

determination that the Secretary plans to address some or all of these substances prior to proceeding with a thorough scientific review of data concerning other substances on the Candidate List. The inclusion or exclusion of any substance on these lists shall not be subject to judicial review or be the basis for any legal action. The Secretary may regulate a potential occupational carcinogen which has not been placed on these lists. The inclusion of a substance on either of these lists does not reflect a final scientific determination that the substance is, in fact, a Category I Potential Carcinogen or a Category II Potential Carcinogen.

EFFECTIVE DATE NOTE: At 48 FR 243, Jan. 4, 1983, § 1990.131 was stayed in order to evaluate the impact of publishing the Candidate List and Priority Lists and to reconsider the criteria used in establishing the lists (see also 47 FR 187, Jan. 5, 1982).

§ 1990.132 Factors to be considered.

(a) The setting of priorities is a complex matter which requires subjective and policy judgments. It is not appropriate to establish a rigid formula or to assign predetermined weight to each factor. The identification of some of the elements is to guide the OSHA staff and inform the public on the development of priorities. It is not intended to create any legal rights with respect to the setting of priorities.

(b) Some factors which may be taken into account in setting priorities for regulating potential occupational carcinogens, when such data are available, are:

- (1) The estimated number of workers exposed;
- (2) The estimated levels of human exposure;
- (3) The levels of exposure to the substance which have been reported to cause an increased incidence of neoplasms in exposed humans, animals or both;
- (4) The extent to which regulatory action could reduce not only risks of contracting cancer but also other occupational and environmental health hazards;
- (5) Whether the molecular structure of the substance is similar to the molecular structure of another substance

which meets the definition of a potential occupational carcinogen;

(6) Whether there are substitutes that pose a lower risk of cancer or other serious human health problems, or available evidence otherwise suggests that the social and economic costs of regulation would be small; and

(7) OSHA will also consider its responsibilities for dealing with other health and safety hazards and will consider the actions being taken or planned by other governmental agencies in dealing with the same or similar health and safety hazards.

§ 1990.133 Publication.

(a) The Secretary shall publish the Candidate List in the FEDERAL REGISTER at least annually.

(b) The Secretary shall publish the Priority Lists in the FEDERAL REGISTER at least every six months and may seek public comment thereon.

(c) The Secretary may periodically publish in the FEDERAL REGISTER a notice requesting information concerning the classification and establishment of priorities for substances on the Candidate List together with a brief statement describing the type of information being sought.

EFFECTIVE DATE NOTE: At 48 FR 243, Jan. 4, 1983, § 1990.133 was stayed in order to evaluate the impact of publishing the Candidate List and Priority Lists and to reconsider the criteria used in establishing the lists (see also 47 FR 187, Jan. 5, 1982).

REGULATION OF POTENTIAL
OCCUPATIONAL CARCINOGENS

§ 1990.141 Advance notice of proposed rulemaking.

(a) Within thirty (30) days after OSHA initiates a study concerning the economic and/or technological feasibility of specific standards that might be applied in the regulation of a potential occupational carcinogen, the Secretary will normally publish, in the FEDERAL REGISTER, a notice which includes at least the following:

- (1) The name of the substance(s),
- (2) The scope of the study, including where possible,
 - (i) Affected industries,
 - (ii) Levels of exposure being studied,
 - (iii) The anticipated completion date of the study;