

Calendar No. 300

105TH CONGRESS
2^D SESSION

S. 1237

[Report No. 105-159]

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

JANUARY 27, 1998

Reported with an amendment

Calendar No. 300

105TH CONGRESS
2^D SESSION

S. 1237

[Report No. 105-159]

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1997

Mr. ENZI (for himself, Mr. GREGG, Mr. FRIST, Mr. JEFFORDS, Mr. COATS, Mr. DEWINE, Mr. HUTCHINSON, Mr. BURNS, Mr. HAGEL, Ms. COLLINS, Mr. MCCONNELL, Mr. WARNER, Mr. ALLARD, Mr. CRAIG, Mr. ROBERTS, Mr. SESSIONS, Mr. THOMAS, Mr. SMITH of Oregon, Mr. BROWNBACK, Mr. NICKLES, Mr. GRASSLEY, Mr. COCHRAN, and Mr. LOTT) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

JANUARY 27, 1998

Reported by Mr. JEFFORDS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; REFERENCE.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Safety Advancement for Employees Act of 1997” or the
4 “SAFE Act”.

5 (b) **REFERENCE.**—Whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or other provi-
9 sion of the Occupational Safety and Health Act of 1970
10 (29 U.S.C. 651 et seq.).

11 **SEC. 2. PURPOSE.**

12 Section 2(b) (29 U.S.C. 651(b)) is amended—

13 (1) in paragraph (13), by striking the period
14 and inserting “; and”; and

15 (2) by adding at the end the following:

16 “(14) by increasing the joint cooperation of em-
17 ployers, employees, and the Secretary of Labor in
18 the effort to ensure safe and healthful working con-
19 ditions for employees.”.

20 **SEC. 3. EMPLOYEE AND EMPLOYER PARTICIPATION PRO-**
21 **GRAMS.**

22 Section 4 (29 U.S.C. 653) is amended by adding at
23 the end the following:

24 “(c)(1) In order to further carry out the purpose of
25 this Act to encourage employers and employees in their
26 efforts to reduce occupational safety and health hazards,

1 employers may establish employer and employee participa-
 2 tion programs which exist for the sole purpose of address-
 3 ing safe and healthful working conditions.

4 “(2) An entity created under a program described in
 5 paragraph (1) shall not constitute a labor organization for
 6 purposes of section 8(a)(2) of the National Labor Rela-
 7 tions Act (29 U.S.C. 158(a)(2)) or a representative for
 8 purposes of sections 1 and 2 of the Railway Labor Act
 9 (45 U.S.C. 151 and 151a).

10 “(3) Nothing in this subsection shall be construed to
 11 affect employer obligations under section 8(a)(5) of the
 12 National Labor Relations Act (29 U.S.C. 158(a)(5)) to
 13 deal with a certified or recognized employee representative
 14 with respect to health and safety matters to the extent
 15 otherwise required by law.”

16 **SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COMMIT-**
 17 **TEE.**

18 Section 7 (29 U.S.C. 656) is amended by adding at
 19 the end the following:

20 “(d)(1) Not later than 6 months after the date of
 21 enactment of this subsection, the Secretary shall establish
 22 an advisory committee (pursuant to the Federal Advisory
 23 Committee Act (5 U.S.C. App.)) to carry out the duties
 24 described in paragraph (3).

25 “(2) The advisory committee shall be composed of—

1 the identification and correction of safety and health
2 hazards in the workplaces of employers.

3 “(2) ELIGIBILITY.—Each of the following indi-
4 viduals shall be eligible to be qualified under the
5 program:

6 “(A) An individual licensed by a State au-
7 thority as a physician, industrial hygienist, pro-
8 fessional engineer, safety engineer, safety pro-
9 fessional, or occupational nurse.

10 “(B) An individual who has been employed
11 as an inspector for a State plan State or as a
12 Federal occupational safety and health inspec-
13 tor for not less than a 5-year period.

14 “(C) An individual qualified in an occupa-
15 tional health or safety field by an organization
16 whose program has been accredited by a nation-
17 ally recognized private accreditation organiza-
18 tion or by the Secretary.

19 “(D) Other individuals determined to be
20 qualified by the Secretary.

21 “(3) GEOGRAPHICAL SCOPE OF CONSULTATION
22 SERVICES.—An individual qualified under the pro-
23 gram may provide consultation services in any State.

24 “(b) SAFETY AND HEALTH REGISTRY.—The Sec-
25 retary shall develop and maintain a registry that includes

1 all individuals that are qualified under the program to pro-
2 vide the consultation services described in subsection (a)
3 and shall publish and make such registry readily available
4 to the general public.

5 “(e) DISCIPLINARY ACTIONS.—

6 “(1) IN GENERAL.—The Secretary may revoke
7 the status of an individual qualified under subsection
8 (a) if the Secretary determines that the individual—

9 “(A) has failed to meet the requirements
10 of the program; or

11 “(B) has committed malfeasance, gross
12 negligence, or fraud in connection with any con-
13 sultation services provided by the qualified indi-
14 vidual.

15 “(d) CONSULTATION SERVICES.—

16 “(1) SCOPE OF CONSULTATION SERVICES.—

17 “(A) IN GENERAL.—The consultation serv-
18 ices described in subsection (a), and provided
19 by an individual qualified under the program,
20 shall include an evaluation of the workplace of
21 an employer to determine if the employer is in
22 compliance with the requirements of this Act,
23 including any regulations promulgated pursuant
24 to this Act.

1 “(B) NON-FIXED WORK SITES.—With re-
2 spect to the employees of an employer who do
3 not work at a fixed site, the consultation serv-
4 ices described in subsection (a), and provided
5 by an individual qualified under the program,
6 shall include an evaluation of the safety and
7 health program of the employer to determine if
8 the employer is in compliance with the require-
9 ments of this Act, including any regulations
10 promulgated under this Act.

11 “(2) CONSULTATION REPORT.—Not later than
12 10 business days after an individual qualified under
13 the program provides the consultation services de-
14 scribed in subsection (a) to an employer, the individ-
15 ual shall prepare and submit a written report to the
16 employer that includes an identification of any viola-
17 tions of this Act and requirements with respect to
18 corrective measures the employer needs to carry out
19 in order for the workplace of the employer to be in
20 compliance with the requirements of this Act.

21 “(3) REINSPECTION.—Not later than 30 days
22 after an individual qualified under the program sub-
23 mits a report to an employer under paragraph (2),
24 or on a date agreed on by the individual and the em-
25 ployer, the individual shall reinspect the workplace

1 of the employer to verify that any occupational safe-
2 ty or health violations identified in the report have
3 been corrected and the workplace of the employer is
4 in compliance with this Act. If, after such reinspec-
5 tion, the individual determines that the workplace is
6 in compliance with the requirements of this Act, the
7 individual shall provide the employer a declaration
8 of compliance.

9 “(4) GUIDELINES.—The Secretary, in consulta-
10 tion with an advisory committee established in sec-
11 tion 7(d), shall develop model guidelines for use in
12 evaluating a workplace under paragraph (1).

13 “(e) ACCESS TO RECORDS.—Any records relating to
14 consultation services (as described in subsection (a)) pro-
15 vided by an individual qualified under the program, or
16 records, reports, or other information prepared in connec-
17 tion with safety and health inspections, audits, or reviews
18 conducted by or for an employer and not required under
19 this Act, shall not be admissible in a court of law or ad-
20 ministrative proceeding against the employer except that
21 such records may be used as evidence for purposes of a
22 disciplinary action under subsection (c).

23 “(f) EXEMPTION.—

24 “(1) IN GENERAL.—If an employer enters into
25 a contract with an individual qualified under the

1 program, to provide consultation services described
 2 in subsection (a), and receives a declaration of com-
 3 pliance under subsection (d)(3), the employer shall
 4 be exempt from the assessment of any civil penalty
 5 under section 17 for a period of 2 years after the
 6 date the employer receives the declaration.

7 “(2) EXCEPTIONS.—Paragraph (1) shall not
 8 apply—

9 “(A) if the employer involved has not made
 10 a good faith effort to remain in compliance as
 11 required under the declaration of compliance; or

12 “(B) to the extent that there has been a
 13 fundamental change in the hazards of the work-
 14 place.

15 “(g) DEFINITION.—In this section, the term ‘pro-
 16 gram’ means the program established by the Secretary
 17 under subsection (a).”.

18 **SEC. 6. INDEPENDENT SCIENTIFIC PEER REVIEW.**

19 Section 6(b) (29 U.S.C. 655(b)(1)) is amended—

20 (1) by striking: “(4) Within” and inserting:

21 “(4)(A) Within”; and

22 (2) by adding at the end the following:

23 “(B)(i) Prior to issuing a final standard under this
 24 paragraph, the Secretary shall submit the draft final
 25 standard and a copy of the administrative record to the

1 National Academy of Sciences for review in accordance
2 with clause (ii).

3 “(ii)(I) The National Academy of Sciences shall ap-
4 point an independent Scientific Review Committee.

5 “(II) The Scientific Review Committee shall conduct
6 an independent review of the draft final standard and the
7 scientific literature and make written recommendations
8 with respect to the draft final standard to the Secretary,
9 including recommendations relating to the appropriateness
10 and adequacy of the scientific data, scientific methodology,
11 and scientific conclusions, adopted by the Secretary.

12 “(III) If the Secretary decides to modify the draft
13 final standard in response to the recommendations pro-
14 vided by the Scientific Review Committee, the Scientific
15 Review Committee shall be given an opportunity to review
16 and comment on the modifications before the final stand-
17 ard is issued.

18 “(IV) The recommendations of the Scientific Review
19 Committee shall be published with the final standard in
20 the Federal Register.”.

1 **SEC. 7. CONTINUING EDUCATION AND PROFESSIONAL CER-**
 2 **TIFICATION FOR CERTAIN OCCUPATIONAL**
 3 **SAFETY AND HEALTH ADMINISTRATION PER-**
 4 **SONNEL.**

5 Section 8 (29 U.S.C. 657) is amended by adding at
 6 the end the following:

7 “(h) Any Federal employee responsible for enforcing
 8 this Act shall (not later than 2 years after the date of
 9 enactment of this subsection or 2 years after the initial
 10 employment of the employee) meet the eligibility require-
 11 ments prescribed under subsection (a)(2) of section 8A.

12 “(i) The Secretary shall ensure that any Federal em-
 13 ployee responsible for enforcing this Act who carries out
 14 inspections or investigations under this section, receive
 15 professional education and training at least every 5 years
 16 as prescribed by the Secretary.”.

17 **SEC. 8. INSPECTION PROCEDURES AND QUOTAS.**

18 (a) IN GENERAL.—Section 8(f) (29 U.S.C. 657(f))
 19 is amended—

20 (1) in paragraph (1)—

21 (A) in the second sentence, by inserting be-
 22 fore “and a copy” the following: “and shall
 23 state whether the alleged violation has been
 24 brought to the attention of the employer and if
 25 so, whether the employer has refused to take
 26 any action to correct the alleged violation.”;

1 (B) by inserting after the third sentence
2 the following: “The inspection shall be con-
3 ducted for the limited purpose of determining
4 whether the violation exists. During such an in-
5 spection, the Secretary may take appropriate
6 actions with respect to health and safety viola-
7 tions that are not within the scope of the in-
8 spection and that are observed by the Secretary
9 or an authorized representative of the Secretary
10 during the inspection.”; and

11 (C) by inserting before the last period the
12 following: “; and, upon request by the employee
13 or employee representative, shall provide a writ-
14 ten statement of the reasons for the determina-
15 tion of the Secretary”; and

16 (2) by adding at the end thereof the following:

17 ~~“(3) The Secretary or an authorized representative~~
18 of the Secretary may, as a method of investigating an al-
19 leged violation or danger under this subsection, attempt,
20 if feasible, to contact an employer by telephone, facsimile,
21 or other appropriate methods to determine whether—

22 “(A) the employer has taken corrective actions
23 with respect to the alleged violation or danger; or

24 “(B) there are reasonable grounds to believe
25 that a hazard exists.

1 “(4) The Secretary is not required to conduct an in-
 2 spection under this subsection if the Secretary determines
 3 that a request for an inspection was made for reasons
 4 other than the safety and health of the employees of an
 5 employer or that the employees of an employer are not
 6 at risk.”.

7 (b) QUOTAS.—Section 9 (29 U.S.C. 658) is amended
 8 by adding at the end the following:

9 “(d) The Secretary shall not establish for any em-
 10 ployee within the Occupational Safety and Health Admin-
 11 istration (including any regional director, area director,
 12 supervisor, or inspector) a quota with respect to the num-
 13 ber of inspections conducted, the number of citations
 14 issued, or the amount of penalties collected, in accordance
 15 with this Act.

16 “(e) Not later than 12 months after the date of en-
 17 actment of this subsection and annually thereafter, the
 18 Secretary shall report on the number of employers that
 19 are inspected under this Act and determined to be in com-
 20 pliance with the requirements prescribed under this Act.”.

21 **SEC. 9. PERSONAL RESPONSIBILITIES.**

22 (a) THE USE OF ALTERNATIVE METHODS AS AN AF-
 23 FIRMATIVE DEFENSE.—Section 9 (29 U.S.C. 658), as
 24 amended by section 8, is further amended by adding at
 25 the end the following:

1 ~~“(f)(1) No citation may be issued under subsection~~
2 ~~(a) to an employer unless the employer knew, or with the~~
3 ~~exercise of reasonable diligence, would have known, of the~~
4 ~~presence of an alleged violation.~~

5 ~~“(2) No citation shall be issued under subsection (a)~~
6 ~~to an employer for an alleged violation of section 5, any~~
7 ~~standard, rule, or order promulgated pursuant to section~~
8 ~~6, any other regulation promulgated under this Act, or~~
9 ~~any other occupational safety and health standard, if the~~
10 ~~employer demonstrates that—~~

11 ~~“(A) the employees of the employer have been~~
12 ~~provided with the proper training and equipment to~~
13 ~~prevent such a violation;~~

14 ~~“(B) work rules designed to prevent such a vio-~~
15 ~~lation have been established and adequately commu-~~
16 ~~nicated to the employees by the employer and the~~
17 ~~employer has taken reasonable measures to dis-~~
18 ~~cipline employees when violations of the work rules~~
19 ~~have been discovered;~~

20 ~~“(C) the failure of employees to observe work~~
21 ~~rules led to the violation; and~~

22 ~~“(D) reasonable measures have been taken by~~
23 ~~the employer to discover any such violation.~~

24 ~~“(g) A citation issued under subsection (a) to an em-~~
25 ~~ployer who violates section 5, any standard, rule, or order~~

1 promulgated pursuant to section 6, or any other regulation
2 promulgated under this Act shall be vacated if such em-
3 ployer demonstrates that the employees of such employer
4 were protected by alternative methods that are equally or
5 more protective of the safety and health of the employees
6 than the methods required by such standard, rule, order,
7 or regulation in the factual circumstances underlying the
8 citation.

9 “(h) Subsections (f) and (g) shall not be construed
10 to eliminate or modify other defenses that may exist to
11 any citation.”.

12 (b) EMPLOYEE RESPONSIBILITY.—The Occupational
13 Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)
14 is amended by inserting after section 10 the following:

15 **“SEC. 10A. EMPLOYEE RESPONSIBILITY.**

16 “(a) IN GENERAL.—Notwithstanding any other pro-
17 vision of this Act, an employee who, with respect to per-
18 sonal protective equipment, willfully violates any require-
19 ment of section 5 or any standard, rule, or order promul-
20 gated pursuant to section 6, or any regulation prescribed
21 pursuant to this Act, may be assessed a civil penalty, as
22 determined by the Secretary, for each violation.

23 “(b) CITATIONS.—If, upon inspection and investiga-
24 tion, the Secretary or the authorized representative of the
25 Secretary believes that an employee of an employer has,

1 with respect to personal protective equipment, violated any
2 requirement of section 5 or any standard, rule, or order
3 promulgated pursuant to section 6, or any regulation pre-
4 scribed pursuant to this Act, the Secretary shall within
5 60 days issue a citation to the employee. Each citation
6 shall be in writing and shall describe with particularity
7 the nature of the violation, including a reference to the
8 provision of this Act, standard, rule, regulation, or order
9 alleged to have been violated. No citation may be issued
10 under this section after the expiration of 6 months follow-
11 ing the occurrence of any violation.

12 “(e) NOTIFICATION.—The Secretary shall notify the
13 employee by certified mail of the citation and proposed
14 penalty and that the employee has 15 working days within
15 which to notify the Secretary that the employee wishes to
16 contest the citation or penalty. If no notice is filed by the
17 employee within 15 working days, the citation and the
18 penalty, as proposed, shall be deemed a final order of the
19 Commission and not subject to review by any court or
20 agency.

21 “(d) CONTESTING OF CITATION.—If the employee
22 notifies the Secretary that the employee intends to contest
23 the citation or proposed penalty, the Secretary shall imme-
24 diately advise the Commission of such notification, and the
25 Commission shall afford an opportunity for a hearing (in

1 accordance section 554 of title 5, United States Code).
 2 The Commission shall after the hearing issue an order,
 3 based on findings of fact, affirming, modifying, or
 4 vacating the Secretary's citation or proposed penalty, or
 5 directing other appropriate relief. Such order shall become
 6 final 30 days after issuance of the order.”.

7 **SEC. 10. REDUCED PENALTIES FOR PAPERWORK VIOLA-**
 8 **TIONS.**

9 Section 17 (29 U.S.C. 666) is amended by striking
 10 subsection (i) and inserting the following:

11 “(i) Any employer who violates any of the posting or
 12 paperwork requirements, other than fraudulent reporting
 13 requirement deficiencies, prescribed under this Act shall
 14 not be assessed a civil penalty for such a violation unless
 15 the Secretary determines that the employer has violated
 16 subsection (a) or (d) with respect to the posting or paper-
 17 work requirements.”.

18 **SEC. 11. REVIEW BY THE COMMISSION.**

19 Section 17 (29 U.S.C. 666) is amended by striking
 20 subsection (j) and inserting the following:

21 “(j) The Commission shall have authority to assess
 22 all civil penalties under this section. In assessing a penalty
 23 under this section for a violation, the Commission shall
 24 give due consideration to the appropriateness of the pen-
 25 alty with respect to—

1 “(1) the size of an employer;

2 “(2) the number of employees exposed to the
3 violation;

4 “(3) the likely severity of any injuries directly
5 resulting from the violation;

6 “(4) the probability that the violation could re-
7 sult in injury or illness;

8 “(5) the good faith of an employer in correcting
9 the violation after the violation has been identified;

10 “(6) the history of previous violations by an em-
11 ployer; and

12 “(7) whether the violation is the sole result of
13 the failure of an employer to meet a requirement
14 under this Act, or prescribed by regulation, with re-
15 spect to the posting of notices, the preparation or
16 maintenance of occupational safety and health
17 records, or the preparation, maintenance, or submis-
18 sion of any written information.”.

19 **SEC. 12. TECHNICAL ASSISTANCE PROGRAM.**

20 (a) IN GENERAL.—Section 21(e) (29 U.S.C. 670(e))
21 is amended—

22 (1) by striking “(e) The” and inserting “(e)(1)
23 The”;

24 (2) by striking “(1) provide” and inserting “(A)
25 provide”;

1 ~~(3)~~ by striking “~~(2)~~ consult” and inserting “(B)
2 consult”; and

3 ~~(4)~~ by adding at the end the following:

4 “~~(2)~~(A) The Secretary shall, through the authority
5 granted under section 7(e) and paragraph (1), enter into
6 cooperative agreements with States for the provision of
7 consultation services by such States to employers concern-
8 ing the provision of safe and healthful working conditions.

9 “~~(B)~~(i) Except as provided in clause (ii), the Sec-
10 retary shall reimburse a State that enters into a coopera-
11 tive agreement under subparagraph (A) in an amount that
12 equals 90 percent of the costs incurred by the State for
13 the provision of consultation services under such agree-
14 ment.

15 “~~(ii)~~ A State shall be reimbursed by the Secretary
16 for 90 percent of the costs incurred by the State for the
17 provision of—

18 “~~(I)~~ training approved by the Secretary for
19 State personnel operating under a cooperative agree-
20 ment; and

21 “~~(II)~~ specified out-of-State travel expenses in-
22 curred by such personnel.

23 “~~(iii)~~ A reimbursement paid to a State under this
24 subparagraph shall be limited to costs incurred by such

1 State for the provision of consultation services under this
2 paragraph and the costs described in clause (ii).

3 ~~“(C) Notwithstanding any other provisions of law,~~
4 ~~not less than 15 percent of the total amount of funds ap-~~
5 ~~propriated for the Occupational Safety and Health Admin-~~
6 ~~istration for a fiscal year shall be used for education, con-~~
7 ~~sultation, and outreach efforts.”.~~

8 (b) ~~PILOT PROGRAM.—Section 21 (29 U.S.C. 670)~~
9 ~~is amended by adding at the end the following:~~

10 ~~“(d)(1) Not later than 90 days after the date of en-~~
11 ~~actment of this subsection, the Secretary shall establish~~
12 ~~and carry out a pilot program in 3 States to provide expe-~~
13 ~~ditated consultation services, with respect to the provision~~
14 ~~of safe and healthful working conditions, to employers that~~
15 ~~are small businesses (as the term is defined by the Admin-~~
16 ~~istrator of the Small Business Administration). The Sec-~~
17 ~~retary shall carry out the program for a period not to ex-~~
18 ~~ceed 2 years.~~

19 ~~“(2) The Secretary shall provide consultation services~~
20 ~~under paragraph (1) not later than 4 weeks after the date~~
21 ~~on which the Secretary receives a request from an em-~~
22 ~~ployer.~~

23 ~~“(3) The Secretary may impose a nominal fee to an~~
24 ~~employer requesting consultation services under para-~~
25 ~~graph (1). The fee shall be in an amount determined by~~

1 the Secretary. Employers paying a fee shall receive prior-
2 ity consultation services by the Secretary.

3 “(4) In lieu of issuing a citation under section 9 to
4 an employer for a violation found by the Secretary during
5 a consultation under paragraph (1), the Secretary shall
6 permit the employer to carry out corrective measures to
7 correct the conditions causing the violation. The Secretary
8 shall conduct not more than 2 visits to the workplace of
9 the employer to determine if the employer has carried out
10 the corrective measures. The Secretary shall issue a cita-
11 tion as prescribed under section 5 if, after such visits, the
12 employer has failed to carry out the corrective measures.

13 “(5) Not later than 90 days after the termination of
14 the program under paragraph (1), the Secretary shall pre-
15 pare and submit a report to the appropriate committees
16 of Congress that contains an evaluation of the implemen-
17 tation of the pilot program.”.

18 **SEC. 13. VOLUNTARY PROTECTION PROGRAMS.**

19 (a) COOPERATIVE AGREEMENTS.—The Secretary of
20 Labor shall establish cooperative agreements with employ-
21 ers to encourage the establishment of comprehensive safe-
22 ty and health management systems that include—

23 (1) requirements for systematic assessment of
24 hazards;

1 (2) comprehensive hazard prevention, mitiga-
2 tion, and control programs;

3 (3) active and meaningful management and em-
4 ployee participation in the voluntary program de-
5 scribed in subsection (b); and

6 (4) employee safety and health training.

7 (b) VOLUNTARY PROTECTION PROGRAM.—

8 (1) IN GENERAL.—The Secretary of Labor shall
9 establish and carry out a voluntary protection pro-
10 gram (consistent with subsection (a)) to encourage
11 and recognize the achievement of excellence in both
12 the technical and managerial protection of employees
13 from occupational hazards. The Secretary of Labor
14 shall encourage small businesses (as the term is de-
15 fined by the Administrator of the Small Business
16 Administration) to participate in the voluntary pro-
17 tection program by carrying out outreach and assist-
18 ance initiatives and developing program require-
19 ments that address the needs of small businesses.

20 (2) PROGRAM REQUIREMENT.—The voluntary
21 protection program shall include the following:

22 (A) APPLICATION.—Employers who volun-
23 teer under the program shall be required to
24 submit an application to the Secretary of Labor
25 demonstrating that the worksite with respect to

1 which the application is made meets such re-
2 quirements as the Secretary of Labor may re-
3 quire for participation in the program.

4 (B) ~~ON~~SITE EVALUATIONS.—There shall
5 be onsite evaluations by representatives of the
6 Secretary of Labor to ensure a high level of
7 protection of employees. The onsite visits shall
8 not result in enforcement of citations under the
9 Occupational Safety and Health Act of 1970
10 (29 U.S.C. 651 et seq.).

11 (C) ~~IN~~FORMATION.—Employers who are
12 approved by the Secretary of Labor for partici-
13 pation in the program shall assure the Sec-
14 retary of Labor that information about the
15 safety and health program of the employers
16 shall be made readily available to the Secretary
17 of Labor to share with employees.

18 (D) ~~REE~~EVALUATIONS.—Periodic reevalua-
19 tions by the Secretary of Labor of the employ-
20 ers shall be required for continued participation
21 in the program.

22 (3) ~~EX~~EMPTIONS.—A site with respect to which
23 a program has been approved shall, during partici-
24 pation in the program be exempt from inspections or
25 investigations and certain paperwork requirements

1 to be determined by the Secretary of Labor, except
 2 that this paragraph shall not apply to inspections or
 3 investigations arising from employee complaints, fa-
 4 talities, catastrophes, or significant toxic releases.

5 **SEC. 14. PREVENTION OF ALCOHOL AND SUBSTANCE**
 6 **ABUSE.**

7 The Occupational Safety and Health Act of 1970 (29
 8 U.S.C. 651 et seq.) is amended—

9 (1) by striking sections 29, 30, and 31;

10 (2) by redesignating sections 32, 33, and 34 as
 11 sections 30, 31, and 32, respectively; and

12 (3) by inserting after section 28 (29 U.S.C.
 13 676) the following:

14 **“SEC. 29. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

15 **“(a) PROGRAM PURPOSE.**—In order to secure a safe
 16 workplace, employers may establish and carry out an alco-
 17 hol and substance abuse testing program in accordance
 18 with subsection (b).

19 **“(b) FEDERAL GUIDELINES.**—An alcohol and sub-
 20 stance abuse testing program described in subsection (a)
 21 shall meet the following requirements:

22 **“(1) SUBSTANCE ABUSE.**—A substance abuse
 23 testing program shall permit the use of an onsite or
 24 offsite urine screening or other recognized screening
 25 methods, so long as the confirmation tests are per-

1 formed in accordance with the mandatory guidelines
2 for Federal workplace testing programs published by
3 the Secretary of Health and Human Services on
4 April 11, 1988, at section 11979 of title 53, Code
5 of Federal Regulations (including any amendments
6 to such guidelines), in a lab that is subject to the
7 requirements of subpart B of such mandatory guide-
8 lines.

9 “(2) ALCOHOL.—The alcohol testing component
10 of the program shall take the form of alcohol breath
11 analysis and shall conform to any guidelines devel-
12 oped by the Secretary of Transportation for alcohol
13 testing of mass transit employees under the Depart-
14 ment of Transportation and Related Agencies Ap-
15 propriations Act, 1992.

16 “(c) TEST REQUIREMENTS.—This section shall not
17 be construed to prohibit an employer from requiring—

18 “(1) an applicant for employment to submit to
19 and pass an alcohol or substance abuse test before
20 employment by the employer; or

21 “(2) an employee, including managerial person-
22 nel, to submit to and pass an alcohol or substance
23 abuse test—

24 “(A) on a for-cause basis or where the em-
25 ployer has reasonable suspicion to believe that

1 such employee is using or is under the influence
2 of alcohol or a controlled substance;

3 “(B) where such test is administered as
4 part of a scheduled medical examination;

5 “(C) in the case of an accident or incident,
6 involving the actual or potential loss of human
7 life, bodily injury, or property damage;

8 “(D) during the participation of an em-
9 ployee in an alcohol or substance abuse treat-
10 ment program, and for a reasonable period of
11 time (not to exceed 5 years) after the conclu-
12 sion of such program; or

13 “(E) on a random selection basis in work
14 units, locations, or facilities.

15 “(d) CONSTRUCTION.—Nothing in this section shall
16 be construed to require an employer to establish an alcohol
17 and substance abuse testing program for applicants or em-
18 ployees or make employment decisions based on such test
19 results.

20 “(e) PREEMPTION.—The provisions of this section
21 shall preempt any provision of State law to the extent that
22 such State law is inconsistent with this section.

23 “(f) INVESTIGATIONS.—The Secretary is authorized
24 to conduct testing of employees (including managerial per-
25 sonnel) of an employer for use of alcohol or controlled sub-

1 stances during any investigations of a work-related fatality
2 or serious injury.”.

3 **SEC. 15. CONSULTATION ALTERNATIVES.**

4 Subsection (a) of section 9 (29 U.S.C. 658(a)) is
5 amended to read as follows:

6 “(a)(1) Nothing in this Act shall be construed as pro-
7 hibiting the Secretary or the authorized representative of
8 the Secretary from providing technical or compliance as-
9 sistance to an employer in correcting a violation discovered
10 during an inspection or investigation under this Act with-
11 out issuing a citation.

12 “(2) Except as provided in paragraph (3), if, upon
13 an inspection or investigation, the Secretary or an author-
14 ized representative of the Secretary believes that an em-
15 ployer has violated a requirement of section 5, of any regu-
16 lation, rule, or order promulgated pursuant to section 6,
17 or of any regulations prescribed pursuant to this Act, the
18 Secretary may with reasonable promptness issue a citation
19 to the employer. Each citation shall be in writing and shall
20 describe with particularity the nature of a violation, in-
21 cluding a reference to the provision of the Act, regulation,
22 rule, or order alleged to have been violated. The citation
23 shall fix a reasonable time for the abatement of the viola-
24 tion.

1 ~~“(3) The Secretary or the authorized representative~~
 2 ~~of the Secretary—~~

3 ~~“(A) may issue a warning in lieu of a citation~~
 4 ~~with respect to a violation that has no significant re-~~
 5 ~~lationship to employee safety or health; and~~

6 ~~“(B) may issue a warning in lieu of a citation~~
 7 ~~in cases in which an employer in good faith acts~~
 8 ~~promptly to abate a violation if the violation is not~~
 9 ~~a willful or repeated violation.”.~~

10 **SECTION 1. SHORT TITLE; REFERENCE.**

11 (a) *SHORT TITLE.*—*This Act may be cited as the*
 12 *“Safety Advancement for Employees Act of 1997” or the*
 13 *“SAFE Act”.*

14 (b) *REFERENCE.*—*Whenever in this Act an amend-*
 15 *ment or repeal is expressed in terms of an amendment to,*
 16 *or repeal of, a section or other provision, the reference shall*
 17 *be considered to be made to a section or other provision*
 18 *of the Occupational Safety and Health Act of 1970 (29*
 19 *U.S.C. 651 et seq.).*

20 **SEC. 2. PURPOSE.**

21 *Section 2(b) (29 U.S.C. 651(b)) is amended—*

22 (1) *in paragraph (13), by striking the period*
 23 *and inserting “; and”;* and

24 (2) *by adding at the end the following:*

1 *respect to health and safety matters to the extent otherwise*
 2 *required by law.”.*

3 **SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COMMIT-**

4 **TEE.**

5 *Section 7 (29 U.S.C. 656) is amended by adding at*
 6 *the end the following:*

7 *“(d)(1) Not later than 3 months after the date of enact-*
 8 *ment of this subsection, the Secretary shall establish an ad-*
 9 *visory committee (pursuant to the Federal Advisory Com-*
 10 *mittee Act (5 U.S.C. App)) to carry out the duties described*
 11 *in paragraph (3).*

12 *“(2) The advisory committee shall be composed of—*

13 *“(A) 3 members who are employees;*

14 *“(B) 3 members who are employers;*

15 *“(C) 2 members who are members of the general*
 16 *public; and*

17 *“(D) 1 member who is a State official from a*
 18 *State plan State.*

19 *Each member of the advisory committee shall have expertise*
 20 *in workplace safety and health as demonstrated by the edu-*
 21 *cational background of the member.*

22 *“(3) The advisory committee shall advise and make*
 23 *recommendations to the Secretary with respect to the estab-*
 24 *lishment and implementation of a consultation services pro-*
 25 *gram under section 8A.”.*

1 **SEC. 5. THIRD PARTY CONSULTATION SERVICES PROGRAM.**

2 (a) *PROGRAM.*—*The Act (29 U.S.C. 651 et seq.) is*
 3 *amended by inserting after section 8 the following:*

4 **“SEC. 8A. THIRD PARTY CONSULTATION SERVICES PRO-**
 5 **GRAM.**

6 “(a) *ESTABLISHMENT OF PROGRAM.*—

7 “(1) *IN GENERAL.*—*Not later than 18 months*
 8 *after the date of enactment of this section, the Sec-*
 9 *retary shall establish and implement, by regulation, a*
 10 *program that qualifies individuals to provide con-*
 11 *sultation services to employers to assist employers in*
 12 *the identification and correction of safety and health*
 13 *hazards in the workplaces of employers.*

14 “(2) *ELIGIBILITY.*—*Each of the following indi-*
 15 *viduals shall be eligible to be qualified under the pro-*
 16 *gram:*

17 “(A) *An individual licensed by a State au-*
 18 *thority as a physician, industrial hygienist, pro-*
 19 *fessional engineer, safety engineer, safety profes-*
 20 *sional, or registered nurse.*

21 “(B) *An individual who has been employed*
 22 *as an inspector for a State plan State or as a*
 23 *Federal occupational safety and health inspector*
 24 *for not less than a 5-year period.*

25 “(C) *An individual qualified in an occupa-*
 26 *tional health or safety field by an organization*

1 *whose program has been accredited by a nation-*
 2 *ally recognized private accreditation organiza-*
 3 *tion or by the Secretary.*

4 “(D) *An individual who has not less than*
 5 *10 years expertise in workplace safety and*
 6 *health.*

7 “(E) *Other individuals determined to be*
 8 *qualified by the Secretary.*

9 “(3) *GEOGRAPHICAL SCOPE OF CONSULTATION*
 10 *SERVICES.—An individual qualified under the pro-*
 11 *gram may provide consultation services in any State.*

12 “(b) *SAFETY AND HEALTH REGISTRY.—The Secretary*
 13 *shall develop and maintain a registry that includes all in-*
 14 *dividuals that are qualified under the program to provide*
 15 *the consultation services described in subsection (a) and*
 16 *shall publish and make such registry readily available to*
 17 *the general public.*

18 “(c) *DISCIPLINARY ACTIONS.—*

19 “(1) *IN GENERAL.—The Secretary may revoke*
 20 *the status of an individual qualified under subsection*
 21 *(a) if the Secretary determines that the individual—*

22 “(A) *has failed to meet the requirements of*
 23 *the program; or*

24 “(B) *has committed malfeasance, gross neg-*
 25 *ligence, or fraud in connection with any con-*

1 *sultation services provided by the qualified indi-*
2 *vidual.*

3 “(d) *CONSULTATION SERVICES.*—

4 “(1) *SCOPE OF CONSULTATION SERVICES.*—

5 “(A) *IN GENERAL.*—*The consultation serv-*
6 *ices described in subsection (a), and provided by*
7 *an individual qualified under the program, shall*
8 *include an evaluation of the workplace of an em-*
9 *ployer to identify any violations of this Act and*
10 *appropriate corrective measures to address the*
11 *violations that are identified.*

12 “(B) *NON-FIXED WORK SITES.*—*With re-*
13 *spect to the employees of an employer who do not*
14 *work at a fixed site, the consultation services de-*
15 *scribed in subsection (a), and provided by an in-*
16 *dividual qualified under the program, shall in-*
17 *clude an evaluation of the safety and health pro-*
18 *gram of the employer to identify any violations*
19 *of this Act and appropriate corrective measures*
20 *to address the violations that are identified.*

21 “(2) *CONSULTATION REPORT.*—*Not later than 30*
22 *business days after an individual qualified under the*
23 *program completes the evaluations described in this*
24 *subsection, or on a date agreed on by the individual*
25 *and the employer, the individual shall prepare and*

1 submit a written report to the employer that includes
2 an identification of any violations of this Act and ap-
3 propriate corrective measures to address the violations
4 that are identified.

5 “(3) *REINSPECTION.*—Not later than 90 days
6 after an individual qualified under the program sub-
7 mits a written report to an employer under para-
8 graph (2), or on a date agreed on by the individual
9 and the employer, the individual shall reinspect the
10 workplace of the employer to verify that any occupa-
11 tional safety or health violations identified in the re-
12 port have been corrected. If, after such reinspection,
13 the individual determines that the violations identi-
14 fied in the report have been corrected or are being cor-
15 rected pursuant to a written plan described in this
16 paragraph, the individual shall provide the employer
17 a declaration of resolution for that workplace. The
18 written plan must identify the violation and the steps
19 to be taken to achieve abatement and, where nec-
20 essary, how employees will be protected from exposure
21 to the violative condition in the interim until abate-
22 ment is complete. Compliance with the written plan
23 shall be verified by progress reports or reinspection by
24 the qualified individual.

1 “(4) *GUIDELINES.*—*The Secretary, in consulta-*
2 *tion with an advisory committee established in sec-*
3 *tion 7(d), shall develop model guidelines for use in*
4 *evaluating a workplace under paragraph (1).*

5 “(e) *ACCESS TO RECORDS.*—*Any records relating to*
6 *consultation services (as described in subsection (a)) pro-*
7 *vided by an individual qualified under the program, or*
8 *records, reports, or other information prepared in connec-*
9 *tion with safety and health inspections, audits, or reviews*
10 *conducted by or for an employer and not required under*
11 *this Act, shall not be admissible in a court of law or admin-*
12 *istrative proceeding or enforcement proceeding against the*
13 *employer except that such records may be used as evidence*
14 *for purposes of a disciplinary action under subsection (c).*

15 “(f) *EXEMPTION.*—

16 “(1) *IN GENERAL.*—*If an employer utilizes an*
17 *individual qualified under the program, to provide*
18 *consultation services described in subsection (a), and*
19 *receives a declaration of resolution under subsection*
20 *(d)(3), the employer shall be exempt from the assess-*
21 *ment of any civil penalty under section 17 for the*
22 *workplace covered by the declaration of resolution for*
23 *a period of 2 years after the date the employer re-*
24 *ceives the declaration.*

1 “(2) *EXCEPTIONS.*—Paragraph (1) shall not
2 *apply—*

3 “(A) *if the employer involved has not made*
4 *a good faith effort to remain in compliance as*
5 *required under the declaration of resolution; or*

6 “(B) *to the extent that there has been a fun-*
7 *damental change in the hazards of the workplace.*

8 “(g) *DEFINITION.*—*In this section, the term ‘program’*
9 *means the program established by the Secretary under sub-*
10 *section (a).”.*

11 **SEC. 6. INDEPENDENT SCIENTIFIC PEER REVIEW.**

12 Section 6(b) (29 U.S.C. 655(b)(1)) is amended—

13 (1) *by striking: “(4) Within” and inserting:*
14 *“(4)(A) Within”; and*

15 (2) *by adding at the end the following:*

16 “(B)(i) *Prior to issuing a final standard under this*
17 *paragraph, the Secretary shall submit the draft final stand-*
18 *ard and a copy of the administrative record to the National*
19 *Academy of Sciences for review in accordance with clause*
20 *(ii).*

21 “(ii)(I) *The National Academy of Sciences shall ap-*
22 *point an independent Scientific Review Committee.*

23 “(II) *The Scientific Review Committee shall conduct*
24 *an independent review of the draft final standard and the*
25 *scientific literature and make written recommendations*

1 *with respect to the draft final standard to the Secretary,*
2 *including recommendations relating to the appropriateness*
3 *and adequacy of the scientific data, scientific methodology,*
4 *and scientific conclusions, adopted by the Secretary.*

5 “(III) *If the Secretary decides to modify the draft final*
6 *standard in response to the recommendations provided by*
7 *the Scientific Review Committee, the Scientific Review*
8 *Committee shall be given an opportunity to review and*
9 *comment on the modifications before the final standard is*
10 *issued.*

11 “(IV) *The recommendations of the Scientific Review*
12 *Committee shall be published with the final standard in the*
13 *Federal Register.*”.

14 **SEC. 7. CONTINUING EDUCATION AND PROFESSIONAL CER-**
15 **TIFICATION FOR CERTAIN OCCUPATIONAL**
16 **SAFETY AND HEALTH ADMINISTRATION PER-**
17 **SONNEL.**

18 *Section 8 (29 U.S.C. 657) is amended by adding at*
19 *the end the following:*

20 “(h) *Any Federal employee responsible for enforcing*
21 *this Act shall (not later than 2 years after the date of enact-*
22 *ment of this subsection or 2 years after the initial employ-*
23 *ment of the employee) meet the eligibility requirements pre-*
24 *scribed under subsection (a)(2) of section 8A.*

1 “(i) *The Secretary shall ensure that any Federal em-*
2 *ployee responsible for enforcing this Act who carries out in-*
3 *spections or investigations under this section, receive profes-*
4 *sional education and training at least every 5 years as pre-*
5 *scribed by the Secretary.”.*

6 **SEC. 8. INSPECTION PROCEDURES AND QUOTAS.**

7 (a) *IN GENERAL.*—Section 8(f) (29 U.S.C. 657(f)) is
8 *amended—*

9 (1) *in paragraph (1)—*

10 (A) *in the second sentence, by inserting be-*
11 *fore “and a copy” the following: “and shall state*
12 *whether the alleged violation has been brought to*
13 *the attention of the employer and if so, whether*
14 *the employer has refused to take any action to*
15 *correct the alleged violation,”;*

16 (B) *by inserting after the third sentence the*
17 *following: “The inspection shall be conducted for*
18 *the limited purpose of determining whether the*
19 *violation exists. During such an inspection, the*
20 *Secretary may take appropriate actions with re-*
21 *spect to health and safety violations that are not*
22 *within the scope of the inspection and that are*
23 *observed by the Secretary or an authorized rep-*
24 *resentative of the Secretary during the inspec-*
25 *tion.”; and*

1 (C) by inserting before the last period the
2 following: “, and, upon request by the employee
3 or employee representative, shall provide a writ-
4 ten statement of the reasons for the determina-
5 tion of the Secretary”; and

6 (2) by adding at the end thereof the following:

7 “(3) The Secretary or an authorized representative of
8 the Secretary may, as a method of investigating an alleged
9 violation or danger under this subsection, attempt, if fea-
10 sible, to contact an employer by telephone, facsimile, or
11 other appropriate methods to determine whether—

12 “(A) the employer has taken corrective actions
13 with respect to the alleged violation or danger; or

14 “(B) there are reasonable grounds to believe that
15 a hazard exists.

16 “(4) The Secretary is not required to conduct an in-
17 spection under this subsection if the Secretary determines
18 that a request for an inspection was made for reasons other
19 than the safety and health of the employees of an employer
20 or that the employees of an employer are not at risk.”.

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

23 “(d) The Secretary shall not establish for any employee
24 within the Occupational Safety and Health Administration
25 (including any regional director, area director, supervisor,

1 or inspector) a quota with respect to the number of inspec-
2 tions conducted, the number of citations issued, or the
3 amount of penalties collected, in accordance with this Act.

4 “(e) Not later than 12 months after the date of enact-
5 ment of this subsection and annually thereafter, the Sec-
6 retary shall report on the number of employers that are in-
7 spected under this Act and determined to be in compliance
8 with the requirements prescribed under this Act.”.

9 **SEC. 9. PERSONAL RESPONSIBILITIES.**

10 (a) *THE USE OF ALTERNATIVE METHODS AS AN AF-*
11 *FIRMATIVE DEFENSE.*—Section 9 (29 U.S.C. 658), as
12 amended by section 8, is further amended by adding at the
13 end the following:

14 “(f)(1) No citation may be issued under subsection (a)
15 to an employer unless the employer knew, or with the exer-
16 cise of reasonable diligence, would have known, of the pres-
17 ence of an alleged violation.

18 “(2) No citation shall be issued under subsection (a)
19 to an employer for an alleged violation of section 5, any
20 standard, rule, or order promulgated pursuant to section
21 6, any other regulation promulgated under this Act, or any
22 other occupational safety and health standard, if the em-
23 ployer demonstrates that—

1 “(A) the employees of the employer have been
2 provided with the proper training and equipment to
3 prevent such a violation;

4 “(B) work rules designed to prevent such a viola-
5 tion have been established and adequately commu-
6 nicated to the employees by the employer and the em-
7 ployer has taken reasonable measures to discipline
8 employees when violations of the work rules have been
9 discovered;

10 “(C) the failure of employees to observe work
11 rules led to the violation; and

12 “(D) reasonable measures have been taken by the
13 employer to discover any such violation.

14 “(g) A citation issued under subsection (a) to an em-
15 ployer who violates section 5, any standard, rule, or order
16 promulgated pursuant to section 6, or any other regulation
17 promulgated under this Act shall be vacated if such em-
18 ployer demonstrates that the employees of such employer
19 were protected by alternative methods that are equally or
20 more protective of the safety and health of the employees
21 than the methods required by such standard, rule, order,
22 or regulation in the factual circumstances underlying the
23 citation.

1 “(h) Subsections (f) and (g) shall not be construed to
2 eliminate or modify other defenses that may exist to any
3 citation.”.

4 (b) *EMPLOYEE RESPONSIBILITY.*—The Occupational
5 Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is
6 amended by inserting after section 10 the following:

7 **“SEC. 10A. EMPLOYEE RESPONSIBILITY.**

8 “(a) *IN GENERAL.*—Notwithstanding any other provi-
9 sion of this Act, an employee who, with respect to personal
10 protective equipment, willfully violates any requirement of
11 section 5 or any standard, rule, or order promulgated pur-
12 suant to section 6, or any regulation prescribed pursuant
13 to this Act, may be assessed a civil penalty, as determined
14 by the Secretary, for each violation.

15 “(b) *CITATIONS.*—If, upon inspection and investiga-
16 tion, the Secretary or the authorized representative of the
17 Secretary believes that an employee of an employer has,
18 with respect to personal protective equipment, violated any
19 requirement of section 5 or any standard, rule, or order
20 promulgated pursuant to section 6, or any regulation pre-
21 scribed pursuant to this Act, the Secretary shall within 60
22 days issue a citation to the employee. Each citation shall
23 be in writing and shall describe with particularity the na-
24 ture of the violation, including a reference to the provision
25 of this Act, standard, rule, regulation, or order alleged to

1 *have been violated. No citation may be issued under this*
2 *section after the expiration of 6 months following the occur-*
3 *rence of any violation.*

4 “(c) *NOTIFICATION.*—*The Secretary shall notify the*
5 *employee by certified mail of the citation and proposed pen-*
6 *alty and that the employee has 15 working days within*
7 *which to notify the Secretary that the employee wishes to*
8 *contest the citation or penalty. If no notice is filed by the*
9 *employee within 15 working days, the citation and the pen-*
10 *alty, as proposed, shall be deemed a final order of the Com-*
11 *mission and not subject to review by any court or agency.*

12 “(d) *CONTESTING OF CITATION.*—*If the employee noti-*
13 *fies the Secretary that the employee intends to contest the*
14 *citation or proposed penalty, the Secretary shall imme-*
15 *diately advise the Commission of such notification, and the*
16 *Commission shall afford an opportunity for a hearing (in*
17 *accordance section 554 of title 5, United States Code). The*
18 *Commission shall after the hearing issue an order, based*
19 *on findings of fact, affirming, modifying, or vacating the*
20 *Secretary’s citation or proposed penalty, or directing other*
21 *appropriate relief. Such order shall become final 30 days*
22 *after issuance of the order.”.*

1 **SEC. 10. REDUCED PENALTIES FOR PAPERWORK VIOLA-**
2 **TIONS.**

3 *Section 17 (29 U.S.C. 666) is amended by striking*
4 *subsection (i) and inserting the following:*

5 *“(i) Any employer who violates any of the posting or*
6 *paperwork requirements, other than fraudulent reporting*
7 *requirement deficiencies, prescribed under this Act shall not*
8 *be assessed a civil penalty for such a violation unless the*
9 *Secretary determines that the employer has violated sub-*
10 *section (a) or (d) with respect to the posting or paperwork*
11 *requirements.”.*

12 **SEC. 11. REVIEW BY THE COMMISSION.**

13 *Section 17 (29 U.S.C. 666) is amended by striking*
14 *subsection (j) and inserting the following:*

15 *“(j) The Commission shall have authority to assess all*
16 *civil penalties under this section. In assessing a penalty*
17 *under this section for a violation, the Commission shall give*
18 *due consideration to the appropriateness of the penalty with*
19 *respect to—*

20 *“(1) the size of an employer;*

21 *“(2) the number of employees exposed to the vio-*
22 *lation;*

23 *“(3) the likely severity of any injuries directly*
24 *resulting from the violation;*

25 *“(4) the probability that the violation could re-*
26 *sult in injury or illness;*

1 “(5) the good faith of an employer in correcting
2 the violation after the violation has been identified;

3 “(6) the history of previous violations by an em-
4 ployer; and

5 “(7) whether the violation is the sole result of the
6 failure of an employer to meet a requirement under
7 this Act, or prescribed by regulation, with respect to
8 the posting of notices, the preparation or maintenance
9 of occupational safety and health records, or the prep-
10 aration, maintenance, or submission of any written
11 information.”.

12 **SEC. 12. TECHNICAL ASSISTANCE PROGRAM.**

13 (a) *IN GENERAL.*—Section 21(c) (29 U.S.C. 670(c)) is
14 amended—

15 (1) by striking “(c) The” and inserting “(c)(1)
16 The”;

17 (2) by striking “(1) provide” and inserting “(A)
18 provide”;

19 (3) by striking “(2) consult” and inserting “(B)
20 consult”; and

21 (4) by adding at the end the following:

22 “(2)(A) The Secretary shall, through the authority
23 granted under section 7(c) and paragraph (1), enter into
24 cooperative agreements with States for the provision of con-

1 *sultation services by such States to employers concerning*
2 *the provision of safe and healthful working conditions.*

3 “(B)(i) *Except as provided in clause (ii), the Secretary*
4 *shall reimburse a State that enters into a cooperative agree-*
5 *ment under subparagraph (A) in an amount that equals*
6 *90 percent of the costs incurred by the State for the provi-*
7 *sion of consultation services under such agreement.*

8 “(ii) *A State shall be reimbursed by the Secretary for*
9 *90 percent of the costs incurred by the State for the provi-*
10 *sion of—*

11 “(I) *training approved by the Secretary for*
12 *State personnel operating under a cooperative agree-*
13 *ment; and*

14 “(II) *specified out-of-State travel expenses in-*
15 *curred by such personnel.*

16 “(iii) *A reimbursement paid to a State under this sub-*
17 *paragraph shall be limited to costs incurred by such State*
18 *for the provision of consultation services under this para-*
19 *graph and the costs described in clause (ii).*

20 “(C) *Notwithstanding any other provisions of law, not*
21 *less than 15 percent of the total amount of funds appro-*
22 *priated for the Occupational Safety and Health Adminis-*
23 *tration for a fiscal year shall be used for education, con-*
24 *sultation, and outreach efforts.”.*

1 (b) *PILOT PROGRAM.*—Section 21 (29 U.S.C. 670) is
2 amended by adding at the end the following:

3 “(d)(1) Not later than 90 days after the date of enact-
4 ment of this subsection, the Secretary shall establish and
5 carry out a pilot program in 3 States to provide expedited
6 consultation services, with respect to the provision of safe
7 and healthful working conditions, to employers that are
8 small businesses (as the term is defined by the Adminis-
9 trator of the Small Business Administration). The Sec-
10 retary shall carry out the program for a period not to exceed
11 2 years.

12 “(2) The Secretary shall provide consultation services
13 under paragraph (1) not later than 4 weeks after the date
14 on which the Secretary receives a request from an employer.

15 “(3) The Secretary may impose a nominal fee to an
16 employer requesting consultation services under paragraph
17 (1). The fee shall be in an amount determined by the Sec-
18 retary. Employers paying a fee shall receive priority con-
19 sultation services by the Secretary.

20 “(4) In lieu of issuing a citation under section 9 to
21 an employer for a violation found by the Secretary during
22 a consultation under paragraph (1), the Secretary shall
23 permit the employer to carry out corrective measures to cor-
24 rect the conditions causing the violation. The Secretary
25 shall conduct not more than 2 visits to the workplace of

1 *the employer to determine if the employer has carried out*
2 *the corrective measures. The Secretary shall issue a citation*
3 *as prescribed under section 5 if, after such visits, the em-*
4 *ployer has failed to carry out the corrective measures.*

5 “(5) *Not later than 90 days after the termination of*
6 *the program under paragraph (1), the Secretary shall pre-*
7 *pare and submit a report to the appropriate committees*
8 *of Congress that contains an evaluation of the implementa-*
9 *tion of the pilot program.”.*

10 **SEC. 13. VOLUNTARY PROTECTION PROGRAMS.**

11 (a) *COOPERATIVE AGREEMENTS.—The Secretary of*
12 *Labor shall establish cooperative agreements with employers*
13 *to encourage the establishment of comprehensive safety and*
14 *health management systems that include—*

15 (1) *requirements for systematic assessment of*
16 *hazards;*

17 (2) *comprehensive hazard prevention, mitigation,*
18 *and control programs;*

19 (3) *active and meaningful management and em-*
20 *ployee participation in the voluntary program de-*
21 *scribed in subsection (b); and*

22 (4) *employee safety and health training.*

23 (b) *VOLUNTARY PROTECTION PROGRAM.—*

24 (1) *IN GENERAL.—The Secretary of Labor shall*
25 *establish and carry out a voluntary protection pro-*

1 *gram (consistent with subsection (a)) to encourage*
2 *and recognize the achievement of excellence in both*
3 *the technical and managerial protection of employees*
4 *from occupational hazards. The Secretary of Labor*
5 *shall encourage small businesses (as the term is de-*
6 *finied by the Administrator of the Small Business Ad-*
7 *ministration) to participate in the voluntary protec-*
8 *tion program by carrying out outreach and assistance*
9 *initiatives and developing program requirements that*
10 *address the needs of small businesses.*

11 (2) *PROGRAM REQUIREMENT.—The voluntary*
12 *protection program shall include the following:*

13 (A) *APPLICATION.—Employers who volun-*
14 *teer under the program shall be required to sub-*
15 *mit an application to the Secretary of Labor*
16 *demonstrating that the worksite with respect to*
17 *which the application is made meets such re-*
18 *quirements as the Secretary of Labor may re-*
19 *quire for participation in the program.*

20 (B) *ONSITE EVALUATIONS.—There shall be*
21 *onsite evaluations by representatives of the Sec-*
22 *retary of Labor to ensure a high level of protec-*
23 *tion of employees. The onsite visits shall not re-*
24 *sult in enforcement of citations under the Occu-*

1 *ational Safety and Health Act of 1970 (29*
2 *U.S.C. 651 et seq.).*

3 (C) *INFORMATION.*—*Employers who are ap-*
4 *proved by the Secretary of Labor for participa-*
5 *tion in the program shall assure the Secretary of*
6 *Labor that information about the safety and*
7 *health program of the employers shall be made*
8 *readily available to the Secretary of Labor to*
9 *share with employees.*

10 (D) *REEVALUATIONS.*—*Periodic reevalua-*
11 *tions by the Secretary of Labor of the employers*
12 *shall be required for continued participation in*
13 *the program.*

14 (3) *EXEMPTIONS.*—*A site with respect to which*
15 *a program has been approved shall, during participa-*
16 *tion in the program be exempt from inspections or in-*
17 *vestigations and certain paperwork requirements to be*
18 *determined by the Secretary of Labor, except that this*
19 *paragraph shall not apply to inspections or investiga-*
20 *tions arising from employee complaints, fatalities, ca-*
21 *tastrophes, or significant toxic releases.*

1 **SEC. 14. PREVENTION OF ALCOHOL AND SUBSTANCE**
2 **ABUSE.**

3 *The Occupational Safety and Health Act of 1970 (29*
4 *U.S.C. 651 et seq.) is amended by adding at the end the*
5 *following:*

6 **“SEC. 35. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

7 *“(a) PROGRAM PURPOSE.—In order to secure a safe*
8 *workplace, employers may establish and carry out an alco-*
9 *hol and substance abuse testing program in accordance with*
10 *subsection (b).*

11 *“(b) FEDERAL GUIDELINES.—*

12 *“(1) IN GENERAL.—An alcohol and substance*
13 *abuse testing program described in subsection (a)*
14 *shall meet the following requirements:*

15 *“(A) SUBSTANCE ABUSE.—A substance*
16 *abuse testing program shall permit the use of an*
17 *onsite or offsite drug testing.*

18 *“(B) ALCOHOL.—The alcohol testing compo-*
19 *nent of the program shall take the form of alco-*
20 *hol breath analysis and shall conform to any*
21 *guidelines developed by the Secretary of Trans-*
22 *portation for alcohol testing of mass transit em-*
23 *ployees under the Department of Transportation*
24 *and Related Agencies Appropriations Act, 1992.*

25 *“(2) DEFINITION.—For purposes of this section*
26 *the term “alcohol and substance abuse testing pro-*

1 *gram” means any program under which test proce-*
2 *dures are used to take and analyze blood, breath,*
3 *hair, urine, saliva, or other body fluids or materials*
4 *for the purpose of detecting the presence or absence of*
5 *alcohol or a drug or its metabolites. In the case of*
6 *urine testing, the confirmation tests must be per-*
7 *formed in accordance with the mandatory guidelines*
8 *for Federal workplace testing programs published by*
9 *the Secretary of Health and Human Services on*
10 *April 11, 1988, at section 11979 of title 53, Code of*
11 *Federal Regulations (including any amendments to*
12 *such guidelines). Proper laboratory protocols and pro-*
13 *cedures shall be used to assure accuracy and fairness*
14 *and laboratories must be subject to the requirements*
15 *of subpart B of the mandatory guidelines, State cer-*
16 *tification, the Clinical Laboratory Improvements Act*
17 *or the College of American Pathologists.*

18 “(c) *TEST REQUIREMENTS.—This section shall not be*
19 *construed to prohibit an employer from requiring—*

20 “(1) *an applicant for employment to submit to*
21 *and pass an alcohol or substance abuse test before em-*
22 *ployment by the employer; or*

23 “(2) *an employee, including managerial person-*
24 *nel, to submit to and pass an alcohol or substance*
25 *abuse test—*

1 “(A) on a for-cause basis or where the em-
2 ployer has reasonable suspicion to believe that
3 such employee is using or is under the influence
4 of alcohol or a controlled substance;

5 “(B) where such test is administered as
6 part of a scheduled medical examination;

7 “(C) in the case of an accident or incident,
8 involving the actual or potential loss of human
9 life, bodily injury, or property damage;

10 “(D) during the participation of an em-
11 ployee in an alcohol or substance abuse treat-
12 ment program, and for a reasonable period of
13 time (not to exceed 5 years) after the conclusion
14 of such program; or

15 “(E) on a random selection basis in work
16 units, locations, or facilities.

17 “(d) CONSTRUCTION.—Nothing in this section shall be
18 construed to require an employer to establish an alcohol and
19 substance abuse testing program for applicants or employ-
20 ees or make employment decisions based on such test results.

21 “(e) PREEMPTION.—The provisions of this section
22 shall not preempt any provision of State law.

23 “(f) INVESTIGATIONS.—The Secretary is authorized to
24 conduct testing of employees (including managerial person-
25 nel) of an employer for use of alcohol or controlled sub-

1 *stances during any investigations of a work-related fatality*
2 *or serious injury.”.*

3 **SEC. 15. CONSULTATION ALTERNATIVES.**

4 *Subsection (a) of section 9 (29 U.S.C. 658(a)) is*
5 *amended to read as follows:*

6 *“(a)(1) Nothing in this Act shall be construed as pro-*
7 *hibiting the Secretary or the authorized representative of*
8 *the Secretary from providing technical or compliance as-*
9 *sistance to an employer in correcting a violation discovered*
10 *during an inspection or investigation under this Act with-*
11 *out issuing a citation.*

12 *“(2) Except as provided in paragraph (3), if, upon*
13 *an inspection or investigation, the Secretary or an author-*
14 *ized representative of the Secretary believes that an em-*
15 *ployer has violated a requirement of section 5, of any regu-*
16 *lation, rule, or order promulgated pursuant to section 6,*
17 *or of any regulations prescribed pursuant to this Act, the*
18 *Secretary may with reasonable promptness issue a citation*
19 *to the employer. Each citation shall be in writing and shall*
20 *describe with particularity the nature of a violation, in-*
21 *cluding a reference to the provision of the Act, regulation,*
22 *rule, or order alleged to have been violated. The citation*
23 *shall fix a reasonable time for the abatement of the viola-*
24 *tion.*

1 “(3) *The Secretary or the authorized representative of*
2 *the Secretary—*

3 “(A) *may issue a warning in lieu of a citation*
4 *with respect to a violation that has no significant re-*
5 *lationship to employee safety or health; and*

6 “(B) *may issue a warning in lieu of a citation*
7 *in cases in which an employer in good faith acts*
8 *promptly to abate a violation if the violation is not*
9 *a willful or repeated violation.”.*