

104TH CONGRESS  
1ST SESSION

# H. R. 1834

To amend the Occupational Safety and Health Act of 1970.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1995

Mr. BALLENGER (for himself, Mr. BOEHNER, Mr. GOODLING, Mr. BARRETT of Nebraska, Mr. BARTLETT, Mr. BONILLA, Mr. BUNNING of Kentucky, Mr. BURR, Mr. CALVERT, Mr. CANADY of Florida, Mr. CASTLE, Mr. CHAMBLISS, Mr. CHRISTENSEN, Mr. COBLE, Mr. COOLEY, Mr. CREMEANS, Mr. CUNNINGHAM, Mr. DELAY, Mr. DOOLITTLE, Mr. EMERSON, Mr. FAWELL, Mr. FOLEY, Mr. FORBES, Mr. FUNDERBURK, Mr. GRAHAM, Mr. GREENWOOD, Mr. GUNDERSON, Mr. HANCOCK, Mr. HANSEN, Mr. HASTERT, Mr. HEFLEY, Mr. HEINEMAN, Mr. HERGER, Mr. HOEKSTRA, Mr. HUTCHINSON, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON of Texas, Mr. JONES, Jr., Ms. KELLY, Mr. KLUG, Mr. KOLLENBERG, Mr. LINDER, Mr. MANZULLO, Mr. MCKEON, Mr. MCINTOSH, Ms. MEYERS of Kansas, Mr. MICA, Mrs. MYRICK, Mr. NORWOOD, Mr. PAXON, Mr. PETRI, Mrs. PRYCE, Mr. RIGGS, Mr. SALMON, Mr. SCARBOROUGH, Mr. SOUDER, Mr. STENHOLM, Mr. STUMP, Mr. TALENT, Mr. TAUZIN, Mr. TIAHRT, Mr. WALKER, Mr. WAMP, Mr. WELDON of Florida, Mr. WICKER, and Mr. ZELIFF) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

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## A BILL

To amend the Occupational Safety and Health Act of 1970.

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; TABLE OF CONTENTS; REF-**  
 2 **ERENCE.**

3 (a) SHORT TITLE.—This Act may be cited as the  
 4 “Safety and Health Improvement and Regulatory Reform  
 5 Act of 1995”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents; reference.
- Sec. 2. Standards.
- Sec. 3. Notice of violation.
- Sec. 4. Consultation, incentives for voluntary action, and technical assistance.
- Sec. 5. Removal of barriers to voluntary safety and health activities.
- Sec. 6. Inspections.
- Sec. 7. Employer defenses.
- Sec. 8. Penalties.
- Sec. 9. Review by the Commission.
- Sec. 10. NIOSH repealed.
- Sec. 11. State Workmen’s Compensation Commission repealed.
- Sec. 12. State programs.
- Sec. 13. Discrimination.
- Sec. 14. Coverage of Federal agencies.
- Sec. 15. Federal agency safety programs.
- Sec. 16. Prevention of alcohol and substance abuse.
- Sec. 17. Mine safety and health.
- Sec. 18. Recordkeeping and reporting.
- Sec. 19. Definitions.
- Sec. 20. Miscellaneous technical amendments.
- Sec. 21. Effective date.

7 (c) REFERENCE.—Except as otherwise expressly pro-  
 8 vided, whenever in this Act an amendment or repeal is  
 9 expressed in terms of an amendment to, or repeal of, a  
 10 section or other provision, the reference shall be consid-  
 11 ered to be made to a section or other provision of the Oc-  
 12 cupational Safety and Health Act of 1970.

13 **SEC. 2. STANDARDS.**

14 (a) PROMULGATION AND MODIFICATION.—Section  
 15 6(b)(1) (29 U.S.C. 655(b)(1)) is amended to read as  
 16 follows:

1           “(1) The promulgation and modification of  
2 standards under this section shall be based upon  
3 sound scientific data in the field and on such re-  
4 search, demonstrations, experiments, and such other  
5 information as may be appropriate. The Secretary  
6 shall ensure an adequate record for any standard.  
7 Each standard shall be based upon the following  
8 analyses and criteria:

9           “(A) A regulatory impact analysis pre-  
10 pared under subsection (h).

11           “(B) An assessment of the risks to workers  
12 resulting from the hazard being addressed by  
13 the standard. The assessment shall be con-  
14 tained in a risk assessment document prepared  
15 in accordance with the principles for risk as-  
16 sessment and characterization prescribed in  
17 subsection (i).

18           “(C) An identification of the benefits and  
19 costs of the standard conducted in accordance  
20 with subsection (k).

21           “(D) A determination that the standard is  
22 needed to address a significant risk of material  
23 impairment to the health or safety of employees  
24 in each industry to which it applies and will  
25 substantially reduce that risk.

1           “(E) A determination that the standard is  
2           economically and technologically feasible and  
3           practical in each industry to which it applies.

4           “(F) A determination that the incremental  
5           risk reduction or other benefits of the standard  
6           justify, and are reasonably related to, the incre-  
7           mental costs incurred in each industry to which  
8           the standard applies.

9           “(G) A determination that the standard  
10          will provide protection to workers in the most  
11          cost-effective manner and minimize employment  
12          loss due to the standard in the affected indus-  
13          tries.

14          “(H) Whenever practicable, the standard  
15          shall be expressed in terms of objective criteria  
16          and of the performance desired.”.

17          (b) SEPARATE RULES FOR CERTAIN HAZARDS.—  
18          Paragraph (5) of section 6(b)(5) (29 U.S.C. 655(b)(5))  
19          is repealed.

20          (c) VARIANCES.—Section 6(d) (29 U.S.C. 655(d)) is  
21          amended by adding at the end the following: “If the Sec-  
22          retary has failed to approve or disapprove an application  
23          for a variance within 90 days of the filing of such applica-  
24          tion, the variance shall be deemed to have been issued as

1 of the date of such filing unless the applicant and the Sec-  
2 retary agree to a longer time period.”.

3 (d) REGULATORY IMPACT ANALYSIS.—Section 6 (29  
4 U.S.C. 655) is amended by adding at the end the  
5 following:

6 “(h)(1) The Secretary shall prepare—

7 “(A) a preliminary regulatory impact analysis,  
8 which shall be transmitted along with any proposed  
9 rule under section 6(b)(2), and

10 “(B) a final regulatory impact analysis, which  
11 shall be transmitted along with a rule or determina-  
12 tion issued under section 6(b)(4).

13 “(2) Each preliminary and final regulatory impact  
14 analysis prepared under paragraph (1) shall contain the  
15 following information:

16 “(A) A description of the potential benefits of  
17 the standard, including any beneficial effects that  
18 cannot be quantified in monetary terms and the  
19 identification of those likely to receive the benefits.

20 “(B) An explanation of the necessity, legal au-  
21 thority, and reasonableness of the standard and a  
22 description of the hazard that the standard is to ad-  
23 dress.

24 “(C) A description of the potential costs of the  
25 standard, including any adverse effects that cannot

1 be quantified in monetary terms, and the identifica-  
2 tion of those likely to bear the costs.

3 “(D) An analysis of any alternative approaches,  
4 including market based mechanisms, that could sub-  
5 stantially achieve the same regulatory goal at a  
6 lower cost and an explanation of the reasons why  
7 such alternative approaches were not adopted, to-  
8 gether with a demonstration that the standard pro-  
9 vides for the least costly approach.

10 “(E) A statement that the standard does not  
11 conflict with, or duplicate, any other standard or re-  
12 quirement, or the reasons why such a conflict or du-  
13 plication exists.

14 “(F) A statement of whether persons will be re-  
15 quired by the standard to maintain any records  
16 which will be subject to inspection.

17 “(G) An estimate of the costs to the Secretary  
18 for implementation and enforcement of the standard  
19 and of whether the Secretary can be reasonably ex-  
20 pected to implement the standard with the current  
21 level of appropriations.”.

22 (e) RISK ASSESSMENT.—Section 6 (29 U.S.C. 655),  
23 as amended by subsection (d), is amended by adding at  
24 the end the following:

1       “(i)(1) The principles to be applied in any assessment  
2 of risks relied upon by the Secretary in promulgating or  
3 modifying any standard are as follows:

4           “(A) When discussing risk to health or safety,  
5 a risk assessment document shall contain a discus-  
6 sion of both relevant laboratory and relevant epide-  
7 miological data of sufficient quality which finds, or  
8 fails to find, a correlation between risks to health or  
9 safety and a potential toxin, condition, process, or  
10 activity. Where conflicts among such data appear to  
11 exist, or where animal data are used as a basis to  
12 assess human health, the risk assessment document  
13 shall, to the extent feasible and appropriate, include  
14 discussion of possible reconciliation of conflicting in-  
15 formation, and as relevant, differences in study de-  
16 signs, comparative physiology, routes of exposure,  
17 bioavailability, pharmacokinetics, and any other rel-  
18 evant factor, including the sufficiency of basic data  
19 for review. Animal data shall be reviewed with re-  
20 gard to its relevancy to humans.

21           “(B) Where a risk assessment document in-  
22 volves selection of any significant assumption, infer-  
23 ence, or model, the document shall, to the extent  
24 feasible—

1           “(i) present a representative list and expla-  
2           nation of plausible and alternative assumptions,  
3           inferences, or models;

4           “(ii) explain the basis for any choices;

5           “(iii) identify any policy or value judg-  
6           ments;

7           “(iv) fully describe any model used in the  
8           risk assessment and make explicit the assump-  
9           tions incorporated in the model; and

10          “(v) indicate the extent to which any sig-  
11          nificant model has been validated by, or con-  
12          flicts with, empirical data.

13          “(2) Any characterization of risk relied upon by the  
14          Secretary in promulgating or modifying a standard shall,  
15          to the extent feasible, provide—

16               “(A) the best estimate or estimates for the spe-  
17               cific classes of workers which are the subject of the  
18               characterization; and

19               “(B) a statement of the reasonable range of sci-  
20               entific uncertainties.

21          In addition to such best estimate or estimates, the risk  
22          characterization may present plausible upper-bound or  
23          conservative estimates in conjunction with plausible lower  
24          bounds estimates. Where appropriate, the risk character-  
25          ization may present, in lieu of a single best estimate, mul-



1 tiple best estimates based on assumptions, inferences, or  
2 models which are equally plausible, given current scientific  
3 understanding.

4 “(3) Any characterization of risk relied upon by the  
5 Secretary in promulgating or modifying a standard shall  
6 explain the exposure scenarios used in any risk assess-  
7 ment, and, to the extent feasible, provide a statement of  
8 the size of the corresponding population at risk and the  
9 likelihood of such exposure scenarios.

10 “(4) Any characterization of risk relied upon by the  
11 Secretary in promulgating or modifying a standard shall  
12 contain a statement that places the nature and magnitude  
13 of risks to worker health or safety in context. Such state-  
14 ment shall, to the extent feasible, provide comparisons  
15 with estimates of greater, lesser, and substantially equiva-  
16 lent risks that are familiar to and routinely encountered  
17 by the general public as well as other risks, and, where  
18 appropriate and meaningful, comparisons of those risks  
19 with other similar risks regulated by the Secretary. Such  
20 comparisons should consider relevant distinctions among  
21 risks, such as the voluntary or involuntary nature of risks  
22 and the preventability or nonpreventability of risks.

23 “(5) If—

24 “(A) a commenter provides the Secretary with  
25 a relevant risk assessment document or a risk char-

1       acterization document, and a summary thereof, dur-  
2       ing the public comment period provided under sec-  
3       tion 6(b), and

4               “(B) the risk assessment document or risk  
5       characterization document is consistent with the  
6       principles and the guidance provided under this Act,  
7       the Secretary shall, to the extent feasible, present  
8       such summary in connection with the presentation  
9       of the Secretary’s description of the risk to health  
10      or safety of employees. Nothing in this paragraph  
11      shall be construed to limit the inclusion of any com-  
12      ments or material supplied by any person to the ad-  
13      ministrative record. A document may satisfy the re-  
14      quirements of paragraph (3) or (4) by reference to  
15      information or material otherwise available to the  
16      public if the document provides a brief summary of  
17      such information or material.

18      “(j) Any recommendation or classification made by  
19      a non-United States-based entity concerning the health ef-  
20      fects value of a substance shall not be incorporated into  
21      any standard without an opportunity for notice and com-  
22      ment. For the purposes of this subsection, the term ‘non-  
23      United States-based entity’ means—

24               “(1) any foreign government and its agencies;

1           “(2) the United Nations or any of its subsidiary  
2 organizations;

3           “(3) any other international governmental body  
4 or international standards-making organization; or

5           “(4) any other organization or private entity  
6 without a place of business located in the United  
7 States or its territories.”.

8           (f) COST-BENEFIT ANALYSIS.—Section 6 (29 U.S.C.  
9 655), as amended by subsection (e), is amended by adding  
10 at the end the following:

11           “(k) Each identification of the costs and benefits of  
12 a final or proposed standard shall include the following:

13           “(1) An identification of reasonable alternative  
14 strategies, including strategies that—

15                   “(A) require no government action;

16                   “(B) will accommodate differences among  
17 differing types of operations and among em-  
18 ployers with different levels of resources with  
19 which to comply; and

20                   “(C) employ performance or other market-  
21 based mechanisms that permit the greatest  
22 flexibility in achieving the identified benefits of  
23 the standard.

24           The Secretary shall consider reasonable alternative  
25 strategies proposed during the comment period.

1           “(2) An analysis of the incremental costs and  
2 incremental risk reduction or other benefits associ-  
3 ated with each alternative strategy identified or con-  
4 sidered by the Secretary. Costs and benefits shall be  
5 quantified to the extent feasible and appropriate and  
6 may otherwise be qualitatively described.

7           “(3) A statement that places in context the na-  
8 ture and magnitude of the risks to be addressed and  
9 the residual risks likely to remain for each alter-  
10 native strategy identified or considered by the Sec-  
11 retary. Such statement shall, to the extent feasible,  
12 provide comparisons with estimates of greater, less-  
13 er, and substantially equivalent risks that are famil-  
14 iar to and routinely encountered by the general pub-  
15 lic as well as other risks, and, where appropriate and  
16 meaningful, comparisons of those risks with other  
17 similar risks regulated by the Secretary. Such com-  
18 parisons should consider relevant distinctions among  
19 risks, such as the voluntary or involuntary nature of  
20 risks and the preventability or nonpreventability of  
21 risks.

22           “(4) For each final rule, an analysis of whether  
23 the identified benefits of the standard are likely to  
24 exceed the identified costs of the standard.

25           “(5) An analysis of the effect of the standard—

1           “(A) on small businesses with fewer than  
2           100 employees;

3           “(B) on net employment; and

4           “(C) to the extent practicable, on the cu-  
5           mulative financial burden of compliance with  
6           the standard and other existing regulations on  
7           persons subject to the standard.”.

8           (g) PROCESS FOR REVIEW OF EXISTING OSHA  
9           STANDARDS.—Section 6 (29 U.S.C. 655), as amended in  
10          subsection (f), is amended by adding at the end the follow-  
11          ing:

12          “(l)(1) The Secretary shall, within 7 years of the ef-  
13          fective date of the Safety and Health Improvement and  
14          Regulatory Reform Act of 1995, review each standard in  
15          effect as of the effective date of such Act under the criteria  
16          established under subsection (b)(1) and modify or revoke  
17          such standards as appropriate.

18          “(2) Any person affected by a standard that has been  
19          promulgated under this section may petition the Secretary  
20          to modify or revoke the standard pursuant to this sub-  
21          section.

22          “(3) Each petition submitted under this subsection  
23          shall include information or documentation that is ade-  
24          quate to—

1           “(A) identify the standard or portion thereof  
2           that is sought to be modified or revoked and de-  
3           scribe the change that is sought in the standard; and

4           “(B) make a prima facie showing that—

5                   “(i) the standard is likely to continue hav-  
6                   ing a significant impact on the industry or in-  
7                   dustries with respect to which the modification  
8                   or revocation is sought, and

9                   “(ii) the modification or revocation is nec-  
10                  essary in order for the risk reduction or other  
11                  benefits of the standard to justify and be rea-  
12                  sonably related to the costs of the standard in  
13                  the industry or industries with respect to which  
14                  the modification or revocation is sought.

15           “(4)(A) Within 120 days of receiving a petition sub-  
16           mitted under this subsection, the Secretary shall review  
17           the petition and determine whether to accept or reject it.

18           “(B) The Secretary shall reject a petition submitted  
19           under this subsection if it does not include adequate infor-  
20           mation and documentation as specified in paragraph (2).  
21           If the Secretary determines to reject the petition, the Sec-  
22           retary, within 30 days of making that determination, shall  
23           publish in the Federal Register a notice announcing the  
24           determination to reject the petition and explaining the  
25           basis for that determination.

1       “(C) The Secretary shall accept a petition submitted  
2 under this subsection if it includes adequate information  
3 and documentation as specified in paragraph (2). Within  
4 120 days of accepting any such petition, the Secretary  
5 shall prepare a cost-benefit analysis of the existing stand-  
6 ard and of the change that is sought in the standard.

7       “(D) If, on the basis of the analysis prepared pursu-  
8 ant to subparagraph (C), the Secretary determines that  
9 the incremental benefits of a standard, or any part of a  
10 standard, do not justify the costs with respect to an indus-  
11 try or industries, the Secretary shall publish a notice in  
12 the Federal Register, initiating a rulemaking to modify or  
13 revoke the standard. Final action taken in that rule-  
14 making shall be subject to judicial review in accordance  
15 with subsection (f) of this section.

16       “(E) If, on the basis of the information and docu-  
17 mentation submitted by the petitioner and the analysis  
18 prepared pursuant to subparagraph (C), the Secretary de-  
19 termines that the standard should not be changed, the  
20 Secretary shall publish a notice in the Federal Register,  
21 announcing the determination not to change the standard  
22 and explaining the basis for that determination.

23       “(5) The Secretary’s determination to reject a peti-  
24 tion under paragraph (4)(B) or a determination not to  
25 change the standard under paragraph (4)(E) shall con-

1 stitute a final agency action subject to judicial review at  
2 the request of a person who submitted the petition under  
3 paragraph (1). Any such person may challenge the Sec-  
4 retary's determination to reject the petition or a deter-  
5 mination not to change the standard, by filing a petition  
6 for review in any court that would have jurisdiction and  
7 be proper venue for the filing of a petition to review the  
8 standard itself. Any such petition shall be filed within 60  
9 days of the date on which notice of the Secretary's deter-  
10 mination under paragraph (4)(B) or (4)(E) is published  
11 in the Federal Register.

12 “(6) Nothing in this subsection shall be construed to  
13 prohibit a person from petitioning the Secretary to pro-  
14 mulgate, modify, or revoke a standard pursuant to any  
15 other provision of law.”.

16 (h) INDEPENDENT AND EXTERNAL PEER REVIEW  
17 PANEL.—Section 6(g) (29 U.S.C. 655(g)) is amended to  
18 read as follows:

19 “(g) Whenever the Secretary determines that a rule  
20 should be promulgated or modified in order to serve the  
21 objectives of this Act, the Secretary shall appoint a panel  
22 of individuals to review the scientific and economic data  
23 which forms the basis for such standard and the relevance  
24 of the data to industries and workers which would be af-  
25 fected by the standard. Such panel shall be broadly rep-



1 resentative and balanced, and shall include persons with  
2 expertise in scientific and economic analysis and persons  
3 with expertise relevant to the industry or industries which  
4 would be subject to the standard. Persons with substantial  
5 and relevant expertise shall not be excluded merely be-  
6 cause they represent entities that may have potential in-  
7 terest in the outcome if that interest is fully disclosed to  
8 the agency and in the case of a decision affecting a single  
9 entity, no peer reviewer representing such entity may be  
10 included on the panel. Reports of the panel, including any  
11 individual and minority reports, shall be published to-  
12 gether with any proposed or final rule under paragraphs  
13 (2) and (4) of subsection (b) on the standard. The Sec-  
14 retary shall provide a written response to all significant  
15 comments of the panel and shall include such responses  
16 with the proposed or final rule to which the reports of  
17 the panel members are attached.”.

18 **SEC. 3. NOTICE OF VIOLATION.**

19 (a) AMENDMENTS.—Section 9 (29 U.S.C. 658) is  
20 amended—

21 (1) by redesignating subsections (b) and (c) as  
22 subsections (c) and (d), respectively;

23 (2) by striking subsection (a) and inserting the  
24 following:

1       “(a) Except as provided in subsection (c), if, upon  
2 inspection or investigation, the Secretary or the Sec-  
3 retary’s authorized representative believes that an em-  
4 ployer or an employee has violated a requirement of sec-  
5 tion 5, of any standard, rule or order prescribed pursuant  
6 to section 6, or of any regulations prescribed pursuant to  
7 this Act, the Secretary shall with reasonable promptness  
8 so notify the employer. Each such notice shall be in writ-  
9 ing and shall describe with particularity the nature of the  
10 violation and the recommendations for abatement. In addi-  
11 tion, the notice shall fix a reasonable time for abatement  
12 of the alleged violation. Such time for abatement shall be  
13 not less than 30 days, except that a shorter period may  
14 be allowed if the condition constitutes a direct threat to  
15 employees and a shorter period is reasonable under all of  
16 the circumstances.

17       “(b) If upon a follow up inspection the Secretary be-  
18 lieves that a violation of a standard, rule, or order pre-  
19 scribed under section 6, or a violation of any regulation  
20 prescribed pursuant to this Act, previously identified in  
21 a notice as provided in subsection (a), remains and the  
22 time provided for its abatement has expired, the Secretary  
23 may issue a citation to the employer. Each citation shall  
24 be in writing and shall describe with particularity the na-  
25 ture of the violation, including a reference to the provision

1 of the Act, standard, rule, regulation, or order alleged to  
2 have been violated. Notwithstanding the issuance of a no-  
3 tice under subsection (a), the Secretary shall not issue a  
4 citation with respect to de minimis violations which have  
5 no direct or immediate relationship to safety or health.  
6 A violation of any requirement for posting, recordkeeping,  
7 reporting, notification, or compiling or maintaining writ-  
8 ten documents or records shall be considered a de minimis  
9 violation unless the Secretary establishes that such viola-  
10 tion has a direct relationship to the safety or health of  
11 employees or reflects an intent to mislead or deceive the  
12 Secretary or any employee.”; and

13 (3) by adding at the end the following:

14 “(e) The notice required in subsection (a) before issu-  
15 ance of a citation shall not be required in the case of any  
16 alleged violation causing death or serious injury to an em-  
17 ployee or which constitutes an imminent danger to an em-  
18 ployee.”.

19 (b) CONFORMING AMENDMENTS.—Sections 10(a),  
20 10(c), and 17(d) (29 U.S.C. 659(a), 659(c), 666(d)) are  
21 each amended by striking “9(a)” each place it occurs and  
22 inserting “9(b)”.

1 **SEC. 4. CONSULTATION, INCENTIVES FOR VOLUNTARY AC-**  
2 **TION, AND TECHNICAL ASSISTANCE.**

3 The Act is amended by inserting after section 8 the  
4 following:

5 “WORKSITE-BASED INCENTIVES

6 “SEC. 8A. (a) The Secretary shall establish an office  
7 to promote, administer, and coordinate the programs and  
8 activities described in this section.

9 “(b)(1) Except as provided in this paragraph, the  
10 Secretary shall not conduct an inspection or investigation  
11 of any place of employment for which certification has  
12 been provided in accordance with paragraph (2) or (4).  
13 Such prohibition does not apply to inspections and inves-  
14 tigation conducted for the purpose of—

15 “(A) determining the cause of a workplace acci-  
16 dent which resulted in the death of one or more em-  
17 ployees or the hospitalization of 3 or more employ-  
18 ees,

19 “(B) responding to an inspection request under  
20 section 8(f), or

21 “(C) conducting an inspection as required  
22 under section 9(c)(1).

23 “(2) In order to qualify for the exemption provided  
24 under paragraph (1), an employer shall certify that the  
25 place of employment or conditions of employment have,  
26 during the preceding year, been reviewed under—

1           “(A) a consultation program provided by recipi-  
2           ents of cooperative agreements described in sub-  
3           section (d), or

4           “(B) a workplace review provided by any person  
5           certified under paragraph (3).

6           Such review shall include a determination that any serious  
7           hazards identified in the workplace have been corrected  
8           and that the employer has in place an effective means of  
9           addressing serious workplace hazards.

10          “(3) The Secretary shall, within 6 months after the  
11          date of the enactment of the Safety and Health Improve-  
12          ment and Regulatory Reform Act of 1995 establish a pro-  
13          gram for the certification of persons to conduct reviews  
14          under this section. The certification program shall pro-  
15          vide—

16                 “(A) that persons may be certified generally or  
17                 as to specific industries, and that the certification  
18                 may be for health, safety, or both;

19                 “(B) uniform minimum standards for certifi-  
20                 cation; and

21                 “(C) acceptance, where appropriate, of certifi-  
22                 cations made by—

23                         “(i) any generally recognized training insti-  
24                         tution if the course of study of the institution

1           meets the criteria that the Secretary shall pre-  
2           scribe, or

3                   “(ii) any generally recognized certifying en-  
4           tity.

5           “(4) The Secretary may certify for exemption under  
6 paragraph (1) workplaces which have significant involve-  
7 ment of employees in their safety and health program,  
8 which involvement includes—

9                   “(A) regular consultation between employer and  
10 non-supervisory employees regarding safety and  
11 health issues;

12                   “(B) assurances that participating non-super-  
13 visory employees have training or expertise on safety  
14 and health issues consistent with their responsibil-  
15 ities; and

16                   “(C) opportunity for non-supervisory employees  
17 to make recommendations regarding hazards in the  
18 workplace and to receive responses or to implement  
19 improvements in response to recommendations.

20           “(c)(1) The Secretary shall establish a program to  
21 give special recognition to worksites and companies and  
22 other organizations which have implemented particularly  
23 effective programs addressing occupational safety and  
24 health in the workplace. Such recognition shall include ex-

1 exemption from inspections except those described in sub-  
2 section (b)(1).

3 “(2) An organization or company may qualify for rec-  
4 ognition under paragraph (1) only if it—

5 “(A) applies to the Secretary in writing, for the  
6 recognition,

7 “(B) permits an evaluation by the Secretary of  
8 its occupational safety and health operations, and

9 “(C) meets such requirements and specifica-  
10 tions as the Secretary determines to be appropriate  
11 to achieve the objectives of this subsection.

12 In applying subparagraph (C) with respect to any organi-  
13 zation or company, the Secretary shall rely upon the Sec-  
14 retary’s evaluation of the occupational safety and health  
15 operation of the organization or company. The evaluation  
16 should encompass all aspects of the organization’s or com-  
17 pany’s current occupational safety and health practice.

18 “(3) The Secretary shall ensure that all organizations  
19 and companies making an application under section 2(A)  
20 receive the complete results of their evaluations as well  
21 as detailed explanations of all suggestions for improve-  
22 ments. The Secretary shall also provide information about  
23 the recognitions and the successful quality improvement  
24 programs of the recognition-winning participants to all or-  
25 ganizations and companies.

1       “(4) The Secretary is authorized to seek and accept  
2 gifts, including in-kind assistance, from public and private  
3 sources to carry out this subsection.

4       “(d) This subsection authorizes the consultative serv-  
5 ices to employers provided under cooperative agreements  
6 between the States and the Occupational Safety and  
7 Health Administration and described in part 1908 of title  
8 29 of the Code of Federal Regulations, as in effect on the  
9 date of the enactment of the Safety and Health Improve-  
10 ment and Regulatory Reform Act of 1995.

11       “(e) In addition to the other programs in this section,  
12 the Secretary shall establish programs to provide edu-  
13 cation, training, and technical assistance to employers and  
14 employees to assist them in the provision of safe and  
15 healthful workplaces and compliance with the require-  
16 ments of this Act. The Secretary may also conduct,  
17 through grants or contracts, education programs to pro-  
18 vide an adequate supply of qualified personnel to carry  
19 out the purpose of this Act.

20       “(f) Effective in the first fiscal year that begins 3  
21 years after the effective date of the Safety and Health Im-  
22 provement and Regulatory Reform Act of 1995, not less  
23 than one-half of the annual appropriation made to the  
24 Secretary to carry out this Act shall be expended to carry  
25 out this section.”.



1 **SEC. 5. REMOVAL OF BARRIERS TO VOLUNTARY SAFETY**  
2 **AND HEALTH ACTIVITIES.**

3 Section 4 (29 U.S.C. 653) is amended by adding at  
4 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) employee participation, including through  
10 committees, teams, or any other arrangement—

11 “(A) which exists for the purpose, in whole  
12 or in part, of dealing with the employer con-  
13 cerning the safety or health of working condi-  
14 tions or related matters, and

15 “(B) which does not have, claim, or seek  
16 authority to be the exclusive bargaining rep-  
17 resentative of the employees or to negotiate or  
18 enter into collective bargaining agreements with  
19 the employer or to amend existing collective  
20 bargaining agreements between the employer  
21 and any labor organization,

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, reports, or other information pre-  
2           pared in connection with safety and health inspec-  
3           tions, audits, or reviews conducted by or for an em-  
4           ployer and not required by this Act shall not be dis-  
5           closed in any inspection, investigation, or enforce-  
6           ment proceeding pursuant to this Act.”.

7 **SEC. 6. INSPECTIONS.**

8           (a) EMPLOYEE-EMPLOYER COOPERATION.—Section  
9 8(f)(1) (29 U.S.C. 657(f)(1)) is amended to read as fol-  
10 lows:

11           “(f)(1) Any employee who believes that a violation of  
12 a safety or health standard exists that threatens physical  
13 harm, or that an imminent danger exists, may, if the em-  
14 ployee has brought the violation or danger to the attention  
15 of the employer and the employer has failed or refused  
16 to correct the violation or danger, request an inspection  
17 by giving notice to the Secretary or the Secretary’s author-  
18 ized representative of such violation or danger. Any such  
19 notice shall set forth with reasonable particularity the  
20 grounds for the notice, including a description of the ef-  
21 forts which the employee has made with the employer to  
22 have the violation or danger corrected, and a copy shall  
23 be provided to the employer no later than at the time of  
24 inspection. If upon receipt of such notification the Sec-  
25 retary determines that there are reasonable grounds to be-

1 lieve that such violation or danger exists and that the em-  
2 ployer has failed to correct the violation or danger, the  
3 Secretary shall make an inquiry with the employer and  
4 may make a special inspection in accordance with the pro-  
5 visions of this section to determine if such violation or  
6 danger exists. Any such inspection shall be conducted for  
7 the limited purpose of determining whether such violation  
8 or danger exists. If the Secretary determines there are no  
9 reasonable grounds to believe a violation or danger exists,  
10 the Secretary shall notify the employees in writing of such  
11 determination.”.

12 (b) INSPECTION TRAINING AND FIRE PROTEC-  
13 TION.—Section 8 is amended by redesignating subsection  
14 (g) as subsection (j) and by inserting after subsection (f)  
15 the following:

16 “(g) Inspections conducted under this section shall  
17 be conducted by at least one individual who has technical  
18 expertise by training or experience in the industry or types  
19 of hazards being inspected.

20 “(h) The Secretary shall enter into agreements with  
21 other Federal agencies and with States to train inspection  
22 personnel of agencies which conduct inspections of employ-  
23 ers to inspect places of employment to determine if em-  
24 ployee fire protection is adequate and shall establish a sys-  
25 tem for referral of fire hazards to the Secretary after noti-

1 fication to the employer, if the employer fails to take cor-  
2 rective actions.”.

3 (c) SMALL BUSINESS INSPECTIONS.—Section 8, as  
4 amended by subsection (b), is further amended by adding  
5 at the end the following:

6 “(i)(1) Except as provided in paragraph (2), the Sec-  
7 retary shall not conduct routine inspections of, or enforce  
8 any standard, rule, regulation, or order under this Act  
9 with respect to—

10 “(A) any person who is engaged in a farming  
11 operation which does not maintain a temporary  
12 labor camp and is employing 10 or fewer employees,  
13 or

14 “(B) any employer of not more than 50 employ-  
15 ees if such employer is included within a category of  
16 employers having an occupational injury or a lost  
17 work day case rate (determined under the Standard  
18 Industrial Classification Code for which such rates  
19 are published) which is less than the national aver-  
20 age rate as most recently published by the Secretary  
21 acting through the Bureau of Labor Statistics under  
22 section 25.

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

1           “(A) providing under this Act consultations,  
2           technical assistance, and educational and training  
3           services and conducting under this Act surveys and  
4           studies;

5           “(B) conducting inspections required under sec-  
6           tion 28(a) or conducting inspections or investiga-  
7           tions in response to employee’s complaints as pro-  
8           vided in section 8(f), issuing warnings for violations  
9           of this Act found during such an inspection, and is-  
10          suing citations and assessing a penalty for violations  
11          which are not corrected within a reasonable abate-  
12          ment period consistent with subsections (a) and (b)  
13          of section 9;

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

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

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

24          “(F) taking any action authorized by this Act  
25          with respect to complaints of discrimination against

1 employees for exercising their rights under this  
2 Act.”.

3 **SEC. 7. EMPLOYER DEFENSES.**

4 Section 9 (29 U.S.C. 658), as amended by section  
5 3, is amended by adding at the end the following:

6 “(f) No citation with respect to an alleged violation  
7 may be issued under subsection (b) to an employer unless  
8 the employer knew or with the exercise of reasonable dili-  
9 gence would have known of the presence of such alleged  
10 violation. No citation shall be issued under subsection (b)  
11 to an employer for an alleged violation of any standard,  
12 rule, or order promulgated pursuant to section 6, or any  
13 other regulation promulgated under this Act if such em-  
14 ployer demonstrates that—

15 “(1) employees of such employer have been pro-  
16 vided with any training and equipment required by  
17 the standard or rule at issue;

18 “(2) work rules designed to prevent such a vio-  
19 lation have been established and communicated to  
20 employees by such employer and the employer has  
21 taken reasonable measures to implement such work  
22 rules and to discipline employees when violations of  
23 such work rules have been discovered; and

24 “(3) the failure of employees to observe work  
25 rules led to the violation.

1       “(g) A citation issued under subsection (b) to an em-  
2 ployer who violates the requirements of any standard, rule,  
3 or order promulgated pursuant to section 6 or any other  
4 regulation promulgated under this Act shall be vacated if  
5 such employer demonstrates that employees of such em-  
6 ployer were protected by alternative methods substantially  
7 equal or more protective of the employee’s safety and  
8 health than those required by such standard, rule, order,  
9 or regulation in the factual circumstances underlying the  
10 citation.

11       “(h) Notwithstanding any other provision of law,  
12 compliance with a requirement under this Act or any other  
13 Federal regulatory requirement designed to protect human  
14 health or safety shall be a defense against a citation or  
15 any civil or administrative action for a violation of a re-  
16 quirement under this or any other law, where the require-  
17 ments under the 2 laws are potentially in conflict. For  
18 purposes of this subsection, the term ‘potentially in con-  
19 flict’ means a requirement that overlaps with, is inconsis-  
20 tent with, or conflicts with, a requirement under this Act,  
21 and includes labeling requirements for the same product  
22 and training requirements that are related to the same  
23 hazard.

1 “(i) Subsections (f), (g), and (h) shall not be con-  
2 strued to eliminate or modify other defenses which may  
3 exist to any citation.”.

4 **SEC. 8. PENALTIES.**

5 (a) ELIMINATION OF “WILLFUL AND REPEATED”  
6 AUTHORITY.—Section 17 (29 U.S.C. 666) is amended by  
7 striking subsection (a) (relating to willful and repeated  
8 violations), by redesignating subsection (k) (relating to the  
9 definition of serious violations) as subsection (a), and by  
10 redesignating subsection (l) as subsection (k).

11 (b) CRITERIA FOR ASSESSING PENALTIES.—Section  
12 17(j) (29 U.S.C. 666(j)) is amended to read as follows:

13 “(j) The Commission shall have authority to assess  
14 all civil penalties provided in this section, giving due con-  
15 sideration to the appropriateness of the penalty with re-  
16 spect to—

17 “(1) the size of the employer,

18 “(2) the number of employees exposed to the  
19 violation,

20 “(3) the likely severity of any injuries directly  
21 resulting from such violation,

22 “(4) the probability that the violation could re-  
23 sult in injury or illness,

24 “(5) the employer’s good faith, including cor-  
25 recting the violation after it has been identified,



1           “(6) the extent to which employee misconduct  
2           was responsible for the violation, and

3           “(7) the effect of the penalty on the employer’s  
4           ability to stay in business.

5 The Commission shall not assess a penalty greater than  
6 that proposed by the Secretary. A civil penalty assessed  
7 under this section may be reduced by the cost to the em-  
8 ployer of correcting the violation to which the penalty ap-  
9 plies.”.

10       (c) SPECIAL ASSESSMENTS.—Section 17 (29 U.S.C.  
11 666), as amended by subsection (a), is amended by adding  
12 at the end the following:

13       “(l) The Secretary may propose that a special assess-  
14 ment be applied in the following circumstances:

15           “(1) Fatalities of employees caused by viola-  
16 tions of standards issued under section 6.

17           “(2) An excessive history of serious injuries to  
18 employees caused by violations of standards issued  
19 under section 6.

20 When the Secretary determines that a special assessment  
21 is appropriate, the Secretary may propose a multiplier,  
22 based on the factors listed in subsection (j), of not greater  
23 than 10 to the penalty determined under subsection (b).”.

24       (d) NO PENALTIES WHERE NO STANDARD OR REGU-  
25 LATION EXISTS.—Section 17 (29 U.S.C. 666) is amended

1 by striking out “of the requirements of section 5 of this  
2 Act,” each place it appears.

3 (e) JURISDICTION FOR PROSECUTION UNDER STATE  
4 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.  
5 666), as amended by subsection (c), is amended by adding  
6 at the end the following:

7 “(m) Nothing in this Act shall preclude State and  
8 local law enforcement agencies from conducting criminal  
9 prosecutions in accordance with the laws of such State or  
10 locality.”.

11 **SEC. 9. REVIEW BY THE COMMISSION.**

12 (a) COMMISSION ACTION.—Section 10(c) (29 U.S.C.  
13 6559(c)) is amended as follows:

14 (1) In the first sentence, by striking out “fif-  
15 teen” and inserting in lieu thereof “30”.

16 (2) By amending the second and third sen-  
17 tences to read as follows: “The Commission shall  
18 thereafter issue an order, based on its de novo find-  
19 ings of fact and its de novo conclusions of law, af-  
20 firming, modifying, or vacating the Secretary’s cita-  
21 tion or proposed penalty, or directing other appro-  
22 priate relief, and such order shall become final 30  
23 days after first issuance. Upon a showing by an em-  
24 ployer of a good faith effort to comply with the  
25 abatement requirements of a citation, and that the

1 abatement has not been completed because of factors  
2 beyond the employer’s reasonable control, the Com-  
3 mission, after an opportunity for a hearing as pro-  
4 vided in this subsection, shall issue an order affirm-  
5 ing or modifying the abatement requirements in  
6 such citation.”.

7 (b) UPHOLDING COMMISSION’S CONCLUSIONS.—Sec-  
8 tion 11(a) (29 U.S.C. 660(c)) is amended by adding the  
9 following sentence immediately after the sixth sentence:  
10 “The Commission’s conclusions of law with respect to the  
11 construction of this Act, or regulations, rules, standards  
12 or orders adopted under this Act, shall be upheld if rea-  
13 sonable.”.

14 (c) NUMBERS.—(1) Section 12(a) (29 U.S.C. 661(a))  
15 is amended by striking out “three members” and inserting  
16 “5 members” and by inserting after the second sentence:  
17 “At least one member of the Commission shall have expe-  
18 rience or expertise in mining.”.

19 (2) Section 12(f) (29 U.S.C. 661(f)) is amended by  
20 striking out “two” and inserting “3”.

21 (d) AMENDMENT.—Section 12(g) (29 U.S.C. 661(g))  
22 is amended by adding at the end the following new sen-  
23 tence: “If the parties so agree, no formal proceedings, in-  
24 cluding requests for the production of documents, requests

1 for admissions, interrogatories, or depositions shall be re-  
2 quired.”.

3 **SEC. 10. NIOSH REPEALED.**

4 The Act is amended by repealing sections 20, 21, and  
5 22 (29 U.S.C. 669, 670, 671).

6 **SEC. 11. STATE WORKMEN’S COMPENSATION COMMISSION**  
7 **REPEALED.**

8 The Act is amended by repealing section 27 (29  
9 U.S.C. 676).

10 **SEC. 12. STATE PROGRAMS.**

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

12 (1) in paragraph (2), by striking out “are re-  
13 quired by compelling local conditions and do not un-  
14 duly burden interstate commerce” and inserting  
15 “are substantively the same as any requirement  
16 under a standard promulgated under section 6,”;

17 (2) in paragraph (3), by inserting before the  
18 comma at the end the following: “and provides  
19 means for informal resolution and adjudication of  
20 contested citations”; and

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

22 “Paragraphs (4) and (5) shall not apply if the State has  
23 adopted alternative performance measures to assure that  
24 its program is at least as effective as the Federal program

1 in assuring safe and healthful employment and places of  
2 employment.”.

3 **SEC. 13. 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 under  
12 section 8(f), may, within 60 days after such violation oc-  
13 curs, file a complaint with the Secretary alleging such dis-  
14 crimination. Upon receipt of such a complaint the Sec-  
15 retary shall notify the person named in the complaint and  
16 begin an investigation to determine if the Secretary  
17 should, on behalf of such employee, request the Commis-  
18 sion to take action on the basis of such complaint. The  
19 Secretary shall make such determination within 60 days  
20 of the filing of such complaint.

21 “(3) If within such 60 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 of if the Secretary files a complaint, the Commis-

1 sion shall provide opportunity for a hearing (in accordance  
2 with section 554 of title 5, United States Code, but with-  
3 out regard to subsection (a)(3) of such section), and issue  
4 an order, based upon findings of fact and conclusions of  
5 law. In such an order, the Commission may order such  
6 equitable relief as may be appropriate, including rehiring  
7 or reinstatement of the employee to the employee's former  
8 position with back pay and interest. Upon completion of  
9 a proceeding on such order, the Commission may award  
10 the prevailing party a reasonable attorney's fee. Final or-  
11 ders of the Commission may be appealed as provided in  
12 subsection (a).

13       “(4) 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, or the Secretary have the right to re-  
17 quest that the complaint be referred to the Federal Medi-  
18 ation and Conciliation Service, or on mutual agreement,  
19 another mediator, for mediation of the dispute.”.

20 **SEC. 14. COVERAGE OF FEDERAL AGENCIES.**

21       Section 3(5) (29 U.S.C. 652(5)) is amended—

22               (1) by striking “but does not include the United  
23       States or any” and inserting “but does not include  
24       any”; and

1 (2) by adding at the end: “Such term includes  
2 the Government of the United States and any agen-  
3 cy or instrumentality of the Government.”.

4 **SEC. 15. FEDERAL AGENCY SAFETY PROGRAMS.**

5 The Act is amended by repealing section 19 (29  
6 U.S.C. 668).

7 **SEC. 16. PREVENTION OF ALCOHOL AND SUBSTANCE**  
8 **ABUSE.**

9 The Act is amended by repealing sections 28 through  
10 31, by redesignating sections 32, 33, and 34 as sections  
11 29, 30, and 33, respectively, and by inserting after section  
12 26 (29 U.S.C. 676) the following:

13 “ALCOHOL AND SUBSTANCE ABUSE TESTING  
14 “SEC. 27. (a) Whenever there exists the reasonable  
15 probability that the safety or health of any employee could  
16 be endangered in the workplace because of the use of alco-  
17 hol or a controlled substance by any employee, the em-  
18 ployer of such employee may establish and implement an  
19 alcohol and substance abuse testing program in accord-  
20 ance with subsection (b). Nothing in this section shall be  
21 construed to require an employer to establish a substance  
22 abuse or drug testing program for applicants or employees  
23 or make employment decisions based on such test results.

24 “(b)(1) The substance abuse testing program shall  
25 conform to subpart B of the mandatory guidelines for  
26 Federal workplace drug testing programs published on

1 April 11, 1988, by the Secretary of Health and Human  
2 Services at 53 Federal Register 11979 and any amend-  
3 ments adopted to such guidelines.

4 “(2) The alcohol testing program shall take the form  
5 of alcohol breath analysis and shall conform to any guide-  
6 lines developed by the Secretary of Transportation for al-  
7 cohool testing of mass transit employees under the Depart-  
8 ment of Transportation and Related Agencies Appropria-  
9 tions Act, 1992.

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

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

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

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

23 “(4) during and for a reasonable period of time  
24 (not to exceed 5 years) after the conclusion of an al-  
25 cohool or substance abuse treatment program, or



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

5           “(d) The Secretary is authorized to conduct testing  
6           of employees for use of alcohol or controlled substances  
7           during any investigation of a work-related fatality or seri-  
8           ous injury.”.

9           **SEC. 17. MINE SAFETY AND HEALTH.**

10           (a) REORGANIZATION.—Titles I, II, III, and V of the  
11           Federal Mine Safety and Health Act of 1977 are repealed,  
12           except as provided in this section. Subject to the provisions  
13           of this Act, and the Occupational Safety and Health Act  
14           of 1970, the functions and authorities provided to the  
15           Mine Safety and Health Administration under such provi-  
16           sions are transferred to the Assistant Secretary of Labor  
17           for Occupational Safety and Health, and the responsibil-  
18           ities and authorities of the Federal Mine Safety and  
19           Health Review Commission are transferred to Occupa-  
20           tional Safety and Health Review Commission.

21           (b) STANDARDS.—Standards promulgated under the  
22           Federal Mine Safety and Health Act of 1977 shall be  
23           deemed to have been promulgated under the Occupational  
24           Safety and Health Act of 1970. The Secretary shall not,  
25           with respect to activities, conditions, or processes which

1 were subject to the Federal Mine Safety and Health Act  
2 of 1977, enforce any other standards promulgated prior  
3 to the effective date of this Act. The following parts of  
4 title 30, Code of Federal Regulations, are repealed effec-  
5 tive 1 year after the date of the enactment of this Act:

- 6 (1) Subchapter A, part 1.
- 7 (2) Subchapter G, parts 40, 43, 45.
- 8 (3) Subchapter M, part 50.
- 9 (4) Subchapter P, part 100.
- 10 (5) Subchapter Q, part 104.

11 The requirements of subchapter H, part 48, shall not be  
12 enforced with respect to shell dredging or with respect to  
13 any sand, gravel, surface stone, surface clay, colloidal  
14 phosphate, or surface limestone mine.

15 (c) MINE SAFETY.—The Act, as amended by section  
16 14, is amended by inserting after section 27 the following:

17 “MINE SAFETY

18 “SEC. 28. (a) Each underground mine shall be in-  
19 spected at least annually.

20 “(b) Inspectors of mines shall be qualified by prac-  
21 tical experience in mining, by experience as a mining engi-  
22 neer or by education. To the maximum extent feasible, in  
23 the selection of persons for appointment as mine inspec-  
24 tors, no person shall be so selected unless the person has  
25 the basic qualification of at least 5 years practical mining  
26 experience.

1       “(c)(1) If upon inspection or investigation of a mine,  
2 the Secretary or the Secretary’s authorized representative  
3 finds an imminent danger exists, the Secretary or the Sec-  
4 retary’s representative shall issue an order requiring the  
5 employer to withdraw all persons from the affected area  
6 and not permit re-entry into the area until the imminent  
7 danger has been eliminated or all persons have been pro-  
8 tected from exposure to the imminent danger.

9       “(2) The following persons shall not be required to  
10 be withdrawn from or prohibited from entering any area  
11 of an employment site subject to an order issued under  
12 this subsection:

13           “(A) Any person whose presence, in the judg-  
14 ment of the employer or an authorized representa-  
15 tive of the Secretary, is necessary to evaluate or  
16 eliminate the condition described in the order.

17           “(B) Any consultants to such persons.

18       “(3) Any employer who is issued an order pursuant  
19 to this subsection may seek immediate review of such  
20 order in the United States District Court for the District  
21 of Columbia or for the District in which the employment  
22 site is located. Such review shall be available to the em-  
23 ployer within one day following the issuance of the order.  
24 The burden shall be on the Secretary to prove the immi-  
25 nent danger and that the danger justifies the issuance of

1 the order under paragraph (1). In the case of proceeding  
2 to review any order issued pursuant to this subsection, the  
3 court may, under such conditions as it may prescribe,  
4 grant such temporary relief as it deems appropriate pend-  
5 ing final determination of the proceedings if—

6           “(A) all parties to the proceeding have been no-  
7           tified and given an opportunity to be heard in per-  
8           son, by telephone or in writing on the request for  
9           temporary relief;

10           “(B) the party requesting such relief shows that  
11           there is substantial likelihood that that party will  
12           prevail on the merits of the final determination of  
13           the proceeding; and

14           “(C) such relief will not cause a serious hazard  
15           to employees.

16           “(4) Any operator who knowingly violates or fails or  
17           refuses to comply with any order issued under this sub-  
18           section shall, upon conviction, be punished by a fine of  
19           not more than \$25,000, or by imprisonment for not more  
20           than one year, or by both, except that if the conviction  
21           is for a violation committed after the first conviction of  
22           such operator under this Act, punishment shall be fined  
23           of not more than \$50,000, or by imprisonment for not  
24           more than five years, or both.

1       “(5) The term “imminent danger” means the exist-  
2       ence of any condition or practice in a workplace as de-  
3       scribed in section 13.

4       “(d) Any miner who willfully violates the mandatory  
5       safety standards relating to smoking or carrying of smok-  
6       ing materials, matches, or lighters shall be subject to a  
7       civil penalty assessed by the Commission which penalty  
8       shall not be more than \$250 for each occurrence.”.

9       (d) NATIONAL MINE HEALTH AND SAFETY ACAD-  
10       EMY.—The National Mine Health and Safety Academy  
11       shall be maintained as an agency of the Department of  
12       Labor. The Academy shall be responsible for the training  
13       of mine safety and health inspectors and in training of  
14       technical support personnel, and for any other training  
15       programs for mine inspectors, mining personnel, or other  
16       personnel as the Secretary of Labor shall designate, in ac-  
17       cordance with procedures and authorities as in effect be-  
18       fore the date of the enactment of this Act.

19       **SEC. 18. RECORDKEEPING AND REPORTING.**

20       (a) RECORDS.—Section 8(c)(2) (29 U.S.C. 657) is  
21       amended to read as follows:

22       “(2) The Secretary shall prescribe regulations requir-  
23       ing employers to maintain accurate records of work-relat-  
24       ed deaths and work-related injuries and illnesses that re-  
25       quire medical treatment, other than first aid treatment,

1 and involve one or more lost workdays or 5 or more days  
2 of restriction of work. The Secretary may require such  
3 records or reports of such records or summaries thereof  
4 be submitted to the Secretary, provided however, that any  
5 such records and reports which may be submitted to or  
6 obtained by the Secretary shall not be released or disclosed  
7 by the Secretary in any manner which identifies individual  
8 employers or workplaces.

9 (b) STATISTICS.—The last sentence of section 24(a)  
10 (29 U.S.C. 673) is amended to read as follows: “The Sec-  
11 retary shall compile accurate statistics on work-related  
12 deaths and work-related injuries and illnesses that require  
13 medical treatment, other than first aid treatment, and in-  
14 volved one or more lost workdays or 5 or more days of  
15 restriction of work.”.

16 **SEC. 19. DEFINITIONS.**

17 Section 3 (29 U.S.C. 652) is amended by adding at  
18 the end thereof the following:

19 “(15) The term ‘serious injury’ means an injury  
20 that results in one or more days away from work  
21 and protracted loss or impairment of the function of  
22 a bodily member, organ, or mental faculty or, in the  
23 case of exposure to toxic materials, requires medical  
24 treatment other than first aid.

1           “(16) The term ‘industry’ means the 4 digit  
2           classification as defined in the Standard Industrial  
3           Classification Manual prepared by the Office of  
4           Management and Budget, unless the Occupational  
5           Safety and Health Administration finds that a  
6           broader classification adequately represents the cir-  
7           cumstances of the constituent industries affected.”.

8   **SEC. 20. MISCELLANEOUS TECHNICAL AMENDMENTS.**

9           (a) ANNUAL REPORT TO THE CONGRESS.—Section  
10          4(b)(3) (29 U.S.C. 653(b)(3)) is amended to read as fol-  
11          lows:

12           “(3) The Secretary shall annually report to the Con-  
13          gress regarding activities under this Act, including rec-  
14          ommendations for legislation to avoid unnecessary dupli-  
15          cation and to achieve coordination between this Act and  
16          other Federal laws.”.

17           (b) CERTIFICATION OF EQUIPMENT.—Section 7 is  
18          amended by adding at the end thereof the following:

19           “(d) CERTIFICATION OF EQUIPMENT.—The Sec-  
20          retary shall provide for a means for certification of equip-  
21          ment for which such certification is required pursuant to  
22          this Act, the Occupational Safety and Health Act of 1970,  
23          or the Federal Mine Safety and Health Act of 1977. The  
24          Secretary shall provide that such certification shall be con-  
25          ducted by nongovernmental agencies, unless the Secretary

1 determines that nongovernmental agencies with profes-  
2 sional or technical personnel or materials and equipment  
3 are not available.”.

4 **SEC. 21. EFFECTIVE DATE.**

5       Except as otherwise provided, this Act and amend-  
6 ments made by this Act shall take effect 120 days after  
7 the date of the enactment of this Act.

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