f OSHA General Carcinogen Proposal



circumstances that should be taken into consideration to preclude identification of a material as carcinogenic. In this regard OSHA noted that exceptional circumstances can exist. See 42 Fed. Reg. 54171. As the court noted in Storer, the FCC's regulations provided flexibility to admit of time and changing circumstances. It noted that the FCC's rules specifically provided for their waiver on an adequate showing by an applicant. 377 U.S. at 3, 40. Indeed, all generic rules that have been favorably received by the courts have included waiver provisions.40/ Thus, they all have allowed flexibility for changing circumstances or the exceptional circumstance. They all have recognized that exceptions to any general rule do exist.

The OSHA proposed rules on the other hand, freeze scientific issues. They do not provide flexibility concerning resolution of questions such as the data base for determining whether a substance is carcinogenic. As OSHA states:

> "It is OSHA's intention, once this proposal is duly promulgated, to foreclose, in the subsequent 6(b) rulemakings on individual substances, the rehearing of the validity of this classification system and most other policy determinations made in this proposal, including the procedural structure intended to be followed." 42 Fed. Reg. 54154.

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40/ See 61 Va. L. Rev. at 891.

NAM position

PLAINTIFF'S EXHIBIT AL-1016