

105TH CONGRESS
1ST SESSION

H. R. 2579

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 1997

Mr. TALENT (for himself, Mr. DOOLEY of California, Mrs. EMERSON, Mr. BISHOP, Ms. PRYCE of Ohio, Mr. STENHOLM, Mrs. FOWLER, and Mr. GOODE) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

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; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Safety Advancement for Employees Act of 1997” or the
6 “SAFE Act”.

7 (b) REFERENCE.—Whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
2 sion of the Occupational Safety and Health Act of 1970
3 (29 U.S.C. 651 et seq.).

4 **SEC. 2. PURPOSE.**

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

6 (1) in paragraph (13), by striking the period
7 and inserting “; and”; and

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

9 “(14) by increasing the joint cooperation of em-
10 ployers, employees, and the Secretary of Labor in
11 the effort to ensure safe and healthful working con-
12 ditions for employees.”.

13 **SEC. 3. EMPLOYEE AND EMPLOYER PARTICIPATION PRO-**
14 **GRAMS.**

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

17 “(c)(1) In order to further carry out the purpose of
18 this Act to encourage employers and employees in their
19 efforts to reduce occupational safety and health hazards,
20 employers may establish employer and employee participa-
21 tion programs which exist for the sole purpose of address-
22 ing safe and healthful working conditions.

23 “(2) An entity created under a program described in
24 paragraph (1) shall not constitute a labor organization for
25 purposes of section 8(a)(2) of the National Labor Rela-

1 tions Act (29 U.S.C. 158(a)(2)) or a representative for
2 purposes of sections 1 and 2 of the Railway Labor Act
3 (45 U.S.C. 151 and 151a).

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

10 **SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COMMIT-**
11 **TEE.**

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

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

19 “(2) The advisory committee shall be composed of—

20 “(A) 3 members who are employees;

21 “(B) 3 members who are employers;

22 “(C) 2 members who are members of the gen-
23 eral public; and

24 “(D) 1 member who is a State official from a
25 State plan State.

1 Each member of the advisory committee shall have exper-
2 tise in workplace safety and health as demonstrated by
3 the educational background of the member.

4 “(3) The advisory committee shall advise and make
5 recommendations to the Secretary with respect to the es-
6 tablishment and implementation of a consultation services
7 program under section 8A.”.

8 **SEC. 5. THIRD PARTY CONSULTATION SERVICES PROGRAM.**

9 The Act (29 U.S.C. 651 et seq.) is amended by in-
10 serting after section 8 the following:

11 **“SEC. 8A. THIRD PARTY CONSULTATION SERVICES PRO-
12 GRAM.**

13 “(a) ESTABLISHMENT OF PROGRAM.—

14 “(1) IN GENERAL.—Not later than 12 months
15 after the date of enactment of this section, the Sec-
16 retary shall establish and implement, by regulation,
17 a program that qualifies individuals to provide con-
18 sultation services to employers to assist employers in
19 the identification and correction of safety and health
20 hazards in the workplaces of employers.

21 “(2) ELIGIBILITY.—Each of the following indi-
22 viduals shall be eligible to be qualified under the
23 program:

24 “(A) An individual licensed by a State au-
25 thority as a physician, industrial hygienist, pro-

1 professional engineer, safety engineer, safety pro-
2 fessional, or occupational nurse.

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

7 “(C) An individual qualified in an occupa-
8 tional health or safety field by an organization
9 whose program has been accredited by a nation-
10 ally recognized private accreditation organiza-
11 tion or by the Secretary.

12 “(D) Other individuals determined to be
13 qualified by the Secretary.

14 “(3) GEOGRAPHICAL SCOPE OF CONSULTATION
15 SERVICES.—An individual qualified under the pro-
16 gram may provide consultation services in any State.

17 “(b) SAFETY AND HEALTH REGISTRY.—The Sec-
18 retary shall develop and maintain a registry that includes
19 all individuals that are qualified under the program to pro-
20 vide the consultation services described in subsection (a)
21 and shall publish and make such registry readily available
22 to the general public.

23 “(c) DISCIPLINARY ACTIONS.—

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

4 “(A) has failed to meet the requirements
5 of the program; or

6 “(B) has committed malfeasance, gross
7 negligence, or fraud in connection with any con-
8 sultation services provided by the qualified indi-
9 vidual.

10 “(d) CONSULTATION SERVICES.—

11 “(1) SCOPE OF CONSULTATION SERVICES.—

12 “(A) IN GENERAL.—The consultation serv-
13 ices described in subsection (a), and provided
14 by an individual qualified under the program,
15 shall include an evaluation of the workplace of
16 an employer to determine if the employer is in
17 compliance with the requirements of this Act,
18 including any regulations promulgated pursuant
19 to this Act.

20 “(B) NON-FIXED WORK SITES.—With re-
21 spect to the employees of an employer who do
22 not work at a fixed site, the consultation serv-
23 ices described in subsection (a), and provided
24 by an individual qualified under the program,
25 shall include an evaluation of the safety and

1 health program of the employer to determine if
2 the employer is in compliance with the require-
3 ments of this Act, including any regulations
4 promulgated under this Act.

5 “(2) CONSULTATION REPORT.—Not later than
6 10 business days after an individual qualified under
7 the program provides the consultation services de-
8 scribed in subsection (a) to an employer, the individ-
9 ual shall prepare and submit a written report to the
10 employer that includes an identification of any viola-
11 tions of this Act and requirements with respect to
12 corrective measures the employer needs to carry out
13 in order for the workplace of the employer to be in
14 compliance with the requirements of this Act.

15 “(3) REINSPECTION.—Not later than 30 days
16 after an individual qualified under the program sub-
17 mits a report to an employer under paragraph (2),
18 or on a date agreed on by the individual and the em-
19 ployer, the individual shall reinspect the workplace
20 of the employer to verify that any occupational safe-
21 ty or health violations identified in the report have
22 been corrected and the workplace of the employer is
23 in compliance with this Act. If, after such reinspec-
24 tion, the individual determines that the workplace is
25 in compliance with the requirements of this Act, the

1 individual shall provide the employer a declaration of
2 compliance.

3 “(4) GUIDELINES.—The Secretary, in consulta-
4 tion with an advisory committee established in sec-
5 tion 7(d), shall develop model guidelines for use in
6 evaluating a workplace under paragraph (1).

7 “(e) ACCESS TO RECORDS.—Any records relating to
8 consultation services (as described in subsection (a)) pro-
9 vided by an individual qualified under the program shall
10 not be admissible in a court of law or administrative pro-
11 ceeding against the employer except that such records may
12 be used as evidence for purposes of a disciplinary action
13 under subsection (c).

14 “(f) EXEMPTION.—

15 “(1) IN GENERAL.—If an employer enters into
16 a contract with an individual qualified under the
17 program, to provide consultation services described
18 in subsection (a), and receives a declaration of com-
19 pliance under subsection (d)(3), the employer shall
20 be exempt from the assessment of any civil penalty
21 under section 17 for a period of 2 years after the
22 date the employer receives the declaration.

23 “(2) EXCEPTIONS.—Paragraph (1) shall not
24 apply—

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

4 “(B) to the extent that there has been a
5 fundamental change in the hazards of the work-
6 place.

7 “(g) DEFINITION.—In this section, the term ‘pro-
8 gram’ means the program established by the Secretary
9 under subsection (a).”.

10 **SEC. 6. INDEPENDENT SCIENTIFIC PEER REVIEW.**

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

12 (1) by striking: “(4) Within” and inserting:
13 “(4)(A) Within”; and

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

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

20 “(ii)(I) The National Academy of Sciences shall ap-
21 point an independent Scientific Review Committee.

22 “(II) The Scientific Review Committee shall conduct
23 an independent review of the draft final standard and the
24 scientific literature and make written recommendations
25 with respect to the draft final standard to the Secretary,

1 including recommendations relating to the appropriateness
2 and adequacy of the scientific data, scientific methodology,
3 and scientific conclusions, adopted by the Secretary.

4 “(III) If the Secretary decides to modify the draft
5 final standard in response to the recommendations pro-
6 vided by the Scientific Review Committee, the Scientific
7 Review Committee shall be given an opportunity to review
8 and comment on the modifications before the final stand-
9 ard is issued.

10 “(IV) The recommendations of the Scientific Review
11 Committee shall be published with the final standard in
12 the Federal Register.”.

13 **SEC. 7. CONTINUING EDUCATION AND PROFESSIONAL CER-**
14 **TIFICATION FOR CERTAIN OCCUPATIONAL**
15 **SAFETY AND HEALTH ADMINISTRATION PER-**
16 **SONNEL.**

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

19 “(h) Any Federal employee responsible for enforcing
20 this Act shall (not later than 2 years after the date of
21 enactment of this subsection or 2 years after the initial
22 employment of the employee) meet the eligibility require-
23 ments prescribed under subsection (a)(2) of section 8A.

24 “(i) The Secretary shall ensure that any Federal em-
25 ployee responsible for enforcing this Act who carries out

1 inspections or investigations under this section, receive
2 professional education and training at least every 5 years
3 as prescribed by the Secretary.”.

4 **SEC. 8. INSPECTION PROCEDURES AND QUOTAS.**

5 (a) IN GENERAL.—Section 8(f) (29 U.S.C. 657(f))
6 is amended by adding at the end thereof the following:

7 “(3) The Secretary or an authorized representative
8 of the Secretary may, as a method of investigating an al-
9 leged violation or danger under this subsection, attempt,
10 if feasible, to contact an employer by telephone, facsimile,
11 or other appropriate methods to determine whether—

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

14 “(B) there are reasonable grounds to believe
15 that a hazard exists.

16 “(4) The Secretary is not required to conduct an in-
17 spection under this subsection if the Secretary determines
18 that a request for an inspection was made for reasons
19 other than the safety and health of the employees of an
20 employer or that the employees of an employer are not
21 at risk.”.

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

24 “(d) The Secretary shall not establish for any em-
25 ployee within the Occupational Safety and Health Admin-

1 istration (including any regional director, area director,
2 supervisor, or inspector) a quota with respect to the num-
3 ber of inspections conducted, the number of citations is-
4 sued, or the amount of penalties collected, in accordance
5 with this Act.

6 “(e) Not later than 12 months after the date of en-
7 actment of this subsection and annually thereafter, the
8 Secretary shall report on the number of employers that
9 are inspected under this Act and determined to be in com-
10 pliance with the requirements prescribed under this Act.”.

11 **SEC. 9. PERSONAL RESPONSIBILITIES.**

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

16 “(f) A citation issued under subsection (a) to an em-
17 ployer who violates section 5, any standard, rule, or order
18 promulgated pursuant to section 6, or any other regulation
19 promulgated under this Act shall be vacated if such em-
20 ployer demonstrates that the employees of such employer
21 were protected by alternative methods that are equally or
22 more protective of the safety and health of the employees
23 than the methods required by such standard, rule, order,
24 or regulation in the factual circumstances underlying the
25 citation.

1 “(g) Subsection (f) shall not be construed to elimi-
2 nate or modify other defenses that may exist to any cita-
3 tion.”.

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

7 **“SEC. 10A. EMPLOYEE RESPONSIBILITY.**

8 “(a) IN GENERAL.—Notwithstanding any other pro-
9 vision of this Act, an employee who, with respect to per-
10 sonal protective equipment, willfully violates any require-
11 ment of section 5 or any standard, rule, or order promul-
12 gated pursuant to section 6, or any regulation prescribed
13 pursuant to this Act, may be assessed a civil penalty, as
14 determined by the Secretary, for each violation.

15 “(b) CITATIONS.—If, upon inspection and investiga-
16 tion, the Secretary or the authorized representative of the
17 Secretary believes that an employee of an employer has,
18 with respect to personal protective equipment, violated any
19 requirement of section 5 or any standard, rule, or order
20 promulgated pursuant to section 6, or any regulation pre-
21 scribed pursuant to this Act, the Secretary shall within
22 60 days issue a citation to the employee. Each citation
23 shall be in writing and shall describe with particularity
24 the nature of the violation, including a reference to the
25 provision of this Act, standard, rule, regulation, or order

1 alleged to have been violated. No citation may be issued
2 under this section after the expiration of 6 months follow-
3 ing the occurrence of any violation.

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

13 “(d) CONTESTING OF CITATION.—If the employee
14 notifies the Secretary that the employee intends to contest
15 the citation or proposed penalty, the Secretary shall imme-
16 diately advise the Commission of such notification, and the
17 Commission shall afford an opportunity for a hearing (in
18 accordance section 554 of title 5, United States Code).
19 The Commission shall after the hearing issue an order,
20 based on findings of fact, affirming, modifying, or
21 vacating the Secretary’s citation or proposed penalty, or
22 directing other appropriate relief. Such order shall become
23 final 30 days after issuance of the order.”.

1 **SEC. 10. REDUCED PENALTIES FOR PAPERWORK VIOLA-**
2 **TIONS.**

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

5 “(i) Any employer who violates any of the posting or
6 paperwork requirements, other than fraudulent reporting
7 requirement deficiencies, prescribed under this Act shall
8 not be assessed a civil penalty for such a violation unless
9 the Secretary determines that the employer has violated
10 subsection (a) or (d) with respect to the posting or paper-
11 work requirements.”.

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

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

15 “(j) The Commission shall have authority to assess
16 all civil penalties under this section. In assessing a penalty
17 under this section for a violation, the Commission shall
18 give due consideration to the appropriateness of the pen-
19 alty with respect to—

20 “(1) the size of an employer;

21 “(2) the number of employees exposed to the
22 violation;

23 “(3) the likely severity of any injuries directly
24 resulting from the violation;

25 “(4) the probability that the violation could re-
26 sult in injury or illness;

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

3 “(6) the history of previous violations by an em-
4 ployer; and

5 “(7) whether the violation is the sole result of
6 the failure of an employer to meet a requirement
7 under this Act, or prescribed by regulation, with re-
8 spect to the posting of notices, the preparation or
9 maintenance of occupational safety and health
10 records, or the preparation, maintenance, or submis-
11 sion of any written information.”.

12 **SEC. 12. TECHNICAL ASSISTANCE PROGRAM.**

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

15 (1) by striking “(c) The” and inserting “(c)(1)
16 The”;

17 (2) by striking “(1) provide” and inserting “(A)
18 provide”;

19 (3) by striking “(2) consult” and inserting “(B)
20 consult”; and

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

22 “(2)(A) The Secretary shall, through the authority
23 granted under section 7(c) and paragraph (1), enter into
24 cooperative agreements with States for the provision of

1 consultation services by such States to employers concern-
2 ing the provision of safe and healthful working conditions.

3 “(B)(i) Except as provided in clause (ii), the Sec-
4 retary shall reimburse a State that enters into a coopera-
5 tive agreement under subparagraph (A) in an amount that
6 equals 90 percent of the costs incurred by the State for
7 the provision of consultation services under such agree-
8 ment.

9 “(ii) A State shall be reimbursed by the Secretary
10 for 90 percent of the costs incurred by the State for the
11 provision of—

12 “(I) training approved by the Secretary for
13 State personnel operating under a cooperative agree-
14 ment; and

15 “(II) specified out-of-State travel expenses in-
16 curred by such personnel.

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

21 “(C) Notwithstanding any other provisions of law,
22 not less than 15 percent of the total amount of funds ap-
23 propriated for the Occupational Safety and Health Admin-
24 istration for a fiscal year shall be used for education, con-
25 sultation, and outreach efforts.

1 “(D) A State may not require that an employer pay
2 a fee in order to participate in any program operated by
3 the State under this paragraph.”.

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

6 “(d)(1) Not later than 90 days after the date of en-
7 actment of this subsection, the Secretary shall establish
8 and carry out a pilot program in 3 States to provide expe-
9 dited consultation services, with respect to the provision
10 of safe and healthful working conditions, to employers that
11 are small businesses (as the term is defined by the Admin-
12 istrator of the Small Business Administration). The Sec-
13 retary shall carry out the program for a period not to ex-
14 ceed 2 years.

15 “(2) The Secretary shall provide consultation services
16 under paragraph (1) not later than 4 weeks after the date
17 on which the Secretary receives a request from an em-
18 ployer.

19 “(3) The Secretary may impose a nominal fee to an
20 employer requesting consultation services under para-
21 graph (1). The fee shall be in an amount determined by
22 the Secretary. Employers paying a fee shall receive prior-
23 ity consultation services by the Secretary.

24 “(4) In lieu of issuing a citation under section 9 to
25 an employer for a violation found by the Secretary during

1 a consultation under paragraph (1), the Secretary shall
2 permit the employer to carry out corrective measures to
3 correct the conditions causing the violation. The Secretary
4 shall conduct not more than 2 visits to the workplace of
5 the employer to determine if the employer has carried out
6 the corrective measures. The Secretary shall issue a cita-
7 tion as prescribed under section 5 if, after such visits, the
8 employer has failed to carry out the corrective measures.

9 “(5) Not later than 90 days after the termination of
10 the program under paragraph (1), the Secretary shall pre-
11 pare and submit a report to the appropriate committees
12 of Congress that contains an evaluation of the implemen-
13 tation of the pilot program.”.

14 **SEC. 13. VOLUNTARY PROTECTION PROGRAMS.**

15 (a) COOPERATIVE AGREEMENTS.—The Secretary of
16 Labor shall establish cooperative agreements with employ-
17 ers to encourage the establishment of comprehensive safe-
18 ty and health management systems that include—

19 (1) requirements for systematic assessment of
20 hazards;

21 (2) comprehensive hazard prevention, mitiga-
22 tion, and control programs;

23 (3) active and meaningful management and em-
24 ployee participation in the voluntary program de-
25 scribed in subsection (b); and

1 (4) employee safety and health training.

2 (b) VOLUNTARY PROTECTION PROGRAM.—

3 (1) IN GENERAL.—The Secretary of Labor shall
4 establish and carry out a voluntary protection pro-
5 gram (consistent with subsection (a)) to encourage
6 and recognize the achievement of excellence in both
7 the technical and managerial protection of employees
8 from occupational hazards. The Secretary of Labor
9 shall encourage small businesses (as the term is de-
10 fined by the Administrator of the Small Business
11 Administration) to participate in the voluntary pro-
12 tection program by carrying out outreach and assist-
13 ance initiatives and developing program require-
14 ments that address the needs of small businesses.

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

17 (A) APPLICATION.—Employers who volun-
18 teer under the program shall be required to
19 submit an application to the Secretary of Labor
20 demonstrating that the worksite with respect to
21 which the application is made meets such re-
22 quirements as the Secretary of Labor may re-
23 quire for participation in the program.

24 (B) ONSITE EVALUATIONS.—There shall
25 be onsite evaluations by representatives of the

1 Secretary of Labor to ensure a high level of
2 protection of employees. The onsite visits shall
3 not result in enforcement of citations under the
4 Occupational Safety and Health Act of 1970
5 (29 U.S.C. 651 et seq.).

6 (C) INFORMATION.—Employers who are
7 approved by the Secretary of Labor for partici-
8 pation in the program shall assure the Sec-
9 retary of Labor that information about the
10 safety and health program of the employers
11 shall be made readily available to the Secretary
12 of Labor to share with employees.

13 (D) REEVALUATIONS.—Periodic reevalua-
14 tions by the Secretary of Labor of the employ-
15 ers shall be required for continued participation
16 in the program.

17 (3) EXEMPTIONS.—A site with respect to which
18 a program has been approved shall, during partici-
19 pation in the program be exempt from inspections or
20 investigations and certain paperwork requirements
21 to be determined by the Secretary of Labor, except
22 that this paragraph shall not apply to inspections or
23 investigations arising from employee complaints, fa-
24 talities, catastrophes, or significant toxic releases.

1 **SEC. 14. PREVENTION OF ALCOHOL AND SUBSTANCE**
2 **ABUSE.**

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

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

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

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

10 **“SEC. 29. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

11 “(a) PROGRAM PURPOSE.—In order to secure a safe
12 workplace, employers may establish and carry out an alco-
13 hol and substance abuse testing program in accordance
14 with subsection (b).

15 “(b) FEDERAL GUIDELINES.—An alcohol and sub-
16 stance abuse testing program described in subsection (a)
17 shall meet the following requirements:

18 “(1) SUBSTANCE ABUSE.—A substance abuse
19 testing program shall permit the use of an onsite or
20 offsite urine screening or other recognized screening
21 methods, so long as the confirmation tests are per-
22 formed in accordance with the mandatory guidelines
23 for Federal workplace testing programs published by
24 the Secretary of Health and Human Services on
25 April 11, 1988, at section 11979 of title 53, Code
26 of Federal Regulations (including any amendments

1 to such guidelines), in a lab that is subject to the
2 requirements of subpart B of such mandatory guide-
3 lines.

4 “(2) ALCOHOL.—The alcohol testing component
5 of the program shall take the form of alcohol breath
6 analysis and shall conform to any guidelines devel-
7 oped by the Secretary of Transportation for alcohol
8 testing of mass transit employees under the Depart-
9 ment of Transportation and Related Agencies Ap-
10 propriations Act, 1992.

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

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

16 “(2) an employee, including managerial person-
17 nel, to submit to and pass an alcohol or substance
18 abuse test—

19 “(A) on a for-cause basis or where the em-
20 ployer has reasonable suspicion to believe that
21 such employee is using or is under the influence
22 of alcohol or a controlled substance;

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

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

4 “(D) during the participation of an em-
5 ployee in an alcohol or substance abuse treat-
6 ment program, and for a reasonable period of
7 time (not to exceed 5 years) after the conclu-
8 sion of such program; or

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

11 “(d) CONSTRUCTION.—Nothing in this section shall
12 be construed to require an employer to establish an alcohol
13 and substance abuse testing program for applicants or em-
14 ployees or make employment decisions based on such test
15 results.

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

19 “(f) INVESTIGATIONS.—The Secretary is authorized
20 to conduct testing of employees (including managerial per-
21 sonnel) of an employer for use of alcohol or controlled sub-
22 stances during any investigations of a work-related fatality
23 or serious injury.”.

○