

How Occupational Health Standards Are Developed

The Occupational Safety and Health Standards Board is the agency in California authorized to adopt substantive OSH regulations. See Labor Code § 142.3(a)(1). However, another state agency or a local agency may adopt and enforce higher standards relating to occupational safety and health for their own employees. See Labor Code § 144(e).

Standards regarding toxics and harmful physical agents (radiation, repetitive motion, noise, heat, etc.) shall assure, to the extent feasible, that no worker will suffer material impairment of health or functional capacity even if exposed during one's working life. See Labor Code § 144.6.

The OSH Standards Board acts based on the following:

1. It shall adopt standards at least as effective as federal standards per Labor Code § 142.3 (a) (2) - (4). The Division of Occupational Safety and Health (DOSH or Cal/OSHA) shall analyze these per Labor Code § 147.1(a).

2. It shall consider standards from interested persons per Labor Code § 142.2. DOSH shall evaluate these per Labor Code § 147.1(d).

3. It shall evaluate generally applicable variances.

4. It shall evaluate decisions of the OSH Appeals Board or courts.

5. It shall evaluate recommendations from OSH Standards Board staff or DOSH staff.

6. It shall evaluate health regulations proposed by DOSH pursuant to Labor Code § 147.1(c) which requires DOSH to maintain surveillance of occupational health issues not covered by federal regs.

7. It shall evaluate toxic regulations proposed by HESIS pursuant to Labor Code § 147.2 which requires HESIS to recommend to the Division that a toxic standard be developed. Nothing limits the CDPH CA Department of Public Health from proposing a standard to the Standards Board.

NOTE: Generally the OSH Standards Board staff handles safety proposals and the DOSH staff handles health proposals.

Developing occupational health standards involves 1) risk assessment and 2) rule making.

I. There are four stages in the Risk Assessment Process:

A. Early Alert. This continuing process may last for a short time or many years. The early alert phase uses compliance findings, medical recommendations, research papers, accident investigations, data from federal and other state agencies, etc.

B. Hazard Evaluation. This phase studies exposure data in workplaces. Data may come from special studies DOSH performs; reports by NIOSH, OSHA, DOSH or HESIS; other literature review; etc.

C. Risk Assessment. This is a critical review of toxicology, epidemiological studies, clinical evaluations, and animal studies extrapolated to estimate human risk.

D. Hazard Assessment. If information accumulated during the first three phases indicates a standard is necessary, hazard assessment proceeds with input from the Medical Unit, inspectors, HESIS, Special Studies, and the Research and Standards Development Unit develops a proposal.

II. The Rule-Making Process

A. DOSH Advisory Committee. DOSH convenes an advisory committee of experts, industry and worker representatives. Advisory Committees review the proposed regulation to assure it is necessary and will accomplish its purpose. DOSH is not obligated to accept committee advice, however. DOSH committees reflect concerns which will surface at subsequent public hearings and so strive for consensus. DOSH then prepares a notice along with other documents for the rule-making file and submits it to the Standards Board.

B. Public Hearing. The Standards Board meets monthly around the State. There are three parts to each meeting: a public meeting at which the public may comment on anything, a public hearing at which persons interested in the standard(s) being heard may testify for or against the proposal, and a business meeting which is limited to Board discussion and voting on previously heard standards, variances and petitions.

C. DOSH Response to Comments. DOSH responds to comments and changes recommended at the hearing and explains why or why not a change should be made. A revised standard and a final statement of reasons are then prepared for the rule-making file.

D. Standards Board Adoption. At a subsequent business meeting, the Board votes to adopt the proposed standard, not to adopt it, or to return it to DOSH and the advisory committee to work out conflicts. If it is adopted by the Board, the standard is sent to the Office of Administrative Law (OAL).

E. Office of Administrative Law Action. The procedures required by law are checked by OAL.

*Was public comment adequately addressed?

*Were the reasons for the standard properly documented?

*Were the impact statements reasonable?

*Was the regulation properly referenced and within the charter of the agency?

OAL may reject the standard or file it with the Secretary of State. If it is filed with the Secretary of State, the standard becomes effective in 30 days.