

§ 1990.147

29 CFR Ch. XVII (7-1-05 Edition)

(c) Whether the available data can appropriately be applied to the substance, group of substances or combination of substances covered by the rulemaking;

(d) Whether the data, views and arguments that are submitted in accordance with §1990.144 are sufficient to warrant an exception to this part;

(e) Whether the data, views and arguments that are submitted in accordance with §1990.145 are sufficient to warrant amendment of this part;

(f) Whether the potential occupational carcinogen meets the criteria for a Category I Potential Carcinogen or a Category II Potential Carcinogen.

(g) The environmental impact arising from regulation of the substance;

(h) Any issues required by statute or executive order;

(i) The determination of the level to control exposures to Category I Potential Carcinogens primarily through the use of engineering and work practice controls including technological and economic considerations.

(j) The determination of the appropriate employee exposure level, consistent with the Act's requirements, for Category II Potential Carcinogens;

(k) Whether suitable substitutes are available for one or more uses of Category I Potential Carcinogens and; if so, the no occupational exposure level to be achieved solely with engineering and work practice controls and other issues relevant to substitution; and

(l) Whether the provisions of the proposal and of §§1990.151 and 1990.152 (model standards) are appropriate, except as limited by §1990.142 and whether additional regulatory provisions may be appropriate.

[45 FR 5282, Jan. 22, 1980, as amended at 46 FR 5881, Jan. 21, 1981]

§ 1990.147 Final action.

(a) Within one hundred twenty (120) days from the last day of any hearing or ninety (90) days from the close of any post hearing comment period, whichever occurs first, the Secretary shall publish in the FEDERAL REGISTER:

(1) A final standard based upon the record in the proceeding; or

(2) A statement that no final standard will be issued, and the reasons therefor, or

(3) A statement that the Secretary intends to issue a final rule, but that he is unable to do so at the present time, including:

(i) The reasons therefor; and

(ii) The date by which the standard will be published, which may not exceed one hundred twenty (120) days thereafter.

(iii) The Secretary may issue no more than one such notice, unless the Secretary determines that (A) new evidence which was unavailable during the rulemaking proceeding has just become available; (B) the evidence is so important that a final rule could not reasonably be issued without this evidence, and; (C) the record is reopened for receipt of comments and/or a hearing on this evidence. This paragraph does not require the Secretary to consider any evidence which is submitted after the dates established for the submission of evidence.

(b) The failure of the Secretary to comply with the required timeframes shall not be a basis to set aside any standard or to require the issuance of a new proposal on any individual substance.

(c) The final standard shall state whether the substance or group of substances subject to the rulemaking is classified as a Category I Potential Carcinogen or as a Category II Potential Carcinogen. If the classification differs from that in the notice of proposed rulemaking, the Secretary shall explain the reasons for the change in classification in the preamble to the final standard.

(d) If the substance is classified as a Category I Potential Carcinogen, the final standard shall conform to the provisions of §1990.142(a)(2)(iii). If the final standard contains other provisions that substantially differ from the proposed provisions, the Secretary shall explain the reasons for the changes in the preamble to the final standard.

(e) If the substance is classified as a Category II potential carcinogen, the final standard shall conform to the provisions of §1990.142(a)(3)(iii). If the final standard contains other provisions that substantially differ from the proposed provisions, the Secretary shall explain the reasons for the changes in the preamble to the final standard.

(f) If the substance is classified as a Category II potential carcinogen, the Secretary shall notify the applicable federal and state agencies, including the Administrator of EPA, the Director of NCI, the Director of NIEHS, the Director of NIOSH, the Commissioner of FDA and the Chairperson of CPSC of such determination and request that the applicable agencies engage in, or stimulate, further research pursuant to their legislative authority, to develop new and additional scientific data.

(g) If, after a rulemaking, the Secretary determines that the substance under consideration should not be classified as a Category I potential carcinogen or a Category II potential carcinogen, the Secretary shall publish a notice of this determination in the FEDERAL REGISTER, together with the reasons therefor.

MODEL STANDARDS

§ 1990.151 Model standard pursuant to section 6(b) of the Act.

Occupational Exposure to _____

Permanent Standard (insert section number of standard)

(a) *Scope and application*—(1) *General*. This section applies to all occupational exposures to _____ or to (specify those uses or classes of uses of _____ [Chemical Abstracts Service Registry Number 0000] which are covered by the standard, including, where appropriate, the type of exposure to be regulated by the standard) except as provided in paragraph (a)(2).

(2) *Exemptions*. This section does not apply to (insert those uses or classes of uses of _____ which are exempted from compliance with the standard, including, where appropriate,

(i) Workplaces where exposure to _____ results from solid or liquid mixtures containing a specified percentage of _____ or less;

(ii) Workplaces where another Federal agency is exercising statutory authority to prescribe or enforce standards or regulations affecting occupational exposure to _____; or

(iii) Workplaces which are appropriately addressed in a separate standard).

(b) *Definitions*.

_____ means (definition of the substance, group of substances, or combination of substances, to be regulated).

Action level means an airborne concentration of _____ of (insert appropriate level of exposure).

NOTE: Where appropriate, consider an action level as a limitation on requirements for periodic monitoring (para. (e)(3)), medical surveillance (para. (n)), training (para. (o)), labels (para. (p)(3)), and other provisions.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter regulated areas or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

Director means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, and Health Services, or designee.

Emergency means in any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may result in a massive release of _____ which is (insert appropriate quantitative or qualitative level of release which constitutes an emergency).

OSHA Area Office means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) *Permissible exposure limits provisions*—(1) *Inhalation*—(i) *Time weighted average limit (TWA)*. Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of _____ in excess of: (insert appropriate exposure limit or when it is determined by the Secretary that there are available suitable substitutes for uses or classes of uses that are less hazardous to humans, the proposal shall permit no occupational exposure) as an eight (8)-hour-time-weighted average.

(Where the Secretary finds that suitable substitutes for _____ may exist, the determination of the _____ level