

104TH CONGRESS
1ST SESSION

H. R. 1834

To amend the Occupational Safety and Health Act of 1970.

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

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 NIOSH repealed.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 State Workmen’s Compensation Commission repealed.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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