

103^D CONGRESS
2^D SESSION

H. R. 2937

To amend the Occupational Safety and Health Act of 1970 to make needed revisions in regulations and programs.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. FAWELL (for himself, Mr. GOODLING, Mr. PETRI, Mr. GUNDERSON, Mr. BALLENGER, Ms. MOLINARI, Mr. BARRETT of Nebraska, Mr. HOEKSTRA, Mr. MCKEON, Mr. MILLER of Florida, and Mr. POMBO) introduced the following bill; which was referred to the Committee on Education and Labor

FEBRUARY 10, 1994

Additional sponsors: Mr. GREENWOOD, Mr. PACKARD, and Mr. ARMEY

A BILL

To amend the Occupational Safety and Health Act of 1970 to make needed revisions in regulations and programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Occupational Safety and Health Reform Act”.

6 (b) REFERENCE.—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
2 shall be considered to be made to a section or other provi-
3 sion of the Occupational Safety and Health Act of 1970.

4 **SEC. 2. PUBLIC EMPLOYEES.**

5 (a) DEFINITION OF EMPLOYER.—Section 3(5) (29
6 U.S.C. 652(5)) is amended—

7 (1) by striking out “but does not include the
8 United States or” and inserting in lieu thereof “in-
9 cluding the executive and judicial branches of the
10 Government and”, and

11 (2) by inserting before the period a comma and
12 the following: “except that such term does not in-
13 clude public agencies which primarily rely upon vol-
14 unteers (as defined in the Fair Labor Standards Act
15 of 1938) to operate or provide services to the
16 public”.

17 (b) STUDY.—The Secretary of Labor shall conduct
18 a study on the potential costs of extending the Occupa-
19 tional Safety and Health Act of 1970 to public agencies
20 and shall provide a separate estimate for extending the
21 Act to agencies described in subsection (a)(2). The Sec-
22 retary shall complete such study within one year of the
23 date of the enactment of this Act and report the results
24 to the Congress.

1 (c) CONGRESSIONAL COVERAGE.—Section 19 (29
2 U.S.C. 668) is amended to read as follows:

3 “COVERAGE OF THE UNITED STATES HOUSE
4 OF REPRESENTATIVES AND INSTRUMENTALITIES OF THE CONGRESS

6 “SEC. 19. (a) The House of Representatives and each
7 instrumentality of Congress shall establish and maintain
8 an effective program to provide safe and healthful places
9 and conditions of employment. Such programs shall, at a
10 minimum—

11 “(1) comply with section 5, the occupational
12 safety and health standards issued under section 6,
13 and the requirements and regulations issued under
14 section 8,

15 “(2) provide for the acquisition and maintenance of safety equipment, personal protective
16 equipment, and devices reasonably necessary to protect employees, and

19 “(3) provide for adequate records of all occupational accidents and illness, provide for the proper
20 evaluation of such records, and provide for necessary
21 corrective action.

23 “(b) The Secretary shall conduct random inspections
24 of places of employment under the jurisdiction or control
25 of the House of Representatives or any instrumentality of

1 Congress. Such inspections shall be conducted at least
2 once during each Congress. The Secretary shall also re-
3 spond to any request that meets the conditions of section
4 8(f). Such inspections shall identify each condition which
5 the Secretary believes is a violation of a requirement under
6 section 5, of an occupational safety and health standard
7 issued under section 6, or of a regulation issued under
8 section 8. Upon completion of such inspection, the Sec-
9 retary shall report all such conditions to the Director of
10 Non-Legislative and Financial Services of the House of
11 Representatives.

12 “(c) The Director of Non-Legislative and Financial
13 Services of the House of Representatives shall, as soon
14 after the receipt of a report under subsection (b) as is
15 practicable, appoint a special counsel to seek abatement
16 of any conditions identified in such report as not in com-
17 pliance with the requirements of section 5 or 6 and to as-
18 sess appropriate penalties against the instrumentality, em-
19 ploying authority, or other employer for noncompliance
20 with such requirements. Section 17 shall apply in any en-
21 forcement procedures brought under this subsection.

22 “(d) Any instrumentality, employing authority, or
23 other employer which is assessed a penalty under sub-
24 section (c) may appeal the assessment to the Office of Fair
25 Employment Practices which shall afford an opportunity

1 for a hearing and shall thereafter issue a decision based
2 on findings of fact which affirms, modifies, or vacates the
3 actions of the special counsel appointed under subsection
4 (c). Any person adversely affected or aggrieved by the de-
5 cision of the Office of Fair Employment Practices may
6 obtain review of such decision by the United States Court
7 of Appeals for the circuit in which such violation is alleged
8 to have occurred or by the Court of Appeals for the Dis-
9 trict of Columbia Circuit under the standards and condi-
10 tions for review of orders by the Commission in section
11 11.

12 “(e) The Office of Fair Employment Practices shall
13 establish procedures and remedies, consistent with the
14 procedures and remedies under section 11(c), to insure
15 that no employee is discharged or in any manner discrimi-
16 nated against because such employee has filed a complaint
17 or request for an inspection or instituted or caused to be
18 instituted any proceeding under or related to this Act. Any
19 person adversely affected or aggrieved by the decision of
20 the Office of Fair Employment Practices may obtain re-
21 view of such decision by the United States Court of Ap-
22 peals for the circuit in which such violation is alleged to
23 have occurred or by the Court of Appeals for the District
24 of Columbia Circuit under the standards and conditions
25 for review of orders by the Commission in section 11.”.

1 **SEC. 3. STANDARD SETTING.**

2 (a) STANDARDS.—Section 6(b)(5) (29 U.S.C.
3 655(b)(5)) is amended to read as follows:

4 “(5) The development of standards under this
5 section shall be based upon the latest scientific data
6 in the field and on such research, demonstrations,
7 experiments, and such other information as may be
8 appropriate. In establishing such standards, the Sec-
9 retary shall consider and make findings concerning
10 the appropriateness of the standard to the following
11 factors:

12 “(A) The standard is needed to address a
13 significant risk of material impairment to work-
14 ers and will substantially reduce that risk.

15 “(B) The standard is feasible.

16 “(C) There is a reasonable relationship be-
17 tween the costs and benefits of the standard.

18 “(D) The standard will provide protection
19 to workers in the most cost-effective manner
20 and minimize employment loss due to the
21 standard in the affected industries and sectors
22 of industries.

23 “(E) Whenever practicable, the standard
24 shall be expressed in terms of objective criteria
25 and of the performance desired.”.

1 (b) STANDARD PRIORITIES.—The second sentence of
2 section 6(g) (29 U.S.C. 655(g)) is amended to read as
3 follows: “In determining the priority for establishing
4 standards dealing with toxic materials or harmful physical
5 agents, the Secretary shall consider the number of workers
6 exposed to the substance, the nature and severity of poten-
7 tial impairment, and the likelihood of such impairment
8 based upon such information as the Secretary shall obtain
9 from the Environmental Protection Agency, the Depart-
10 ment of Health and Human Services, and other appro-
11 priate sources.”.

12 (d) PROCEDURE.—Section 6(b)(1) (29 U.S.C.
13 655(b)(1)) is amended by striking out all after “Act” the
14 first time it appears and inserting in lieu thereof the fol-
15 lowing: “, the Secretary shall promulgate such rule in ac-
16 cordance with subchapter IV of chapter 5 of title 5, United
17 States Code, unless the Secretary determines on the basis
18 of the factors listed in section 583 of title 5, United States
19 Code, that such procedure would be inappropriate. The re-
20 quirements of this paragraph do not alter in any manner
21 the requirements otherwise applicable to the Secretary’s
22 action in promulgating an occupational health and safety
23 standard.”.

1 (e) REGULATORY FLEXIBILITY ANALYSIS.—Section
2 6 (29 U.S.C. 655), as amended by subsection (b), is
3 amended by adding at the end the following:

4 “(i) In promulgating any occupational safety and
5 health standard under subsection (b), the Secretary shall
6 perform a regulatory flexibility analysis described in sec-
7 tions 603 and 604 of title 5, United States Code.

8 “(j) In promulgating any occupational safety and
9 health standard under subsection (b), the Secretary shall
10 minimize the time, effort, and costs involved in the reten-
11 tion, reporting, notifying, or disclosure of information to
12 the Secretary, to third parties, or to the public to the ex-
13 tent consistent with the purpose of the standard. Compli-
14 ance with the requirement of this subsection may be in-
15 cluded in a review under subsection (f).”.

16 **SEC. 4. APPLICATION OF ACT.**

17 (a) REPORTS.—Section 4(b)(3) (29 U.S.C.
18 653(b)(3)) is amended to read as follows:

19 “(3) The Secretary shall report on an annual basis
20 to the Congress on the number and nature of the com-
21 plaints the Secretary receives which the Secretary does not
22 respond to because of paragraph (1) of this subsection.
23 The Secretary shall include in such report the Secretary’s
24 recommendation for legislation to avoid unnecessary dupli-

1 cation and to achieve coordination between this Act and
2 other Federal laws.”.

3 (b) PURPOSES.—Section 4 (29 U.S.C. 653) is amend-
4 ed by adding at the end the following:

5 “(c) In order to carry out the purposes of this Act
6 to encourage employer and employees in their efforts to
7 reduce the number of occupational safety and health haz-
8 ards—

9 “(1) an employee participation committee or
10 plan—

11 “(A) in which employees participate,

12 “(B) which exists for the purpose, in whole
13 or in part, of dealing with employees concerning
14 the safety or health of working conditions or re-
15 lated matters, and

16 “(C) which does not have, claim, or seek
17 authority to negotiate or enter into collective
18 bargaining agreements with the employer or to
19 amend existing collective bargaining agreements
20 between the employer and any labor organiza-
21 tion,

22 shall not constitute a ‘labor organization’ for pur-
23 poses of section 8(a)(2) of the National Labor Rela-
24 tions Act or a representative for purposes of sections
25 1 and 2 of the Railway Labor Act, and

1 “(2) records of safety and health inspections,
2 audits, or reviews conducted by an employer and not
3 required by this Act shall not be required to be dis-
4 closed to the Secretary except as may be necessary
5 to determine eligibility for an exemption from in-
6 spection under section 8A.”.

7 **SEC. 5. VARIANCES.**

8 Section 6(d) (29 U.S.C. 655(d)) is amended by add-
9 ing at the end the following: “No citation shall be issued
10 for a violation of an occupational safety and health stand-
11 ard, which is the subject of an application for a variance
12 and which application has been pending before the Sec-
13 retary for at least 90 days, during the period the applica-
14 tion is pending before the Secretary.”.

15 **SEC. 6. INSPECTIONS.**

16 (a) TRAINING AND AUTHORITY OF SECRETARY.—
17 Section 8 (29 U.S.C. 657) is amended by redesignating
18 subsection (g) as subsection (l) and by adding after sub-
19 section (f) the following:

20 “(g) Inspections conducted under this section shall
21 be conducted by at least one individual who has training
22 in and is knowledgeable of the industry or types of hazards
23 being inspected.

24 “(h) The Secretary shall enter into agreements with
25 other Federal agencies and with States to train inspection

1 personnel of agencies which conduct inspections of employ-
2 ers to inspect places of employment to determine if em-
3 ployee fire protection is adequate and to identify recogniz-
4 able dangerous conditions and shall establish a system for
5 referral of fire hazards and such dangerous conditions to
6 the Secretary.

7 “(i)(1) Except as provided in paragraph (2), the Sec-
8 retary shall not conduct routine inspections of, or enforce
9 any standard, rule, regulation, or order under this Act
10 with respect to, any person who is engaged in a farming
11 operation which does not maintain a temporary labor
12 camp and employs 10 or fewer employees or any employer
13 of not more than 10 employees if such employer is in-
14 cluded within a category of employers having an occupa-
15 tional injury or a lost work day case rate (determined
16 under the Standard Industrial Classification Code for
17 which such data are published) which is less than the na-
18 tional average rate as most recently published by the Sec-
19 retary acting through the Bureau of Labor Statistics
20 under section 24.

21 “(2) Paragraph (1) shall, in the case of persons who
22 are not engaged in farming operations, not prevent the
23 Secretary from—

24 “(A) providing under this Act consultations,
25 technical assistance, and educational and training

1 services and conducting under this Act surveys and
2 studies;

3 “(B) conducting inspections or investigations in
4 response to employee’s complaints, issuing citations
5 for violations of this Act found during such an in-
6 spection, and assessing a penalty for violations
7 which are not corrected within a reasonable abate-
8 ment period;

9 “(C) taking any action authorized by this Act
10 with respect to imminent dangers;

11 “(D) taking any action authorized by this Act
12 with respect to health standards;

13 “(E) taking any action authorized by this Act
14 with respect to a report of an employment accident
15 which is fatal to at least one employee or which re-
16 sults in hospitalization of at least 3 employees and
17 taking any action pursuant to an investigation of
18 such report; and

19 “(F) taking any action authorized by this Act
20 with respect to complaints of discrimination against
21 employees for exercising their rights under this
22 Act.”.

23 (b) EMPLOYEE NOTICE.—Section 8(f)(1) (29 U.S.C.
24 657(f)(1)) is amended—

1 (1) by striking out “he shall make” and insert-
2 ing in lieu thereof “the Secretary may make”,

3 (2) by striking out “determines there” in the
4 third sentence and inserting in lieu thereof “deter-
5 mines that there”, and

6 (3) by striking out “he shall notify” and insert-
7 ing in lieu thereof “or that the facts alleged in the
8 notification do not justify an exercise of the Sec-
9 retary’s inspection authority under subsection (a) for
10 any reason consistent with the standard used by the
11 Secretary to choose subjects for inspection under
12 that subsection, the Secretary shall notify”.

13 **SEC. 7. VOLUNTARY COMPLIANCE.**

14 (a) PROGRAM.—The Occupational Safety and Health
15 Act of 1970 is amended by inserting after section 8 the
16 following:

17 “VOLUNTARY COMPLIANCE

18 “SEC. 8A. (a) The Secretary shall by regulation es-
19 tablish a program to encourage voluntary employer and
20 employee efforts to provide safe and healthful working
21 conditions.

22 “(b) In establishing a program under subsection (a),
23 the Secretary shall, in accordance with subsection (c), pro-
24 vide an exemption from all safety and health inspections
25 and investigations with respect to a place of employment

1 maintained by an employer, except inspections and inves-
2 tigations conducted for the purpose of—

3 “(1) determining the cause of a workplace
4 accident which resulted in the death of one or more
5 employees or the hospitalization of 3 or more
6 employees,

7 “(2) responding to a request for an inspection
8 pursuant to subsection (f)(1), or

9 “(3) carrying out a special emphasis program
10 under section 12.

11 “(c) In order to qualify for the exemption provided
12 under subsection (b), an employer shall provide evidence
13 that—

14 “(1) the place of employment or conditions of
15 employment have, during the preceding year, been
16 reviewed or inspected under—

17 “(A) a consultation program provided by
18 recipients of grants under section 7(c)(1) or
19 23(g),

20 “(B) a certification or consultation pro-
21 gram provided by an insurance carrier or other
22 private business entity pursuant to a State pro-
23 gram, law, or regulation, or

24 “(C) a workplace consultation program
25 provided by an other person certified by the

1 Secretary for purposes of providing such con-
2 sultations and the program under subparagraph
3 (A) or (B) or this subparagraph includes means
4 of assuring that serious hazards identified in
5 the consultation are corrected within an appro-
6 priate time, or

7 “(2) the place of employment has an exemplary
8 safety record and the employer maintains a safety
9 and health program for the workplace which in-
10 cludes—

11 “(A) procedures for assessing hazards to
12 the employer’s employees which are inherent to
13 the employer’s operations or business;

14 “(B) procedures for correcting or control-
15 ling such hazards in a timely manner based
16 upon the severity of the hazard; and

17 “(C) employee participation in the pro-
18 gram which participation includes at the least—

19 “(i) regular consultation between the
20 employer and non-supervisory employees
21 regarding safety and health issues;

22 “(ii) assurances that participating
23 non-supervisory employees have training or
24 expertise on safety and health issues con-
25 sistent with their responsibilities; and

1 “(iii) opportunity for non-supervisory
2 employees to make recommendations re-
3 garding hazards in the workplace and to
4 receive responses or to implement improve-
5 ments in response to such recommenda-
6 tions.

7 “(d) The Secretary may require that an employer in
8 order to claim the exemption give certification to the Sec-
9 retary and notice to the employer’s employees of such eli-
10 gibility.”.

11 (b) DEFINITION.—Section 3 (29 U.S.C. 652) is
12 amended by adding at the end the following:

13 “(15) The term ‘exemplary safety record’
14 means such record as the Secretary shall annually
15 determine for each industry. Such record shall in-
16 clude employers which have had, in the most recent
17 reporting period, no employee death caused by occu-
18 pational injury and fewer lost workdays due to occu-
19 pational injury and illness than the average for the
20 industry of which the employer is a part.”.

21 **SEC. 8. EMPLOYER DEFENSES**

22 Section 9 (29 U.S.C. 658) is amended by adding at
23 the end the following:

24 “(d) No citation may be issued under subsection (a)
25 to an employer unless the employer knew or with the exer-

1 cise of reasonable diligence would have known of the pres-
2 ence of the alleged violation. No citation shall be issued
3 under subsection (a) to an employer for an alleged viola-
4 tion of section 5, any standard, rule, or order promulgated
5 pursuant to section 6, any other regulation promulgated
6 under this Act, or any other occupational safety and
7 health standard if such employer demonstrates that—

8 “(1) employees of such employer have been pro-
9 vided with the proper training and equipment to pre-
10 vent such a violation;

11 “(2) work rules designed to prevent such a vio-
12 lation have been established and adequately commu-
13 nicated to employees by such employer and the em-
14 ployer has taken reasonable measures to discipline
15 employees when violations of such work rules have
16 been discovered;

17 “(3) the failure of employees to observe work
18 rules led to the violation; and

19 “(4) reasonable steps have been taken by such
20 employer to discover any such violation.

21 “(e) A citation issued under subsection (a) to an em-
22 ployer who violates the requirements of any standard, rule,
23 or order promulgated pursuant to section 6 or any other
24 regulation promulgated under this Act shall be vacated if
25 such employer demonstrates that employees of such em-

1 ployer were protected by alternative methods equally or
2 more protective of the employee's safety and health than
3 those required by such standard, rule, order, or regulation
4 in the factual circumstances underlying the citation.

5 “(f) Subsections (d) and (e) shall not be construed
6 to eliminate or modify other defenses which may exist to
7 any citation.”.

8 **SEC. 9. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW**
9 **COMMISSION.**

10 (a) SECTION 10.—Section 10(c) (29 U.S.C 659(c))
11 is amended—

12 (1) in the first sentence, by striking out “fifteen
13 working days” and inserting in lieu thereof “30
14 working days”, and

15 (2) by striking out the second sentence and in-
16 serting in lieu thereof the following: “The Commis-
17 sion shall issue an order, based on de novo findings
18 of fact and de novo conclusions of law, affirming,
19 modifying, or vacating the Secretary's citation or
20 proposed penalty or directing other appropriate re-
21 lief. Such order shall become final 30 days after it
22 is issued.”.

23 (b) SECTION 11.—Section 11(a) (29 U.S.C 660(a) is
24 amended by inserting after “conclusive” at the end of the
25 sixth sentence the following: “and the Commission's con-

1 clusions with respect to questions of law shall be given
2 deference if reasonable”.

3 **SEC. 10. DISCRIMINATION.**

4 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-
5 ing out paragraphs (2) and (3) and inserting in lieu there-
6 of the following:

7 “(2) Any employee who believes that the employee
8 has been discharged or otherwise discriminated against by
9 any person in violation of paragraph (1) or who believes
10 that the employee has been discharged or discriminated
11 against because of an action taken by the employee’s em-
12 ployer in violation of section 28, may, within 60 days after
13 such violation occurs, file a complaint with the Secretary
14 alleging such discrimination. Upon receipt of such a com-
15 plaint the Secretary shall notify the person named in the
16 complaint and begin an investigation to determine if the
17 Secretary should, on behalf of such employee, request the
18 Commission to take action on the basis of such complaint.
19 The Secretary shall make such determination within 90
20 days of the filing of such complaint.

21 “(3) If within such 90 days, the Secretary does not
22 file a complaint on behalf of the complainant with the
23 Commission, such employee may file such complaint with
24 the Commission. If such a complaint is filed with the Com-
25 mission, the Commission shall provide opportunity for a

1 hearing (in accordance with section 554 of title 5, United
2 States Code, but without regard to subsection (a)(3) of
3 such section), and issue an order, based upon findings of
4 fact and conclusions of law. In such an order, the Commis-
5 sion may require a person charged with committing a vio-
6 lation of paragraph (1) to take appropriate affirmative ac-
7 tion, including rehiring or reinstatement of the employee
8 to the employee's former position with back pay and inter-
9 est. Upon completion of a proceeding on such order, the
10 Commission may award the prevailing party a reasonable
11 attorney's fee. Final orders of the Commission may be ap-
12 pealed as provided in subsection (a).

13 “(4)(A) Anytime after a complaint has been filed with
14 the Secretary alleging a violation of paragraph (1), the
15 complaining employee, the person charged with commit-
16 ting the violation (referred to in this paragraph as the ‘re-
17 spondent’), or the Secretary have the right to request that
18 the complaint be referred to the Federal Mediation and
19 Conciliation Service (referred to in this paragraph as the
20 ‘Service’) for mediation of the dispute. In lieu of receiving
21 mediation services from the Service, the parties may upon
22 mutual agreement refer the complaint to a mediator other
23 than one provided by the Service.

1 “(B) During mediation, the respondent and the com-
2 plaining party may be represented by legal counsel or
3 other representative of their choice.

4 “(C)(i) All contested proceedings shall be stayed dur-
5 ing the time for mediation and neither the Secretary or
6 the complaining party shall file a complaint pending com-
7 pletion of the mediation.

8 “(ii) The mediator shall have 60 days from the time
9 of the referral to mediate the dispute to complete the me-
10 diation. If the complaint has not been resolved within such
11 60-day period or such extension as may be agreed upon,
12 the mediation shall be deemed to be completed. The par-
13 ties may extend the mediation for an additional 60 days
14 by mutual agreement.

15 “(iii) The complaint shall be resolved through medi-
16 ation in a manner that is mutually agreeable to the par-
17 ties. Such resolution shall be binding upon the parties and
18 shall preclude resort to other legal proceedings except as
19 provided in subparagraph (E).

20 “(D)(i) Any agreement shall be kept confidential by
21 the parties to the mediation unless all parties to the medi-
22 ation agree otherwise in writing.

23 “(ii) All communications, oral or written, made in
24 connection with the mediation (including memoranda,

1 work product, transcripts, notes, or other materials) shall
2 be kept confidential by the participants to the mediation.

3 “(iii) The material referred to in clause (ii) shall not
4 be subject to disclosure through discovery or compulsory
5 process and shall not be used as evidence in any investiga-
6 tory, arbitral, judicial, administrative, or other proceeding.

7 “(E) A party to an agreement made pursuant to me-
8 diation under this paragraph may bring an action to en-
9 force the agreement in any Federal or State court of com-
10 petent jurisdiction.

11 “(F) Except as provided in subparagraph (C)(iii),
12 nothing in this paragraph shall be interpreted to effect or
13 modify whatever rights and obligations the parties may
14 have under arbitration agreements or other form of alter-
15 native dispute resolution mechanisms.”.

16 **SEC. 11. ENFORCEMENT.**

17 (a) SPECIAL CONDITIONS AND PRACTICES.—Section
18 13 (29 U.S.C. 662) is amended by striking out subsection
19 (c), by redesignating subsections (a) and (b) as sub-
20 sections (b) and (c), respectively, and by inserting before
21 subsection (b) (as so redesignated) the following:

22 “(a)(1) If the Secretary determines, on the basis of
23 an inspection or investigation under this section, that a
24 condition or practice in a place of employment is such that
25 an imminent danger to safety or health exists that could

1 reasonably be expected to cause death or serious physical
2 harm or permanent impairment of the health or functional
3 capacity of employees if not corrected immediately or be-
4 fore the imminence of such danger can be eliminated
5 through the enforcement procedures otherwise provided by
6 this Act, the Secretary may so inform the employer and
7 provide notice to the affected employees and shall request
8 that the condition or practice be corrected immediately or
9 that employees be immediately removed from exposure to
10 such danger. The notice shall be removed by the Secretary
11 from the place of employment not later than 72 hours
12 after the notice was first posted unless a court in an action
13 brought under subsection (c) requires that the notice be
14 maintained. The Secretary shall not prevent the continued
15 activity of employees whose presence is necessary to avoid,
16 correct, or remove such imminent danger or to maintain
17 the capacity of a continuous process operation to resume
18 normal operations without a cessation of operations or
19 where cessation of operations is necessary, to permit such
20 to be accomplished in a safe and orderly way.

21 “(2) No person shall discharge or in any manner dis-
22 criminate against any employee because such employee
23 has refused to perform a duty that has been identified as
24 the source of an imminent danger by a notice posted pur-
25 suant to paragraph (1).”.

1 (b) MANDATORY SPECIAL EMPHASIS.—Section 8 (29
2 U.S.C. 657), as amended by section 6, is amended by add-
3 ing at the end the following:

4 “(j)(1) The Secretary shall establish and carry out
5 a special emphasis program for identifying and correcting
6 existing or newly recognized hazards in selected industries
7 and operations and high hazard industries and operations.

8 “(2) Each special emphasis program under para-
9 graph (1) shall consist of a planned and coordinated ef-
10 fort, including outreach, education and training programs,
11 and inspections. Before beginning any such program, the
12 Secretary shall meet and discuss with representatives of
13 employers and employees in the industries affected by
14 such program the intended goals and benefits of such pro-
15 gram, the number of inspections under such program, and
16 the nature of other activities planned. To the extent prac-
17 ticable, the Secretary shall coordinate efforts with such
18 representatives. Each such program shall have a date of
19 termination and shall include methods of evaluating the
20 effectiveness of the program in reducing illness and injury
21 in the targeted industries or operations.”.

22 (c) INVESTIGATIONS OF DEATHS AND SERIOUS INCI-
23 DENTS.—Section 8 (29 U.S.C. 657), as amended by sub-
24 section (b), is amended by adding at the end the following:

1 “(k)(1) The Secretary shall investigate any work-re-
2 lated death or serious incident.

3 “(2) If a death or serious incident occurs in a place
4 of employment covered by this Act, the employer shall no-
5 tify the Secretary of the death or serious incident.

6 “(3) As used in this subsection, the term ‘serious in-
7 cident’ means an incident that results in the hospitaliza-
8 tion of 3 or more employees. The Secretary shall by regu-
9 lation define ‘hospitalization’.”.

10 (d) ENFORCEMENT AGAINST STATE AND LOCAL
11 GOVERNMENTS.—During the 3 year period beginning on
12 the date of the enactment of this Act the Secretary shall
13 not undertake any enforcement action under section 10
14 of the Occupational Safety and Health Act against a State
15 or political subdivision of a State. During such 3-year pe-
16 riod the Secretary shall work with each of the States which
17 does not have a State plan in effect under section 18 to
18 assist the States in the adoption of such a plan, including
19 a plan which applies only to the government of the State
20 or its political subdivisions. This subsection shall not af-
21 fect the Secretary’s review of State programs under sec-
22 tion 18.

23 **SEC. 12. PENALTIES.**

24 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) is
25 amended by striking out subsections (a), (b), (c), (j), and

1 (k), by redesignating subsections (d), (e), (f), (g), (h), (i),
2 and (l) as subsections (b), (c), (d), (e), (f), (g), and (h),
3 and by inserting after “17.” the following:

4 “(a)(1) Any employer who violates the requirements
5 of section 5, any standard, rule, or order promulgated pur-
6 suant to section 6, or any other regulation promulgated
7 under this Act may be assessed a civil penalty of not more
8 than \$7,000. The Commission shall have authority to as-
9 sess all civil penalties provided in this section, giving due
10 consideration to the appropriateness of the penalty with
11 respect to—

12 “(A) the size of the employer,

13 “(B) the number of employees exposed to the
14 violation,

15 “(C) the likely severity of any injuries directly
16 resulting from such violation,

17 “(D) the probability that the violation could re-
18 sult in injury or illness,

19 “(E) the employer’s good faith in correcting the
20 violation after it has been identified,

21 “(F) the extent to which employee misconduct
22 was responsible for the violation,

23 “(G) the effect of the penalty on the employer’s
24 ability to stay in business.

1 “(2)(A) In assessing under paragraph (1) a civil pen-
2 alty against a State or political subdivision, the Commis-
3 sion may reduce the civil penalty by the amount spent by
4 the State or political subdivision to abate the violation
5 with which the State or political subdivision is charged.

6 “(B) A penalty assessed under paragraph (1) shall
7 be reduced by 25 percent in any case in which the em-
8 ployer—

9 “(i) maintains a written safety and health pro-
10 gram for the worksite at which the violation for
11 which the penalty was assessed took place, or

12 “(ii) shows that the worksite at which the viola-
13 tion for which the penalty was assessed took place
14 has an exemplary safety record.

15 If the employer maintains a program described in clause
16 (i) and has the record described in clause (ii), the penalty
17 shall be reduced by 50 percent.

18 “(C) No penalty shall be assessed against an em-
19 ployer for a violation other than a violation previously
20 cited by the Secretary or a violation which creates an im-
21 minent danger or has caused death or a willful violation
22 which has caused serious injury to an employee if the
23 worksite at which the violation occurred has been reviewed
24 or inspected under a program described in section

1 8A(c)(1) during the one year period before the date of the
2 citation for such violation.”.

3 (b) SPECIAL ASSESSMENTS.—Section 17 (29 U.S.C.
4 666), as amended by subsection (a), is amended by adding
5 at the end the following:

6 “(i) The Secretary shall, by regulation, prescribe pro-
7 cedures for determining that conditions surrounding a vio-
8 lation warrant a special assessment. Such regulation shall
9 provide that all findings shall be in narrative form and
10 provide for individual review of violations for special as-
11 sessment in the following circumstances:

12 “(1) Violations causing fatalities.

13 “(2) An excessive history of serious injuries to
14 employees or a pattern of violations of this Act
15 which cause or are likely to cause death or serious
16 physical injury to employees.

17 When the Secretary determines that a special assessment
18 is appropriate, the Secretary may apply an appropriate
19 multiplier, based on the factors listed in subsection (a),
20 of not greater than 10 to the penalty determined under
21 subsection (a). In addition to any fines assessed with re-
22 spect to the violations described in paragraphs (1) and (2),
23 the Secretary may require the employer involved to estab-
24 lish a comprehensive safety and health program for the
25 worksite at which the violations occurred and provide reg-

1 ular certification to the Secretary that such employer is
2 in compliance with such program.”.

3 (c) PENALTIES.—

4 (1) CITATIONS.—Section 17 (29 U.S.C. 666),
5 as amended by subsection (b), is amended by adding
6 at the end the following:

7 “(j) Nothing in this Act shall be construed as requir-
8 ing the Secretary to issue a citation for violations of this
9 Act if the Secretary believes that the public interest will
10 be adequately served by a suitable written notice or warn-
11 ing.”.

12 (2) KNOWING VIOLATION.—Subsection (e) of
13 section 17 (29 U.S.C. 666) is amended to read as
14 follows:

15 “(e) If any employer who knowingly violates any
16 standard, rule, or order promulgated pursuant to section
17 6 or any regulation prescribed pursuant to this Act and
18 if such violation caused death to any employee, such em-
19 ployer, if such employer knew such violation would place
20 an employee in imminent danger of death and the employ-
21 er’s conduct in the circumstances manifests an extreme
22 indifference or reckless disregard of human life, shall upon
23 conviction be punished by a fine in accordance with section
24 3571 of title 18, United States Code, or by imprisonment
25 of not more than 3 years. If the conviction is for a viola-

1 tion committed after a first conviction under this sub-
2 section of such person, imprisonment shall be for not more
3 than 6 years.”.

4 (d) VICTIM’S RIGHTS.—Section 10 (29 U.S.C. 659)
5 is amended by adding at the end the following:

6 “(d)(1) The Secretary shall provide any individual
7 who is a victim of a violation of this Act with—

8 “(A) access to information respecting any inves-
9 tigation of the Secretary or hearing by the Commis-
10 sion of such violation, to citations issued for such
11 violation, to penalties imposed under this section for
12 such violation, and to settlements made respecting
13 such violation, and

14 “(B) an opportunity to meet with the Secretary
15 or a representative of the Secretary respecting such
16 violation.

17 “(2) For purposes of paragraph (1), the term ‘victim’
18 means—

19 “(A) an employee who has sustained a work-re-
20 lated injury or illness which is the subject of an in-
21 spection or investigation conducted under section 8,
22 or

23 “(B) a family member of an employee described
24 in subparagraph (A) who is killed as a result of such
25 injury or illness.”.

1 **SEC. 13. STATE PROGRAMS.**

2 Section 18(c) (29 U.S.C. 667(c)) is amended—

3 (1) in paragraph (2), by striking out “and
4 which” and inserting in lieu thereof “which” and by
5 inserting after the comma at the end the following:
6 “and which standards when applicable to the label-
7 ing, content, and hazard information for such prod-
8 ucts are identical to any requirement under a stand-
9 ard promulgated under section 6,”

10 (2) in paragraph (4), by inserting before the
11 comma the following: “at least as effective as en-
12 forcement by the Secretary”, and

13 (3) by adding after and below paragraph (8)
14 the following: “The Secretary may waive any of the
15 requirements of this subsection (other than the re-
16 quirements of paragraphs (2) and (6)) upon a re-
17 quest of a State seeking approval of a plan or an
18 amendment to an approved plan. Such a waiver shall
19 not extend for more than 3 years but may be re-
20 newed if the Secretary determines that the rate of
21 occupational fatalities, injuries, and illnesses has
22 declined in such State during the period of the
23 waiver.”.

24 **SEC. 14. NIOSH.**

25 Section 22 (29 U.S.C. 671) is repealed and the func-
26 tions and authorities provided to the National Institute

1 of Occupational Safety and Health under section 22 are
2 transferred to the Secretary of Labor. The responsibilities
3 and authorities of the Secretary of Health and Human
4 Services under sections 20, 21, and 22 are transferred to
5 the Secretary of Labor. The Secretary of Labor shall take
6 such actions as are necessary to avoid duplication of pro-
7 grams and to maximize training, education, and research
8 under the Occupational Safety and Health Act of 1970.

9 **SEC. 15. PREVENTION OF ALCOHOL AND SUBSTANCE**
10 **ABUSE.**

11 Sections 28 through 31 are repealed, sections 32, 33,
12 and 34 are redesignated as sections 29, 30, and 31, re-
13 spectively, and the following is inserted after section 27
14 (29 U.S.C. 676):

15 “ALCOHOL AND SUBSTANCE ABUSE TESTING

16 “SEC. 28. (a) Whenever there exists the reasonable
17 probability that the safety or health of any employee could
18 be endangered because of the use of alcohol or a controlled
19 substance in the workplace, the employer of such employee
20 may establish and implement an alcohol and substance
21 abuse testing program in accordance with subsection (b).

22 “(b) The Secretary shall establish standards under
23 section 6 for substance abuse and alcohol testing programs
24 established under subsection (a) as follows:

25 “(1) The substance abuse testing program shall
26 conform, to the maximum extent practicable, to sub-

1 part B of the mandatory guidelines for Federal
2 workplace drug testing programs published on April
3 11, 1988, by the Secretary of Health and Human
4 Services at 53 Federal Register 11979 and any
5 amendments adopted to such guidelines.

6 “(2) The alcohol testing program shall take the
7 form of alcohol breath analysis and shall conform, to
8 the maximum extent practicable, to any guidelines
9 developed by the Secretary of Transportation for al-
10 cohool testing of mass transit employees under the
11 Department of Transportation and Related Agencies
12 Appropriations Act, 1992.

13 “(c) This section shall not be construed to prohibit
14 an employer from requiring an employee to submit to and
15 pass an alcohol or substance abuse test before employment
16 by the employer or—

17 “(1) on a for cause basis or where the employer
18 has reasonable suspicion to believe that such em-
19 ployee is using or is under the influence of alcohol
20 or a controlled substance,

21 “(2) where such test is administered as part of
22 a scheduled medical examination,

23 “(3) in the case of an accident or incident in-
24 volving the actual or potential loss of human life,
25 bodily injury, or property damage,

1 “(4) during and for a reasonable period of time
2 (not to exceed 5 years) after the conclusion of an al-
3 cohol or substance abuse treatment program, or

4 “(5) on a random selection basis in work units,
5 locations, or facilities where alcohol and substance
6 abuse has been identified as a problem or as part of
7 a universal testing program.”.

8 **SEC. 16. SMALL BUSINESS ASSISTANCE AND TRAINING.**

9 Section 16 (29 U.S.C. 655) is amended by inserting
10 “(a)” after “16.” and by adding at the end the following:

11 “(b) The Secretary shall publish and make available
12 to employers a model injury prevention program which if
13 completed by the employer shall be deemed to meet the
14 requirement for an exemption under section 8A or a re-
15 duction in penalty under section 17(a)(2)(B).

16 “(c) The Secretary shall establish and implement a
17 program to provide technical assistance and consultative
18 services for employers and employees, either directly or by
19 grant or contract, concerning worksite safety and health
20 and compliance with this Act. Such assistance shall be
21 targeted at small employers and the most hazardous
22 industries.

23 “(d) This subsection authorizes the consultative serv-
24 ices to employers provided under cooperative agreements
25 between the States and the Occupational Safety and

1 Health Administration and described in part 1908 of title
2 39 of the Code of Federal Regulations.

3 “(e) Not less than one-fourth of the annual appro-
4 priation made to the Secretary to carry out this Act shall
5 be expended for the purposes described in this section.”.

6 **SEC. 17. EXEMPLARY PROGRAMS.**

7 (a) ESTABLISHMENT.—The Secretary of Labor shall
8 establish an award which shall periodically be made to
9 companies and other organizations which have imple-
10 mented particularly effective approaches to addressing oc-
11 cupational safety and health in the workplace, including
12 those which provide for effective employee involvement in
13 improving safety and health, and which are as a con-
14 sequence deserving of special recognition.

15 (b) USE OF AWARD.—A company or organization to
16 which an award is made under subsection (a) and which
17 agrees to help other American companies or organizations
18 improve their occupational safety and health may publicize
19 its receipt of such award and use the award in its advertis-
20 ing, but it shall be ineligible to receive another such award
21 in the same category for a period of 5 years.

22 (c) CATEGORIES IN WHICH AWARD MAY BE
23 GIVEN.—

24 (1) CATEGORIES.—Subject to paragraph (2),
25 separate awards shall be made to qualifying organi-

1 zations and companies in each of the following cat-
2 egories—

3 (A) Small businesses.

4 (B) Other companies or their subsidiaries.

5 (C) Companies which primarily perform
6 construction work.

7 (2) CHANGE IN LIST.—The Secretary of Labor
8 may at any time expand, subdivide, or otherwise
9 modify the list of categories within which awards
10 may be made as initially in effect under paragraph
11 (1) and may establish separate awards for other or-
12 ganizations and companies including units of govern-
13 ment, upon a determination that the objectives of
14 this section would be better served thereby; except
15 that any such expansion, subdivision, modification,
16 or establishment shall not be effective unless and
17 until the Secretary of Labor has submitted a de-
18 tailed description thereof to the Congress and a pe-
19 riod of 30 days has elapsed since that submission.

20 (3) Not more than two awards may be made
21 within any subcategory in any year (and no award
22 shall be made within any category or subcategory if
23 there are no qualifying enterprises in that category
24 or subcategory).

1 (d) CRITERIA FOR QUALIFICATION.—An organization
2 or company may qualify for an award under subsection
3 (a) only if it—

4 (1) applies to the Secretary of Labor in writing,
5 for the award,

6 (2) permits a rigorous evaluation of its occupa-
7 tional safety and health operations, and

8 (3) meets such requirements and specifications
9 as the Secretary of Labor determines to be appro-
10 priate to achieve the objectives of this section.

11 In applying paragraph (3) with respect to any organiza-
12 tion or company, the Secretary of Labor shall rely upon
13 an intensive evaluation of the occupational safety and
14 health operation. The examination should encompass all
15 aspects of the organization's or company's current occupa-
16 tional safety and health practice. The award shall be given
17 only to organizations and companies which have made out-
18 standing improvements in their occupational safety and
19 health practices and which demonstrate effective occupa-
20 tional safety and health practices through the training and
21 involvement of all levels of personnel.

22 (e) INFORMATION TRANSFER PROGRAM.—The Sec-
23 retary of Labor shall ensure that all program participants
24 receive the complete results of their audits as well as de-
25 tailed explanations of all suggestions for improvements.

1 The Director shall also provide information about the
2 awards and the successful quality improvement strategies
3 and programs of the award-winning participants to all
4 participants and other appropriate groups.

5 (f) FUNDING.—The Secretary of Labor is authorized
6 to seek and accept gifts from public and private sources
7 to carry out the program under this section. If additional
8 sums are needed to cover the full cost of the program,
9 the Secretary of Labor shall impose fees upon the organi-
10 zations and companies applying for the award in amounts
11 sufficient to provide such additional sums.

12 (g) REPORT.—The Secretary of Labor shall prepare
13 and submit to the President and the Congress, within 3
14 years after the date of the enactment of this section, a
15 report on the progress, findings, and conclusions of activi-
16 ties conducted pursuant to this section along with rec-
17 ommendations for possible modifications thereof.

18 **SEC. 18. ECONOMIC IMPACT ANALYSIS.**

19 The Secretary of Labor shall conduct a continuing
20 comprehensive analysis of the costs and benefits of each
21 standard in effect under section 6 of the Occupational
22 Safety and Health Act of 1970. The Secretary shall first
23 report the results of such analysis to Congress upon the
24 expiration of 2 years after the date of the enactment of
25 this Act and shall report every 2 years thereafter.



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