Users Board, transmitting, pursuant to law, the annual report for fiscal year 1998; to the Committee on Environment and Public Works.

EC–3090. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the St. Paul Island Harbor, Alaska; to the Committee on Environment and Public Works.

EC–3091. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to a deep-draft navigation project at Chignik Harbor, Alaska; to the Committee on Environment and Public Works.

EC–3092. A communication from the Acting Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 96-03; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation To Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1998'' (Rept. No. 105–91).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 750. A bill to consolidate certain mineral interests in the National Grasslands in Billings County, North Dakota, through the exchange of Federal and private mineral interests to enhance land management capabilities and environmental and wildlife protection, and for other purposes (Rept. No. 105–92).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1158. A bill to amend the Alaska Native Claims Settlement Act, regarding the Huna Totem Corporation public interest land exchange, and for other purposes (Rept. No. 105–93).

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute and an amended preamble:

H. Con. Res. 8. A concurrent resolution expressing the sense of Congress with respect to the significance of maintaining the health and stability of coral reef ecosystems (Rept. No. 105–94).

By Mr. WARNER, from the Committee on Rules and Administration, without amendment:

S. Res. 126. An original resolution authorizing supplemental expenditures by the Committee on Veterans' Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ENZI (for himself, Mr. GREGG, Mr. FRIST, Mr. JEFFORDS, Mr. COATS, Mr. DEWINE, Mr. HUTCHINSON, Mr. BURNS, Mr. HAGEL, Ms. COLLINS, Mr. MCCONNELL, Mr. WARNER, Mr. ALLARD, Mr. CRAIG, Mr. ROBERTS, Mr. SESSIONS, Mr. THOMAS, Mr. SMITH of Oregon, Mr. BROWNBACK, and Mr. NICKLES):

S. 1237. A bill to amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SMITH of Oregon:

S. 1238. A bill to amend section 1926 of the Public Health Service Act to encourage States to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18 and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ABRAHAM:

S. 1239. A bill to suspend temporarily the duty on ethofumesate; to the Committee on Finance.

S. 1240. A bill to suspend temporarily the duty on phenmedipham; to the Committee on Finance.

S. 1241. A bill to suspend temporarily the duty on desmedipham; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENZI (for himself, Mr. GREGG, Mr. FRIST, Mr. JEFFORDS, Mr. COATS, Mr. DEWINE, Mr. HUTCHINSON, Mr. BURNS, Mr. HAGEL, Ms. COLLINS, Mr. MCCONNELL, Mr. WARNER, Mr. ALLARD, Mr. CRAIG, Mr. ROBERTS, Mr. SESSIONS, Mr. THOMAS, Mr. SMITH of Oregon, Mr. BROWNBACK, and Mr. NICKLES):

S. 1237. A bill to amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes; to the Committee on Labor and Human Resources.

THE SAFETY ADVANCEMENT FOR EMPLOYEES ACT

Mr. ENZI. Mr. President, I rise today to introduce the Safety Advancement for Employees Act of 1997. I send the bill to the desk.

Mr. President, I ask that further reading of the bill be dispensed with.

Mr. President, during this first Session of the 105th Congress, my esteemed colleague from New Hampshire, Senator GREGG, and I, each introduced a bill related to workplace safety and health. On July 10, a comprehensive OSHA oversight hearing was held by Chairman FRIST in the Subcommittee on Public Health and Safety. This hearing specifically focused on OSHA modernization legislation pending before the committee. The results of this hearing further confirmed the commitment Senator GREGG and I share concerning the safety and health of our Nation's workforce.

It is with great pleasure that Senator GREGG and I, introduce this consensus legislation. The SAFE Act has the support of Subcommittee Chairman FRIST, as well as Labor Committee Chairman JEFFORDS. Both are proud to be original cosponsors and I am sincerely grateful to them for all their hard work. They have clearly helped pave the way for this important measure. In addition, my House colleague and chairman of the Small Business Committee, JIM TALENT, will introduce similar legislation in the House today. This legislation has received strong bipartisan support—an essential ingredient in the recipe for success.

It is important to understand that both the Senate and House versions do not attempt to reinvent OSHA's wheel, just change its tires. Treading water for 27 years, OSHA has never seriously attempted to encourage employers and employees in their efforts to create safe and healthful workplaces. Instead, OSHA chose to operate according to a command and control mentality. This approach has lead to burdensome and often incomprehensible regulations which may not relate to worker safety and health and are, quite often, only sporadically enforced. Even the AFL-CIO has acknowledged that with only 2,451 State and Federal inspectors regulating 6.2 million American worksites, an employer can expect to see an inspector once every 167 years.

While changing OSHA's bald tires, it is important to point out that the SAFE Act does not dismantle OSHA's enforcement capabilities. That approach has been tried time and time again. But, enforcement alone cannot ensure the safety of our Nation's workplaces and the health of our working population. America would be better served by an OSHA that places a greater emphasis on promoting employers and employees working together and this bill would strike that balance.

The SAFE Act is geared to provide employers who seek a safe and healthful workplace for their employees with the ability to obtain compliance evaluations from qualified, third party consultants. In addition, the SAFE Act includes additional voluntary and technical compliance initiatives to assist employers in deeming their worksites safe for their employees. Businesses and employees need clarification on a whole host of issues. They need progress, now. We need good commonsense legislation that advances safety and health of the American workplace, now.

Senator GREGG and I are not interested in making another political statement. It is time for us to tuck the political statements into our coat pockets and pass good common sense legislation that advances the safety and health of the American workplace. Advancing safety and health in the American workplace is a matter of great importance and it must be considered in a serious and rational manner by Congress, by the Occupational Safety and Health Administration, by employers, and yes, by employees too.

Mr. President, I firmly believe that the SAFE Act represents a clean start to addressing the problems that affect OSHA and its dealings with employers and employees. Senator GREGG and I, are quite eager to continue working with my Senate and House colleagues on this important matter. By working together in a bipartisan fashion, we can ensure our Nation's work force that Congress does care about their

personal safety and health. I welcome your support in doing just that.

I ask unanimous consent that the text of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1237

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the ''Safety Advancement for Employees Act of 1997'' or the ''SAFE Act''.

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

SEC. 2. PURPOSE.

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

(1) in paragraph (13), by striking the period and inserting ''; and''; and

(2) by adding at the end the following:

''(14) by increasing the joint cooperation of employers, employees, and the Secretary of Labor in the effort to ensure safe and healthful working conditions for employees.''.

SEC. 3. EMPLOYEE AND EMPLOYER PARTICIPATION PROGRAMS.

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

''(c)(1) In order to further carry out the purpose of this Act to encourage employers and employees in their efforts to reduce occupational safety and health hazards, employers may establish employer and employee participation programs which exist for the sole purpose of addressing safe and healthful working conditions.

''(2) An entity created under a program described in paragraph (1) shall not constitute a labor organization for purposes of section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) or a representative for purposes of sections 1 and 2 of the Railway Labor Act (45 U.S.C. 151 and 151a).

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

SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COMMITTEE.

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

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

''(2) The advisory committee shall be composed of—

''(A) 3 members who are employees;

''(B) 3 members who are employers;

''(C) 2 members who are members of the general public; and

''(D) 1 member who is a State official from a State plan State.

Each member of the advisory committee shall have expertise in workplace safety and health as demonstrated by the educational background of the member.

''(3) The advisory committee shall advise and make recommendations to the Secretary with respect to the establishment and implementation of a consultation services program under section 8A.''.

SEC. 5. THIRD PARTY CONSULTATION SERVICES PROGRAM.

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

''SEC. 8A. THIRD PARTY CONSULTATION SERVICES PROGRAM.

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—Not later than 12 months after the date of enactment of this section, the Secretary shall establish and implement, by regulation, a program that qualifies individuals to provide consultation services to employers to assist employers in the identification and correction of safety and health hazards in the workplaces of employers.

''(2) ELIGIBILITY.—Each of the following individuals shall be eligible to be qualified under the program:

''(A) An individual licensed by a State authority as a physician, industrial hygienist, professional engineer, safety engineer, safety professional, or occupational nurse.

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

''(C) An individual qualified in an occupational health or safety field by an organization whose program has been accredited by a nationally recognized private accreditation organization or by the Secretary.

''(D) Other individuals determined to be qualified by the Secretary.

''(3) GEOGRAPHICAL SCOPE OF CONSULTATION SERVICES.—An individual qualified under the program may provide consultation services in any State.

''(b) SAFETY AND HEALTH REGISTRY.—The Secretary shall develop and maintain a registry that includes all individuals that are qualified under the program to provide the consultation services described in subsection (a) and shall publish and make such registry readily available to the general public.

''(c) DISCIPLINARY ACTIONS.—

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

''(A) has failed to meet the requirements of the program; or

''(B) has committed malfeasance, gross negligence, or fraud in connection with any consultation services provided by the qualified individual.

''(d) CONSULTATION SERVICES.—

''(1) SCOPE OF CONSULTATION SERVICES.—

''(A) IN GENERAL.—The consultation services described in subsection (a), and provided by an individual qualified under the program, shall include an evaluation of the workplace of an employer to determine if the employer is in compliance with the requirements of this Act, including any regulations promulgated pursuant to this Act.

''(B) NON-FIXED WORK SITES.—With respect to the employees of an employer who do not work at a fixed site, the consultation services described in subsection (a), and provided by an individual qualified under the program, shall include an evaluation of the safety and health program of the employer to determine if the employer is in compliance with the requirements of this Act, including any regulations promulgated under this Act.

''(2) CONSULTATION REPORT.—Not later than 10 business days after an individual qualified under the program provides the consultation services described in subsection (a) to an employer, the individual shall prepare and submit a written report to the employer that includes an identification of any violations of this Act and requirements with respect to corrective measures the employer needs to carry out in order for the workplace of the employer to be in compliance with the requirements of this Act.

''(3) REINSPECTION.—Not later than 30 days after an individual qualified under the program submits a report to an employer under paragraph (2), or on a date agreed on by the individual and the employer, the individual shall reinspect the workplace of the employer to verify that any occupational safety or health violations identified in the report have been corrected and the workplace of the employer is in compliance with this Act. If, after such reinspection, the individual determines that the workplace is in compliance with the requirements of this Act, the individual shall provide the employer a declaration of compliance.

''(4) GUIDELINES.—The Secretary, in consultation with an advisory committee established in section 7(d), shall develop model guidelines for use in evaluating a workplace under paragraph (1).

''(e) ACCESS TO RECORDS.—Any records relating to consultation services (as described in subsection (a)) provided by an individual qualified under the program, or records, reports, or other information prepared in connection with safety and health inspections, audits, or reviews conducted by or for an employer and not required under this Act, shall not be admissible in a court of law or administrative proceeding against the employer except that such records may be used as evidence for purposes of a disciplinary action under subsection (c).

''(f) EXEMPTION.—

''(1) IN GENERAL.—If an employer enters into a contract with an individual qualified under the program, to provide consultation services described in subsection (a), and receives a declaration of compliance under subsection (d)(3), the employer shall be exempt from the assessment of any civil penalty under section 17 for a period of 2 years after the date the employer receives the declaration.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply—

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

''(B) to the extent that there has been a fundamental change in the hazards of the workplace.

''(g) DEFINITION.—In this section, the term 'program' means the program established by the Secretary under subsection (a).''.

SEC. 6. INDEPENDENT SCIENTIFIC PEER REVIEW.

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

(1) by striking: ''(4) Within'' and inserting: ''(4)(A) Within''; and

(2) by adding at the end the following:

''(B)(i) Prior to issuing a final standard under this paragraph, the Secretary shall submit the draft final standard and a copy of the administrative record to the National Academy of Sciences for review in accordance with clause (ii).

''(ii)(I) The National Academy of Sciences shall appoint an independent Scientific Review Committee.

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

''(III) If the Secretary decides to modify the draft final standard in response to the recommendations provided by the Scientific Review Committee, the Scientific Review Committee shall be given an opportunity to review and comment on the modifications before the final standard is issued.

''(IV) The recommendations of the Scientific Review Committee shall be published with the final standard in the Federal Register.''.

SEC. 7. CONTINUING EDUCATION AND PROFESSIONAL CERTIFICATION FOR CERTAIN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PERSONNEL.

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

''(h) Any Federal employee responsible for enforcing this Act shall (not later than 2 years after the date of enactment of this subsection or 2 years after the initial employment of the employee) meet the eligibility requirements prescribed under subsection (a)(2) of section 8A.

''(i) The Secretary shall ensure that any Federal employee responsible for enforcing this Act who carries out inspections or investigations under this section, receive professional education and training at least every 5 years as prescribed by the Secretary.''.

SEC. 8. INSPECTION PROCEDURES AND QUOTAS.

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

(1) in paragraph (1)—

(A) in the second sentence, by inserting before ''and a copy'' the following: ''and shall state whether the alleged violation has been brought to the attention of the employer and if so, whether the employer has refused to take any action to correct the alleged violation,'';

(B) by inserting after the third sentence the following: ''The inspection shall be conducted for the limited purpose of determining whether the violation exists. During such an inspection, the Secretary may take appropriate actions with respect to health and safety violations that are not within the scope of the inspection and that are observed by the Secretary or an authorized representative of the Secretary during the inspection.''; and

(C) by inserting before the last period the following: '', and, upon request by the employee or employee representative, shall provide a written statement of the reasons for the determination of the Secretary''; and

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

''(3) The Secretary or an authorized representative of the Secretary may, as a method of investigating an alleged violation or danger under this subsection, attempt, if feasible, to contact an employer by telephone, facsimile, or other appropriate methods to determine whether—

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

''(B) there are reasonable grounds to believe that a hazard exists.

''(4) The Secretary is not required to conduct an inspection under this subsection if the Secretary determines that a request for an inspection was made for reasons other than the safety and health of the employees of an employer or that the employees of an employer are not at risk.''.

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

''(d) The Secretary shall not establish for any employee within the Occupational Safety and Health Administration (including any regional director, area director, supervisor, or inspector) a quota with respect to the number of inspections conducted, the number of citations issued, or the amount of penalties collected, in accordance with this Act.

''(e) Not later than 12 months after the date of enactment of this subsection and annually thereafter, the Secretary shall report on the number of employers that are inspected under this Act and determined to be in compliance with the requirements prescribed under this Act.''.

SEC. 9. PERSONAL RESPONSIBILITIES.

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

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

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

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

''(B) work rules designed to prevent such a violation have been established and adequately communicated to the employees by the employer and the employer has taken reasonable measures to discipline employees when violations of the work rules have been discovered;

''(C) the failure of employees to observe work rules led to the violation; and

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

''(g) A citation issued under subsection (a) to an employer who violates section 5, any standard, rule, or order promulgated pursuant to section 6, or any other regulation promulgated under this Act shall be vacated if such employer demonstrates that the employees of such employer were protected by alternative methods that are equally or more protective of the safety and health of the employees than the methods required by such standard, rule, order, or regulation in the factual circumstances underlying the citation.

''(h) Subsections (f) and (g) shall not be construed to eliminate or modify other defenses that may exist to any citation.''.

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

''SEC. 10A. EMPLOYEE RESPONSIBILITY.

''(a) IN GENERAL.—Notwithstanding any other provision of this Act, an employee who, with respect to personal protective equipment, willfully violates any requirement of section 5 or any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, may be assessed a civil penalty, as determined by the Secretary, for each violation.

''(b) CITATIONS.—If, upon inspection and investigation, the Secretary or the authorized representative of the Secretary believes that an employee of an employer has, with respect to personal protective equipment, violated any requirement of section 5 or any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, the Secretary shall within 60 days issue a citation to the employee. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this Act, standard, rule, regulation, or order alleged to have been violated. No citation may be issued under this section after the expiration of 6 months following the occurrence of any violation.

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

''(d) CONTESTING OF CITATION.—If the employee notifies the Secretary that the employee intends to contest the citation or proposed penalty, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance section 554 of title 5, United States Code). The Commission shall after the hearing issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief. Such order shall become final 30 days after issuance of the order.''.

SEC. 10. REDUCED PENALTIES FOR PAPERWORK VIOLATIONS.

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

''(i) Any employer who violates any of the posting or paperwork requirements, other than fraudulent reporting requirement deficiencies, prescribed under this Act shall not be assessed a civil penalty for such a violation unless the Secretary determines that the employer has violated subsection (a) or (d) with respect to the posting or paperwork requirements.''.

SEC. 11. REVIEW BY THE COMMISSION.

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

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

''(1) the size of an employer;

''(2) the number of employees exposed to the violation;

''(3) the likely severity of any injuries directly resulting from the violation;

''(4) the probability that the violation could result in injury or illness;

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

''(6) the history of previous violations by an employer; and

''(7) whether the violation is the sole result of the failure of an employer to meet a requirement under this Act, or prescribed by regulation, with respect to the posting of notices, the preparation or maintenance of occupational safety and health records, or the preparation, maintenance, or submission of any written information.''.

SEC. 12. TECHNICAL ASSISTANCE PROGRAM.

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

(1) by striking ''(c) The'' and inserting ''(c)(1) The'';

(2) by striking ''(1) provide'' and inserting ''(A) provide'';

(3) by striking ''(2) consult'' and inserting ''(B) consult''; and

(4) by adding at the end the following:

''(2)(A) The Secretary shall, through the authority granted under section 7(c) and paragraph (1), enter into cooperative agreements with States for the provision of consultation services by such States to employers concerning the provision of safe and healthful working conditions.

''(B)(i) Except as provided in clause (ii), the Secretary shall reimburse a State that enters into a cooperative agreement under

subparagraph (A) in an amount that equals 90 percent of the costs incurred by the State for the provision of consultation services under such agreement.

''(ii) A State shall be reimbursed by the Secretary for 90 percent of the costs incurred by the State for the provision of—

''(I) training approved by the Secretary for State personnel operating under a cooperative agreement; and

''(II) specified out-of-State travel expenses incurred by such personnel.

''(iii) A reimbursement paid to a State under this subparagraph shall be limited to costs incurred by such State for the provision of consultation services under this paragraph and the costs described in clause (ii).

''(C) Notwithstanding any other provisions of law, not less than 15 percent of the total amount of funds appropriated for the Occupational Safety and Health Administration for a fiscal year shall be used for education, consultation, and outreach efforts.''.

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

''(d)(1) Not later than 90 days after the date of enactment of this subsection, the Secretary shall establish and carry out a pilot program in 3 States to provide expedited consultation services, with respect to the provision of safe and healthful working conditions, to employers that are small businesses (as the term is defined by the Administrator of the Small Business Administration). The Secretary shall carry out the program for a period not to exceed 2 years.

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

''(3) The Secretary may impose a nominal fee to an employer requesting consultation services under paragraph (1). The fee shall be in an amount determined by the Secretary. Employers paying a fee shall receive priority consultation services by the Secretary.

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

''(5) Not later than 90 days after the termination of the program under paragraph (1), the Secretary shall prepare and submit a report to the appropriate committees of Congress that contains an evaluation of the implementation of the pilot program.''.

SEC. 13. VOLUNTARY PROTECTION PROGRAMS.

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

(1) requirements for systematic assessment of hazards;

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

(3) active and meaningful management and employee participation in the voluntary program described in subsection (b); and

(4) employee safety and health training.

(b) VOLUNTARY PROTECTION PROGRAM.—

(1) IN GENERAL.—The Secretary of Labor shall establish and carry out a voluntary protection program (consistent with subsection (a)) to encourage and recognize the achievement of excellence in both the technical and managerial protection of employees from occupational hazards. The Secretary of Labor shall encourage small businesses (as the term is defined by the Administrator of the Small Business Administration) to participate in the voluntary protection program by carrying out outreach and assistance initiatives and developing program requirements that address the needs of small businesses.

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

(A) APPLICATION.—Employers who volunteer under the program shall be required to submit an application to the Secretary of Labor demonstrating that the worksite with respect to which the application is made meets such requirements as the Secretary of Labor may require for participation in the program.

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

(C) INFORMATION.—Employers who are approved by the Secretary of Labor for participation in the program shall assure the Secretary of Labor that information about the safety and health program of the employers shall be made readily available to the Secretary of Labor to share with employees.

(D) REEVALUATIONS.—Periodic reevaluations by the Secretary of Labor of the employers shall be required for continued participation in the program.

(3) EXEMPTIONS.—A site with respect to which a program has been approved shall, during participation in the program be exempt from inspections or investigations and certain paperwork requirements to be determined by the Secretary of Labor, except that this paragraph shall not apply to inspections or investigations arising from employee complaints, fatalities, catastrophes, or significant toxic releases.

SEC. 14. PREVENTION OF ALCOHOL AND SUBSTANCE ABUSE.

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

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

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

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

''SEC. 29. ALCOHOL AND SUBSTANCE ABUSE TESTING.

''(a) PROGRAM PURPOSE.—In order to secure a safe workplace, employers may establish and carry out an alcohol and substance abuse testing program in accordance with subsection (b).

''(b) FEDERAL GUIDELINES.—An alcohol and substance abuse testing program described in subsection (a) shall meet the following requirements:

''(1) SUBSTANCE ABUSE.—A substance abuse testing program shall permit the use of an onsite or offsite urine screening or other recognized screening methods, so long as the confirmation tests are performed in accordance with the mandatory guidelines for Federal workplace testing programs published by the Secretary of Health and Human Services on April 11, 1988, at section 11979 of title 53, Code of Federal Regulations (including any amendments to such guidelines), in a lab that is subject to the requirements of subpart B of such mandatory guidelines.

''(2) ALCOHOL.—The alcohol testing component of the program shall take the form of alcohol breath analysis and shall conform to any guidelines developed by the Secretary of Transportation for alcohol testing of mass transit employees under the Department of Transportation and Related Agencies Appropriations Act, 1992.

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

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

''(2) an employee, including managerial personnel, to submit to and pass an alcohol or substance abuse test—

''(A) on a for-cause basis or where the employer has reasonable suspicion to believe that such employee is using or is under the influence of alcohol or a controlled substance;

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

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

''(D) during the participation of an employee in an alcohol or substance abuse treatment program, and for a reasonable period of time (not to exceed 5 years) after the conclusion of such program; or

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

''(d) CONSTRUCTION.—Nothing in this section shall be construed to require an employer to establish an alcohol and substance abuse testing program for applicants or employees or make employment decisions based on such test results.

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

''(f) INVESTIGATIONS.—The Secretary is authorized to conduct testing of employees (including managerial personnel) of an employer for use of alcohol or controlled substances during any investigations of a work-related fatality or serious injury.''.

SEC. 15. CONSULTATION ALTERNATIVES.

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

''(a)(1) Nothing in this Act shall be construed as prohibiting the Secretary or the authorized representative of the Secretary from providing technical or compliance assistance to an employer in correcting a violation discovered during an inspection or investigation under this Act without issuing a citation.

''(2) Except as provided in paragraph (3), if, upon an inspection or investigation, the Secretary or an authorized representative of the Secretary believes that an employer has violated a requirement of section 5, of any regulation, rule, or order promulgated pursuant to section 6, or of any regulations prescribed pursuant to this Act, the Secretary may with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of a violation, including a reference to the provision of the Act, regulation, rule, or order alleged to have been violated. The citation shall fix a reasonable time for the abatement of the violation.

''(3) The Secretary or the authorized representative of the Secretary—

''(A) may issue a warning in lieu of a citation with respect to a violation that has no significant relationship to employee safety or health; and

''(B) may issue a warning in lieu of a citation in cases in which an employer in good faith acts promptly to abate a violation if the violation is not a willful or repeated violation.''.

By Mr. SMITH of Oregon:

S. 1238. A bill to amend section 1926 of the Public Health Service Act to encourage States to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18 and for other purposes; to the Committee on Labor and Human Resources.

THE TOBACCO USE BY MINORS DETERRENCE ACT OF 1997

Mr. SMITH of Oregon. Mr. President, today in America, too many teenagers have access to too much tobacco at too many stores and retail outlets. The result? Each day 3,000 more young people start smoking and get addicted to lethal tobacco products.

As Congress considers legislation to reduce teenage smoking and to address the growing public health concerns associated with the use of tobacco, I want to propose a concept that goes to the heart of the problem—keeping tobacco products out of the hands of kids. While there are numerous well-intentioned suggestions as to how to best achieve this goal, I believe that the proposal I am introducing today goes to the heart of the problem—holding both those who sell tobacco accountable and those who illegally purchase tobacco responsible. It demands the participation by store owners, clerks, parents, kids, and local law enforcement.

The proposal is a simple, direct approach: require those who sell tobacco to be licensed and trained, and hold children who illegally purchase tobacco responsible for their actions—by notifying their parents, imposing fines and community service, and restricting access to driving privileges.

With this legislation, we have an opportunity to take some incremental and immediate action today, to empower our communities in the fight against teenage tobacco use. The Tobacco Use by Minors Deterrence Act elicits cooperation among families, communities, the retailers, and law enforcement officials in the fight against tobacco use by children. Importantly, this legislation gives retailers a new leadership role and places greater responsibility on parents and minors.

First, this bill establishes a self-funding State license program for retailers to sell tobacco products, similar to liquor licenses. Second, it imposes strict penalties on store owners and employees for selling tobacco products to minors. Third, it requires employee training on all tobacco laws. Fourth, it subjects minors who are caught purchasing or using tobacco products to punishments that are meaningful to them, including the option of fines, parental notification, community service, and possible loss of driving privileges.

In my State of Oregon, restrictions on the distribution and sale of tobacco products are some of the strongest in the nation. This legislation echoes Oregon's commitment by making it more difficult for retailers across the Nation to make a profit from the illegal sale of tobacco products to children.

Just how important is it that we take immediate action? Each day that we wait for the pending FDA lawsuits, and each day that we spend talking about doing something to reduce tobacco use by our Nation's children, 3,000 more young people begin smoking. I want you to think about that for a moment. Each day, 3,000 children start smoking—-that's more than 1 million children each year. To put this into perspective, the Centers for Disease Control [CDC] estimates that 16.6 million of our children today will become regular smokers, and almost one-third, approximately 5 million children, will die from tobacco-related illness. In my State of Oregon, 191,688 children under 18 are projected to become smokers; 61,340 of those youth will die. It is time to recognize teen tobacco use for what it is—a public health epidemic.

In addition to the loss of life associated with tobacco use, there is a significant cost to our public health system. Currently, health care costs caused directly by smoking total more than $50 billion each year. We cannot afford to wait any longer. Because the longer we postpone empowering communities, families, and law enforcement officials, we do so by sacrificing the health and life of our children.

ADDITIONAL COSPONSORS

S. 28

At the request of Mr. THURMOND, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 61

At the request of Mr. LOTT, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 766

At the request of Ms. SNOWE, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 766, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 773

At the request of Mr. DURBIN, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 773, a bill to designate certain Federal lands in the State of Utah as wilderness, and for other purposes.

S. 852

At the request of Mr. LOTT, the name of the Senator from Tennessee [Mr. THOMPSON] was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 943

At the request of Mr. SPECTER, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 943, a bill to amend title 49, United States Code, to clarify the application of the Act popularly known as the ''Death on the High Seas Act'' to aviation accidents.

S. 1096

At the request of Mr. KERREY, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 1096, a bill to restructure the Internal Revenue Service, and for other purposes.

S. 1133

At the request of Mr. COVERDELL, the names of the Senator from New York [Mr. D'AMATO] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 1133, a bill to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses and to increase the maximum annual amount of contributions to such accounts.

S. 1141

At the request of Mr. JOHNSON, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 1141, a bill to amend the Energy Policy Act of 1992 to take into account newly developed renewable energy-based fuels and to equalize alternative fuel vehicle acquisition incentives to increase the flexibility of controlled fleet owners and operators, and for other purposes.

S. 1180

At the request of Mr. KEMPTHORNE, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 1180, a bill to reauthorize the Endangered Species Act.

S. 1205

At the request of Mrs. MURRAY, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 1205, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to clarify that records of arrival or departure are not required to be collected for purposes of the automated entry-exit control system developed under section 110 of such Act for Canadians who are not otherwise required to possess a visa, passport, or border crossing identification card.

SENATE CONCURRENT RESOLUTION 42

At the request of Mr. D'AMATO, the names of the Senator from Kansas [Mr. BROWNBACK], the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of Senate Concurrent Resolution 42, a concurrent resolution to authorize the use of the rotunda of the Capitol for a congressional ceremony honoring Ecumenical Patriarch Bartholomew.