

**Supporting Statement A for
Paperwork Reduction Act Submission¹**

Survey of Participants in OSHRC Settlement Part Program

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Under the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651-678), the Occupational Safety and Health Review Commission (OSHRC) “is authorized to make such rules as are necessary for the orderly transaction of its proceedings.” 29 U.S.C. § 661(g). As part of its rulemaking authority, OSHRC created the Settlement Part program, codified at 29 C.F.R. § 2200.120. The Settlement Part program 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 an OSHRC Administrative Law Judge. If settlement efforts fail, the case would continue under OSHRC’s conventional proceedings, usually before a judge other than the one who presided over the settlement proceedings.

The survey at hand is being administered by Indiana University (IU). The survey procedures and survey instrument were approved by IU’s Institutional Review Board (IRB) No. 1107006384. To ensure the continued success of the program, OSHRC proposes to collect information from Settlement Part participants about their experiences with the program. The participants would be 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. We estimate that IU will send surveys to all 300 individuals who participated in the Settlement Part program during this time. The sample frame is Settlement Part participants. The survey covers all identifiable individuals who participated in the Settlement Part process in the selected timeframe. 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 survey is voluntary. Respondents may skip any questions that they do not feel comfortable answering and they are permitted to comment further on their experiences at the end of the questionnaire. The survey is only one element of a larger research design, which includes interviews (already completed) and extensive case record analysis. The survey instrument is also a follow up to a survey previously approved and conducted in 2000, when the Settlement Part program was in its pilot stage.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

¹ This submission supersedes OSHRC’s earlier submission of March 13, 2012.

This new collection will be a one-time voluntary survey conducted by IU on behalf of OSHRC to assess the Settlement Part. IU will mail Settlement Part participants described above the “Survey of Participants in OSHRC Settlement Program” survey form and will be provided a postage-paid envelope to return the form back to IU. Responses will be kept confidential. The survey is primarily a customer satisfaction survey. Based on information gathered from the survey, data collected from OSHRC, and other information gleaned during the course of the ongoing IU study of OSHRC’s settlement part program; *e.g.* interviews of OSHRC personnel, IU will prepare a report for OSHRC that will provide feedback about, and recommend improvements to, the Settlement Part program, if necessary, so as to enable OSHRC to provide fair and timely resolution of disputes relative to OSHA citations.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

We anticipate about 210 responses (70% response rate) to our survey using the postage-paid, business-reply envelope included with the survey form. We determined that regular mail would be the most effective method collection technique given the relatively low number of responses. We do not have the necessary infrastructure to support an exclusive internet-based survey and it is unknown whether all potential respondents would be willing or able to respond by e-mail. The use of mail to solicit responses also ensures that we will receive responses only from individuals who have actively participated in the Settlement Part process during the designated time period.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

This is a new collection, and there is no similar information available.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This collection does not significantly impact small entities. This information is only collected from individuals who actively participated in the Settlement Part program. The burden on small entities is minimized since the survey primarily consists of only 23 multiple choice questions and takes less than 30 minutes to complete on a voluntary basis.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If this collection is not conducted, OSHRC’s ability to understand the attitudes and beliefs of the Settlement Part participants would be greatly weakened, and it would have a detrimental effect

on the ability to potentially improve on the Settlement Part program. Our contract with IU calls for IU to conduct the survey.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * **requiring respondents to report information to the agency more often than quarterly;**
- * **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- * **requiring respondents to submit more than an original and two copies of any document;**
- * **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- * **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- * **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- * **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- * **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Confidentiality Assured: OSHRC and IU strictly adhere to ethical standards, public law, and federal policies for safeguarding the confidentiality of all participants in this survey. All responses to the survey items are confidential and anonymous. The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA, PL 107-347, Title V, Subtitle A), 44 U.S.C. § 3501 *et. seq.* (Coordination of Federal Information Policy), 5 U.S.C. § 552a (The Privacy Act of 1974), and 18 U.S.C. § 1905 (Disclosure of confidential information generally), protect the confidentiality of information collected through this survey. Although IU is committed to keeping all responses to the survey private, no one can guarantee absolute confidentiality. There is always a small risk of a breach of privacy. Strong precautions will be taken to protect all survey responses.

Our Settlement Part calls for all statements made and information presented during the course of settlement proceedings to be regarded as confidential. *See* 29 C.F.R. § 2200.120(d)(3). The survey questions do not breach this confidentiality. Our contract with IU includes a Human Research Protocol that requires the research comply with federal laws, regulations and IU policies that are applicable to human research.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 C.F.R. § 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On November 1, 2011, we published in the Federal Register (76 Fed. Reg. 67,496) a notice soliciting public comment on this information collection for 60 days. The comment period ended on January 3, 2012. We did not receive any comments.

We have consulted with IU representatives to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format, and on the data elements to be recorded disclosed, or reported.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

Respondents will not be provided payments or gifts.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

As stated in the survey and previously discussed at paragraph 7, herein, the respondents' responses will be kept confidential. The survey questions deal with the settlement part process and do not address any substantive matter in any case. Respondents will not be asked to write their names on the questionnaires.

Confidentiality is "a quality or condition accorded to information as an obligation not to transmit that information to an unauthorized party" (National Research Council and Social Science Research Council, 1993:22). Our contract with IU requires that the university obtain approvals from their IRB as a prerequisite to conducting the survey. IRB approvals are not granted unless the university demonstrates to the Board's satisfaction that the research will be conducted in accordance with strict guidelines for research involving human subjects. IRB guidelines specifically include requirements for maintaining confidentiality and anonymity throughout the

research process. Since the questions pertain to participants' experiences with case settlement, assurances of confidentiality are especially important. Pursuant to the Administrative Dispute Resolution Act of 1996 (5 U.S.C. §§ 571-583 and specifically Section 574, which expressly authorizes agencies to maintain confidentiality), Settlement Part rules require confidentiality of all statements made and information presented during the course of settlement proceedings to be regarded as confidential. *See also* 29 C.F.R. § 2200.120(d)(3). The survey questions do not breach this confidentiality. Our contract with IU also includes a Human Research Protocol that requires the research comply with federal laws, regulations and IU policies that are applicable to human research. In the process of conducting the survey, IU researchers will have mailing addresses for survey respondents. Mailing addresses are considered identifying information. However, only a small number of researchers at IU (less than 5) will have access to the surveys, responses and related files; all of which will be kept under lock and key. Also, study codes will be used in place of any identifying information so that at the earliest possible stage of the research identifying information can only be ascertained by individuals that have access to a separate file that includes the identification codes. When data is summarized, only aggregate information is reported.

A cover letter with IU's letterhead, signed in blue by one of the co-principal investigators, will accompany each survey. The cover letter will state that IU has and will continue to make efforts to keep all personal information confidential and that IU will hold all identities in confidence in reports and publications. IU will not report names in any study that it produces relating to the survey. The cover letter will state that IU will restrict access to survey files to no more than 3 researchers under the supervision of the co-principal investigators during the course of the study. It will state that when IU receives surveys back, it will code them to replace any names with numbers so there will be no way to personally connect survey respondents to their responses or comments. The cover letter will assure survey respondents that IU will destroy the surveys once it has recorded the aggregate information. It will also advise survey recipients that IU will destroy all related notes upon completion of the study, which is expected to take less than one (1) year. The cover letter will further advise survey recipients that IU cannot guarantee absolute confidentiality and that personal information may be disclosed if required by law. The cover letter will state that State and federal agencies (as allowed by law) and the IU IRB (specifically the Office for Human Research Protections) may inspect records in the survey, but only for the purpose of assuring the researchers are complying with ethical standards and they will not inspect study records to obtain any personal information about study participants or their responses.

Our contract with IU also includes a Confidentiality Safeguard clause that states that the contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, any item; labeled as confidential received by contractor from an employee of the Government or any third party, relating to the subject matter of this contract.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any

steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.**

The Survey on Participants in OSHRC Settlement Part Program is a one-time data collection and we estimate 210 responses with an estimated time per respondent of 30 minutes for a total of 105 burden hours for this collection. The 30-minute estimate is based on the completion time estimates given by three individuals who reviewed the survey questions.

We estimate the total dollar value of the annual burden hours for this collection to be \$5,261.55. We used BLS Bulletin USDL-11-0849 (<http://www.bls.gov/news.release/pdf/ecec.pdf>) to obtain the \$50.11 estimate of hourly cost per hour worked for management, professional and related workers, who we expect will comprise the bulk of the survey respondents.

Burden Hour Estimates

Collection type	Estimated Number of Annual Respondents	Estimated Number of Annual Responses	Completion Time per Response	Total Annual Burden Hours	\$ Value of Annual Burden Hours (\$50.11/hr)
Survey of Participants in OSHRC Settlement Part Program	210	210	30 minutes	105 hours	\$5,261.55

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

- * **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- * **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- * **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The survey is accompanied by a postage-paid return envelope. There is no non-hour cost burden to respondents. There is no fee for completing the survey or any other costs associated with responding to this survey.

14. Provide estimates of annualized costs to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

OSHRC contracted with IU to assess the Settlement Part program and to recommend improvements, if necessary, that will enable OSHRC to provide fair and timely resolution of disputes relative to OSHA citations. The contract that included the survey at issue is a firm fixed-price contract awarded in an amount less than \$100,000. There are eleven tasks that IU is to perform under the contract, two of which concern the survey at issue and the analysis of the results. The specific cost of the survey and analysis of the survey results are not identified in the contract. The Federal Government will not perform the distribution of the survey or analysis of the survey results, and will therefore not incur a cost for this information collection; beyond that established by the contract's overall firm fixed price.

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

There are no program changes or adjustments because this is a new collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

IU will edit the response data, compile it in a database, and analyze it using standard statistical techniques. They will prepare the final report and present it to OSHRC. The contractor will also make copies of any papers it generates in conducting the project work to OSHRC. OSHRC awarded its contract that calls for the survey on September 30, 2010. The contract completion date is currently July 31, 2012; which may be further extended. We expect to begin sending out the survey and receiving all survey responses during the contract performance period. We also expect the study report to be completed during the contract performance period.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date on the survey forms.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

The Certificate provides as follows:

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 C.F.R. § 1320.9 and the related provisions of 5 C.F.R. § 1320.8(b)(3). The following is a summary of the topics, regarding the proposed collection of information that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 C.F.R. § 1320.8 (b)(3) about:
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected.
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

There are no exceptions to the certification statement.

Attachment
29 U.S.C. § 661(g)

court of appeals may assess the penalties provided in section 666 of this title, in addition to invoking any other available remedies.

(c) Discharge or discrimination against employee for exercise of rights under this chapter; prohibition; procedure for relief

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph (2) of this subsection.

(Pub. L. 91-596, §11, Dec. 29, 1970, 84 Stat. 1602; Pub. L. 98-620, title IV, §402(32), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out provision requiring expeditious hearing of petitions filed under this subsection.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 661. Occupational Safety and Health Review Commission

(a) Establishment; membership; appointment; Chairman

The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this chapter. The President shall designate one of the members of the Commission to serve as Chairman.

(b) Terms of office; removal by President

The terms of members of the Commission shall be six years except that (1) the members of

the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) Omitted

(d) Principal office; hearings or other proceedings at other places

The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(e) Functions and duties of Chairman; appointment and compensation of administrative law judges and other employees

The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such administrative law judges and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(f) Quorum; official action

For the purpose of carrying out its functions under this chapter, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(g) Hearings and records open to public; promulgation of rules; applicability of Federal Rules of Civil Procedure

Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(h) Depositions and production of documentary evidence; fees

The Commission may order testimony to be taken by deposition in any proceeding pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are

paid for like services in the courts of the United States.

(i) Investigatory powers

For the purpose of any proceeding before the Commission, the provisions of section 161 of this title are hereby made applicable to the jurisdiction and powers of the Commission.

(j) Administrative law judges; determinations; report as final order of Commission

A¹ administrative law judge appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such administrative law judge by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the administrative law judge shall become the final order of the Commission within thirty days after such report by the administrative law judge, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Appointment and compensation of administrative law judges

Except as otherwise provided in this chapter, the administrative law judges shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5. Each administrative law judge shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5.

(Pub. L. 91-596, §12, Dec. 29, 1970, 84 Stat. 1603; Pub. L. 95-251, §2(a)(7), Mar. 27, 1978, 92 Stat. 183.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (e), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Rules of Civil Procedure, referred to in subsec. (g), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Subsec. (c) of this section amended sections 5314 and 5315 of Title 5, Government Organization and Employees.

In subsec. (e), reference to section 5372 of title 5 was substituted for section 5362 on authority of Pub. L. 95-454, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

AMENDMENTS

1978—Subsecs. (e), (j), (k). Pub. L. 95-251 substituted “administrative law judge” and “administrative law judges” for “hearing examiner” and “hearing examiners”, respectively, wherever appearing.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)]

¹ So in original. Probably should be “An”.

of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 662. Injunction proceedings

(a) Petition by Secretary to restrain imminent dangers; scope of order

The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Appropriate injunctive relief or temporary restraining order pending outcome of enforcement proceeding; applicability of Rule 65 of Federal Rules of Civil Procedure

Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Notification of affected employees and employers by inspector of danger and of recommendation to Secretary to seek relief

Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) of this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) Failure of Secretary to seek relief; writ of mandamus

If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

(Pub. L. 91-596, §13, Dec. 29, 1970, 84 Stat. 1605.)