

AUTHORITY: California Labor Code Section 144.6

POLICY: It is the policy of the Division of Occupational Safety and Health to periodically update the list of Permissible Exposure Limits in Title 8, section 5155, with the assistance of an advisory committee of relevant health experts and the public.

PROCEDURES:

Several types of advisory committees are used to assist Division staff in developing rulemaking proposals to add new substances or revise existing substances listed in Section 5155, Airborne Contaminants. For most substances an advisory committee of technical experts is used to review the scientific literature and recommend a new or revised airborne concentration or Permissible Exposure Limit (PEL) to protect the health of employees. Where there are highly sensitive, controversial, or complex issues unique to the substance such as technical and/or economic feasibility, an additional or separate advisory committee process shall be used. The selection of substances, composition and procedures of all these advisory committees should adhere to the following steps to ensure that the resulting rulemaking will be reasonable and effectively protect California employees.

Outline:

- I. Selection of substances for review
 - A. Sources of substances for review
 - B. Prioritization and scheduling for discussion
- II. Role and selection of expert advisory committee
- III. Advisory committee review process

Appendix A: Process flowchart

I. SELECTION OF SUBSTANCES FOR REVIEW

A. Prior to the formation of the advisory committee, Division staff shall develop a list of existing and new section 5155, airborne contaminant substances to be reviewed for possible inclusion or updating in Table AC-1 of Section 5155. The development of the list of substances to be considered shall at a minimum include the following sources:

1. New or revised TLVs of the American Conference of Governmental Industrial Hygienists
2. Form 9 requests and other internal recommendations for consideration from Division staff
3. Petitions to the Cal/OSHA Standards Board or other requests from the public or other governmental agencies

B. Division staff shall prioritize the list of substances for consideration by the advisory committee based on the following considerations:

1. Evidence of a serious potential hazard not adequately addressed by existing regulations of the Division or other governmental agency.
2. A substantial change in the value of a TLV that could contribute to increased protection of workers if adhered to by employers.
3. The degree to which exposure to the substance is widespread and potentially hazardous.
4. The seriousness of the hazard presented by the substance. For example a substance with apparent potential for cancer or reproductive effects would generally lead to that substance receiving a higher priority for consideration considered than a substance where the major hazard potential was mild respiratory irritation.
5. The ease with which a protective proposal likely to be adopted by the Standards Board could be developed. Factors in this consideration include:
 - a. Clarity and weight of the scientific evidence with respect to the nature and severity of the hazard presented by the substance and the threshold concentration for health effects.
 - b. Complexity of measurement of the airborne concentration of the substance at, and reasonably below, the PEL being proposed. A factor in this would be the degree to which the substance is stable and does not have multiple chemical forms which complicate the measurement process.
 - c. The cost and technical feasibility of implementation by employers
6. Management of the entire PEL updating process. It is anticipated that some substances of relatively low priority may be considered by the committee, and possibly included in a proposal to the Standards Board, along with others of higher priority, in order to manage the workload of the PEL Advisory Committee and Division staff toward overall progress in maintaining Section 5155 roughly consistent with the ACGIH TLVs, except in specific instances where it is decided to deviate from, or not address, a new or revised TLV.

II. ROLE AND SELECTION OF THE TECHNICAL EXPERT ADVISORY COMMITTEE

A. The role of the committee

The role of the technical expert advisory committee is to recommend health-based exposure levels for hazardous substances to the Division for development as a possible proposal to the Cal/OSHA Standards Board. The members do this by applying their expertise to the evaluation of scientific evidence regarding the health hazard posed by a substance. In addition, the members, as needed, apply their expertise to defining and refining the process by which scientific evidence is evaluated and recommendations are reached.

B. Selection of technical expert advisory committee members.

Technical experts from other state agencies, academic institutions, professional associations, or other interested groups should be considered for membership. Whenever possible these technical experts can also represent the affected industry(s) and be balanced between management and labor.

1. Areas of expertise. The Division's experience is that the committee functions best when it includes at least two experts from each of the following disciplines:

- Toxicology (Ph.D. level preferred)
- Epidemiology (Ph.D. level preferred)
- Occupational medicine (M.D. level required)
- Industrial hygiene (at least M.S. or M.P.H. level and CIH)

Members may have more than one area of expertise and can be relied upon to fill more than one of the above desired disciplines. For example, an occupational physician will also satisfy the toxicology or epidemiology area.

2. The size of the committees. Generally the committee has functioned effectively with between 5 and 8 regularly attending members. When the numbers get larger than this the time spent on communications and arriving at acceptable meeting times becomes excessive. Generally at least 4 or 5 members would need to be present at a meeting in order to make a recommendation for a PEL. However, the process is rather informal. If there are only 3 attendees at a meeting and they agree that a recommendation can be made, it can be subsequently reviewed by other members and if there are disagreements discussed further at a future meeting. Generally, given the work that goes into arranging meetings, and the staff time that will be taken to prepare for them, a committee meeting would not be canceled for lack of attendance unless fewer than 3 committee members were able to attend.

3. Process to select members. The Division staff identifies potential candidates through the following types of sources:

- a. Recommendations of past committee members.
- b. Recommendations of local experts in the field sought who are unable to participate themselves
- c. Recommendations of interested parties, including labor, trade and employer organizations, who wish to have their perspectives included in the committee's deliberations but recognize that members serve as impartial experts evaluating scientific studies and not as representatives of particular interests.

4. Staff participation. The Division staff shall chair the committee and coordinate all technical and logistical support for the committee. Board staff will be invited to attend all advisory committee meetings. HESIS staff will be invited to provide technical support in preparation for and during all advisory committee meetings.

III. ADVISORY COMMITTEE MEETING PROCESS

Depending on the number of substances to be considered and prioritization of the list of substances, the advisory committee will have an initial meeting to set meeting schedules and the process to be used in evaluating the list of substances. At least 10 days prior to

this and all subsequent meetings, Division staff will send out an agenda to all committee members and interested parties with the items/substances to be discussed. These agendas along with the list of substances, meeting minutes, and results of the previous meetings will be posted on the Division's 5155 advisory committee website as soon as the documents are available.

A. Public notice and interested party involvement.

The meetings are open to the public and noticed via email, web postings and announced at Cal/OSHA advisory committee and other appropriate public forums. Interested parties are encouraged to attend committee meetings and to participate to the extent that they have factual information to share. In the past some interested parties have requested to make presentations to the committee relevant to the process of recommending a PEL. Such presentations will be allowed to the extent they are respectful of the committee's limited time and voluntary status, and that they are factual and provide references for assertions that can be shared publicly.

1. Identifying and notifying interested parties. The Division will maintain a list of interested parties for the PEL process and send out e-mail announcements of each meeting at least 10 days prior but typically 4 to 6 weeks before it is scheduled to take place. This notice will also announce the substances the committee is scheduled to discuss.

The Division will also attempt to contact labor, employer, trade, and professional organizations which it believes may have members with an interest in particular substances under consideration. Where for a particular substance no such organization can be identified or effectively contacted the Division will attempt to identify and contact a sample of individual potentially interested parties, usually a manufacturer or user of the particular substance, and inform them of the occurrence of the meeting and enlist their assistance in the process of informing other potentially interested parties of the meeting.

2. Web posting of notices and meeting materials. Recognizing the limitations of e-mail, and the desire of some interested parties to maintain ongoing involvement with the process, the Division will also maintain in its advisory committee web area a list of the substances anticipated to be considered by the advisory committee over its current multi-year process, along with information on the new or revised TLV or other event which led to its consideration. At this web area the Division will also post the notice for the latest upcoming meeting and, to the extent possible, tentative schedules and agendas for future meetings.

As part of the list of substances under consideration noted above, the Division will post recommendations of the committee as they develop along with the date of the meeting at which the recommendation was made and the dates of any other meetings at which the substance was discussed. This information can be used to locate discussion of the committee on particular substances in minutes of meetings that will also be posted at the website.

For a variety of reasons the Division is not in a position to post on its website, or copy and mail out upon request, documents that may be referred to in the discussions of the committee. Where a reference used by the committee is publicly available on the Internet and is central to the committee's recommendation the Division will attempt to include a hyperlink to it (or at least an abstract) in the minutes or elsewhere in the PEL web area. Because the committee will only rarely use reports that are not generally

available to the public, if such a document is used it will generally be posted in the PEL Advisory Committee web area. It should be noted that any documents included in the “Documents Relied Upon” section of the Cal/OSHA Standards Board rulemaking package for a proposed PEL will be available at the offices of the Standards Board in Sacramento.

B. Committee consideration of relevant science and feasibility documents.

Generally preference will be given in the committee’s deliberations to peer reviewed articles published in recognized scientific journals. Consideration may be given to presentations by interested parties and non-published reports where the committee believes they are sufficiently well documented. Relevant documents and briefing summaries shall be provided by Division and HESIS staff to the committee preferably at least 4 to 6 weeks prior to the scheduled meeting. At the meeting staff will brief the committee on these documents. The committee in making a PEL recommendation will strive for a consensus that can be justified scientifically, to protect California workers exposed to the substance over a working lifetime.

Cost and feasibility considerations may be incorporated into the committee’s recommendations where staff, committee members or interested parties present relevant facts and opinions which can be included in the meeting minutes, or provided in writing. Such facts and opinions can be of value in the subsequent assessment of costs and feasibility for the committee’s recommendations. Even if no discussion of cost or feasibility occurs during the committee meeting, the Division will continuously be in the process of gathering such information specific to California should the committee recommendation result in a proposed new or revised PEL.

C. Supplemental need to consider cost, feasibility or California unique issues

Before, during and after the committee deliberates the Division staff may see the need to gather information relevant to cost, feasibility or California unique uses of the substance as it relates to a proposed new or revised PEL. As needed a separate advisory committee shall be formed either. Once the committee has reached its recommendation for a particular substance or group of substances, Division staff will convene a public advisory meeting to provide an opportunity for interested parties to comment and provide information on cost and feasibility of the committee’s recommendation, as well as comment on its health-related basis. Interested parties from among employers and manufacturers, and in some cases labor, are generally in the best position to provide information on cost and feasibility of PEL recommendations. Such factual information should include:

The number of employees exposed in California and the extent of their exposure (ie. all day, part day, occasionally, etc.)

The specific operations in which employees are exposed.

The measures in place or available, to control employee exposures to the hazardous substance

Information on chemical handling practices, including spill prevention and control measures, and their association with particular levels of exposure.

The results of air sampling conducted to assess employee exposures to the hazardous substance, including the numbers and percentages of employees at different levels of exposure.

Air sampling results associated with different operations and exposure control measures.

To the extent it is available, information on incidents of employee injury or illness related to exposure to the hazardous substance.

Appendix A: [attached excel flowchart]