

Occupational Safety and Health Review Commission

Plan for Retrospective Analysis of Existing Rules

Settlement Part

November 8, 2011

The President recently issued Executive Orders 13563 and 13579 which supplement and reaffirm the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866, and recognize the importance of maintaining a consistent culture of retrospective review and analysis throughout the federal government.

The Occupational Safety and Health Review Commission (Review Commission), as an independent, adjudicatory agency, does not have any regulations that meet the definition of a “significant regulatory action” as defined in Section 3(f) of Executive Order 12866. Nevertheless, consistent with the President’s Executive Orders, the Review Commission historically has reviewed its rules and regulations to evaluate their effectiveness. Based on this ongoing review, the Commission has recently begun an evaluation of its Settlement Part program.

The Review Commission’s Settlement Part program, codified at 29 CFR § 2200.120, is designed to encourage settlements on contested citations issued by the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) and to reduce litigation costs. The program requires employers who receive job safety or health citations that include proposed penalties of \$ 100,000 or more in total to participate in formal settlement talks presided over by a Review Commission Administrative Law Judge. If settlement efforts fail, the case would continue under the Review Commission’s conventional proceedings, usually before a judge other than the one who presided over the settlement proceedings.

The Review Commission has contracted with Indiana University to conduct an evaluation of the Settlement Part program. As part of the review, the Review Commission plans on collecting information from Settlement Part participants about their experiences with the program. The participants would include employers and Department of Labor personnel, Authorized Employee Representatives and their representatives, including attorneys, who have personally participated in cases from February 15, 2011 through February 14, 2012. The proposed information collection instrument is a written survey consisting of a series of multiple-choice questions that are intended to take a respondent no more than 30 minutes to complete. The public is invited to comment on the proposed information collection by submitting written comments by the methods described in the Review Commission’s Federal Register notice found at 76 Fed. Reg. 67496 (Nov. 1, 2011). OSHRC will submit the proposed information collection to the Office of Management and Budget for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*).

The Review Commission will also collect information from Review Commission Administrative Law Judges as well as other Review Commission stakeholders (those indirectly involved in the Settlement

Part program). Indiana University will use the collected information along with data obtained from the Review Commission's case tracking system to evaluate the Settlement Part program. Indiana University is expected to present the Settlement Part evaluation report to the Review Commission by mid-2012. After consideration of the report, the Review Commission may consider changes to the Settlement Part program and implementing regulations.