

Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order will order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(e) If the Board determines that the named person has not violated the law, an order will be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding \$1,000.

### Subpart C—Miscellaneous Provisions

#### § 1981.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 60-day objection period described in § 1981.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of

the substituted findings or order will begin a new 60-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(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

## § 1981.113

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 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

### GENERAL

- Sec.
- 1990.101 Scope.
- 1990.102 Purpose.
- 1990.103 Definitions.
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### THE OSHA CANCER POLICY

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- 1990.112 Classification of potential carcinogens.

### PRIORITY SETTING

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### REGULATION OF POTENTIAL OCCUPATIONAL CARCINOGENS

- 1990.141 Advance notice of proposed rule-making.
- 1990.142 Initiation of a rulemaking.
- 1990.143 General provisions for the use of human and animal data.
- 1990.144 Criteria for consideration of arguments on certain issues.
- 1990.145 Consideration of substantial new issues or substantial new evidence.
- 1990.146 Issues to be considered in the rule-making.
- 1990.147 Final action.

### MODEL STANDARDS

- 1990.151 Model standard pursuant to section 6(b) of the Act.
- 1990.152 Model emergency temporary standard pursuant to section 6(c) of the Act.

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