

§ 1981.112

(d)(1) Investigative settlements. At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) Adjudicatory settlements. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board will constitute the final order of the Secretary and may be enforced pursuant to § 1981.113.

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board (Secretary) under § 1981.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1981.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for

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the district in which the violation was found to have occurred.

§ 1981.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.

PART 1990—IDENTIFICATION, CLASSIFICATION, AND REGULATION OF POTENTIAL OCCUPATIONAL CARCINOGENS

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AUTHORITY: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 8-76 (41 FR 25059); and 29 CFR part 1911.

SOURCE: 45 FR 5282, Jan. 22, 1980, unless otherwise noted.

GENERAL

§ 1990.101 Scope.

This part establishes criteria and procedures for the identification, classification, and regulation of potential occupational carcinogens found in each workplace in the United States regulated by the Occupational Safety and Health Act of 1970 (the Act). The procedures contained in this part supplement the procedural regulations in other parts of this chapter. In the event of a conflict, the procedures contained in this part shall govern the identification, classification, and regulation of potential occupational carcinogens. This part may be referred to as "The OSHA Cancer Policy."

§ 1990.102 Purpose.

The Act provides, among other things, that

the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this section, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his or her working life. Development of standards under this section shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired (section 6(b)(5)).

It is the purpose of the regulations of this part to carry out the intent of the Act with respect to the identification,

classification, and regulation of potential occupational carcinogens.

§ 1990.103 Definitions.

Terms used in this part shall have the meanings set forth in the Act. In addition, as used in this part, the following terms shall have the meanings set forth below:

Act means the Occupational Safety and Health Act of 1970 (Pub. L. 91-596, 84 Stat. 1590 *et seq.*, 29 U.S.C. 551 *et seq.*).

Administrator of EPA means the Administrator of the United States Environmental Protection Agency, or designee.

Chairperson of CPSC means the Chairman of the United States Consumer Product Safety Commission, or designee.

Commissioner of FDA means the Commissioner of the Food and Drug Administration, United States Department of Health and Human Services, or designee.

Director of NCI means the Director of the National Cancer Institute, United States Department of Health and Human Services, or designee.

Director of NIEHS means the Director of the National Institute of Environmental Health Sciences, United States Department of Health and Human Services, or designee.

Director of NIOSH means the Director of the National Institute for Occupational Safety and Health, United States Department of Health and Human Services, or designee.

Mutagenesis means the induction of heritable changes in the genetic material of either somatic or germinal cells.

Positive results in short-term tests means positive results in assays for two or more of the following types of effect:

(1) The induction of DNA damage and/or repair;

(2) Mutagenesis in bacteria, yeast, *Neurospora* or *Drosophila melanogaster*;

(3) Mutagenesis in mammalian somatic cells;

(4) Mutagenesis in mammalian germinal cells; or

(5) Neoplastic transformation of mammalian cells in culture.

Potential occupational carcinogen means any substance, or combination or mixture of substances, which causes