

Union Calendar No. 475

103^D CONGRESS
2^D SESSION

H. R. 115

[Report No. 103-858]

A BILL

To strengthen the authority to require safe workplaces for Federal and Postal Service employees, and for other purposes.

OCTOBER 7, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. CLAY introduced the following bill; which was referred to the Committee on Post Office and Civil Service

SEPTEMBER 9, 1993

Additional sponsors: Mr. McCLOSKEY, Mr. SAWYER, Mr. SANDERS, Ms. PELOSI, Mr. ACKERMAN, Mr. FORD of Michigan, Mr. JACOBS, Mr. RANGEL, Mr. WATT, Mr. JEFFERSON, Mr. TOWNS, Mr. BERMAN, Mr. ROMERO-BARCELÓ, Mrs. CLAYTON, Mrs. MALONEY, Mr. TUCKER, Mrs. MINK, Mr. YOUNG of Alaska, Mrs. MORELLA, Mr. KLINK, Mr. FILNER, Mr. HASTINGS, Mr. HINCHEY, Mr. PARKER, Mr. KOPETSKI, Ms. DANNER, Mr. BLACKWELL, Mr. SERRANO, Mr. LEHMAN, Mr. BROWN of California, Mr. LANTOS, Ms. NORTON, Ms. ESHOO, Mr. FOGLIETTA, Mr. LAFALCE, Mr. CONYERS, Ms. VELÁZQUEZ, Mr. BECERRA, Mr. TORRES, and Mr. DELLUMS

OCTOBER 7, 1994

Additional sponsors: Mr. GEJDENSON, Mr. WYNN, Mr. STARK, Mr. BONIOR, Mr. REED, Mr. ABERCROMBIE, Ms. DELAURO, Mr. MINETA, and Mr. NADLER

OCTOBER 7, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on January 5, 1993]

A BILL

To strengthen the authority to require safe workplaces for Federal and Postal Service employees, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Federal and Postal Serv-*
 5 *ice Employees Occupational Safety and Health Act of*
 6 *1994”.*

7 **SEC. 2. FEDERAL OCCUPATIONAL SAFETY AND HEALTH**
 8 **PROGRAMS.**

9 *(a) NEW SUBCHAPTER.—Chapter 79 of title 5, United*
 10 *States Code, is amended—*

11 *(1) by inserting before section 7901 the following:*

12 *“SUBCHAPTER I—GENERAL PROVISIONS”;*

13 *(2) by repealing section 7902; and*

14 *(3) by adding at the end the following:*

15 *“SUBCHAPTER II—FEDERAL OCCUPATIONAL*
 16 *SAFETY AND HEALTH*

17 **“§ 7911. Definitions; applicability**

18 *“(a) For the purpose of this subchapter—*

19 *“(1) the term ‘agency’ means an Executive agen-*
 20 *cy, the United States Postal Service, and the Postal*

1 *Rate Commission, but shall not include the General*
2 *Accounting Office;*

3 “(2) the term ‘employee’ means any person, other
4 than a member of the Armed Forces, employed by an
5 agency, including any individual employed outside
6 the United States;

7 “(3) the term ‘Commission’ means the Occupa-
8 tional Safety and Health Review Commission estab-
9 lished under the Occupational Safety and Health Act
10 of 1970;

11 “(4) the term ‘Secretary’ means the Secretary of
12 Labor;

13 “(5) the term ‘worksite’ means a single physical
14 location where the work of the agency is conducted or
15 where services or operations are performed by employ-
16 ees of the agency; where distinctly separate activities
17 are performed at a single physical location, each ac-
18 tivity shall be treated as a separate worksite; and

19 “(6) the term ‘State’ includes a State of the
20 United States, the District of Columbia, Puerto Rico,
21 the Virgin Islands, American Samoa, Guam, and the
22 Trust Territory of the Pacific Islands.

23 “(b) This subchapter shall apply with respect to em-
24 ployment in a workplace, whether inside or outside the
25 United States.

1 **“§ 7912. Employee rights and obligations**

2 *“Each employee of an agency—*

3 *“(1) shall have the right to employment and a*
4 *place of employment which are free from recognized*
5 *safety and health hazards that are causing or are*
6 *likely to cause death or serious physical harm to em-*
7 *ployees;*

8 *“(2) shall have the right to report unsafe or*
9 *unhealthy working conditions to appropriate officials*
10 *without fear of reprisal; and*

11 *“(3) shall comply with occupational safety and*
12 *health standards, rules, and orders issued under sec-*
13 *tion 6 of the Occupational Safety and Health Act of*
14 *1970, and all regulations issued pursuant to this sub-*
15 *chapter which are applicable to the employee’s actions*
16 *and conduct.*

17 *The rights of employees under this section are in addition*
18 *to any other rights which such employees may have.*

19 **“§ 7913. Duties of agencies**

20 *“(a) The head of each agency shall—*

21 *“(1) furnish, to each employee of such agency*
22 *and to each other employee at a worksite of the agen-*
23 *cy, employment and a place of employment which are*
24 *free from recognized hazards which the agency creates*
25 *or controls or to which the agency exposes employees*

1 *and which are causing or are likely to cause death or*
2 *serious physical harm to employees;*

3 *“(2) comply with occupational safety and health*
4 *standards, rules, and orders under section 6 of the Oc-*
5 *cupational Safety and Health Act of 1970, and all*
6 *regulations issued pursuant to this subchapter;*

7 *“(3) acquire, maintain and require the use of*
8 *such safety equipment, personal protective equipment*
9 *and clothing, and devices as are reasonably necessary*
10 *to protect employees of such agency from unsafe or*
11 *unhealthy conditions in the performance of their du-*
12 *ties, at no cost to the employees; and*

13 *“(4) ensure that the safety and health program*
14 *established under section 7914 and the agency em-*
15 *ployees who administer such program and other pro-*
16 *visions of this subchapter have the funds, authority,*
17 *training, and qualified personnel to effectively carry*
18 *out the requirements of this subchapter.*

19 *“(b) Notwithstanding sections 7103(a)(14)(C),*
20 *7106(a), and 7117 (a) and (b), the duty to bargain in good*
21 *faith under chapter 71 of this title, chapter 12 of title 39,*
22 *or chapter 74 of title 38 shall, in addition to any other*
23 *matter to which it applies, also extend to occupational safe-*
24 *ty and health matters generally and the substance of the*
25 *programs and requirements under this subchapter, except*

1 *that any matter agreed to shall afford at least the level of*
2 *protection which would otherwise be required under this*
3 *subchapter and section 6 of the Occupational Safety and*
4 *Health Act of 1970.*

5 “(c)(1) *The head of each agency shall appoint a Des-*
6 *ignated Agency Safety and Health Officer (hereinafter in*
7 *this subchapter referred to as a ‘DASHO’). The DASHO*
8 *shall perform such functions as the head of the agency may*
9 *from time to time prescribe in establishing and carrying*
10 *out the agency safety and health program.*

11 “(2) *The head of each agency shall appoint such other*
12 *subordinate officials as are necessary to ensure that the*
13 *agency’s safety and health program is carried out at all*
14 *agency worksites.*

15 “(d) *The head of each agency shall ensure that, in con-*
16 *ducting any performance evaluation of any employee with*
17 *management or supervisory functions, such evaluation*
18 *measures such employee’s performance in meeting the re-*
19 *quirements of this subchapter and of the safety and health*
20 *program of the agency, consistent with such employee’s re-*
21 *sponsibilities and duties thereunder.*

22 “(e)(1) *Each agency shall make, keep and preserve,*
23 *and make available to the Secretary or the Secretary of*
24 *Health and Human Services, such records regarding its ac-*
25 *tivities relating to this subchapter as the Secretary, in co-*

1 operation with the Secretary of Health and Human Serv-
2 ices, may prescribe by regulation as necessary or appro-
3 priate for the enforcement of this subchapter or for develop-
4 ing information regarding the causes and prevention of oc-
5 cupational accidents and illnesses. The Secretary shall also
6 issue regulations requiring that agencies, through posting
7 of notices or other appropriate means, keep their employees
8 informed of their protections and obligations under this
9 subchapter, including the provisions of applicable stand-
10 ards. Such regulations shall include provisions requiring
11 agencies to post for employees the protections afforded under
12 section 7922, including the circumstances under which an
13 employee is protected against reprisal for refusing to per-
14 form duties that might result in serious injury to the em-
15 ployee or other employees.

16 “(2) The Secretary, in cooperation with the Secretary
17 of Health and Human Services, shall prescribe regulations
18 requiring each agency to maintain accurate records of, and
19 make periodic reports on, work-related deaths, injuries, ill-
20 nesses, work-related illness reported by an employee or an
21 employee’s physician (unless the agency makes a reasonable
22 determination that the illness is not work-related), and an
23 adverse medical condition determined as a result of a medi-
24 cal examination or test conducted under an occupational
25 safety and health standard. Records and reports shall not

1 *be required for minor injuries requiring only first aid treat-*
2 *ment and which do not involve medical treatment, loss of*
3 *consciousness, restriction of work or motion, or transfer to*
4 *another job.*

5 “(3) *The Secretary, in cooperation with the Secretary*
6 *of Health and Human Services, shall prescribe regulations*
7 *requiring each agency to maintain accurate records of em-*
8 *ployee exposures to potentially toxic materials or harmful*
9 *physical agents which are required to be monitored or meas-*
10 *ured under section 6 of the Occupational Safety and Health*
11 *Act of 1970. Each agency shall provide employees or their*
12 *representatives with an opportunity to observe such mon-*
13 *itoring or measuring, and to have access to the records*
14 *thereof, and shall also make appropriate provision for each*
15 *employee or former employee to have access to such records*
16 *as will indicate that individual’s own exposure to toxic ma-*
17 *terials or harmful physical agents. Each agency shall*
18 *promptly notify any employee who has been or is being ex-*
19 *posed to toxic materials or harmful physical agents in con-*
20 *centrations or at levels which exceed those prescribed by an*
21 *applicable occupational safety and health standard promul-*
22 *gated under section 6 of the Occupational Safety and*
23 *Health Act of 1970. The agency shall inform any employee*
24 *who is being thus exposed of the corrective action being*
25 *taken to prevent further such exposure.*

1 **“§ 7914. Safety and health programs**

2 “(a) The head of each agency shall establish and carry
3 out a comprehensive, agency-wide occupational safety and
4 health program to reduce or eliminate hazards and to pre-
5 vent injuries and illnesses to employees. The scope of such
6 a program shall include, but not be limited to, establish-
7 ment and evaluation of worksite safety and health programs
8 established under subsection (b); activities that span mul-
9 tiple worksites, such as education and training programs;
10 and inspections by qualified safety and occupational health
11 specialists.

12 “(b) The head of each agency shall establish and carry
13 out a written safety and health program in each worksite
14 that includes—

15 “(1) methods and procedures for identifying,
16 evaluating, and documenting safety and health haz-
17 ards, including the designation of 1 or more rep-
18 resentatives of the agency who have the qualifications
19 and responsibility to identify safety and health haz-
20 ards;

21 “(2) methods and procedures for correcting the
22 safety and health hazards identified under paragraph
23 (1) and protecting employees in imminent danger sit-
24 uations, including the designation of 1 or more rep-
25 resentatives of the agency who have the authority to

1 *initiate corrective action at each location where the*
2 *agency's employees work;*

3 *“(3) methods and procedures for investigating*
4 *and recording work-related illnesses, injuries, and*
5 *deaths;*

6 *“(4) methods and procedures for providing emer-*
7 *gency response first-aid and other occupational health*
8 *services that are required by regulations under this*
9 *subchapter;*

10 *“(5) methods and procedures for employee par-*
11 *ticipation in the implementation of the agency's safe-*
12 *ty and health program, including participation*
13 *through a safety and health committee established*
14 *under section 7915, where applicable;*

15 *“(6) methods and procedures for providing safety*
16 *and health training and education to employees and*
17 *to members of a safety and health committee estab-*
18 *lished under section 7915;*

19 *“(7) in the case of a worksite where employees of*
20 *2 or more agencies work, procedures for each agency*
21 *to protect employees at the worksite from hazards*
22 *under the agency's control, including procedures to*
23 *provide information on safety and health hazards to*
24 *other agencies and employees at the worksite; and*

1 “(8) such other measures as the Secretary may
2 by regulation require to carry out the purposes of this
3 subchapter.

4 “(c) The agency shall permit employees to take such
5 time from work as is reasonably necessary to participate
6 in the agency-wide or worksite safety and health programs,
7 including training and education activities. Such partici-
8 pation shall be considered to be time worked, and no em-
9 ployee shall suffer any adverse effect in terms of pay, bene-
10 fits, or any other term or condition of employment for hav-
11 ing participated.

12 “(d)(1) The Secretary shall, within 18 months after
13 the effective date of the Federal and Postal Service Employ-
14 ees Occupational Safety and Health Act of 1994, issue final
15 regulations on agency safety and health programs required
16 by this section.

17 “(2) The regulations of the Secretary under paragraph
18 (1) respecting an agency’s safety and health program
19 shall—

20 “(A) provide for training and education of em-
21 ployees at the time of assignment in a manner that
22 is readily understood by such employees concerning
23 safety and health hazards, control measures, and the
24 agency’s safety and health program;

1 “(B) provide for the dissemination of informa-
2 tion to employees at the time of appointment, in a
3 manner that is readily understood by such employees,
4 regarding employee rights and obligations, the protec-
5 tions afforded under section 7922, including the cir-
6 cumstances under which an employee is protected
7 against reprisal for refusing to perform duties that
8 might result in serious injury or for reporting an un-
9 safe condition, and applicable laws and regulations;

10 “(C) provide for training and education of safety
11 and health committee members, at the time of their
12 selection, to enable such members to carry out the ac-
13 tivities of the committee under section 7915;

14 “(D) require that refresher training and addi-
15 tional training be provided to employees and to safety
16 and health committee members as needed and when
17 there are changes in conditions or operations that
18 may expose employees to new or different safety or
19 health hazards or when there are changes in safety
20 and health regulations or standards under this sub-
21 chapter or section 6 of the Occupational Safety and
22 Health Act of 1970 that apply to the agency; and

23 “(E) provide that any specific program or train-
24 ing requirements imposed by regulations issued under
25 section 6 of the Occupational Safety and Health Act

1 of 1970 may be combined or coordinated with the
2 agency's safety and health program.

3 “(e) The head of each agency shall develop and imple-
4 ment a program for evaluating the effectiveness of the agen-
5 cy's safety and health program and shall report to the Sec-
6 retary annually the results of such evaluation. The annual
7 report shall—

8 “(1) report the status on appropriate outcome
9 performance measures, consistent with regulations es-
10 tablished by the Secretary under subsection (d), which
11 the agency is using to determine program effective-
12 ness;

13 “(2) summarize the agency's evaluations of each
14 worksite safety and health program;

15 “(3) describe any violations of safety and health
16 program or committee requirements found by the Sec-
17 retary in the inspections and investigations conducted
18 under section 7916, and what steps have been taken
19 to ensure that such violations do not exist at other
20 worksites within the agency; and

21 “(4) contain other such information as the Sec-
22 retary shall require.

23 “(f)(1) As part of the agency-wide safety and health
24 program, and in order to carry out the purposes of this
25 subchapter, the head of each agency shall ensure that each

1 *worksite of such agency is inspected by a qualified safety*
2 *or occupational health specialist—*

3 “(A) *annually;*

4 “(B) *as needed in worksites where conditions cre-*
5 *ate a high risk of accident, injury, or illness;*

6 “(C) *as needed to confirm that hazardous condi-*
7 *tions identified in inspections by the worksite safety*
8 *and health committees, the agency, or the Secretary*
9 *have been abated; and*

10 “(D) *as may be required under paragraph (2).*

11 “(2)(A) *Any employee of an agency and any represent-*
12 *ative of such employee may request an inspection under*
13 *paragraph (1) by reporting to the DASHO in such agency*
14 *(or to any designee of the DASHO), any unsafe or*
15 *unhealthy working condition. Upon the request of the indi-*
16 *vidual making such report, the agency shall not disclose the*
17 *identity of any individual who makes such report except*
18 *to an authorized representative of the Secretary.*

19 “(B) *If a report is made under subparagraph (A), and*
20 *the DASHO (or designee) determines that there are reason-*
21 *able grounds to believe such a hazard exists, an inspection*
22 *shall be conducted under paragraph (1)—*

23 “(i) *within 12 hours after the receipt of such re-*
24 *port in the case of a condition which presents an im-*
25 *minent danger to the safety or health of employees;*

1 “(ii) within 3 working days after the receipt of
2 such report in the case of a condition which presents
3 a potentially serious risk to the safety or health of em-
4 ployees of the agency; or

5 “(iii) within 20 working days after the receipt of
6 such report in the case of a condition other than 1 de-
7 scribed in clause (i) or (ii).

8 “(C) If the DASHO determines that there are no rea-
9 sonable grounds to believe that a violation or danger exists,
10 the DASHO shall notify the employees or representative of
11 the employees in writing of such determination within 15
12 days after receipt of the request for inspection.

13 “(3) If it is determined in an inspection conducted
14 under this subsection that an imminent danger to safety
15 or health exists at the worksite, the inspector conducting
16 such inspection shall immediately inform the designated
17 representative of the agency at the worksite who has the au-
18 thority to initiate corrective action, and the affected em-
19 ployees in such worksite and the representative of such em-
20 ployees (if any). The agency representative with authority
21 to initiate corrective action in the worksite shall imme-
22 diately correct the condition or practice constituting an im-
23 minent danger or remove employees from exposure to such
24 danger. For the purposes of this subchapter, an imminent
25 danger exists when there is a condition or practice in a

1 *place of employment that could reasonably be expected to*
2 *cause death or serious physical harm or permanent impair-*
3 *ment to the health or functional capacity of employees if*
4 *not corrected immediately or before the imminence of such*
5 *danger can be eliminated through the enforcement proce-*
6 *dures otherwise required by this subchapter.*

7 **“§ 7915. Safety and health committees**

8 “(a) *The head of each agency shall establish a safety*
9 *and health committee (hereinafter in this section referred*
10 *to as the ‘committee’) at each worksite in accordance with*
11 *subsection (d), subject to subsections (e) and (g). The head*
12 *of each agency shall make available to such committees all*
13 *information and assistance relevant and necessary for car-*
14 *rying out the purposes of this section.*

15 “(b) *The purpose of the committees is to bring employ-*
16 *ees and agency management together in a nonadversarial,*
17 *cooperative effort to promote safety and health in each*
18 *worksite. A safety and health committee established under*
19 *subsection (a) assists the agency head and makes rec-*
20 *ommendations regarding methods of addressing safety and*
21 *health hazards. The committee rights include, but are not*
22 *limited to, those specified in subsection (c).*

23 “(c)(1) *Each committee shall have the right, within*
24 *reasonable limits and in a reasonable manner, to—*

1 “(A) review any safety and health program es-
2 tablished under section 7914;

3 “(B) review incidents resulting in work-related
4 deaths, injuries, and illnesses, and complaints regard-
5 ing safety or health hazards by employees or commit-
6 tee members;

7 “(C) review, upon request to the agency by any
8 committee member, the agency’s work injury and ill-
9 ness records, other than personally identifiable medi-
10 cal information, and other reports or documents relat-
11 ing to occupational safety and health;

12 “(D) conduct inspections of the worksite at least
13 once every 3 months and in response to complaints
14 regarding safety or health hazards by employees or
15 committee members;

16 “(E) conduct interviews with employees in con-
17 junction with inspections of the worksite;

18 “(F) conduct regularly-scheduled meetings at
19 least once every 3 months and maintain written min-
20 utes of such meetings;

21 “(G) call special meetings, where necessary, with
22 advance notice to members of the committee, employ-
23 ees, and exclusive representatives of employees;

24 “(H) observe the measurement of employee expo-
25 sure to toxic materials and harmful physical agents;

1 “(I) on behalf of the committee as a whole, agen-
2 cy or employee representatives on the committee or
3 individual committee members, make recommenda-
4 tions, and receive a response from the agency, regard-
5 ing improvements in the comprehensive agency-wide
6 safety and health program or the worksite safety and
7 health program and correction of hazards to employee
8 safety or health; and

9 “(J) accompany the head of the agency or the
10 head of the agency’s representative during any phys-
11 ical inspection of the committee’s worksite under sec-
12 tion 7914(f), and the Secretary or the Secretary’s rep-
13 resentative during any physical inspection of the
14 worksite under section 7916.

15 “(2) The agency shall permit members of the committee
16 to take such time from work as is reasonably necessary to
17 carry out the functions of the committee, without suffering
18 any adverse effect in terms of pay, benefits, or any other
19 term or condition of employment.

20 “(d)(1) Each committee shall consist of the employee
21 safety and health representatives elected or appointed under
22 paragraph (3) and up to an equal number of agency rep-
23 resentatives. In determining the average number of
24 nonmanagerial employees of an agency for purposes of this

1 *subsection, only employees employed more than an average*
2 *of 20 hours per week shall be counted.*

3 *“(2) Each committee shall include—*

4 *“(A) 1 employee safety and health representative*
5 *at each worksite where the average number of*
6 *nonmanagerial employees of the agency during the*
7 *preceding calendar year was more than 10, but less*
8 *than 51;*

9 *“(B) 2 employee safety and health representa-*
10 *tives at each worksite where the average number of*
11 *nonmanagerial employees of the agency during the*
12 *preceding calendar year was more than 50 but less*
13 *than 101; or*

14 *“(C) at each worksite where the average number*
15 *of nonmanagerial employees of the agency during the*
16 *preceding calendar year was more than 100, 2 em-*
17 *ployee safety and health representatives plus 1 addi-*
18 *tional representative for every unit of 100 by which*
19 *such average exceeds 100, except that not more than*
20 *a total of 6 employee safety and health representatives*
21 *shall be allowed under this subparagraph.*

22 *“(3) The agency’s nonmanagerial employees shall, in*
23 *accordance with procedures under subsection (e)(1), select*
24 *employee safety and health representatives by and from*
25 *among themselves, as follows:*

1 “(A) Where none of the agency’s employees at a
2 worksite are represented by an exclusive representa-
3 tive, the employees shall select employee safety and
4 health representatives.

5 “(B) Where the agency’s employees are rep-
6 resented by a single exclusive representative, the rep-
7 resentative shall designate the employee safety and
8 health representatives.

9 “(C) Where the agency’s employees are rep-
10 resented by more than one exclusive representative or
11 where some but not all of the employees are rep-
12 resented by an exclusive representative, each such ex-
13 clusive representative and, where applicable, the em-
14 ployees shall designate a proportionate number of em-
15 ployee safety and health representatives in a manner
16 prescribed by the Secretary by regulation.

17 “(4) An employee shall have the right to seek to be an
18 employee safety and health representative and to otherwise
19 participate in the selection process without being subject to
20 penalties, discipline, agency interference, or reprisal of any
21 kind.

22 “(e)(1) The Secretary shall, within 18 months after the
23 effective date of the Federal and Postal Service Employees
24 Occupational Safety and Health Act of 1994, issue regula-

1 *tions on safety and health committees. Such regulations*
2 *shall include provisions relating to—*

3 “(A) *the functioning of committees, including the*
4 *selection, terms, and number of employee safety and*
5 *health representatives and the maintenance of records;*
6 *and*

7 “(B) *the procedures for obtaining employee par-*
8 *ticipation in the worksite safety and health program*
9 *and inspections conducted by the Secretary in work-*
10 *sites with fewer than 11 employees.*

11 “(2) *Regulations issued under paragraph (1) shall in-*
12 *clude provisions addressing situations in which—*

13 “(A) *an agency’s employees do not primarily re-*
14 *port to or work at a fixed location;*

15 “(B) *employees of more than 1 agency employer*
16 *are employed; and*

17 “(C) *access to all or part of a worksite requires*
18 *a security clearance.*

19 “(f) *The rights and remedies provided to employees*
20 *and employee safety and health representatives by this sec-*
21 *tion are in addition to, and not in lieu of, any other rights*
22 *and remedies provided by contract, by other provisions of*
23 *this subchapter, or by other applicable law, and are not*
24 *intended to alter or affect such rights and remedies.*

1 “(g) Upon application of the agency, the Secretary
2 may approve the establishment of a mechanism for em-
3 ployee participation in the promotion of worksite safety
4 and health which differs in form from the safety and health
5 committee if the alternative ensures that employees may
6 meaningfully participate in safety and health activities at
7 the worksite. An application to establish an alternative
8 mechanism for employee participation may not be approved
9 by the Secretary unless—

10 “(1) the mechanism for employee participation
11 provides for the free and fair selection of employee
12 participants by and from among the agency’s
13 nonmanagerial employees in a manner that ensures
14 that employees will not be subject to penalties, dis-
15 cipline, agency interference, or reprisals of any kind;

16 “(2) the mechanism for employee participation
17 ensures that the rights under subsection (c) may be
18 exercised by the employee participants; and

19 “(3) the mechanism for employee participation
20 contains such other provisions as the Secretary may
21 require.

22 The Secretary shall not approve an application unless the
23 agency’s nonmanagerial employees have received notice and
24 have been provided at least 60 days in which to comment
25 on the application and, where the agency’s employees are

1 *represented by one or more exclusive representatives, unless*
2 *such representatives support the agency's application.*

3 **“§ 7916. Inspections and investigations by the Sec-**
4 **retary**

5 *“(a) In order to carry out the purposes of this sub-*
6 *chapter, the Secretary, upon presenting appropriate creden-*
7 *tials, is authorized—*

8 *“(1) to enter without delay any facility, site, es-*
9 *tablishment or other area, workplace, or environment*
10 *where work is performed by an employee of an agen-*
11 *cy; and*

12 *“(2) to inspect and investigate, within reason-*
13 *able limits and in a reasonable manner, any such*
14 *place of employment and all pertinent conditions,*
15 *structures, machines, apparatus, devices, equipment,*
16 *and materials therein, and to question privately any*
17 *such agency employee or official.*

18 *“(b) In making any inspection or investigation under*
19 *this subchapter, the Secretary may require the attendance*
20 *and testimony of witnesses and the production of evidence*
21 *under oath. Witnesses who are not employees of the agency*
22 *shall be paid the same fees and mileage that are paid wit-*
23 *nesses in the courts of the United States. In case of contu-*
24 *macy, or a failure or refusal of any person to obey such*
25 *an order, any district court of the United States or the*

1 *United States courts of any territory or possession, within*
2 *the jurisdiction of which such person is found, resides, or*
3 *transacts business, upon the application by the Secretary,*
4 *shall have jurisdiction to issue to such person an order re-*
5 *quiring such person to appear to produce evidence if, as,*
6 *and when so ordered, and to give testimony relating to the*
7 *matter under investigation or in question, and any failure*
8 *to obey such order of the court may be punished by such*
9 *court as a contempt thereof.*

10 “(c)(1) *Subject to regulations issued by the Secretary,*
11 *a representative of the agency and a designee of the em-*
12 *ployee representatives on the worksite safety and health*
13 *committee shall be given an opportunity to accompany the*
14 *Secretary or an authorized representative of the Secretary*
15 *during the physical inspection of any workplace under sub-*
16 *section (a) for the purpose of aiding such inspection. Where*
17 *there is no worksite safety and health committee, an em-*
18 *ployee representative identified according to regulations es-*
19 *tablished under 7915(e) shall be given an opportunity to*
20 *accompany the Secretary or the Secretary’s representative*
21 *during the inspection. Time spent by an employee on any*
22 *such inspection shall be considered to be time worked, and*
23 *no employee shall suffer any adverse effect in terms of pay,*
24 *benefits, or any other term or condition of employment for*
25 *having participated in the inspection.*

1 “(2) A representative of the Administrator of General
2 Services shall, upon request of the Secretary, accompany
3 the Secretary in an inspection under this section of a facil-
4 ity subject to the authority of the Administrator.

5 “(d)(1) Any employees or representative of employees
6 who believe that a violation of this subchapter or a safety
7 or health standard under section 6 of the Occupational
8 Safety and Health Act of 1970 exists that threatens physical
9 harm, or that an imminent danger exists, may request an
10 inspection by giving notice to the Secretary or the Sec-
11 retary’s authorized representative of such violation or dan-
12 ger. Any such notice shall be reduced to writing, shall set
13 forth with reasonable particularity the grounds for the no-
14 tice, and shall be signed by the employees or representative
15 of employees, and a copy shall be provided the agency no
16 later than at the time of inspection, except that, upon the
17 request of the person giving such notice, such person’s name
18 and the names of any employees referred to therein shall
19 not appear in such copy or on any record published, re-
20 leased, or made available pursuant to subsection (e). If,
21 upon receipt of such notification, the Secretary determines
22 there are reasonable grounds to believe that such violation
23 or danger exists, the Secretary shall make a special inspec-
24 tion in accordance with the provisions of this section as
25 soon as practicable to determine if such violation or danger

1 *exists. If the Secretary determines there are no reasonable*
2 *grounds to believe that a violation or danger exists, the Sec-*
3 *retary shall notify the employees or representative of the*
4 *employees in writing of such determination within 30 days*
5 *after receipt of the request for inspection.*

6 “(2) *If, upon receipt of a notification other than those*
7 *specified in paragraph (1), the Secretary determines that*
8 *there are reasonable grounds to believe that a violation of*
9 *this subchapter or a safety and health standard promul-*
10 *gated under section 6 of the Occupational Safety and*
11 *Health Act of 1970 exists that threatens physical harm, the*
12 *Secretary shall conduct an investigation. The Secretary*
13 *shall by regulation establish procedures for conducting such*
14 *investigations which shall include provisions for verifying*
15 *the existence or abatement of the alleged violation and for*
16 *notice to affected employees of the Secretary’s investigation*
17 *of the alleged violation.*

18 “(3) *The head of any Federal or State agency or the*
19 *representative of the head of any such agency who believes*
20 *that a violation of this subchapter or a safety or health*
21 *standard exists that threatens physical harm, or that an*
22 *imminent danger exists, may request an inspection by giv-*
23 *ing notice to the Secretary or the Secretary’s authorized*
24 *representative of such violation or danger. Upon receipt of*
25 *such notification, the Secretary shall make a special inspec-*

1 *tion as soon as practicable to determine if such violation*
2 *or danger exists.*

3 “(4) *Prior to or during any inspection or investigation*
4 *of a workplace, any employees or representative of employ-*
5 *ees employed in such workplace may notify the Secretary*
6 *or any representative of the Secretary responsible for con-*
7 *ducting the inspection or investigation, in writing, of any*
8 *violation of this subchapter or section 6 of the Occupational*
9 *Safety and Health Act of 1970 which they have reason to*
10 *believe exists in such workplace. The Secretary shall, by reg-*
11 *ulation, establish procedures for informal review of any re-*
12 *fusal by a representative of the Secretary to issue a citation*
13 *with respect to any such alleged violation and shall furnish*
14 *the employees or representative of employees requesting such*
15 *review a written statement of the reasons for the Secretary’s*
16 *final disposition of the case.*

17 “(e)(1) *The Secretary and the Secretary of Health and*
18 *Human Services each may compile, analyze, and publish,*
19 *either in summary or detailed form, all reports or informa-*
20 *tion obtained under this subchapter.*

21 “(2) *The Secretary and the Secretary of Health and*
22 *Human Services shall each prescribe such rules and regula-*
23 *tions as each may deem necessary with respect to their re-*
24 *sponsibilities, the duties of agencies, and other requirements*
25 *under this subchapter.*

1 “(f)(1) The Secretary shall establish and carry out a
2 special emphasis inspection program for conducting inspec-
3 tions of agency operations where—

4 “(A) existing hazards, or

5 “(B) newly recognized or new hazards intro-
6 duced into worksites,

7 warrant more intensive than normal inspections, as deter-
8 mined by the Secretary.

9 “(2) The Secretary shall annually designate the oper-
10 ations for the special emphasis inspection program and
11 identify the number of special emphasis inspections that the
12 Secretary plans to conduct in each designated operation
13 and the number of enforcement personnel required for such
14 inspections.

15 “(3) The Secretary shall include information on in-
16 spections conducted pursuant to paragraph (2) during the
17 preceding year as part of the Secretary’s annual report re-
18 quired under section 7921.

19 “(g)(1) For the purposes of this subsection, the term
20 ‘serious incident’ means an incident that results in the hos-
21 pitalization of 2 or more employees.

22 “(2) The Secretary shall investigate any work-related
23 death or serious incident.

24 “(3) If a death or serious incident occurs in a place
25 of employment covered by this subchapter, the agency shall

1 *notify the Secretary of the death or serious incident and*
2 *shall take appropriate measures to prevent the destruction*
3 *or alteration of any evidence that would assist in inves-*
4 *tigating the death or serious incident. The appropriate*
5 *measures required by this paragraph do not prevent an*
6 *agency from taking action at a worksite to prevent injury*
7 *to employees or substantial damage to property. If an agen-*
8 *cy takes such action, the agency shall notify the Secretary*
9 *of the action in a timely fashion.*

10 **“§ 7917. Citations**

11 *“(a) If, upon inspection or investigation, the Secretary*
12 *or the Secretary’s authorized representative believes that an*
13 *agency has violated a requirement of—*

14 *“(1) section 7912, 7913, 7914, or 7915;*

15 *“(2) any standard, rule or order prescribed pur-*
16 *suant to section 6 of the Occupational Safety and*
17 *Health Act of 1970; or*

18 *“(3) any regulation prescribed under this sub-*
19 *chapter,*

20 *the Secretary shall with reasonable promptness issue a cita-*
21 *tion to the agency. Each citation shall be in writing and*
22 *shall describe with particularity the nature of the violation,*
23 *including a reference to the provision of law, standard, rule,*
24 *regulation, or order alleged to have been violated. In addi-*
25 *tion, the citation shall fix a reasonable time for the abate-*

1 *ment of the violation. The Secretary may prescribe proce-*
2 *dures for the issuance of a notice in lieu of a citation with*
3 *respect to de minimis violations which have no direct or*
4 *immediate relationship to safety or health.*

5 “(b) *Each citation issued under this section, or a copy*
6 *or copies thereof, shall be prominently posted, as prescribed*
7 *in regulations issued by the Secretary, at or near each place*
8 *a violation referred to in the citation occurred.*

9 “(c) *No citation may be issued under this section after*
10 *the expiration of 6 months following the occurrence of any*
11 *violation. The 6-month time limit shall not apply to a noti-*
12 *fication of penalty.*

13 “(d) *A citation issued under this section to an agency*
14 *that violates the requirements of paragraph (1) or (2) of*
15 *section 7912 or section 7913(a); any standard, rule, or*
16 *order prescribed pursuant to section 6 of the Occupational*
17 *Safety and Health Act of 1970; or any regulation prescribed*
18 *under this subchapter shall be vacated if such agency dem-*
19 *onstrates that, prior to the date of the alleged violation—*

20 “(1) *employees of such agency were provided*
21 *with the proper training and equipment to prevent*
22 *such a violation;*

23 “(2) *work rules designed to prevent such a viola-*
24 *tion were established and adequately communicated to*

1 *employees by such agency and were being effectively*
2 *enforced when a violation was discovered;*

3 *“(3) the failure of employees to observe work*
4 *rules led to the violation; and*

5 *“(4) reasonable steps were taken by such agency*
6 *to discover any such violation.*

7 ***“§ 7918. Procedure for enforcement***

8 *“(a) If, after an inspection or investigation, the Sec-*
9 *retary issues a citation under section 7917, the Secretary*
10 *shall, within a reasonable time after the termination of such*
11 *inspection or investigation, notify the agency by certified*
12 *mail of the penalty, if any, proposed to be assessed under*
13 *section 7918e and that the agency has 15 working days*
14 *within which to notify the Secretary that such agency wish-*
15 *es to contest the citation or proposed assessment of penalty.*
16 *If, within 15 working days after the receipt of the notice*
17 *issued by the Secretary, the agency fails to notify the Sec-*
18 *retary that the agency intends to contest the citation or pro-*
19 *posed assessment of penalty, and no notice is filed by any*
20 *employee or representative of employees under subsection (c)*
21 *within such time, the citation and the assessment, as pro-*
22 *posed, shall be deemed a final order of the Occupational*
23 *Safety and Health Review Commission and not subject to*
24 *review by any court or agency.*

1 “(b) If the Secretary has reason to believe that an
2 agency has failed to correct a violation for which a citation
3 has been issued within the period permitted for its correc-
4 tion (which period for other than serious violations shall
5 not begin to run until the entry of a final order by the
6 Commission in the case of any review proceedings under
7 this section initiated by the agency in good faith and not
8 solely for delay or avoidance of penalties), the Secretary
9 shall notify the agency by certified mail of such failure and
10 of the penalty proposed to be assessed under section 7918e
11 by reason of such failure, and that the agency has 15 work-
12 ing days within which to notify the Secretary that such
13 agency wishes to contest the Secretary’s notification or the
14 proposed assessment of penalty. If, within 15 working days
15 after the receipt of notification issued by the Secretary, the
16 agency fails to notify the Secretary that it intends to contest
17 the notification or proposed assessment of penalty, the noti-
18 fication and assessment, as proposed, shall be deemed a
19 final order of the Commission and not subject to review by
20 any court or agency. In lieu of providing the notification
21 required by this subsection, where a notice of contest to a
22 citation is pending before the Commission, the Secretary
23 may by appropriate motion in that proceeding assert that
24 the agency has failed to abate the violation within the time
25 period fixed in the citation.

1 “(c) If an agency notifies the Secretary that it intends
2 to contest a citation issued under section 7917(a) or notifi-
3 cation issued under subsection (a) or (b) of this section, or
4 if, within 15 working days after the issuance of a citation
5 or modification of a citation under section 7917(a), any
6 employee or representative of employees files a notice with
7 the Secretary alleging that the citation fails properly to des-
8 ignate the violation as serious, willful, or repeated, or that
9 the proposed penalty is not adequate, or alleging that the
10 period of time fixed in the citation for the abatement of
11 the violation is unreasonable, the Secretary shall imme-
12 diately advise the Commission of such notification, and the
13 Commission shall afford an opportunity for a hearing (in
14 accordance with section 554, but without regard to sub-
15 section (a)(3) of such section). The pendency of a contest
16 before the Commission shall not bar the Secretary from in-
17 specting a place of employment or from issuing a citation
18 under section 7917. The Commission shall thereafter issue
19 an order, based on findings of fact, affirming, modifying,
20 or vacating the Secretary’s citation or proposed penalty, or
21 directing other appropriate relief, and such order shall be-
22 come final 30 days after its issuance. Upon a showing by
23 an agency of a good faith effort to comply with the abate-
24 ment requirements of a citation, and that abatement has
25 not been completed because of factors beyond the agency’s

1 *reasonable control, the Secretary, after an opportunity for*
2 *a hearing as provided in this subsection, shall issue an*
3 *order affirming or modifying the abatement requirements*
4 *in such citation. The rules of procedure prescribed by the*
5 *Commission shall provide affected employees or representa-*
6 *tives of affected employees an opportunity to participate as*
7 *parties to proceedings under this subsection.*

8 “(d) *Each agency to which a citation for a serious,*
9 *willful, or repeated violation has been issued under section*
10 *7917 shall verify the abatement of such violation in writing*
11 *to the Secretary not later than 10 days after the period for*
12 *correction of the violation has expired. Such verification*
13 *shall include appropriate documentary evidence of abate-*
14 *ment. In addition, each such agency shall prominently post,*
15 *within 10 days after the verification of abatement, at or*
16 *near each place a violation occurred a notice that the viola-*
17 *tion has been abated, and shall make available to employees*
18 *and employee representatives for inspection a copy of the*
19 *verification of abatement provided to the Secretary pursu-*
20 *ant to this subsection. The Secretary shall issue regulations*
21 *to implement this subsection within 1 year of the date of*
22 *the enactment of the Federal and Postal Service Employees*
23 *Occupational Safety and Health Act of 1994.*

24 “(e)(1) *If the Secretary intends to withdraw or to mod-*
25 *ify a citation as a result of any agreement with the cited*

1 *agency, the rules of procedure prescribed by the Commission*
2 *shall provide for prompt notice to affected employees or rep-*
3 *resentatives of affected employees, which notice shall include*
4 *the terms of the proposed agreement.*

5 “(2) *Within 15 working days of receipt of the notice*
6 *provided in accordance with paragraph (1), any employee*
7 *or representative of employees, regardless of whether such*
8 *employee or representative has previously elected to partici-*
9 *pate in the proceedings, shall have the right to file a notice*
10 *with the Secretary alleging that the proposed agreement*
11 *fails to effectuate the purposes of this subchapter and stat-*
12 *ing the respects in which it fails to do so.*

13 “(3) *Upon receipt of a notice filed under paragraph*
14 *(2), the Secretary shall consider the matter, and if the Sec-*
15 *retary determines to proceed with the proposed agreement,*
16 *the Secretary shall respond with particularity to the state-*
17 *ments presented in that notice.*

18 “(4) *Within 15 working days following the Secretary’s*
19 *response provided pursuant to paragraph (3), the employee*
20 *or representative of employees shall, upon a request to the*
21 *Commission, have the right to a hearing as to whether adop-*
22 *tion of the proposed agreement would effectuate the purposes*
23 *of this subchapter, including a determination as to whether*
24 *the proposed agreement would adequately abate the alleged*
25 *violations.*

1 “(5) If the Commission determines that a proposed
2 agreement fails to effectuate the purposes of this subchapter,
3 the proposed agreement shall not be entered as an order of
4 the Commission and the citation shall not be withdrawn
5 or modified in accordance with the proposed agreement.

6 “(f) To the extent applicable, the provisions of section
7 12 of the Occupational Safety and Health Act of 1970 shall
8 govern proceedings before the Commission under this sub-
9 chapter.

10 **“§ 7918a. Judicial review**

11 “(a) Any person adversely affected or aggrieved by an
12 order of the Commission issued under subsection (c) of sec-
13 tion 7918 may obtain a review of such order in any United
14 States court of appeals for the circuit in which the violation
15 is alleged to have occurred or where the agency has its prin-
16 cipal office, or in the Court of Appeals for the District of
17 Columbia Circuit, by filing in such court within 60 days
18 following the issuance of such order a written petition pray-
19 ing that the order be modified or set aside. A copy of such
20 petition shall be forthwith transmitted by the clerk of the
21 court to the Commission and to the other parties, and there-
22 upon the Commission shall file in the court the record in
23 the proceeding as provided in section 2112 of title 28. Upon
24 such filing, the court shall have jurisdiction of the proceed-
25 ing and of the question determined therein, and shall have

1 *power to grant such temporary relief or restraining order*
2 *as it deems just and proper, and to make and enter upon*
3 *the pleadings, testimony, and proceedings set forth in such*
4 *record a decree affirming, modifying, or setting aside in*
5 *whole or in part, the order of the Commission and enforcing*
6 *the same to the extent that such order is affirmed or modi-*
7 *fied. The commencement of proceedings under this sub-*
8 *section shall not, unless ordered by the court, operate as*
9 *a stay of the order of the Commission. No objection that*
10 *has not been urged before the Commission shall be consid-*
11 *ered by the court, unless the failure or neglect to urge such*
12 *objection shall be excused because of extraordinary cir-*
13 *cumstances. The findings of the Commission with respect*
14 *to questions of fact, if supported by substantial evidence on*
15 *the record considered as a whole, shall be conclusive. If any*
16 *party shall apply to the court for leave to adduce additional*
17 *evidence and shall show to the satisfaction of the court that*
18 *such additional evidence is material and that there were*
19 *reasonable grounds for the failure to adduce such evidence*
20 *in the hearing before the Commission, the court may order*
21 *such additional evidence to be taken before the Commission*
22 *and to be made a part of the record. The Commission may*
23 *modify its findings as to the facts, or make new findings,*
24 *by reason of additional evidence so taken and filed, and*
25 *it shall file such modified or new findings, which findings*

1 *with respect to questions of fact, if supported by substantial*
2 *evidence on the record considered as a whole, shall be con-*
3 *clusive, and its recommendations, if any, for the modifica-*
4 *tion or setting aside of its original order. Upon the filing*
5 *of the record with it, the jurisdiction of the court shall be*
6 *exclusive and its judgment and decree shall be final, except*
7 *that the same shall be subject to review by the Supreme*
8 *Court of the United States, as provided in section 1254 of*
9 *title 28. Petitions filed under this subsection shall be heard*
10 *expeditiously.*

11 “(b) *The Secretary may also obtain review or enforce-*
12 *ment of any final order of the Commission by filing a peti-*
13 *tion for such relief in the United States court of appeals*
14 *for the circuit in which the alleged violation occurred or*
15 *in which the agency has its principal office, and the provi-*
16 *sions of subsection (a) shall govern such proceedings to the*
17 *extent applicable. If no petition for review, as provided in*
18 *subsection (a), is filed within 60 days after service of the*
19 *Commission’s order, the Commission’s findings of fact and*
20 *order shall be conclusive in connection with any petition*
21 *for enforcement which is filed by the Secretary after the ex-*
22 *piration of such 60-day period. In any such case, as well*
23 *as in the case of a noncontested citation or notification by*
24 *the Secretary which has become a final order of the Com-*
25 *mission under subsection (a) or (b) of section 7918, the clerk*

1 of the court, unless otherwise ordered by the court, shall
2 forthwith enter a decree enforcing the order and shall trans-
3 mit a copy of such decree to the Secretary and the agency
4 named in the petition. In any contempt proceeding brought
5 to enforce a decree of a court of appeals entered pursuant
6 to this subsection or subsection (a), the court of appeals may
7 assess the penalties provided in section 7918e, in addition
8 to invoking any other available remedies.

9 “(c) For the purpose of this section, the term ‘person’
10 includes an agency.

11 **“§ 7918b. Procedures to counteract imminent dangers**

12 “(a)(1) If the Secretary determines, on the basis of an
13 inspection or investigation under this subchapter, that a
14 condition or practice in a place of employment is such that
15 an imminent danger to safety or health exists that could
16 reasonably be expected to cause death or serious physical
17 harm or permanent impairment to the health or functional
18 capacity of employees if not corrected immediately or before
19 the imminence of such danger can be eliminated through
20 the enforcement procedures otherwise required by this sub-
21 chapter, the Secretary shall so inform the agency and af-
22 fected employees and representatives of affected employees,
23 and shall request that the condition or practice be corrected
24 immediately or that employees be immediately removed
25 from exposure to such danger. The Secretary shall not pre-

1 vent the continued activity of employees, whose presence is
2 necessary to avoid, correct, or remove such imminent dan-
3 ger or maintain the capacity of a continuous process oper-
4 ation, to resume normal operations without a complete ces-
5 sation of operations or, where a cessation of operations is
6 necessary, to permit such to be accomplished in a safe and
7 orderly manner.

8 “(2) If the agency refuses to comply with the request
9 under paragraph (1), the Secretary shall immediately cause
10 notice to be posted in the workplace identifying the equip-
11 ment, process, or practice that is the source of the imminent
12 danger. Such notice shall take the form of a tag or other
13 device that will be seen by employees who might otherwise
14 be exposed to the dangerous equipment, process, or practice.
15 The notice shall be removed only by the Secretary.

16 “(3) The fact that notice under paragraph (2) has been
17 posted shall be noted in any citation issued pursuant to
18 section 7917 with respect to the hazard involved.

19 “(4) No person shall discharge or in any manner dis-
20 criminate against any employee because such employee has
21 refused to perform a duty that has been identified as the
22 source of an imminent danger by a notice posted pursuant
23 to paragraph (2). The right to refuse to perform such a duty
24 shall be in addition to any other right to refuse to perform
25 hazardous work that is afforded to employees by this sub-

1 *chapter, by standards or regulations issued pursuant to this*
2 *subchapter, by contract, or by other applicable law.*

3 “(b) *The United States district courts shall have juris-*
4 *isdiction, upon petition of the Secretary, to restrain any con-*
5 *ditions or practices in any place of employment which pose*
6 *an imminent danger as described in subsection (a) and to*
7 *impose the penalty described in section 7918e(e). Any order*
8 *issued under this section may require such steps to be taken*
9 *as may be necessary to avoid, correct, or remove such immi-*
10 *nent danger and prohibit the employment or presence of*
11 *any individual in locations or under conditions where such*
12 *imminent danger exists, except individuals whose presence*
13 *is necessary to avoid, correct, or remove such imminent*
14 *danger or to maintain the capacity of a continuous process*
15 *operation to resume normal operations without a complete*
16 *cessation of operations, or where a cessation of operations*
17 *is necessary, to permit such to be accomplished in a safe*
18 *and orderly manner.*

19 “(c) *Upon the filing of any such petition, the district*
20 *court shall have jurisdiction to grant such injunctive relief*
21 *or temporary restraining order pending the outcome of an*
22 *enforcement proceeding pursuant to this subchapter. The*
23 *proceeding shall be as provided by Rule 65 of the Federal*
24 *Rules of Civil Procedure, except that no temporary restrain-*

1 *ing order issued without notice shall be effective for a period*
2 *longer than 5 days.*

3 “(d) *If the Secretary arbitrarily or capriciously fails*
4 *to seek relief under this section, any employee who may be*
5 *injured by reason of such failure, or the representative of*
6 *such employees, may bring an action against the Secretary*
7 *in the United States district court for the district in which*
8 *the imminent danger is alleged to exist or the agency has*
9 *its principal office, or for the District of Columbia, for a*
10 *writ of mandamus to compel the Secretary to seek such an*
11 *order and for such further relief as may be appropriate.*

12 **“§ 7918c. Representation in civil litigation**

13 “*Except as provided in section 518(a) of title 28, relat-*
14 *ing to litigation before the Supreme Court, the Solicitor of*
15 *Labor may appear for and represent the Secretary in any*
16 *civil litigation brought under this subchapter, but all such*
17 *litigation shall be subject to the direction and control of*
18 *the Attorney General.*

19 **“§ 7918d. Variations, tolerances, and exemptions**

20 “*The Secretary, on the record, after notice and oppor-*
21 *tunity for a hearing, may provide such reasonable limita-*
22 *tions and may make such rules and regulations allowing*
23 *reasonable variations, tolerances, and exemptions to and*
24 *from any or all provisions of this subchapter and section*
25 *6 of the Occupational Safety and Health Act of 1970 as*

1 *the Secretary may find necessary and proper to avoid seri-*
2 *ous impairment of the national defense. Such action shall*
3 *not be in effect for more than 6 months without notification*
4 *to affected employees and an opportunity being afforded for*
5 *a hearing.*

6 **“§ 7918e. Penalties**

7 “(a) Any agency that willfully or repeatedly violates
8 *the requirements of section 7912, 7913, 7914, or 7915 of*
9 *this title, of any standard, rule, or order prescribed pursu-*
10 *ant to section 6 of the Occupational Safety and Health Act*
11 *of 1970, or of any regulation prescribed pursuant to this*
12 *subchapter, may be assessed a civil penalty of not more than*
13 *\$70,000 for each violation, but not less than \$5,000 for each*
14 *willful violation.*

15 “(b) Any agency that has received a citation for a seri-
16 *ous violation of the requirements of section 7912, 7913,*
17 *7914, or 7915 of this title, of any standard, rule, or order*
18 *prescribed pursuant to section 6 of the Occupational Safety*
19 *and Health Act of 1970, or of any regulation prescribed*
20 *pursuant to this subchapter, shall be assessed a civil penalty*
21 *of up to \$7,000 for each such violation. The penalty for*
22 *a serious violation shall be at least \$1,000.*

23 “(c) Any agency that has received a citation for a vio-
24 *lation of the requirements of section 7912, 7913, 7914, or*
25 *7915 of this title, of any standard, rule, or order promul-*

1 gated pursuant to section 6 of the Occupational Safety and
2 Health Act of 1970, or of any regulation prescribed pursu-
3 ant to this subchapter, and which violation is specifically
4 determined not to be of a serious nature, may be assessed
5 a civil penalty of up to \$7,000 for each violation.

6 “(d) Any agency that unreasonably fails to correct a
7 violation for which a citation has been issued under section
8 7917(a) within the period permitted for its correction
9 (which period for other than serious violations shall not
10 begin to run until the date of the final order of the Commis-
11 sion in the case of any review proceeding under section
12 7918 initiated by the agency in good faith and not solely
13 for delay or avoidance of penalties), shall be assessed a civil
14 penalty of not more than \$7,000 for each day during which
15 such failure or violation continues.

16 “(e) In the event that an agency does not immediately
17 correct a hazard referenced in a notice posted under section
18 7918b(a) or remove all employees from exposure thereto, the
19 agency shall be assessed a civil penalty of not less than
20 \$10,000 and not more than \$50,000 for each day during
21 which an employee continues to be exposed to the hazard
22 unless the Commission or the district court determines the
23 condition or practice is not of such nature as to be covered
24 by section 7918b.

1 “(f) Any agency that violates any of the posting re-
2 quirements, as prescribed under the provisions of this sub-
3 chapter, shall be assessed a civil penalty of up to \$7,000
4 for each violation.

5 “(g) Any agency that makes any written misrepresen-
6 tation to the Secretary regarding compliance with this sub-
7 chapter, any standard, rule, or order promulgated under
8 section 6 of the Occupational Safety and Health Act of
9 1970, or any regulation prescribed pursuant to this sub-
10 chapter may be assessed a civil money penalty of up to
11 \$70,000 for each such misrepresentation.

12 “(h) Any agency officer, management official, or su-
13 pervisor having the authority to prevent the violation of
14 any standard, rule, or order promulgated pursuant to sec-
15 tion 6 of the Occupational Safety and Health Act of 1970
16 or of any regulation prescribed pursuant to this subchapter
17 who willfully violates any such standard, rule, order, or reg-
18 ulation, and which violation caused the death of any em-
19 ployee, shall, upon conviction, be punished by a fine in ac-
20 cordance with section 3571 of title 18 or by imprisonment
21 for not more than 10 years, or by both, except that if the
22 conviction is for a violation committed after a first convic-
23 tion of such person, punishment shall be by a fine in accord-
24 ance with section 3571 of title 18, or by imprisonment for
25 not more than 20 years, or by both.

1 “(i) Any person who gives advance notice of any in-
2 spection to be conducted by the Secretary or a representative
3 of the Secretary under this subchapter, without authority
4 from the Secretary or the Secretary’s designee, shall, upon
5 conviction, be punished by a fine in accordance with section
6 3571 of title 18, or by imprisonment for not more than 2
7 years, or by both.

8 “(j) Whoever knowingly makes any false statement,
9 representation, or certification in any application, record,
10 report, plan, or other document filed or required to be main-
11 tained pursuant to this subchapter shall, upon conviction,
12 be punished by a fine in accordance with section 3571 of
13 title 18, or by imprisonment for not more than 1 year, or
14 by both.

15 “(k)(1) Any agency officer, management official, or su-
16 pervisor having the authority to prevent the violation of
17 any standard, rule, or order promulgated pursuant to sec-
18 tion 6 of the Occupational Safety and Health Act of 1970
19 or of any regulation prescribed pursuant to this subchapter
20 who willfully violates any such standard, rule, order, or reg-
21 ulation, and which violation causes serious bodily injury
22 to any employee but does not cause the death of any em-
23 ployee, shall, upon conviction, be punished by a fine in ac-
24 cordance with section 3571 of title 18, or by imprisonment
25 for not more than 5 years, or by both, except that if the

1 *conviction is for a violation committed after a first convic-*
2 *tion of such person under this subsection or subsection (g),*
3 *punishment shall be by a fine in accordance with section*
4 *3571 of title 18, or by imprisonment for not more than 10*
5 *years, or by both.*

6 “(2) The term ‘serious bodily injury’ means bodily in-
7 jury that involves—

8 “(A) a substantial risk of death;

9 “(B) protracted, substantial, and obvious phys-
10 ical disfigurement; or

11 “(C) protracted loss or impairment of the func-
12 tion of a bodily member, organ, or mental faculty.

13 “(l) The Commission shall have authority to assess all
14 civil penalties provided in this section, giving due consider-
15 ation to the appropriateness of the penalty with respect to
16 the gravity of the violation, the good faith of the agency,
17 and the history of previous violations.

18 “(m) For purposes of this section, a serious violation
19 shall be deemed to exist in a place of employment if there
20 is a substantial probability that death or serious physical
21 harm could result from a condition which exists, or from
22 one or more practices, means, methods, operations, or proc-
23 esses which have been adopted or are in use in such place
24 of employment unless the agency did not, and could not

1 *with the exercise of reasonable diligence, know of the pres-*
2 *ence of the violation.*

3 “(n) *Penalties owed under this subchapter shall be*
4 *paid to the Secretary for deposit into the Secretary’s pen-*
5 *alty fund established under section 7924. If necessary in*
6 *order to recover any such penalties owed, an action shall*
7 *be brought in the name of the United States in the United*
8 *States district court for the district where the violation is*
9 *alleged to have occurred or where the agency has its prin-*
10 *cipal office.*

11 “(o) *Nothing in this subchapter shall preclude State*
12 *and local law enforcement agencies from conducting crimi-*
13 *nal prosecutions in accordance with the laws of such State*
14 *or locality.*

15 “(p) *It is the sense of the Congress that no agency*
16 *should pay any fine under this subchapter out of any funds*
17 *appropriated for employee salaries or expenses.*

18 “(q) *If a penalty or fine is imposed on any agency*
19 *officer, management official, supervisor or employee under*
20 *subsection (h), (i), (j), or (k), such penalty or fine shall not*
21 *be paid by the agency on behalf of that individual.*

22 **“§ 7919. Special Federal enforcement procedure**

23 “*Any employee, or the representative of such employ-*
24 *ees, who may be adversely affected by a failure of an agency*
25 *or the Secretary to carry out any duty under this sub-*

1 chapter, may bring an action in the United States district
2 court for the district in which such failure is alleged to have
3 occurred or the agency has its principal place of business,
4 or for the District of Columbia, to compel such agency or
5 the Secretary to carry out such duty and for such further
6 relief as may be appropriate. If the employee, or the rep-
7 resentative of such employees, prevails in an action brought
8 under this section, the court in such action shall assess the
9 defendants in the action a reasonable attorney's fee and
10 other litigation costs reasonably incurred by the employee
11 or representative of an employee.

12 **“§ 7919a. Federal Advisory Council on Occupational**
13 **Safety and Health**

14 “(a) The Secretary shall establish a Federal Advisory
15 Council on Occupational Safety and Health to advise the
16 Secretary in carrying out responsibilities under this sub-
17 chapter. The Council shall consist of 16 members appointed
18 by the Secretary, of whom 8 shall be representatives of Fed-
19 eral agencies and 8 shall be representatives of labor organi-
20 zations representing Federal employees. The members shall
21 serve 3-year terms with the terms of 5 or 6 members expir-
22 ing each year. The members serving on the Council estab-
23 lished pursuant to Executive Order 12196 on the effective
24 date of this subchapter shall be deemed its initial members

1 *and their terms shall expire in accordance with the terms*
2 *of their appointment.*

3 “(b) *The Secretary, or a designee, shall serve as the*
4 *Chairman of the Council, and shall prescribe rules for the*
5 *conduct of its business.*

6 “(c) *The Secretary shall make available necessary of-*
7 *fice space and furnish the Council necessary equipment,*
8 *supplies, and staff services, and shall perform such func-*
9 *tions with respect to the Council as may be required by*
10 *the Federal Advisory Committee Act.*

11 **“§ 7920. Facilities provided to federal agencies**

12 “(a) *The Administrator of General Services shall not*
13 *provide any agency with space that contains any hazards*
14 *or conditions that violate this subchapter or section 6 of*
15 *the Occupational Safety and Health Act of 1970.*

16 “(b) *The Administrator of General Services shall in-*
17 *vestigate, upon request of an agency, any report of unsafe*
18 *or unhealthy conditions within the scope of the Administra-*
19 *tor’s responsibility in a facility provided by the Adminis-*
20 *trator. The Administrator shall abate any unsafe or*
21 *unhealthy condition disclosed by such an investigation or*
22 *submit to the agency a plan to abate such unsafe or*
23 *unhealthy condition.*

24 “(c) *The Administrator of General Services shall*
25 *maintain a log of any report by an agency of any unsafe*

1 *or unhealthy condition in a building occupied by the agency*
2 *and provided by the Administrator. Any person who leases*
3 *a building to an agency, whether under the direction of the*
4 *Administrator or under direct negotiation with the agency,*
5 *shall also maintain such a log.*

6 *“(d) Any lease of a building to an agency which is*
7 *entered into by a private person under the direction of the*
8 *Administrator of General Services or under direct negotia-*
9 *tion with an agency shall be subject to the requirements of*
10 *this section and section 6 of the Occupational Safety and*
11 *Health Act of 1970.*

12 **“§ 7921. Annual report**

13 *“Within 60 days following the convening of each regu-*
14 *lar session of each Congress, the Secretary shall prepare and*
15 *submit to the President for transmittal to the Congress a*
16 *report upon the subject matter of this subchapter, the*
17 *progress toward achievement of the purpose of this sub-*
18 *chapter, the results of the agency evaluations conducted*
19 *under section 7914(e), and any other relevant information.*

20 **“§ 7922. Antidiscrimination protection**

21 *“(a) No person shall discharge, discipline, or in any*
22 *manner discriminate against any employee because such*
23 *employee (or any person acting on behalf of the employee)*
24 *has filed any complaint or caused to be instituted any pro-*
25 *ceeding under or relating to this subchapter, or has testified*

1 *or is about to testify in any such proceeding or because of*
2 *the exercise by such employee on behalf of that employee*
3 *or other employees of any right afforded by this subchapter,*
4 *including reporting any injury, illness or unsafe or*
5 *unhealthy condition to the head of the agency, any designee*
6 *of the head of the agency, or safety and health committee.*

7 “(b) No person shall discharge, discipline, or in any
8 manner discriminate against an employee for refusing to
9 perform the employee’s duties when the employee has a rea-
10 sonable apprehension that performing such duties would re-
11 sult in serious injury to the employee or other employees.
12 The circumstances causing the employee’s apprehension of
13 serious injury must be of such a nature that a reasonable
14 person, under the circumstances then confronting the em-
15 ployee, would conclude that there is a bona fide danger of
16 an injury or serious impairment of health resulting from
17 the circumstances. In order to qualify for protection under
18 this subsection, the employee, when practicable, must have
19 sought from the employee’s agency, and have been unable
20 to obtain, correction of the circumstances causing the re-
21 fusal to perform the employee’s duties.

22 “(c) Any employee who believes that the employee has
23 been discharged, disciplined, or otherwise discriminated
24 against by any person in violation of subsection (a) or (b)
25 may, within 180 days after such alleged violation occurs,

1 file (or have filed by any person on the employee's behalf)
2 a complaint with the Secretary alleging such discharge, dis-
3 cipline, or discrimination violates subsection (a) or (b).
4 Upon receipt of such a complaint, the Secretary shall notify
5 the person named in the complaint of the filing of the com-
6 plaint.

7 “(d)(1)(A) Within 60 days of receipt of a complaint
8 filed under subsection (c), the Secretary shall conduct an
9 investigation and determine whether there is reasonable
10 cause to believe that the complaint has merit. During the
11 investigation, the Secretary shall notify the respondent to
12 the complaint of the charges made in the complaint, shall
13 provide the respondent with an opportunity to meet the in-
14 vestigator conducting the investigation, to submit a re-
15 sponse to such charges, and to present witnesses to rebut such
16 charges. The Secretary shall also consider the result of any
17 collectively bargained grievance proceeding which may have
18 been held with respect to such charges. Upon completion of
19 the investigation, the Secretary shall notify the complain-
20 ant and the respondent to the complaint of the Secretary's
21 findings. Where the Secretary has concluded that there is
22 reasonable cause to believe that a violation has occurred,
23 the Secretary's findings shall be accompanied by a prelimi-
24 nary order providing the relief prescribed by paragraph (2).

1 “(B) After the Secretary has made findings, either the
2 person alleged to have committed the violation or the com-
3 plainant may, within 30 days, file objections to the findings
4 or preliminary order, or both, and request a hearing on
5 the record, except that the filing of such objections shall not
6 operate to stay any reinstatement remedy contained in the
7 preliminary order. If the Secretary does not issue findings
8 with respect to a complaint within 90 days of the receipt
9 of the complaint, the complainant may request a hearing
10 on the record on the complaint.

11 “(C) A hearing requested under clause (B) shall be ex-
12 peditiously conducted. Where a hearing is not timely re-
13 quested, the preliminary order shall be deemed a final order
14 which is not subject to judicial review. Upon the conclusion
15 of such hearing, the Secretary shall issue a final order with-
16 in 120 days. In the interim, such proceedings may be termi-
17 nated at any time on the basis of a settlement agreement
18 entered into by the Secretary, the complainant, and the per-
19 son alleged to have committed the violation.

20 “(2) If, in response to a complaint filed under sub-
21 section (c), the Secretary determines that a violation of sub-
22 section (a) or (b) has occurred, the Secretary shall order—

23 “(A) the person who committed such violation to
24 correct the violation,

1 “(B) such person to reinstate the complainant to
2 the complainant’s former position together with the
3 compensation (including back pay), terms, conditions,
4 and privileges of the complainant’s employment, and
5 “(C) compensatory damages.

6 If such an order is issued, the Secretary, at the request of
7 the complainant, may assess against the person against
8 whom the order is issued a sum equal to the aggregate
9 amount of all costs and expenses (including attorney’s fees)
10 reasonably incurred, as determined by the Secretary, by the
11 complainant for, or in connection with, the bringing of the
12 complaint upon which the order was issued.

13 “(e)(1) Any person adversely affected or aggrieved by
14 an order issued after a hearing under subsection (d)(1) may
15 obtain review of the order in the United States Court of
16 Appeals for the circuit in which the violation, with respect
17 to which the order was issued, allegedly occurred, or the
18 circuit in which such person resided on the date of such
19 violation. The petition for review must be filed within 60
20 days from the issuance of the Secretary’s order. Such review
21 shall be in accordance with the provisions of chapter 7 of
22 this title, and shall be heard and decided expeditiously.

23 “(2) Whenever a person has failed to comply with an
24 order issued under subsection (d)(1), the Secretary shall file
25 a civil action in the United States district court for the

1 *district in which the violation was found to occur in order*
2 *to enforce such order. In actions brought under this para-*
3 *graph, the district court shall have jurisdiction to grant all*
4 *appropriate relief, including injunctive relief, reinstate-*
5 *ment, and compensatory damages.*

6 “(f) *In determining whether a violation of subsection*
7 *(a) or (b) has occurred, the legal burdens of proof are as*
8 *follows:*

9 “(1) *A violation of subsection (a) or (b) may be*
10 *determined to have occurred only if the complainant*
11 *demonstrates that the exercise of a right protected by*
12 *such subsection was a contributing factor in the dis-*
13 *charge or discrimination alleged in the complaint.*

14 “(2) *Relief may not be ordered if the person*
15 *named in the complaint demonstrates by clear and*
16 *convincing evidence that the person would have taken*
17 *the same unfavorable action against the complainant*
18 *in the absence of the complainant’s exercise of such*
19 *protected rights.*

20 “(g) *The discharge, discipline, or other discrimination*
21 *alleged to have occurred in violation of subsection (a) or*
22 *(b) shall not be considered a prohibited personnel practice.*

23 **“§ 7923. Victims’ rights**

24 “(a) *For purposes of this section, the term ‘victim’*
25 *means—*

1 “(1) an employee who has sustained a work-re-
2 lated injury or illness which is the subject of an in-
3 spection or investigation conducted under section
4 7916; and

5 “(2) a family member of an employee if the em-
6 ployee—

7 “(A) is killed as a result of work-related in-
8 jury or illness which is the subject of an inspec-
9 tion or investigation (conducted under section
10 7916) into a death or serious incident; or

11 “(B) sustains a work-related injury which
12 is the subject of an inspection or investigation
13 (conducted under section 7916) into a death or
14 serious incident and the employee cannot reason-
15 ably exercise the employee’s rights under this sec-
16 tion.

17 “(b) On request, a victim shall be afforded the right,
18 with respect to the work-related injury, illness, or death re-
19 ferred to in paragraph (1) or (2) of subsection (a), as appli-
20 cable—

21 “(1) to meet with the Secretary or an authorized
22 representative of the Secretary respecting the inspec-
23 tion or investigation conducted under section 7916
24 with respect to such injury, illness, or death, before

1 *the Secretary's decision to issue a citation or to take*
2 *no action; and*

3 “(2) *to receive, at no cost, a copy of any citation*
4 *or report issued as a result of such inspection or in-*
5 *vestigation on the date the citation or report is issued,*
6 *and to be informed of any notice of contest filed under*
7 *section 7917.*

8 “(c) *Before entering into an agreement to withdraw*
9 *or modify a citation issued as a result of an inspection or*
10 *investigation of a death or serious incident under section*
11 *7916, the Secretary, on request, shall provide an oppor-*
12 *tunity to the victim involved to appear and make a state-*
13 *ment before the parties conducting any settlement negotia-*
14 *tions.*

15 “(d) *The Secretary shall take reasonable actions to in-*
16 *form victims of their rights under this section.*

17 **“§ 7924. Fund for technical assistance and training to**
18 **agencies and employees**

19 “(a) *The Secretary shall develop and widely dissemi-*
20 *nate technical assistance materials to assist agencies in*
21 *complying with the requirements of this subchapter and sec-*
22 *tion 6 of the Occupational Safety and Health Act of 1970.*
23 *The Secretary shall develop, as appropriate—*

24 “(1) *fact sheets and other technical assistance to*
25 *educate agencies and employees as to the requirements*

1 *of this subchapter and section 6 of the Occupational*
2 *Safety and Health Act of 1970,*

3 *“(2) model training curricula and model safety*
4 *and health programs to assist agencies in complying*
5 *with the requirements of section 7914, and*

6 *“(3) guidelines for complying with the require-*
7 *ments for safety and health committees under section*
8 *7915.*

9 *The Secretary may develop these materials directly or by*
10 *grant or contract. Such materials shall be written so that*
11 *they may be readily understood by agency managers and*
12 *employees.*

13 *“(b) The Secretary shall establish and implement a*
14 *program to provide education and technical assistance for*
15 *agencies and employees, either directly or by grant or con-*
16 *tract, concerning worksite safety and health and compliance*
17 *with this subchapter and section 6 of the Occupational Safe-*
18 *ty and Health Act of 1970.*

19 *“(c) There is established in the Treasury of the United*
20 *States an account to be known as the Federal Occupational*
21 *Safety and Health Training Fund (hereinafter in this sub-*
22 *chapter referred to as the ‘Fund’). The Fund, and any*
23 *amounts deposited in it, including any interest earned*
24 *thereon, shall be available to the Secretary to pay the costs*
25 *of implementing subsections (a) and (b).*

1 “(d) Amounts in the Fund which are not currently
2 needed for the purpose of this section shall be kept on deposit
3 or invested in obligations of, or guaranteed by, the United
4 States and all earnings on such investments shall be depos-
5 ited in the Fund.

6 “(e) The Secretary shall transmit to the Committee on
7 Post Office and Civil Service of the House of Representa-
8 tives and the Committee on Governmental Affairs of the
9 Senate, not later than 4 months after the end of each fiscal
10 year, a report on the financial condition, uses, and oper-
11 ation of the Fund during the preceding fiscal year. The re-
12 port shall include a listing, by agency, of civil penalties
13 proposed in citations to the agency, contained in final or-
14 ders of the Commission, and paid into the Fund.

15 **“§ 7925. Program on ergonomic hazards**

16 “(a) Within 1 year of the date of enactment of this
17 subchapter, each agency, with the assistance of the Sec-
18 retary, shall develop and implement a program, in con-
19 sultation with employees or exclusive representatives of such
20 employees, to protect employees from work-related musculo-
21 skeletal disorders. The program shall include requirements
22 for—

23 “(1) evaluation of job processes, work station de-
24 sign, rate of work, and work methods to identify

1 *ergonomic risk factors that cause or are likely to*
2 *cause musculoskeletal disorders;*

3 *“(2) control measures to reduce stressors and*
4 *musculoskeletal disorders, including engineering con-*
5 *trols, new equipment, or work organization controls;*

6 *“(3) an effective medical management program*
7 *for musculoskeletal disorders, including requirements*
8 *for qualified health care providers, health surveil-*
9 *lance, appropriate diagnosis, treatment, and follow*
10 *up;*

11 *“(4) a system for recording musculoskeletal dis-*
12 *orders and reporting such disorders to the Secretary;*

13 *“(5) training and education of employees ex-*
14 *posed to ergonomic hazards on ergonomic risk factors,*
15 *control measures, and the agency’s medical manage-*
16 *ment program; and*

17 *“(6) employee participation in the establishment*
18 *and implementation of the agency’s ergonomic pro-*
19 *gram through any safety and health committee estab-*
20 *lished under section 7915.*

21 *“(b) The requirements of subsection (a) shall not affect*
22 *an agency’s responsibility or obligation to comply with any*
23 *standard on ergonomic hazards which may be issued by the*
24 *Secretary in accordance with section 6 of the Occupational*
25 *Safety and Health Act of 1970.*

1 **“§ 7926. Incentives for exemplary performance**

2 “(a) *The Secretary shall target enforcement efforts on*
3 *agency worksites with poor safety and health performance*
4 *and shall encourage, through the program established under*
5 *subsection (c), exemplary safety and health performance.*

6 “(b) *In carrying out the inspection authority under*
7 *section 7916, the Secretary shall establish an effective sys-*
8 *tem for targeting inspections of worksites, especially work-*
9 *sites with a high potential for death, serious injury, or expo-*
10 *sure to toxic materials or harmful physical agents, and*
11 *shall establish priorities for such inspections to ensure that*
12 *enforcement activities are concentrated on such worksites.*
13 *All such targeted inspections shall include evaluation of the*
14 *agency’s compliance with the requirements, under sections*
15 *7914 and 7915, for safety and health programs and safety*
16 *and health committees in each worksite and shall include*
17 *review of the agency’s self-evaluations described in annual*
18 *reports to the Secretary as required by section 7914(e), to*
19 *the extent they are applicable to the worksite being in-*
20 *spected.*

21 “(c) *The Secretary shall establish a safety and health*
22 *incentive program to recognize safety and health perform-*
23 *ance by agencies and agency worksites that exceed the re-*
24 *quirements of this subchapter and section 6 of the Occupa-*
25 *tional Safety and Health Act of 1970. The safety and health*
26 *incentive program shall provide positive incentives for*

1 agencies to encourage them to exceed the minimum require-
2 ments of this subchapter and section 6 of the Occupational
3 Safety and Health Act of 1970. Such incentives may in-
4 clude, but not be limited to—

5 “(1) consideration of the overall safety and
6 health performance of an agency participating in the
7 safety and health incentive program in assessing pen-
8 alties in section 7918e; and

9 “(2) such other incentives as the Secretary may
10 designate, but the Secretary shall not be authorized to
11 exempt agencies participating in the safety and
12 health incentive program from policies and programs
13 to administer this subchapter and section 6 of the Oc-
14 cupational Safety and Health Act of 1970.

15 “(d) The Secretary shall establish a program under
16 which the Secretary may annually recognize agencies and
17 agency worksites with outstanding safety and health records
18 by presenting such agencies and worksites with a safety and
19 health excellence award. The Secretary may annually recog-
20 nize other organizations through the presentation of such
21 awards in recognition of the outstanding efforts of such or-
22 ganization to promote occupational safety and health.

23 “(e) The Secretary shall promulgate regulations to im-
24 plement this section. Such regulations shall include defining
25 the qualifications necessary for an agency worksite to be

1 *eligible to participate in the safety and health incentive*
2 *program provided in subsection (c) and the frequency with*
3 *which a worksite's eligibility for the safety and health in-*
4 *centive program shall be reevaluated.*

5 **“§ 7927. Effective dates**

6 “(a) *Except as provided in subsection (b), this sub-*
7 *chapter shall take effect upon the expiration of the 90-day*
8 *period beginning on the date of the enactment of this sub-*
9 *chapter.*

10 “(b) *Effective upon the expiration of the 2-year period*
11 *beginning on the date of the enactment of this subchapter—*

12 “(1) *agencies shall be required to comply with*
13 *the requirements of sections 7914 and 7915 of this*
14 *title; and*

15 “(2) *section 19 of the Occupational Safety and*
16 *Health Act of 1970 shall be repealed.*

17 **“§ 7928. Military equipment, systems, and operations**

18 “(a) *Nothing in this subchapter shall apply to working*
19 *conditions involving uniquely military equipment, systems,*
20 *and operations, as defined for purposes of this section in*
21 *regulations prescribed by the Secretary (in consultation*
22 *with the Secretary of Defense).*

23 “(b) *Nothing in this subchapter shall be construed as*
24 *altering or otherwise affecting any authority under Execu-*

1 *tive Order 12344 and section 1634 of Public Law 98-525,*
2 *to the extent available as of January 1, 1994.*

3 **“§ 7929. Promulgation of standards; variances**

4 “(a) *EMPLOYEES.*—*Employees shall, for purposes of*
5 *the provisions of sections 6 and 7 (a) and (b) of the Occupa-*
6 *tional Safety and Health Act of 1970, be afforded the same*
7 *rights, protections, and obligations and shall otherwise be*
8 *treated in the same way as an ‘employee’ under such provi-*
9 *sions (including when referred to as a ‘worker’ or ‘person’,*
10 *or collectively as ‘labor’), to the extent that such provisions*
11 *relate to the Federal workplace.*

12 “(b) *AGENCIES.*—*Agencies shall, for purposes of the*
13 *provisions of sections 6 and 7 (a) and (b) of the Occupa-*
14 *tional Safety and Health Act of 1970, be afforded the same*
15 *rights, protections, and obligations and shall otherwise be*
16 *treated in the same way as an ‘employer’ under such provi-*
17 *sions (including when referred to as a ‘person’, or collec-*
18 *tively as ‘management’), to the extent that such provisions*
19 *relate to the Federal workplace, except for purposes of sec-*
20 *tion 6(f) of such Act.*

21 “(c) *REGULATIONS.*—*The Secretary shall prescribe*
22 *such regulations as may be necessary to carry out this sec-*
23 *tion.”.*

24 (b) *CONFORMING AMENDMENTS.*—*The table of sections*
25 *for chapter 79 of title 5, United States Code, is amended—*

1 (1) *by inserting after the chapter heading the fol-*
 2 *lowing:*

 “SUBCHAPTER I—GENERAL PROVISION”;

3 (2) *by repealing the item relating to section*
 4 *7902; and*

5 (3) *by adding at the end the following:*

 “SUBCHAPTER II—FEDERAL OCCUPATIONAL SAFETY AND HEALTH

 “Sec.

 “7911. Definitions; applicability.

 “7912. Employee rights and obligations.

 “7913. Duties of agencies.

 “7914. Safety and health programs.

 “7915. Safety and health committees.

 “7916. Inspections and investigations by the Secretary.

 “7917. Citations.

 “7918. Procedure for enforcement.

 “7918a. Judicial review.

 “7918b. Procedures to counteract imminent dangers.

 “7918c. Representation in civil litigation.

 “7918d. Variations, tolerances, and exemptions.

 “7918e. Penalties.

 “7919. Special Federal enforcement procedure.

 “7919a. Federal Advisory Council on Occupational Safety and Health.

 “7920. Facilities provided to federal agencies.

 “7921. Annual report.

 “7922. Antidiscrimination protection.

 “7923. Victims’ rights.

 “7924. Fund for technical assistance and training to agencies and employees.

 “7925. Program on ergonomic hazards.

 “7926. Incentives for exemplary performance.

 “7927. Effective dates.

 “7928. Military equipment, systems, and operations.

 “7929. Promulgation of standards; variances.”.

6 **SEC. 3. POSTAL SERVICE OCCUPATIONAL SAFETY AND**
 7 **HEALTH PROGRAMS.**

8 (a) *PROGRAMS.—*

9 (1) *IN GENERAL.—Chapter 10 of title 39, United*
 10 *States Code, is amended by adding at the end the fol-*
 11 *lowing:*

1 **“§ 1012. Occupational safety and health programs**

2 “(a)(1) *Within 1 year after the date of the enactment*
3 *of this section, the Postal Service, with the assistance of the*
4 *Secretary of Labor, shall develop and implement a pro-*
5 *gram, in consultation with employees or exclusive rep-*
6 *resentatives of such employees, to protect deaf and hearing*
7 *impaired employees from the hazards of smoke or fire, in-*
8 *cluding the installation of visual warning devices, as appro-*
9 *priate.*

10 “(2) *The Postal Service shall submit a written report*
11 *to the Committee on Post Office and Civil Service of the*
12 *House of Representatives and the Committee on Govern-*
13 *mental Affairs of the Senate, not later than 18 months after*
14 *the date of enactment of this section, on the implementation*
15 *of this subsection.*

16 “(b)(1) *As used in this subsection, ‘major new mecha-*
17 *nization, equipment, or technology’ means any major new*
18 *mechanization, equipment, or technology which, if imple-*
19 *mented by the Postal Service, would directly affect—*

20 “(A) *the way in which employees of the Postal*
21 *Service perform their work; or*

22 “(B) *their safety or health.*

23 “(2) *To the extent practicable, in developing the speci-*
24 *fications for any major new mechanization, equipment, or*
25 *technology, and before awarding any contract for acquisi-*

1 *tion for any such mechanization, equipment, or technology,*
2 *the Postal Service shall—*

3 *“(A) provide an opportunity for employees or ex-*
4 *clusive representatives of such employees to—*

5 *“(i) review the design plans for such mecha-*
6 *nization, equipment, or technology to evaluate*
7 *the likely impact on the occupational safety and*
8 *health of postal employees; and*

9 *“(ii) submit written comments, within 30*
10 *working days, relating to any safety or health*
11 *hazards which might result, as well as sugges-*
12 *tions on ways to mitigate or eliminate such haz-*
13 *ards; and*

14 *“(B) review and respond in writing to any com-*
15 *ments submitted under subparagraph (A).”.*

16 *(2) CHAPTER ANALYSIS.—The analysis for chap-*
17 *ter 10 of title 39, United States Code, is amended by*
18 *adding at the end the following:*

“1012. Occupational safety and health programs.”.

19 *(b) CONFORMING AMENDMENTS.—*

20 *(1) FIRST AMENDMENT.—Effective as of the effec-*
21 *tive date set forth in section 7927(a) of title 5, United*
22 *States Code (as amended by section 2(a)), paragraph*
23 *(7) of section 410(b) of title 39, United States Code,*
24 *is amended by striking the semicolon and inserting*
25 *“and subchapter II of chapter 79 of title 5;”.*

1 (2) *SECOND AMENDMENT.—Effective as of the ef-*
2 *fective date set forth in section 7927(b) of title 5,*
3 *United States Code (as amended by section 2(a)),*
4 *paragraph (7) of section 410(b) of title 39, United*
5 *States Code (as amended by paragraph (1)), is*
6 *amended to read as follows:*

7 “*(7) subchapter II of chapter 79 of title 5;*”.

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