not provide abortion services." In fact, such evidence does exist. JAMA reported:

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In order to evaluate the commenter's comments one must first realize that OSHPD is not changing or increasing HVAC or plumbing requirements for abortion clinics. In the public interest we are leaving in place requirements that have been proven and supported in national standards to provide sufficient protection for patients (ASHRAE 170 and Guidelines for Design and Construction of Health Care Facilities). OSHPD is proposing to reduce some requirements for some clinics that, typically, provide primary care (basic exams, etc). The new proposed amendments were written after OSHPD received input from industry that having primary care clinics comply with the same requirements that hospitals do is costly and in need of modification. Some, but not all, clinics may be able to employ cost-reducing measures from these new amendments. The exclusion of clinics that perform abortions from 3SE is not an addition of any requirements.

2010 Guidelines for Design and Construction of Health Care Facilities defines *invasive procedure* as, "…any procedure that penetrates the protective surfaces of a patient's body (i.e., skin, mucous membrane, cornea) and that is performed within an aseptic field (procedural site). Not included in this category are placement of peripheral intravenous needles or catheters, dialysis, bronchoscopy, endoscopy (e.g., sigmoidoscopy), insertion of urethral catheters, and similar procedures."

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(1) L. Iffy; *Second Trimester Abortions,* JAMA, vol. 249, no. 5, Feb. 4, 1983, p.588.

Commenter: Essie Santana Tuttle, La Clinica de La Raza, Inc.

- **Part 5, Section 217.0 Definitions-OSHPD 3SE**

The commenter expressed support for the new category of OSHPD 3SE, stating that it will allow community clinics to build appropriate facilities for primary care services. This will exempt clinics from the more expensive existing HVAC and plumbing requirements.

OSHPD Response to Comments: Essie Santana Tuttle, La Clinica de La Raza, Inc.

- **Part 5, Section 217.0 Definitions-OSHPD 3SE**

OSHPD appreciates the support from Ms. Tuttle, La Clinica de La Raza, Inc. in regard to this amendment.

Commenter: Jeffrey F. Piepert, MD, PhD, Washington University in St. Louis

- **Part 5, Section 217.0 Definitions-OSHPD 3SE**

The commenter stated various arguments supporting his position that, “any differential treatment of health clinics that perform abortions makes no clinical sense in terms of infection risk.”

OSHPD Response to Comments: Jeffrey F. Piepert, MD, PhD, Washington University in St. Louis

- **Part 5, Section 217.0 Definitions-OSHPD 3SE**

In his letter, Mr. Piepert points out that plumbing and ventilation have had no causal effect on infections after an abortion or uterine evacuation. The commenter states that the “use of unsterile instruments” and that “poor (lack of sterile) technique” are risk factors. This argument assumes that the sterilization of instruments and technique are unrelated to the environment.

The letter states: “Airborne infections (due to inadequate ventilation) are not the mechanism of infection. I can think of no reason that plumbing would have any effect on infection risk.” In reality, there have been numerous studies linking poor air quality and plumbing to infection. What the commenter fails to address is that the proposed amendments to the CMC for OSHPD 3SE do not change “ventilation” requirements. The proposed amendments do reduce filtration requirements for clinics that fall in the definition of 3SE. This has a direct relationship on the amount of airborne pathogens. However, the types of clinics selected for inclusion into 3SE are chosen because the expected occupants are not typically immunosuppressed and the practices performed in those clinics do not expose the patient to pathogen dose high enough to justify hospital-like HVAC and plumbing requirements.
The third paragraph states, “As an expert in family planning and risks for female genital tract infection, it is my belief that there is **no evidence** that plumbing and ventilation impact infection risk.” There is a plethora of evidence that plumbing and ventilation impact infection risk. (1)(2)(3)Etc. What this argument is lacking is examples of abortions being performed in less-stringent environments without additional complications. JAMA reported:

> Complications following abortions performed in free-standing clinics is one of the most frequent gynecologic emergencies . . . encountered. Even life-endangering complications rarely come to the attention of the physician who performed the abortion unless the incident entails litigation. The statistics presented by Cates represent substantial under- reporting and disregard women’s reluctance to return to a clinic, where, in their mind, they received inadequate treatment.(4)

State of California has established HVAC and plumbing codes that provide an adequate level of protection from infection. In order to evaluate the commenter’s statements one must first realize that OSHPD is not changing or increasing HVAC or plumbing requirements for abortion clinics. We are leaving in place requirements that have been proven effective and are supported in national standards to provide sufficient protection for patients (ASHRAE 170 and Guidelines for Design and Construction of Health Care Facilties). OSHPD is proposing to reduce some requirements for some clinics that, typically, provide primary care (basic exams, etc). The new proposed amendments that the commenter is addressing were written after OSHPD received input from industry that having primary care clinics comply with the same requirements that hospitals do is costly and in need of modification. Some, not all, clinics may be able to employ cost-reducing measures from these amendments. This is not an increase of requirements on clinics that perform abortions.

Commenter: Margaret Crosby, Attorney, American Civil Liberties Union of Northern California

- **Part 5, Section 217.0 Definitions-OSHPD 3SE (2)**

The commenter requested that OSHPD remove the verbiage, “that do not provide abortion services” from Section 217. The commenter stated that not allowing clinics that provide abortion services to be included in the category of OSHPD 3SE constitutes discriminatory treatment.

OSHPD Response to Comments: Margaret Crosby, Attorney, American Civil Liberties Union of Northern California

- **Part 5, Section 217.0 Definitions-OSHPD 3SE (2)**

In order to evaluate the commenter’s comments one must first realize that OSHPD is not changing or increasing HVAC or plumbing requirements for abortion clinics. In the public interest we are leaving in place requirements that have been proven and supported in national standards to provide sufficient protection for patients (ASHRAE 170 and Guidelines for Design and Construction of Health Care

Facilties). OSHPD is proposing to reduce some requirements for some clinics that, typically, provide primary care (basic exams, etc). The new proposed amendments were written after OSHPD received input from industry that having primary care clinics comply with the same requirements that hospitals do is costly and in need of modification. Some, but not all, clinics may be able to employ cost-reducing measures from these new amendments. This is not an application of special burdens on abortion providers.

The commenter states, "If these building supplies were necessary to protect the health of women obtaining early abortions, private patients would have experience injuries and the state would have imposed these regulations." JAMA reported:

> Complications following abortions performed in free-standing clinics is one of the most frequent gynecologic emergencies . . . encountered. Even life-endangering complications rarely come to the attention of the physician who performed the abortion unless the incident entails litigation. The statistics presented by Cates represent substantial under- reporting and disregard women's reluctance to return to a clinic, where, in their mind, they received inadequate treatment.(1)

The OSHPD-specific amendments apply to facilities that are to be licensed. So the use of the term "these regulations" references code that does not apply to all facilities as some may not be licensed.
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(1) L. Iffy; *Second Trimester Abortions,* JAMA, vol. 249, no. 5, Feb. 4, 1983, p.588.

Commenter: Adams Broadwell Joseph & Cardozo submitted comments on behalf of the California Sate Pipe Trades Council

Part 5, Section 604.1 and 701.1.2.1 CPVC Potable Water Pipe and PVC & ABS Drainage Pipe

The commenter states multiple arguments in opposition to these modifications to the OSHPD amendments.

OSHPD Response to Comments: Adams Broadwell Joseph & Cardozo

- **Part 5, Section 604.1 and 701.1.2.1 CPVC Potable Water Pipe and PVC & ABS Drainage Pipe**

The commenter provided a prolific and impressive array of text supporting their position on this matter. Particularly of interest is the fact that Department of Housing and Community Development performed an environmental impact report (EIR) that resulted in the acceptance of expanded use of CPVC with caveats similar to those in the current California Plumbing Code (CPC) for the use of PEX piping.

The removal of the prohibition of CPVC, PVC and ABS in plumbing piping for OSHPD 3 facilities is not an addition of burden to the construction of such facilities but a lowering of requirements to meet those already accepted in CPC for other types of construction. Their use has been proven safe and effective in the design and construction of other types of facilities constructed per model plumbing code. A primary goal of OSHPD is to encourage the delivery of accessible healthcare to all Californians and the proposed amendment is a component of that by making it more likely that clinics will be constructed in impoverished and rural communities. However, hazards pointed out by the commenter may warrant more study by OSHPD.

Public comments received during the 2nd 45-Day Public Comment Period from February 20, 2013 to April 8, 2013.

The majority of comment received covered both the CMC and CPC revisions regarding this rulemaking.

Commenter: Elizabeth C. Saviano, on behalf of the California Primary Care Association California

The commenter agrees with adoption of the proposed standards and suggests additional language be included in the definition of OSHPD 3SE.

OSHPD Response to Comments: Elizabeth C. Saviano, on behalf of the California Primary Care Association California
The language addition proposed by the commenter is contrary to the basis of substantiation for the OSHPD 3SE category of facility resulting in the proposal not meeting nine point criteria elements 1, 3, 4, 6 and 7.

Commenter: Thomas A. Enslow, Adams Broadwell Joseph & Cardozo, along Joint Committee on Energy and Environmental Policy

OSHPD Response to Comments: Thomas A. Enslow, Join Committee on Energy and Environmental Policy
Partial responses to the comments are provided above under the 1st 45-Day Public Comment Period from August 24, 2012 to October 8, 2012. Additional response to comments regarding a required CEQA review in order to allow continued use of UPC/CPC code approved materials for non-residential commercial buildings subject to local jurisdictional approval is not provided. A number of other contentions put forward in provided comments are not factually correct.

Commenter: Roger Richter, California Hospital Association
The commenter expressed support of the new OSHPD 3SE subcategory stating "the OSHPD 3SE subcategory maintains a quality of care physical environment while reducing expensive mechanical requirements where they are not needed.

OSHPD Response to Comments: Roger Richter, California Hospital Association
OSHPD appreciates the support of the California Hospital Association regarding the OSHPD 3SE subcategory.

Commenter: Deepak Dandekar AIA, UCSF Medical Center
The commenter expressed support of the new OSHPD 3SE subcategory .

OSHPD Response to Comments: Deepak Dandekar AIA, UCSF Medical Center
OSHPD appreciates the support of the UCSF Medical Center regarding the OSHPD 3SE subcategory.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

OSHPD has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:

OSHPD has determined that the proposed regulations will not have an adverse economic impact on small businesses.