

**(c) Citation for violation determined not serious**

Any employer who has received a citation for a violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of regulations prescribed pursuant to this chapter, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$7,000 for each such violation.

**(d) Failure to correct violation**

Any employer who fails to correct a violation for which a citation has been issued under section 658(a) of this title within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 659 of this title initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.

**(e) Willful violation causing death to employee**

Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

**(f) Giving advance notice of inspection**

Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

**(g) False statements, representations or certification**

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

**(h) Omitted****(i) Violation of posting requirements**

Any employer who violates any of the posting requirements, as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to \$7,000 for each violation.

**(j) Authority of Commission to assess civil penalties**

The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the

gravity of the violation, the good faith of the employer, and the history of previous violations.

**(k) Determination of serious violation**

For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

**(l) Procedure for payment of civil penalties**

Civil penalties owed under this chapter shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

(Pub. L. 91-596, §17, Dec. 29, 1970, 84 Stat. 1606, 1607; Pub. L. 101-508, title III, §3101, Nov. 5, 1990, 104 Stat. 1388-29.)

**Editorial Notes****CODIFICATION**

Subsec. (h) of this section amended section 1114 of Title 18, Crimes and Criminal Procedure, and enacted note set out thereunder.

**AMENDMENTS**

1990—Subsec. (a). Pub. L. 101-508, §3101(1), substituted “\$70,000 for each violation, but not less than \$5,000 for each willful violation” for “\$10,000 for each violation”.

Subsecs. (b) to (d), (i). Pub. L. 101-508, §3101(2), substituted “\$7,000” for “\$1,000”.

**§ 667. State jurisdiction and plans****(a) Assertion of State standards in absence of applicable Federal standards**

Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 655 of this title.

**(b) Submission of State plan for development and enforcement of State standards to preempt applicable Federal standards**

Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 655 of this title shall submit a State plan for the development of such standards and their enforcement.

**(c) Conditions for approval of plan**

The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 655 of this title which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to this chapter which is at least as effective as that provided in section 657 of this title, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

**(d) Rejection of plan; notice and opportunity for hearing**

If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

**(e) Discretion of Secretary to exercise authority over comparable standards subsequent to approval of State plan; duration; retention of jurisdiction by Secretary upon determination of enforcement of plan by State**

After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 657, 658, 659, 662, and 666 of this title with respect to comparable standards promulgated under section 655 of this title, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the deter-

mination referred to in the preceding sentence, the provisions of sections 654(a)(2), 657 (except for the purpose of carrying out subsection (f) of this section), 658, 659, 662, and 666 of this title, and standards promulgated under section 655 of this title, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 658 or 659 of this title before the date of determination.

**(f) Continuing evaluation by Secretary of State enforcement of approved plan; withdrawal of approval of plan by Secretary; grounds; procedure; conditions for retention of jurisdiction by State**

The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

**(g) Judicial review of Secretary's withdrawal of approval or rejection of plan; jurisdiction; venue; procedure; appropriate relief; finality of judgment**

The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

**(h) Temporary enforcement of State standards**

The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from December 29, 1970, whichever is earlier.

(Pub. L. 91-596, §18, Dec. 29, 1970, 84 Stat. 1608.)

### § 668. Programs of Federal agencies

#### (a) Establishment, development, and maintenance by head of each Federal agency

It shall be the responsibility of the head of each Federal agency (not including the United States Postal Service) to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 655 of this title. The head of each agency shall (after consultation with representatives of the employees thereof)—

- (1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 655 of this title;
- (2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;
- (3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;
- (4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and
- (5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5.

#### (b) Report by Secretary to President

The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports.

#### (c) Omitted

#### (d) Access by Secretary to records and reports required of agencies

The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

(Pub. L. 91-596, §19, Dec. 29, 1970, 84 Stat. 1609; Pub. L. 97-375, title I, §110(c), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 105-241, §2(b)(1), Sept. 28, 1998, 112 Stat. 1572.)

### Editorial Notes

#### CODIFICATION

Subsec. (c) of this section amended section 7902 of Title 5, Government Organization and Employees.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-241 inserted “(not including the United States Postal Service)” after “each Federal agency”.

1982—Subsec. (b). Pub. L. 97-375 struck out direction that the President transmit annually to the Senate and House a report of the activities of Federal agencies under this section.

### Executive Documents

#### OCCUPATIONAL SAFETY AND HEALTH PROGRAMS FOR FEDERAL EMPLOYEES

Occupational safety and health programs for Federal employees and continuation of Federal Advisory Council on Occupational Safety and Health, see Ex. Ord. No. 12196, Feb. 26, 1980, 45 F.R. 12769, set out as a note under section 7902 of Title 5, Government Organization and Employees.

### § 669. Research and related activities

#### (a) Authority of Secretary of Health and Human Services to conduct research, experiments, and demonstrations, develop plans, establish criteria, promulgate regulations, authorize programs, and publish results and industry-wide studies; consultations

(1) The Secretary of Health and Human Services, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health and Human Services shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this chapter; and the Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this chapter.

(3) The Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health and Human Services shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this chapter. The Secretary of Health and Human Services shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(5) The Secretary of Health and Human Services, in order to comply with his responsibilities under paragraph (2), and in order to develop