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FROM: T. G. Grumbles

DATE: August 26, 1991

VISTA

Interoffice Communication

SUBJ: OSHA REFORM LEGISLATION

Attached is a copy of a bill introduced by Senators Kennedy and Metzenbaum the first of this month. An SDA summary of the bill is also attached.

There is growing pressure to significantly revise the OSHA Act and this bill is a good example of the type of revisions that may occur. I'll keep you informed on the progress of this particular bill.

T. G. Grumbles

dlj

Attachment

Distribution: **SAFETY DIRECTORS**

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SDA GENERAL INFORMATION BULLETIN

Editor: Mary P. Kilcoyne

G-12 August 14, 1991

FEDERAL LEGISLATION

COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

BILLS TO TARGET "HIGH-RISK" WORKPLACES, IMPROVE HAZARD ABATEMENT PROCESSES & STRENGTHEN CRIMINAL PENALTIES INTRODUCED IN HOUSE & SENATE

LEGISLATION: S 1622 - Senators Kennedy & Metzenbaum - 8/1/91
HR 1360 - Representative Ford (D-Michigan), et al - 8/1/91

The Comprehensive Occupational Safety and Health Reform Act (S 1622 and HR 3160) was introduced at a press conference by Senators Edward Kennedy (D-Massachusetts), Howard Metzenbaum (D-Ohio) and Representative William Ford (D-Michigan). Representative Joseph Gaydos (D-Pennsylvania) is one of the 18 other co-sponsors of HR 3160.

Among the areas addressed in the legislation are employer and employee participation; standard setting; enforcement; expansion of coverage; research, training and recordkeeping; and state plans.

DESCRIPTION: **Employee's Role:**

The legislation would require employers to establish and maintain safety and health programs to reduce or eliminate hazards and prevent injuries and illnesses to employees.

Employers with 11 or more employees would be required to establish safety and health committees comprised of equal numbers of employee and employer representatives. The joint committees would be authorized to review the employer's safety and health program, conduct inspections, and make advisory recommendations to the employer.

Under the bill, employees would be able to seek Occupational Safety and Health Review Commission review of settlement agreements between employers and OSHA.

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(continued)

The bill would grant OSHA authority to fine an employer failing to take corrective action $10,000 to $50,000 per day.

The legislation also would incorporate S 445 (Senator Metzenbaum, 2/20/91), which proposed to increase the maximum criminal penalty available under the act for willful violations that cause death and would authorize criminal penalties for willful violations that cause serious bodily harm.

COVERAGE: The bill would expand coverage of the act to federal, state and local government employees and to employees working in federal nuclear facilities under the jurisdiction of the Department of Energy.

For industries regulated by other agencies, except for mining, the bill would allow OSHA to cede jurisdiction "only if OSHA certifies that the agency has and is enforcing a standard that is as effective as the applicable OSHA standard.

State plans would be required to incorporate provisions "at least as effective" as those outlined in the bill. NIOSH would be charged with establishing a program to "identify and notify employees who are at increased risk of suffering work-related injuries and illnesses." It also would be responsible for implementing a national surveillance program to identify and collect data on work-related injuries and illnesses.

STATUS: S 1622 - Referred to Committee on Labor & Human Resources
HR 3160 - Referred to Committee on Education & Labor

- -

A copy of S 1622 is attached.

The bill takes the GAO approach instead, with one purpose in mind: to provide tough fiscal oversight. There is at least an appearance of a conflict of interest when an agency such as HUD regulates a GSE like Fannie Mae and, at the same time, may want that GSE to take certain actions. An independent agency does not have that ongoing relationship and can better concentrate on minimizing the risk to Federal taxpayers. At the same time, using a board format allows the regulator to draw on the expertise of the Federal Reserve System, the Treasury Department, and the agencies with policy expertise.

This bill is not perfect. There may be ways to toughen it even further, and I hope the Banking Committee will examine the bill with that purpose in mind so that the Senate can vote on legislation with the toughest measures possible.

GSE's perform critical public policy roles, but they also impose very real and very serious financial risks on Federal taxpayers. I agree with Senator Kohl that, for once, Congress needs to fix a roof while the sun is shining—build a tough oversight program, while our GSE's are enjoying good health.

I commend Senator Kohl for his leadership in this area and for accommodating my concern for strong compensation oversight at the GSE's. I urge my colleagues to join Senator Kohl, Senator Glenn, and myself in working for the passage of legislation this year to strengthen Federal control of our GSE's.●

By Mr. KENNEDY (for himself and Mr. METZENBAUM):

S. 1622. A bill to amend the Occupational Safety and Health Act of 1970 to improve the provisions of such Act with respect to the health and safety of employees, and for other purposes; to the Committee on Labor and Human Resources.

COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

Mr. President, 20 years ago, Congress enacted the Occupational Safety and Health Act because an unconscionable number of workers were being killed, injured or made ill as a result of workplace conditions. The act represented a promise by the Government to millions of working men and women that we as a country were prepared to take the steps necessary to "assure so far as possible" a safe and healthful workplace for every working American.

Since the, significant strides have been made in reducing the rate of fatalities from workplace injuries. But more than 10,000 workers still die every year from injuries sustained on the job, and as many as 100,000 die of occupational disease. The percentage of annual workdays lost because of workplace injuries has actually increased since the early 70's. The stark fact is that as a nation, we continue to pay for the goods we consume and the services we use with the health and the lives of the workers who produce them.

As one of the sponsors of the 1970 legislation which created the Occupational Safety and Health Administration, I believed then and I continue to believe that a decent society should not tolerate that kind of human suffering and tragedy. That is why I am introducing today, with my distinguished colleague from Ohio, [Mr. METZENBAUM] the Comprehensive Occupational Safety and Health Reform Act to update and strengthen the 1970 law.

When that law originally was enacted, it was a landmark measure—the first comprehensive, nationwide program to prevent workplace injuries and illnesses. But since that time, America has changed, and so have the jobs that Americans do. We have also learned a great deal that we didn't know in 1970, about the nature and causes of occupational injury and disease, and about what needs to be done to more effectively identify and address workplace safety and health hazards.

The legislation we are introducing today is intended to address many of the weaknesses in the current law which have been identified in studies by the General Accounting Office, the Office of Technology Assessment, and the Administrative Conference, and in oversight hearings conducted by the Committee on Labor and Human Resources in 1988.

As described more fully in the section-by-section analysis, the bill includes provisions to streamline and expedite the standard-setting process, to require better targeting of limited resources to high-risk workplaces, to speed up and improve the hazard abatement process, to strengthen criminal penalties for the most egregious violations of the Act, and to expand coverage of the Act to federal, state and local government employees.

Of particular significance are new provisions to shift the focus of the Act from one which relies on inspections and the threat of civil fines to bring about compliance with workplace safety and health standards, to one which recognizes that the objectives of the Act can never be fully achieved unless employers and employees take an active role in working cooperatively to identify workplace hazards and take corrective action before injuries or illnesses occur.

To encourage that kind of active involvement, our bill includes provisions that would significantly increase employer and employee involvement in two ways.

First, it would require employers to develop written safety and health programs identifying and addressing safety and health hazards in the workplace, and providing for employee education and training regarding those hazards. Second, it would require joint employer-employee safety and health committees to be established at worksites with 11 or more employees. The committees would have the authority to review the employer's injury and illness records, investigate employee complaints of safety and health hazards, conduct regular inspections of the workplace, and make advisory recommendations to correct hazards or alleviate unhealthy working conditions.

Two states—Oregon and Washington—already have statutes requiring workplace health and safety committees. They are required in several Canadian provinces, and in many European countries including Germany and Sweden. They also exist in various forms in many non-union and union firms in this country. California has recently enacted legislation requiring employers to have safety and health programs.

The proposals are based on two important concepts: employee empowerment and a workplace approach to occupational safety and health. They reflect a reasonable and realistic approach to the problems we face in trying to improve workplace safety and health in an era of limited government resources.

Work-related injuries and illnesses are not just a public health issue; they are also an economic issue. A recent study by the Rand Institute for Civil Justice found that in 1989, work-related injuries cost the nation $83 billion, or nearly 2 percent of GNP—$31 billion in medical and other direct costs, and a whopping $52 billion in lost work time. At a time when the nation's health care system is in crisis, and when American business is under intense competitive pressure from abroad, those figures are cause for serious concern.

Above all, it is the human costs that should give us pause, costs that are measured not in numbers, but in shattered families and broken lives—in blood that is shed, bodies that are mangled, and lungs that are destroyed.

With the introduciton of this legislation, we take a major new step toward fulfillment of the promise we made 20 years ago—of a safe and healthful workpace for every working American.

I urge my colleagues to cosponsor this legislation and I ask unanimous consent that a section-by-section analysis and the text of the bill be printed in the RECORD.

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

S. 1622

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Occupational Safety and Health Reform Act".

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SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) during the past two decades progress has been made in reducing workplace fatalities, injuries and exposures to toxic substances through efforts of the Federal agencies, States, employers, employees and employee representatives;

(2) despite the progress described in paragraph (1), work-related injuries, illnesses and fatalities continue to occur at rates that are unacceptable and that impose a substantial burden upon employers, employees and the nation in terms of lost production, wage loss, medical expenses, compensation payments and disability;

(3) employers and employees are not sufficiently involved in joint efforts to identify and correct occupational safety and health hazards;

(4) employers and employees require better training to identify safety and health problems;

(5) Federal agency standard-setting has not kept pace with knowledge about safety and health hazards;

(6) enforcement of occupational safety and health standards has not been adequate to bring about timely abatement of hazardous conditions or to deter future violation of occupational health and safety standards;

(7) millions of American workers exposed to serious occupational safety and health hazards are excluded from full coverage under the Occupational Safety and Health Act of 1970; and

(8) the lack of accurate data and information on work related fatalities, injuries and illnesses has impeded efforts to prevent such fatalities, injuries and illnesses.

(b) PURPOSE.—It is the purpose of this Act to—

(1) increase the joint participation of employers and employees in identifying and correcting occupational safety and health hazards, by requiring the establishment of employer safety and health programs, joint employer-employee safety and health committees, and training and education programs;

(2) improve and expedite the setting of occupational safety and health standards;

(3) strengthen Federal and State agency enforcement of violations of safety and health standards;

(4) assure that all employees are afforded full coverage and protection from safety and health hazards under the Occupational Safety and Health Act of 1970 or other Federal laws; and

(5) improve information and data on work related injuries, illnesses and fatalities for purposes of enhancing occupational safety and health.

SEC. 3. REFERENCES.

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

TITLE I—SAFETY AND HEALTH PROGRAMS

SEC. 101. SAFETY AND HEALTH PROGRAMS.

Section 27 (29 U.S.C. 676) is amended to read as follows:

"SEC. 27. SAFETY AND HEALTH PROGRAMS.

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—Each employer shall, in accordance with this section, establish and carry out a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to employees.

"(2) MODIFICATIONS TO SAFETY AND HEALTH PROGRAMS.—The Secretary may, pursuant to regulations promulgated under subsection (c)(1), modify the application of the requirements of this section to classes of employers where the Secretary determines that, in light of the nature of the risks faced by the employees of such employers, such a modification would not reduce the employees' safety and health protection.

"(3) WORKSITES.—As used in this section and section 28, the term 'worksite' means a single physical location where business is conducted or where operations are performed by employees of an employer.

"(b) REQUIREMENTS.—A safety and health program established and carried out under subsection (a) shall be a written program that shall include—

"(1) methods and procedures for identifying, evaluating, and documenting safety and health hazards;

"(2) methods and procedures for correcting the safety and health hazards identified under paragraph (1);

"(3) methods and procedures for investigating work-related fatalities, injuries and illnesses;

"(4) methods and procedures for providing occupational safety and health services, including emergency response and first aid procedures;

"(5) methods and procedures for employee participation in the implementation of the safety and health program, including participation through any safety and health committee established under section 28;

"(6) methods and procedures for responding to the recommendations of the safety and health committee, where applicable;

"(7) methods and procedures for providing safety and health training and education to employees and to members of any safety and health committee established under section 28;

"(8) the designation of a representative of the employer who has the qualifications and responsibility to identify safety and health hazards and the authority to initiate corrective action where appropriate;

"(9) in the case of a worksite where employees of two or more employers work, procedures for each employer to protect employees at the worksite from hazards under the employer's control, including procedures to provide information on safety and health hazards to other employers and employees at the worksite; and

"(10) such other provisions as the Secretary requires to effectuate the purposes of the Act.

"(c) REGULATIONS ON EMPLOYER SAFETY AND HEALTH PROGRAMS.—

"(1) GENERAL REGULATIONS.—

"(A) ESTABLISHMENT.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate final regulations concerning the establishment and implementation of employer safety and health programs under this section.

"(B) TRAINING AND EDUCATION.—Regulations promulgated under subparagraph (A) shall include provisions for the training and education of employees, and of safety and health committee members, as required under subsection (b)(6). Such regulations shall—

"(i) provide for the training and education of employees, including safety and health committee members, in a manner that is readily understandable by such employees, concerning safety and health hazards, control measures, the employer's safety and health program, employee rights and applicable laws and regulations;

"(ii) provide for the training and education of safety and health committee, concerning methods and procedures for hazard recognition and control, the conduct of worksite safety and health inspections, the rights of the safety and health committee, and concerning other information necessary to enable such members to carry out the activities of the committee under section 28;

"(iii) require that training and education be provided to employees at the time of employment and to safety and health committee members at the time of selection; and

"(iv) require that refresher training be provided on at least an annual basis and that additional training be provided to employees and to safety and health committee members when there are changes in conditions or operations that may expose employees to new or different safety or health hazards or when there are changes in safety and health regulations or standards under this Act that apply to the employer.

"(2) NO LOSS OF PAY.—The time during which employees are participating in training and education activities under this subsection shall be considered as hours worked for purposes of wages, benefits, and other terms and conditions of employment. Such training and education shall be provided by an employer at no cost to the employees of the employer.".

TITLE II—SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES

SEC. 201. SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

(a) IN GENERAL.—Section 28 is amended to read as follows:

"SEC. 28. SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

"(a) REQUIREMENT.—Each employer of not less than 11 employees shall provide for the establishment of safety and health committees and the selection of employee safety and health representatives in accordance with this section.

"(b) SAFETY AND HEALTH COMMITTEES.—

"(1) IN GENERAL.—Each employer covered by this section shall establish a safety and health committee at each worksite of the employer, except that the Secretary may, by regulation, modify the application of this paragraph to—

"(A) an employer whose employees do not primarily report to or work at a fixed location;

"(B) worksites at which less than eleven employees of a covered employer are employed; or

"(C) worksites where employees of more than one employer are employed.

Each employer required to establish a safety and health committee under this section shall, pursuant to regulations promulgated by the Secretary, enable such committee to exercise the rights described in this section.

"(2) MEMBERSHIP.—A committee established under paragraph (1) shall consist of—

"(A) the employee safety and health representatives elected or appointed under subsection (c)(2); and

"(B) as determined appropriate by the employer, employer representatives, the number of which may not exceed the number of employee representatives described in subparagraph (A).

"(3) CHAIRPERSONS.—A committee established under paragraph (1) shall be cochaired by—

"(A) a representative selected by the employer; and

"(B) a representative selected by the employee members of such committee.

"(4) RIGHTS.—A committee established under paragraph (1) shall have the right, within reasonable limits and in a reasonable manner, to—

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"(A) review any safety and health program established under section 27 by the employer;

"(B) review incidents involving work-related fatalities, injuries and illnesses and complaints regarding safety or health hazards by employees;

"(C) review, upon the request of the committee or upon the request of the employer representatives or employee representatives of the committee, the employer's work injury and illness records, other than personally identifiable medical information, and other reports or documents relating to occupational safety and health;

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

"(E) conduct interviews with employees in conjunction with inspections of the worksite;

"(F) conduct meetings, at least once every 3 months, and maintain written minutes of such meetings;

"(G) observe the measurement of employee exposure to toxic materials and harmful physical agents;

"(H) establish procedures for exercising the rights of the committee;

"(I) make recommendations on behalf of the committee, and in making such recommendations, permit any member of such committee to submit the separate views of such member, or on behalf of the employer or employee representatives on such committee, to the employer for improvements in the employer's safety and health program and for the correction of hazards to employee safety or health, except that such recommendations shall be advisory only and the employer shall retain full authority to manage the worksite; and

"(J) accompany the Secretary or the Secretary's representative during any physical inspection of the worksite under section 8(a).

"(5) TIME FOR COMMITTEE ACTIVITIES.—The employer shall permit members of the committee established under paragraph (1) to take such time from work as is reasonably necessary to exercise the rights of the committee, without suffering any loss of pay or benefits for time spent on duties of the committee.

"(6) REGULATIONS.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate final regulations for the establishment and functioning of safety and health committees under this section. Such regulations shall include provisions concerning—

"(A) the establishment of such committees by an employer whose employees do not primarily report to or work at a fixed location;

"(B) the establishment of such committees with regard to worksites at which less than 11 employees of a covered employer are employed;

"(C) the establishment of committees at worksites where employees of more than one employer are employed; and

"(D) the employer's obligation to enable the committee to function properly and effectively, including the provision of facilities and materials necessary for the committee to conduct its activities, and the maintenance of records and minutes developed by the committee.

"(c) EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.—

"(1) IN GENERAL.—Safety and health committees established under this section shall include—

"(A) one employee safety and health representative where the average number of nonmanagerial employees of the employer at the worksite during the year ending January 1 was more than 10, but less than 50;

"(B) two employee safety and health representatives where the average number of nonmanagerial employees of the employer at the worksite during the year ending January 1 was more than 50, but less than 100;

"(C) an additional employee safety and health representative for each additional 100 such employees at the worksite, up to a maximum of six employee safety and health representatives, except as provided in paragraph (2)(C); and

"(D) where an employer's employees do not primarily report to or work at a fixed location, at worksites at which less than 11 employees of a covered employer are employed, or at worksites where employees of more than one employer are employed, a number of employee safety and health representatives as determined by the Secretary by regulation.

"(2) SELECTION.—Employee safety and health representatives shall be selected by and from among the employer's nonmanagerial employees, as follows:

"(A) Where none of the employer's employees at a worksite are represented by an exclusive bargaining representative, the employees shall elect employee safety and health representatives in an election held in conformity with procedures pursuant to regulations promulgated by the Secretary.

"(B) Where the employer's employees are represented by a single exclusive bargaining representative, the bargaining representative shall designate the employee safety and health representatives.

"(C) Where the employer's employees are represented by more than one exclusive representative or where some but not all of the employees are represented by an exclusive representative, each bargaining unit of represented employees (and any residual group of unrepresented employees) shall have a proportionate number of employee safety and health representatives based on the number of employees in each bargaining unit or group, except that each such unit or group of 11 or more employees shall have at least one representative. The selection process shall be conducted in accordance with the provisions of subparagraph (A) or (B) as applicable.

"(3) REGULATIONS.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate regulations concerning safety and health representatives. Such regulations shall include provisions concerning—

"(A) the number of employee safety and health representatives where an employer's employees do not primarily report to work at a fixed location;

"(B) the number of employee safety and health representatives with respect to worksites at which less than 11 employees of a covered employer are employed;

"(C) the number of employee safety and health representatives at worksites where employees of more than one employer are employed; and

"(D) the selection and election procedures for employee safety and health representatives, such election procedures to provide for a fair election by secret ballot and protect employee's equal rights to participate in the election without being subject to penalty, discipline, improper interference or reprisal.

"(d) ADDITIONAL RIGHTS.—The rights and remedies provided to employees and employee safety and health representatives by this section are in addition to, and not in lieu of, any other rights and remedies provided by contract, by other provisions of this Act or by other applicable law, and are not intended to alter or affect such rights and remedies.".

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not be construed to affect the amendments made by section 28 of the Occupational Safety and Health Act of 1970 as such section existed on the date of enactment of such Act.

TITLE III—COVERAGE

SEC. 301. EXTENSION OF COVERAGE TO PUBLIC EMPLOYEES.

(a) DEFINITION OF EMPLOYER.—Section 3(5) (29 U.S.C. 652(5)) is amended by striking "but does not include" and inserting "including".

(b) CONFORMING AMENDMENTS.—

(1) Section 19 (29 U.S.C. 668) is repealed.

(2) Section 410(b) of title 39, United States Code, is amended by striking paragraph (7) and inserting the following new paragraph:

"(7) the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);".

SEC. 302. APPLICATION OF ACT.

Section 4(b) (29 U.S.C. 653(b)(1)) is amended—

(1) in paragraph (1) to read as follows:

"(1) Where a Federal agency has promulgated and is enforcing standards or regulations affecting the occupational safety or health of some or all of the employees within that agency's regulatory jurisdiction, and the Secretary of Labor determines that a standard or regulation as promulgated and the manner in which such standard or regulation is being enforced provides protection to those employees that is at least as effective as the protection provided to those employees by the Secretary's enforcement of this Act, the Secretary may publish a notice in the Federal Register setting forth such determination and the reasons therefore and certifying that the Secretary has ceded jurisdiction to that Federal agency with respect to the specified hazards to which the designated employees are exposed. Such certification shall remain in effect unless and until rescinded by the Secretary.";

(2) by redesignating paragraphs (2) through (4) as paragraph (5) through (7), respectively; and

(3) by inserting after paragraph (1), the following new paragraphs:

"(2) The Secretary shall, by regulation, establish procedures by which any affected person may petition the Secretary to rescind a certification under paragraph (1). Upon receipt of such a petition the Secretary shall investigate the matter and shall, within 90 days after receipt of the petition, publish a decision with respect to the petition in the Federal Register.

"(3) Any person who may be adversely affected by a decision of the Secretary certifying that the Secretary has ceded jurisdiction to another Federal agency pursuant to paragraph (1), or by a decision of the Secretary denying a petition to rescind such a certification under paragraph (2), may at any time prior to the 60th day after such decision is published in the Federal Register file a petition challenging such decision with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business, for judicial review of such decision. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary's decision shall be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(4) Nothing in this Act shall apply to working conditions covered by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).".

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SEC. 303. APPLICATION OF OSHA TO DOE NUCLEAR FACILITIES.

Paragraph (6) of section 4(b) (29 U.S.C. 653(b)(2)) (as redesignated by section 302(2)) is amended to read as follows:

"(6) Notwithstanding paragraph (1) or any other provision of this law, this Act shall apply with respect to employment performed in the Federal nuclear facilities under the control or jurisdiction of the Department of Energy.".

SEC. 304. EXTENSION OF EMPLOYER DUTIES TO ALL EMPLOYEES WORKING AT A PLACE OF EMPLOYMENT.

Paragraph (1) of section 5(a) (29 U.S.C. 654(a)(1)) is amended to read as follows:

"(1) shall furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees of the employer or to other employees at the place of employment.".

TITLE IV—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SEC. 401. TIMEFRAMES FOR SETTING STANDARDS.

(a) RECOMMENDATIONS AND PETITIONS FOR STANDARDS.—Paragraph (2) of section 6(b) (29 U.S.C. 655(b)(2)) is amended to read as follows:

"(2)(A) If the Secretary receives a recommendation of an advisory committee, the Secretary of Health and Human Services or the Administrator of the Environmental Protection Agency or a petition from an interested person that sets forth with reasonable particularity the facts that the person claims establish that an occupational safety or health standard should be promulgated, modified or revoked, the Secretary shall, not later than 90 days after receipt of such recommendation or petition, publish in the Federal Register a response stating whether the Secretary intends to publish a proposed rule promulgating, modifying or revoking such standard.

"(B) If the response of the Secretary under subparagraph (A) states that the Secretary does not intend to publish a proposed rule, the Secretary shall set forth the reasons for that decision. In all other cases, the Secretary shall, not later than 12 months after the receipt of a recommendation or petition under subparagraph (A), publish in the Federal Register a proposed rule promulgating, modifying or revoking the standard discussed in the petition or recommendation.".

(b) PROCEDURE FOR COMMENT AND HEARING.—Paragraph (3) of section 6(b) (29 U.S.C. 655(b)(3)) is amended—

(1) by redesignating such paragraph as subparagraph (B) of paragraph (3); and

(2) by inserting before such subparagraph, as so redesignated, the following new subparagraph:

"(A) Where information developed by or submitted to the Secretary indicates that a rule should be proposed promulgating, modifying, or revoking an occupational safety or health standard, the Secretary shall publish such a proposed rule in the Federal Register and shall afford interested persons a period of at least 30 days after publication to submit written data or comments.".

(c) TIME FRAME FOR ISSUING RULES.—Section 6(b)(4) (29 U.S.C. 655(b)(4)) is amended by striking "sixty days" both places such appears and inserting "180 days".

(d) REVIEW OF SECRETARY'S FAILURE OR REFUSAL TO ISSUE RULES.—Section 6 (29 U.S.C. 655) is amended—

(1) by adding at the end of subsection (f) the following new sentence: "Judicial review of the validity of an occupational safety and health standard may be obtained exclusively through a petition for review in the appropriate United States court of appeals, acting under this subsection or under subsection (h)."; and

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

"(h)(1) Any person who may be adversely affected by a determination by the Secretary under subsection (b)(2) not to propose a rule promulgating, modifying, or revoking a standard may at any time prior to the expiration of 60 days after such determination is published in the Federal Register file a petition seeking review of such determination with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary's determination shall be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(2) Any person who may be adversely affected by a failure of the Secretary to take any action required by this section within the time period prescribed by this section may at any time after such period of time has elapsed file a petition for review stating that such action has been unlawfully withheld or unreasonably delayed. Such petition may be filed with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The reviewing court shall compel the Secretary to take any action that is found to have been unlawfully withheld or unreasonably delayed. In deciding whether to compel such action the court shall consider whether the Secretary's failure to act is consistent with the time limits set forth in this section. The Secretary's desire to confer with, or to receive approval from any other Federal agency or Federal executive official, shall not justify the withholding or delaying of action by the Secretary, except where such consultation or solicitation of approval is required by Federal law.".

SEC. 402. BASIS FOR STANDARDS.

Paragraph (8) of section 3 (29 U.S.C. 652(8)) is amended to read as follows:

"(8) The term 'occupational safety and health standard' means a standard that addresses a significant risk to the safety or health of employees by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes that most adequately assure, to the extent feasible, safe and healthful employment and places of employment.".

SEC. 403. RECORDING OF WORK RELATED ILLNESSES.

Section 6(b)(7) (29 U.S.C. 655(b)(7)) is amended by inserting after the third sentence the following new sentence: "The standard shall also prescribe requirements for recording or reporting a work-related illness determined as a result of a medical examination or test conducted under the standard.".

SEC. 404. PUBLIC DISCLOSURE OF ALL COMMUNICATIONS ON STANDARDS.

Section 6(b) (29 U.S.C. 655(b)) is amended by adding at the end thereof the following new paragraph:

"(9) The Secretary shall place all written comments and communications, and a summary of all verbal communications, with parties outside the Department of Labor (including communications with other government agencies), regarding the promulgation, modification or revocation of a standard under this section, in the public record.".

SEC. 405. REVISION OF PERMISSIBLE EXPOSURE LIMITS.

Section 6 (29 U.S.C. 655) (as amended by section 401(d)) is further amended by adding at the end thereof the following new subsection:

"(i) In addition to other health and safety standards promulgated under subsection (b), the Secretary shall, in cooperation with the Secretary of Health and Human Services, modify and establish exposure limits for toxic materials and harmful physical agents on a regular basis, in accordance with the requirements of subsection (b)(5), in the following manner:

"(1) The Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall regularly evaluate available scientific evidence, data and information to determine if exposure limits for toxic materials and harmful physical agents promulgated under subsections (a) and (b) should be modified or established to protect exposed employees against material impairment of health or functional capacity. Such evaluations shall include a review of the scientific literature, standards of private and professional organizations, national consensus standards, standards adopted by other countries, and recommendations of State and Federal agencies.

"(2) Not less than once every 3 years the Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall develop and transmit to the Secretary recommendations identifying toxic materials and harmful physical agents, if any, for which exposure limits should be modified or established to protect employees from material impairment of health or functional capacity. For each such material or agent, the recommendation shall include a suggested permissible exposure limit, the basis for the suggested exposure limit and, where available, information on feasible control measures.

"(3) Not later than 30 days after the receipt of such recommendations, the Secretary shall publish such recommendations on exposure limits in the Federal Register and provide a period of 30 days for public comment. The Secretary shall evaluate the recommendations and public comments and not later than 6 months after the receipt of such recommendations, shall publish a proposed rule to maintain, modify or establish exposure limits for each toxic material and harmful physical agent as to which the Secretary of Health and Human Services has recommended that exposure limits be modified or established. If a proposed exposure limit is not the same as the exposure limit suggested by the Secretary of Health and Human Services, the Secretary shall explain why the suggested limit is not being proposed.

"(4) Not later than 1 year after the publication of the proposed exposure limits, the Secretary shall issue a final standard and such standard shall be subject to the requirements of subsection (b)(5). If a final exposure limit is not the same as the exposure limit suggested by the Secretary of Health and Human Services, the Secretary shall explain the reasons that the suggested exposure limit is not being adopted.

"(5) In addition to the periodic review of permissible exposure limits required by this subsection, the Secretary shall also establish or modify exposure limits for toxic materials and harmful physical agents whenever such action is warranted, pursuant to subsections (b)(5) and (g).".

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ation and the number of enforcement personnel required for such inspections.

"(3) Inspections conducted under this subsection shall be in addition to other inspections conducted under this Act.

"(4) The Secretary shall annually submit a report to the Congress on the special emphasis inspection program as part of the Secretary's annual report required under section 26 which shall include the information on inspections described in paragraph (2) that were carried out in the preceding and current year.".

SEC. 505. INVESTIGATIONS OF FATALITIES AND SERIOUS INCIDENTS.

Section 8 (29 U.S.C. 657) (as amended by section 504) is further amended by adding at the end thereof the following new subsection:

"(i)(1) The Secretary shall investigate any work-related fatality or serious incident.

"(2) If a fatality or serious incident occurs in a place of employment covered by this Act, the employer shall notify the Secretary of the fatality or serious incident and shall take appropriate measures to prevent the destruction or alteration of any evidence that would assist in investigating the fatality or serious incident.

"(3) As used in this subsection, the term 'serious incident' means an incident that results in the hospitalization of two or more employees.".

SEC. 506. ABATEMENT OF SERIOUS HAZARDS DURING EMPLOYER CONTESTS.

(a) CITATIONS.—Section 9(a) (29 U.S.C. 658(a)) is amended by inserting after the third sentence the following new sentence: "If the Secretary or an authorized representative of the Secretary believes that an alleged violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of review proceedings should not suspend the running of the period for the correction of the violation, the citation shall so state.".

(b) CITATIONS AND ENFORCEMENT.—Section 10 (29 U.S.C. 659) is amended—

(1) in subsection (b), by striking out "(which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties)"; and

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

"(d)(1) Except as provided in paragraphs (2) and (3), the period permitted for the correction of a violation shall begin to run from the date of the receipt of the citation.

"(2) If the employer initiates timely review proceedings under this section in which the employer contests matters other than the proposed assessment of penalty or characterization of the violation and the proceedings are initiated by the employer in good faith and not solely for delay, the period permitted for the correction of a violation shall, except as provided in paragraph (3), not begin to run until the entry of a final order by the Commission.

"(3) If the citation states that the violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of review proceedings shall not suspend the running of the period for correction of the violation and if, simultaneous with initiating timely review proceedings under the citation, the employer files a statement asserting that the period for correction of the violation should be suspended during such proceedings, the Commission shall expedite the consideration and decision of the employer's review proceeding. In its decision resolving that proceeding, the Commission may modify the citation's provision that the period for the correction of the violation shall run from the date of the receipt of the citation, if the Commission determines, based on a consideration of the nature of the violation, that the nature and degree of risk posed to employees by the employer's refusal to undertake prompt correction of the violation, and the extent of any irreparable injury the employer would incur by undertaking correction of the violation during the pendency of review proceedings, that such provision is unreasonable in the circumstances.".

(c) PENALTIES.—Section 17(d) (29 U.S.C. 666(d)) is amended by striking out "(which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties)".

(d) VERIFICATION OF ABATEMENT.—Section 10 (as amended by subsection (b)) is further amended by adding at the end thereof the following new subsection:

"(e)(1) Each employer to whom a citation for a serious, willful or repeated violation has been issued under section 9 shall verify the abatement of such violation in writing to the Secretary not later than 30 days after the period for the correction of the violation has expired, with appropriate documentary evidence. Each such employer shall prominently post, at or near each place that a violation referred to in the citation occurred, a notice that the violation has been abated, and shall make available to employees and employee representatives for inspection a copy of the verification of abatement provided to the Secretary pursuant to this subsection.

"(2) Not later than 1 year after the effective date of this subsection, the Secretary shall promulgate final regulations regarding the requirements of this subsection, including provisions concerning—

"(A) the documentary evidence required to verify abatement of a violation; and

"(B) the posting of notice of abatement of a violation.".

SEC. 507. RIGHT TO CONTEST CITATIONS AND PENALTIES.

The first sentence of section 10(c) (29 U.S.C. 659(c)) is amended by inserting after "files a notice with the Secretary" the following: "alleging that the citation fails properly to designate the provisions of the Act, standard, rule, regulation or order that have been violated, or that the citation fails properly to designate the violation as serious, willful or repeated, or that the proposed penalty is not adequate, or".

SEC. 508. RIGHT OF EMPLOYEE REPRESENTATIVES TO PARTICIPATE IN OTHER PROCEEDINGS.

The last sentence of section 10(c) (29 U.S.C. 659(c)) is amended by inserting after "participate as parties to hearings" the following: "or other proceedings conducted".

SEC. 509. OBJECTIONS TO MODIFICATION OF CITATIONS.

Section 10 (29 U.S.C. 659) (as amended by section 506) is further amended by adding at the end thereof the following new subsection:

"(f)(1) If the Secretary intends to withdraw or to modify a citation as a result of any agreement with the cited employer, the rules of procedure prescribed by the Commission shall provide for prompt notice to affected employees or representatives of affected employees, and that such notice include the terms of the proposed agreement.

"(2) Not later than 15 working days after the receipt of the notice provided in accordance with paragraph (1), any employee or representative of employees, regardless of whether such employee or representative has previously elected to participate in the proceedings, shall have the right to file a notice with the Secretary alleging that the proposed agreement fails to effectuate the purposes of this Act, and stating the respects in which it fails to do so.

"(3) Upon receipt of a notice filed under paragraph (2), the Secretary shall consider the matter, and if the Secretary determines to proceed with the proposed agreement, shall respond with particularity to the statements presented in that notice.

"(4) Not later than 15 working days following the Secretary's response provided pursuant to paragraph (3), the employee or representative of employees shall upon filing a petition for service with the Commission have the right to a hearing as to whether adoption of the proposed agreement would effectuate the purposes of the Act, including a determination as to whether the proposed agreement would adequately abate the alleged violations.

"(5) If the Commission determines that a proposed agreement fails to effectuate the purposes of the Act, the proposed agreement shall not be entered as an order of the Commission, nor shall the citation be withdrawn or modified in accordance with the proposed agreement.".

SEC. 510. IMMINENT DANGER INSPECTIONS.

(a) CORRECTION OF CONDITIONS.—Section 13 (29 U.S.C. 662) is amended—

(1) by striking out subsection (c);

(2) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(3) by inserting before subsection (b), as so redesignated, the following new subsection:

"(a)(1) If any representative of the Secretary determines, on the basis of an inspection or investigation under this section, that a condition or practice in a place of employment is such that an imminent danger to safety or health exists that could reasonably be expected to cause death or serious physical harm or permanent impairment of the health or functional capacity of employees if not corrected immediately, the representative of the Secretary shall so inform the employer and affected employees and shall request that the condition or practice be corrected immediately or that employees be immediately removed from exposure to such danger.

"(2) If the employer refuses to comply with a request under paragraph (1), the representative of the Secretary shall consult by telephone or similarly direct medium of communication with the Secretary or the Secretary's designee to determine whether notice should be posted in the workplace pursuant to paragraph (3).

"(3) If the Secretary or the Secretary's designee so authorizes, the representative of the Secretary shall immediately cause notice to be posted in the workplace identifying the equipment, process or practice that is the source of the imminent danger. Such notice shall take the form of a tag or other device that will be seen by employees who might otherwise be exposed to the dangerous equipment, process or practice. The notice shall be removed only by the Secretary or a representative of the Secretary.

"(4) The fact that such notice has been posted shall be noted in any citation issued pursuant to section 9 with respect to the hazard involved.

"(5) No person shall discharge or in any manner discriminate against any employee because such employee has refused to perform a duty that would expose the employee to the condition or a practice that has been identified as the source of imminent danger by a notice posted pursuant to para-

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SEC. 406. EXPOSURE MONITORING AND MEDICAL SURVEILLANCE.

Section 6 (42 U.S.C. 655) (as amended by sections 401(d) and 405) is further amended by adding at the end thereof the following new subsection:

"(j)(1) Not later than 2 years after the effective date of this subsection, the Secretary shall promulgate final standards on exposure monitoring and medical surveillance programs in accordance with subsection (b)—

"(2) The standards on exposure monitoring promulgated under paragraph (1) shall include the following:

"(A) Requirements for a formal exposure assessment in a case where workers may be exposed to toxic materials or harmful physical agents that are subject to standards issued under this section, including toxic materials or harmful physical agents covered under section 1910.1200 of title 29, Code of Federal Regulations.

"(B) Requirements for regular monitoring and measurement of toxic materials or harmful physical agents for which an exposure limit has been established by the Secretary or adopted by the employer, where such monitoring and measurements will assist in protecting the health and safety of workers exposed to such toxic materials or harmful physical agents.

"(C) Requirements for a written compliance plan for reducing exposures where exposures are determined to exceed limits established by the Secretary or adopted by the employer.

"(D) Requirements for employees to be notified in writing of exposures above exposure limits established by the Secretary or adopted by the employer and the steps the employer is taking to reduce exposures.

"(E) Requirements for the maintenance of and access to exposure records according to the provisions of section 1910.20 of title 29, Code of Federal Regulations.

"(F) Requirements for any safety and health committee established under section 28 to review the exposure assessment and exposure monitoring program, to observe exposure monitoring, to receive and have access to copies of assessment and monitoring results, to review written compliance plans, and to make recommendations with respect to such programs and plans.

"(3) The standards on medical surveillance programs promulgated under paragraph (1) shall include the following:

"(A) Requirements for an evaluation of employee exposure assessments and exposure monitoring to identify which employees may be at risk of material impairment of health or functional capacity due to exposure to toxic materials or harmful physical agents.

"(B) Requirements for periodic medical examinations for employees identified to be at risk of material impairment of health or functional capacity due to exposure to toxic materials or harmful physical agents where such examinations are appropriate to identify or to prevent material impairment to health or functional capacity.

"(C) Requirements for the evaluation of the results of medical examinations to determine if an employee or a group of employees are exhibiting indications of present or potential material impairment of health or functional capacity due to exposure to toxic substances or harmful physical agents.

"(D) Requirements for the notification of employees of the results of medical examinations in a manner that is understood by the employees.

"(E) Provisions setting forth the qualifications for health care providers who may conduct medical examinations mandated by this section. Where feasible, the Secretary in cooperation with the Secretary of Health and Human Services shall establish criteria and procedures for the certification of health care providers who conduct medical examinations under this section.

"(F) Provisions to assure the confidentiality of personally identifiable medical information developed under this section.

"(G) Provisions to prohibit discrimination against employees based on the results of medical examinations and, as appropriate, provisions to provide for the protection of the wages, benefits, seniority and other relevant conditions of employment of employees who are transferred or removed from their jobs due to the result of medical examinations conducted under this section.

"(H) Records developed under this subsection shall be maintained and made available according to the provisions of section 1910.20 of title 29, Code of Federal Regulations.

"(I) Requirements for the safety and health committee established under section 28 to review the employer's medical surveillance program and to make recommendations with respect thereto. ".

SEC. 407. STANDARD ON ERGONOMIC HAZARDS.

Section 6 (42 U.S.C. 655) (as amended by sections 401(d), 405 and 406) is further amended by adding at the end thereof the following new subsection:

"(k)(1) Not later than 1 year after the effective date of this subsection, the Secretary shall issue a final standard on ergonomic hazards to protect employees from work-related musculoskeletal disorders in accordance with subsection (b)(5).

"(2) The final standard issued under paragraph (1) shall include the following:

"(A) A requirement for an ergonomics program for employees who are exposed to ergonomic hazards, that shall include provisions for hazard identification, control measures, medical management, training and education, and employee participation.

"(B) Requirements for an evaluation of job processes, work station design, rate of work, and work methods to identify ergonomic risk factors that cause or are likely to cause musculoskeletal disorders.

"(C) Requirements for control measures to reduce stressors and musculoskeletal disorders including engineering controls, new equipment or work organization controls.

"(D) Requirements for an effective medical management program for musculoskeletal disorders including requirements for qualified health care providers, health surveillance, appropriate diagnosis, treatment, and followup.

"(E) Requirements for recording musculoskeletal disorders as an illness as defined under section 8(c)(2) and reporting such illnesses to the Secretary.

"(F) Requirements for the training and education of employees exposed to ergonomic hazards on ergonomic risk factors, control measures and the employer's medical management program.

"(G) Requirements for employee participation in the establishment and implementation of the employer's ergonomic program through any safety and health committee established under section 28.".

SEC. 408. TIMETABLE FOR SPECIFIC STANDARDS.

Section 6 (42 U.S.C. 655) (as amended by sections 401(d), 405, 406 and 407) is further amended by adding at the end thereof the following new subsection:

"(l) The Secretary shall issue the following safety and health standards under subsection (b):

"(1) Not later than November 30, 1991, the Secretary shall issue a final standard concerning bloodborne pathogens.

"(2) Not later than December 31, 1991, the Secretary shall issue final standards concerning:

"(A) permissible exposure limits, upda for construction, maritime and agriculture;

"(B) electric power generator, transmission and distribution;

"(C) logging operations;

"(D) face, head, eye and foot protection;

"(E) walking and working surfaces;

"(F) hazardous materials; and

"(G) motor vehicle inspection, maintenance and safety.

"(2) Not later than June 30, 1992, the Secretary shall issue final standards on:

"(A) cadmium;

"(B) confined space entry;

"(C) asbestos (remand);

"(D) accreditation of training for programs for hazardous waste operations; and

"(E) methylene chloride.

"(3) Not later than December 31, 1992, the Secretary shall issue final standards on:

"(A) respiratory protection;

"(B) 1,3-butadiene;

"(C) scaffolds;

"(D) fall protection; and

"(E) glycol ethers.

"(4) Not later than December 31, 1993, the Secretary shall issue final standards on:

"(A) indoor air quality; and

"(B) safety and health regulations for longshoring.

"(5) Nothing in this subsection shall be construed as limiting the Secretary from issuing additional safety and health standards under subsection (b).".

TITLE V—ENFORCEMENT

SEC. 501. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.

Section 8(e) (29 U.S.C. 657(e)) is amended by inserting after the first sentence the following new sentence: "Time spent by an employee on any such inspection shall be deemed to be hours worked for purposes of wages, benefits, and other terms and conditions of employment.".

SEC. 502. COMPLAINTS.

Section (8)(f)(1) (29 U.S.C. 657(f)(1)) is amended—

(1) in the first sentence, by inserting "the Act or" after "violation of"; and

(2) by inserting after the third sentence the following new sentence: "If the Secretary, upon notification from any other source determines that there are reasonable grounds to believe that an imminent danger (as described in section 13(a)) or serious violation (as described in section 17(k)) exists in a place of employment, the Secretary shall also make a special inspection in accordance with this section.".

SEC. 503. TIMEFRAME FOR RESPONSE.

The last sentence of section 8(f)(1) (29 U.S.C. 657(f)(1)) is amended by inserting before the period the following: "not later than 30 days after the receipt of the request for inspection".

SEC. 504. MANDATORY SPECIAL EMPHASIS.

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

"(h)(1) The Secretary shall establish and carry out a special emphasis inspection program for conducting inspections of industries or operations where existing hazards newly recognized or new hazards introduced into worksites warrant a more intensive than normal inspection program.

"(2) The Secretary shall annually designate the industries and operations for the special emphasis inspection program and identify the number of special emphasis inspections that the Secretary plans to conduct in each designated industry and opergraph (3). The right to refuse to perform such a duty shall be in addition to any other right to refuse to perform hazardous work that is afforded to employees by this Act, by standards or regulations issued pursuant to this Act, by contract, or by other applicable law.".

(4) in subsection (b), as so redesignated, by striking out the first sentence and inserting in lieu thereof the following new sentence: "The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which pose an imminent danger as described in subsection (a).".

(b) PENALTIES.—Subsection (e) of section 17 (29 U.S.C. 666) is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) In the event that an employer does not immediately correct the hazard referenced in a notice posted under section 13(a) or remove all employees from exposure thereto, the employer shall be assessed a civil penalty of not less than $10,000 and not more than $50,000 for each day during which an employee continues to be exposed to the hazard. This paragraph shall not apply if the Commission determines that the condition or practice was not of such a nature as to be covered by section 13(a).".

SEC. 511. CITATIONS AND PENALTIES FOR VIOLATIONS OF SECTION 27 AND SECTION 28.

(a) CITATIONS.—Section 9(a) (29 U.S.C. 658(a)) is amended by inserting ", 27 or 28" after "section 5".

(b) PENALTIES.—Section 17 (29 U.S.C. 666) is amended—

(1) in subsection (a), by inserting ", 27 or 28" after "section 5";

(2) in subsection (b), by inserting ", 27 or 28" after "section 5"; and

(3) in subsection (c), by inserting ", 27 or 28" after "section 5".

SEC. 512. OSHA CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 17 (29 U.S.C. 666) is amended—

(1) in subsection (e)—

(A) by striking "fine of not more than $10,000" and inserting "fine in accordance with section 3571 of title 18, United States Code,";

(B) by striking "six months" and inserting "10 years";

(C) by striking "fine of not more than $20,000" and inserting "fine in accordance with section 3571 of title 18, United States Code,"; and

(D) by striking "one year" and inserting "20 years";

(2) in subsection (f), by striking "fine of not more than $1,000 or by imprisonment for not more than six months," and inserting "fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 2 years,";

(3) in subsection (g), by striking "fine of not more than $10,000, or by imprisonment for not more than six months," and inserting "fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 1 year,";

(4) by redesignating subsections (h) through (l) as subsections (i) through (m), respectively;

(5) by inserting after subsection (g) the following new subsection:

"(h) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, and that violation causes serious bodily injury to any employee but does not cause death to any employee, shall, upon conviction, be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or by both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or by both,"; and

(6) by adding at the end the following new subsection:

"(n) If a penalty or fine is imposed on a director, officer, or agent of an employer under subsection (e), (f), (g), or (h), such penalty or fine shall not be paid out of the assets of the employer on behalf of that individual.".

(b) DEFINITION.—Section 3 (29 U.S.C. 652) is amended by adding at the end thereof the following new paragraph:

"(15) The term 'serious bodily injury' means bodily injury that involves—

"(A) a substantial risk of death;

"(B) protracted unconsciousness;

"(C) protracted and obvious physical disfigurement; or

"(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.".

(c) JURISDICTION FOR PROSECUTION UNDER STATE AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C. 666) (as amended by subsection (a)) is further amended by adding at the end thereof the following new subsection:

"(o) Nothing in this Act shall preclude State and local law enforcement agencies from conducting criminal prosecutions in accordance with the laws of such State or locality.".

TITLE VI—PROTECTION OF EMPLOYEES FROM DISCRIMINATION

SEC. 601. ANTIDISCRIMINATION PROVISIONS.

Section 11(c) (29 U.S.C. 660(c)) is amended—

(1) in paragraph (1), by adding before the period the following: ", including reporting any injury, illness or unsafe condition to the employer, agent of the employer, the safety and health committee or employee safety and health representative";

(2) by striking out paragraphs (2) and (3), and inserting the following new paragraphs:

"(2) No person shall discharge or in any manner discriminate against an employee for refusing to perform the employee's duties because of the employee's reasonable apprehension that performing such duties would result in serious injury to the employee or other employees. The circumstances causing the employee's apprehension of serious injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee would conclude that there is a bona fide danger of an injury or serious impairment of health resulting from the circumstances. In order to qualify for protection, the employee must have sought from his employer, and have been unable to obtain, corrections of the circumstances causing the refusal to perform the employee's duties.

"(3) Any employee who believes that such employee has been discharged, disciplined, or otherwise discriminated against by any person in violation of this subsection may, within 180 days after such alleged violation occurs, file (or have filed by any person on the employee's behalf) a complaint with the Secretary alleging such discharge, discipline, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

"(4)(A) Not later than 60 days after the receipt of a complaint filed under paragraph (3), the Secretary shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and shall notify the complainant and the person alleged to have committed a violation of this section of such findings. Where the Secretary has concluded that there is reasonable cause to believe that a violation has occurred, the Secretary shall accompany such findings with a preliminary order providing the relief prescribed by this subsection. Thereafter, either the person alleged to have committed the violation or the complainant may, within 30 days, file objections to the findings or preliminary order, or both, and request a hearing on the record, except that the filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be expeditiously conducted. Where a hearing is not timely requested, the preliminary order shall be deemed a final order which is not subject to judicial review. Upon the conclusion of such hearing, the Secretary shall issue a final order within 120 days. In the interim, such proceedings may be terminated at any time on the basis of an agreenent entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

"(B) If, in response to a complaint filed under paragraph (1) or (2), the Secretary determines that a violation of this subsection has occurred, the Secretary shall order—

"(i) the person who committed such violation to take action to correct the violation;

"(ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including backpay), terms, conditions, and privileges of the complainant's employment; and

"(iii) compensatory damages.

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

"(5)(A) Any person adversely affected or aggrieved by an order issued after a hearing under paragraph (4)(B) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred, or the circuit in which such person resided on the date of such violation. The petition for review must be filed within 60 days from the issuance of the order of the Secretary. Such review shall be in accordance with the provisions of chapter 7, of title 5, United States Code, and shall be heard and decided expeditiously.

"(B) Whenever a person has failed to comply with an order issued under paragraph (4)(B), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur in order to enforce such order. In actions brought under this subsection, the district court shall have jurisdiction to grant all appropriate relief, including injunctive relief, reinstatement, back pay and compensatory damages.

"(6) The legal burdens of proof that prevail under section 1221(e) of title 5, United States Code, shall govern adjudication of protected activities under this subsection."

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TITLE VII—OSHA AND NIOSH TRAINING AND EDUCATION

SEC. 701. OSHA AND NIOSH TRAINING ACTIVITIES.

(a) EXPANSION.—Section 21 (29 U.S.C. 670) is amended—

(1) in subsection (a) by inserting after "qualified personnel to carry out the purpose of this Act," the following: ", including education programs for employees and members of safety and health committees, as appropriate,"; and

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

"(d) The Secretary shall develop, directly or by grants or contracts, training materials, model curricula and programs to assist employers in providing the training and education required by section 27 and in complying with the standards issued under section 6.".

TITLE VIII—RECORDKEEPING AND REPORTING

SEC. 801. DATA COLLECTED BY SECRETARY.

Section 24(a) (29 U.S.C. 673) is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) For the purpose of setting safety and health standards, targeting inspections to individual establishments, evaluating standard setting and enforcement programs, and for other purposes, the Secretary shall collect information and conduct analyses that identify—

"(A) industries, employers, processes, operations, and occupations that have a high rate of injury or illness;

"(B) factors that cause or contribute to injuries and illnesses; and

"(C) workers' compensation costs associated with the injuries and illnesses.

"(3) The Secretary shall issue regulations that require each employer covered by this Act to report to the Secretary each work-related death of an employee of the employer immediately upon knowledge of the employer, and to report each serious incident that results in the hospitalization of two or more employees of the employer within 24 hours of the incident.

"(4) Data collected under this subsection shall be publicly available in a form suitable for further statistical analysis.".

SEC. 802. EMPLOYEE REPORTED ILLNESSES.

Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended—

(1) by striking "deaths, injuries and illnesses" and inserting "deaths and injuries"; and

(2) by inserting before the period at the end the following: ", and work related illnesses and suspected work related illnesses (including a work related illness reported by an employee or an employee's physician), unless the employer makes a reasonable determination that the illness is not work related".

SEC. 803. EMPLOYEE ACCESS.

Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by adding at the end the following new sentence: "The records and reports required under this section shall be made available to the Secretary, the Secretary of Health and Human Services, to employees and to employee representatives.".

TITLE IX—NIOSH

SEC. 901. HAZARD EVALUATION REPORTS.

Section 20(a)(6) (29 U.S.C. 669(a)(6)) is amended—

(1) in the second sentence, by inserting "and whether any hazardous condition or harmful physical agent found in the place of employment poses a risk to exposed employees" after "as used or found"; and

(2) by inserting after the second sentence, the following new sentence: "If a determination is not made within 6 months of the receipt of a request, the Secretary shall provide the employer and affected employees with an interim report on the known or suspected hazards and recommendations for control and an estimate of the time that a final determination will be made.".

SEC. 902. SAFETY RESEARCH AND EVALUATIONS.

Section 20(a) (29 U.S.C. 669(a)) is amended by adding at the end thereof the following new paragraph:

"(8) The Secretary of Health and Human Services shall identify major factors contributing to occupational injuries and fatalities through accident investigations, and epidemiological research.".

SEC. 903. INFORMATION AND EDUCATION ABOUT OCCUPATIONAL ILLNESSES.

Section 20(a) (29 U.S.C. 669(a)) (as amended by section 902) is further amended by adding at the end the following new paragraph:

"(9) The Secretary of Health and Human Services shall carry out a program to identify and notify employees at increased risk of occupational illnesses, injuries, and fatalities, including public information and education programs for groups of workers at increased risk. In carrying out the program, the Secretary shall notify subjects of studies conducted or funded by the Secretary who are found to be at increased risk and shall make recommendations on appropriate medical surveillance for groups of employees at increased risk.".

SEC. 904. CONTRACTOR RIGHTS.

Section 20(b) (29 U.S.C. 669(b)) is amended by inserting after "Secretary of Health and Human Services" the following: "or the designees or contractors of such Secretary.".

SEC. 905. NATIONAL SURVEILLANCE PROGRAM.

Section 20 (29 U.S.C. 669) is amended by adding at the end thereof the following new subsection:

"(f)(1) The Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall (in cooperation with other agencies of the Department of Health and Human Services and the Secretary of Labor) establish a national surveillance program to identify cases of occupational illnesses, fatalities, and serious injuries. In conducting the national surveillance program, the Secretary of Health and Human Services shall coordinate the activities of the Secretary with State health agencies and Federal and State workers' compensation agencies.

"(2)(A) The Secretary of Health and Human Services shall collect data each year on the number and characteristics of all occupational fatalities, selected occupational illnesses, and selected occupational injuries.

"(B) In selecting occupational diseases and injuries for the collection of data under subparagraph (A), the Secretary of Health and Human Services shall consider the known frequency of the disorder, the severity of the disorder, and the size of the population at risk.

"(3) The Secretary of Health and Human Services shall prepare reports and analysis of fatalities, occupational diseases, and injuries collected under the national surveillance program and transmit the information to the Secretary of Labor, State health agencies, employers, employees, and other interested parties.

"(4) The Secretary of Health and Human Services may issue regulations to require an employer, through a physician or other health professional employed by or under contract to the employer, to report information on occupational fatalities, illnesses and injuries in order to carry out the provisions of this subsection.".

SEC. 906. ESTABLISHMENT OF NIOSH AS A SEPARATE AGENCY WITHIN PUBLIC HEALTH SERVICE.

The second sentence of section 22(b) (29 U.S.C. 671(b)) is amended by inserting after "The Institute shall be" the following: "established as a separate agency within the Public Health Service and be".

TITLE X—STATE PLANS

SEC. 1001. STATE PLAN COMMITTEES AND PROGRAMS.

Section 18(c) (29 U.S.C. 667(c)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting a comma; and

(3) by adding at the end the following new paragraph:

"(9) provides for the development of safety and health programs, training programs, and safety and health committees that are at least as effective as those required under section 27 and 28, and".

SEC. 1002. ACCESS TO INFORMATION; EMPLOYEE RIGHTS.

Section 18(c) (29 U.S.C. 667(c)) (as amended by section 1001) is further amended by adding at the end thereof the following new paragraph:

"(10) provides for reporting requirements, protection of employee rights, and access to information that are at least as effective as those required under this Act or other Federal laws which govern access to information related to this Act.".

SEC. 1003. COMPLAINTS AGAINST A STATE PLAN.

Section 18 (29 U.S.C. 667) is amended—

(1) in the third sentence of subsection (e)—

(A) by inserting after "preceding sentence" the following: "and except as provided in subsections (f), (i) and (j)"; and

(B) by striking out "(except for the purpose of" and all that follows through "of this section)"; and

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

"(i)(1) If the Secretary receives a written complaint from an employer, employee, or employee representative that a State is deficient in its compliance with a provision of its State plan and the Secretary determines that there are reasonable grounds to believe that such a deficiency exists, the Secretary shall promptly investigate any such complaint. Complaints that allege a deficiency in an enforcement action by a State shall be investigated not later than 30 days after the receipt of such complaint.

"(2) The Secretary shall, not later than 30 days after the completion of an investigation under paragraph (1), transmit in writing to the State and to the complainant the findings of such investigations and recommendations for the correction of any deficiency that is identified. If the Secretary determines there are no reasonable grounds to believe that a deficiency exists the Secretary shall notify the complainant in writing of such determination.

"(3) Not later than 30 days after the receipt of a finding transmitted under paragraph (2), the State shall respond to the Secretary in writing concerning what action the State has taken in response to the Secretary's findings and recommendations.

"(4) If after receipt of the response of the State under paragraph (3), the Secretary believes a serious violation of the Act exists for which the State has failed to issue a citation, the Secretary shall with reasonable promptness issue a citation.".

SEC. 1004. ACTION AGAINST STATE PLAN.

Section 18(f) (29 U.S.C 667(f)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating the second sentence as paragraph (3) and indenting such appropriately;

(3) by inserting after paragraph (1), the following new paragraph:

"(2)(A) If the Secretary at any time finds reasonable grounds to believe that a State has failed to comply substantially with any provision of the State plan or any assurance contained therein, the Secretary shall give notice to the State of the deficiencies and shall allow 6 months for the correction of the deficiencies.

"(B) If after 6 months the Secretary determines that the State has not corrected the deficiencies and that grounds for withdrawing approval of the State plan exist, the Secretary shall institute proceedings pursuant to paragraph (3) for the withdrawal of approval of the plan, unless the Secretary determines in writing that exceptional circumstances exist that justify a decision not to institute such proceedings."; and

(4) by adding at the end thereof the following new paragraph:

"(4) During the pendency of proceedings pursuant to paragraph (3), the Secretary shall exercise jurisdiction, concurrent with the State, over the safety and health issues that are subject to the State plan.".

SEC. 1005. APPLICATION OF FEDERAL STANDARDS.

Section 18 (29 U.S.C. 667) (as amended by section 1003) is further amended by adding at the end thereof the following new subsection:

"(j) In the event a State, within 6 months after the promulgation of a safety and health standard by the Secretary under section 6, fails to adopt or promulgate a standard that is at least as effective as the Federal standard, the State shall enforce the Federal standard until a State standard is in effect that is at least as effective as the Federal standard.".

SEC. 1006. STATE PLAN CONFORMING AMENDMENTS.

Section 18 (29 U.S.C. 667) (as amended by section 1003 and 1005) is further amended by adding at the end thereof the following new subsection:

"(k) Each State which is exercising authority to operate a State safety and health plan under section 18 shall within 1 year of the effective date of this subsection modify the plan to conform with the requirements of this Act.".

TITLE XI—VICTIM'S RIGHTS

SEC. 1101. OCCUPATIONAL SAFETY AND HEALTH HAZARDS VICTIM'S RIGHTS

(a) IN GENERAL.—Section 29 is amended to read as follows:

"SEC. 29. OCCUPATIONAL SAFETY AND HEALTH HAZARDS VICTIM'S RIGHTS

"(a) DEFINITION.—As used in this section, the term "victim" means—

"(1) an employee who has sustained a work-related injury or illness which is the subject of an inspection or investigation conducted under section 8(i); or

"(2) a family member of an employee, if—

"(A) the employee is killed as a result of a work-related injury or illness which is the subject of an inspection or investigation conducted under section 8(i); or

"(B) the employee sustains a work-related injury which is the subject of an inspection or investigation conducted under section 8(i), and the employee cannot reasonably exercise the rights of the employee under this section.

"(b) VICTIM'S RIGHTS.—Notwithstanding any other provision of law, on request, a victim shall be afforded the right to—

"(1) meet with the Secretary or an authorized representative regarding the inspection or investigation conducted under section 8(i) concerning the employee's injury, illness or death, prior to the Secretary's decision to issue a citation or take no action; and

"(2) receive at no cost, a copy of any citations or reports, issued as a result of the inspection or investigation, at the time of issuance, and be informed of any notice of contest filed under section 10 that shall be accompanied by an explanation of the rights of employee and employee representatives to participate in proceedings conducted under section 10.

For the purposes of section 10, a victim shall have the same rights as an employee.

"(c) DISCUSSION ON MODIFICATION OF CITATION.—Prior to entering into an agreement to withdraw or modify a citation issued as a result of an inspection of a fatality or serious incident conducted under section 8(i), on request, the Secretary shall provide an opportunity to the victim to appear and make a statement before the parties conducting the settlement negotiations.

"(d) REMEDIES.—For a violation of this section, in addition to any other remedies that might be available to a victim under Federal or State law, a victim shall be entitled to—

"(1) declaratory relief;

"(2) injunctive relief;

"(3) any costs incurred by the victim in securing the documents referred to in subsections (b)(2) and (c); and

"(4) reasonable attorneys fees and costs.

"(e) NOTIFICATION.—The Secretary shall take reasonable actions to inform victims of their rights under this section.".

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not be construed to affect the amendments made by section 29 of the Occupational Safety and Health Act of 1970 as such section existed on the date of enactment of such Act.

TITLE XII—EFFECTIVE DATE

SEC. 1201. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date that is 90 days after the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF THE COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

SECTION 1. SHORT TITLE.

The legislation may be cited as the "Comprehensive Occupational Safety and Health Reform Act".

SECTION 2. FINDINGS AND PURPOSE.

Congress finds that despite progress made in reducing the rates of work-related deaths, injuries and exposures to toxic substances since 1970, such rates remain unacceptably high. In addition, employers and employees are insufficiently involved in joint efforts to identify and correct occupational safety and health hazards, and lack sufficient OSH training; standard-setting, enforcement, and data collection are inadequate; and millions of American workers lack adequate federal occupational safety and health protection.

The purposes of the legislation are to increase the joint participation of employers and employees in identifying and correcting workplace hazards, to improve standard-setting, enforcement and data collection, and to ensure adequate federal occupational safety and health protection for all workers.

SECTION 3. OSHA AMENDMENTS.

The legislation amends the Occupational Safety and Health Act of 1970 ("the Act") (29 U.S.C. section 651 et seq.).

Title I—Safety and Health Programs

SECTION 101. SAFETY AND HEALTH PROGRAMS.

Section 101 requires employers to establish and maintain occupational safety and health ("OSH") programs to reduce or eliminate hazards and to prevent injuries and illnesses to employees. Each program must be in writing, and must provide for (a) identification and correction of hazards, (b) employee training, education, and participation in the OSH program (to be considered as hours worked), (c) procedures for responding to and investigating OSH incidents, (d) designation of an employer OSH representative, and (e) OSH procedures for multi-employer worksites.

Within one year of enactment, DOL is required to issue regulations concerning employer OSH programs. DOL is authorized to modify the application of this section's requirements to classes of employers if DOL determines that employees' OSH protection would not be reduced.

The legislation requires employers to provide employee OSH training, including training for new employees and employees who face changed working conditions or modifications in applicable OSH regulations and standards, as well as annual refresher training. OSH committee members (as described in Section 201) must receive special training.

Title II—Joint Safety and Health Committees

SECTION 201. JOINT SAFETY AND HEALTH COMMITTEES.

Section 201 requries employers with more than 10 employees to establish joint employer-employee OSH committees. Each committee shall have the right to (a) review the employer's OSH program and OSH records, (b) conduct inspections and employee interviews periodically and in response to specific incidents, (c) observe OSHA inspections and exposure monitoring by the employer, and (d) make advisory recommendations to the employer. Time spent on committee activities shall be considered as time worked.

Although this section requires employers to establish a committee at each of its worksites, DOL is authorized to modify this requirement for worksites with fewer than 11 employees, multi-employer worksites, and employees who do not work at fixed locations.

For worksites of between 11 and 50 employees, the committee must include at least one employee representative. For worksites of between 51 and 99 employees, the committee must include at least two employee representatives. Committees at larger worksites must include an additional representative for each additional 100 employees at such worksites (up to a maximum of six).

Employer-designated representatives on the Committee are not to exceed employee representatives in number. In non-union settings, employee representatives are to be selected from among non-managerial employees by secret ballot election. In union settings, the exclusive bargaining agent shall designate such representatives. In mixed settings, each represented group (plus one residual group of unrepresented employees) shall have proportional representation on the committee, except that each group of 11 or more employees shall have at least one representative.

DOL is required to issue final regulations regarding OSH committees within one year of the effective date of the legislation. DOL's regulations must provide procedures (where applicable) for election of employee representatives, and require employers to make necessary facilities and materials available to committees.

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Title III OSHA—coverage

SECTION 301. PUBLIC EMPLOYEES

Section 301 provides comprehensive OSHA coverage to all federal, state and local employees for the first time.

SECTION 302. CEDING JURISDICTION TO OTHER FEDERAL AGENCIES

OSHA currently does not apply to private sector employees covered by another federal agency's OSH regulations. Section 302 replaces this rule, requiring DOL to certify, for each specified hazard as to which it wishes to cede jurisdiction, that another federal agency has an equally effective standard or regulation regulating that hazard. (Employees covered by MSHA, however, are expressly exempted.) This section also sets forth procedures which permit affected individuals to seek a rescission of a certification before DOL, as well as judicial review of DOL certifications and refusals to rescind a certification.

SECTION 303. COVERAGE OF DOE NUCLEAR FACILITIES

Section 303 specifically extends OSHA coverage to federal nuclear facilities under the jurisdiction of the Department of Energy.

SECTION 304. CLARIFICATION OF GENERAL DUTY CLAUSE

Section 304 makes clear that OSHA's general duty clause extends to multi-employer worksites, where hazardous conditions of practices may affect not only the employer's own employees but also other employees working at the site.

Title IV: OSHA standards

SECTION 401. STANDARD-SETTING PROCEDURES

Section 401 sets forth procedures regarding OSHA's standard-setting process. First, if an advisory committee, NIOSH, or EPA recommends (or any interested person petitions for) the promulgation, modification or revocation of a standard, DOL must publish a response within 90 days, and must issue a proposed rule within 12 months unless it concludes that no action is warranted.

Following the issuance of a proposed rule, DOL must permit a public comment period of at least 30 days, and must issue a final rule within 180 days after the comment period or hearing.

Section 401 also permits affected persons to seek judicial review of a decision by DOL not to propose a rule to promulgate, modify or revoke a standard as requested in a recommendation or petition. Such a decision may be set aside if it is found to be arbitrary, capricious, or an abuse of discretion. Affected persons may also seek judicial review if DOL fails to act within the time periods specified in this section, to compel DOL to take any action unlawfully withheld or unreasonably delayed.

Finally, Section 401 makes clear that challenges to the validity of a standard must be brought either within 60 days of the issuance of a final rule (as provided under section 6(f) of the Act), or by petitioning for the modification or revocation of a standard through the process set forth above.

SECTION 402. CONSIDERATIONS IN STANDARD-SETTING

Section 402 amends the definition of "occupational safety and health standard" to mean a standard which addresses a significant health or safety risk by requiring employers to adopt practices or processes that most adequately assure, to the extent feasible, a safe and healthful workplace.

SECTION 403. RECORDING WORK-RELATED ILLNESSES

Section 403 requires DOL standards to provide for recording or reporting of work-related illnesses determined as a result of medical examinations conducted under such standards.

SECTION 404. PUBLIC DISCLOSURE OF STANDARD-SETTING COMMUNICATIONS

Section 404 requires DOL to place all communications regarding the standard-setting process in the public record.

SECTION 405. REVISION OF PERMISSIBLE EXPOSURE LIMITS

Section 405 requires NIOSH to evaluate, on a regular basis, whether exposure limits for toxic materials and harmful physical agents should be modified or established. NIOSH must also transmit to DOL, at least every 3 years, recommendations as to exposure limits which should be modified or established.

DOL is required to publish such recommendations, allow 30 days for public comment, issue a proposed rule responding to such recommendations within 6 months of receiving them, and issue a final rule within 1 year of issuance of the proposed rule. DOL must explain its reasons for adopting any proposed or final exposure limit which differs from NIOSH's recommendations.

SECTION 406. EXPOSURE MONITORING AND MEDICAL SURVEILLANCE STANDARDS

Section 406 requires DOL to issue final standards on exposure monitoring and medical surveillance programs within 2 years of the legislation's effective date. The exposure monitoring standards must provide for formal exposure assessments, regular monitoring, a written compliance plan to reduce excessive exposures, employee notification of excessive exposures, recordkeeping, and participation of the joint OSH committee. The medical surveillance standards must provide for identification of at-risk employees, periodic medical examinations of such employees, notification to employees of examination results, certification of health care providers to perform medical examinations, confidentiality of personal employee medical records, prohibition of discrimination against any employee based on examination results, recordkeeping, and participation of the joint OSH committee.

SECTION 407. ERGONOMIC HAZARDS STANDARD

Section 407 requires DOL to issue a final standard on ergonomic hazards within 1 year of the legislation's effective date. The standard must provide for identificaiton of ergonomic hazards, a program for employees exposed to such hazards (including training and education of such employees), control measures to reduce such hazards (including an effective medical management program), recordkeeping, and participation of the joint OSH committee.

SECTION 408. ADDITIONAL STANDARDS

Section 408 requires DOL to issue certain additional standards by the dates listed below:

November 30, 1991, blood borne pathogens.

December 31, 1991, permissible exposure limits (update for construction, maritime, and agriculture); electric power; logging; head and foot protection; walking and working surfaces; hazardous materials; and motor vehicles.

June 30, 1992, cadmium; confined space entry, asbestos (remand); hazardous waste training program accreditation; and methylene chloride.

December 31, 1992, respiratory protection; 1.3-butadiene; scaffaolds; fall protection; and glycol ethers.

December 31, 1993, indoor air quality; and longshoring.

Title V: Enforcement

SECTION 501. EMPLOYEE PARTICIPATION IN INSPECTIONS

Section 501 provides that time spent by an employee accompanying an OSHA representative on an inspection, as permitted by the Act, shall be treated as hours worked.

SECTION 502. IMMINENT DANGER AND SERIOUS VIOLATION COMPLAINTS

The Act requires DOL to make a special inspection upon receipt of a complaint from an employee or employee representative alleging an imminent danger or a serious violation which threatens physical harm, if DOL finds reasonable grounds to believe that such danger or violation exists. Section 502 extends this requirement to imminent dangers and violations DOL learns about from other sources, and makes clear that the complaint may allege a serious violation of either a standard or a provision of the Act.

SECTION 503. NOTIFICATION OF DOL FINDING OF NO REASONABLE GROUNDS

Section 503 requires DOL to notify the complainant within 30 days of the complaint if it concludes that there are no reasonable grounds to believe that such danger or violation exists.

SECTION 504. SPECIAL EMPHASIS INSPECTION PROGRAM

Section 504 requires DOL to establish and carry out a special emphasis inspection program targeting high-risk industries or operations, and to report annually to Congress thereon.

SECTION 505. DOL INVESTIGATION OF SERIOUS INCIDENTS

Section 505 requires employers to report any work-related death or serious incident (requiring hospitalization of at least two employees) to DOL, and requires DOL to investigate such incidents.

SECTION 506. ABATEMENT PROCEDURES

Section 506 revises the Act's abatement procedures by providing a general rule that the period permitted for correction of a violation shall begin to run from the date of receipt of the citation. An exception allows an employer to delay abatement until the entry of a final order by the OSH Review Commission if an employer contests a citation in good faith, unless (a) the employer contests only the proposed penalty or the characterization of the violation, or (b) the violation is serious and presents a substantial safety or health risk of harm.

Section 506 further provides that an employer charged with a serious violation which presents a substantial safety or health risk, and thus subject to an abatement period which begins to run upon issuance of a citation, may seek a delay or suspension of such period from the OSH Review Commission. In the event of such a request, the Commission shall expedite the proceeding and may modify the requirement of immediate commencement of the abatement period if it determines that such requirement was unreasonable under the circumstances.

This section also requires employers cited for serious, willful or repeat violations to verify to DOL the abatement of such violations within 30 days of the expiration of the abatement period, to provide appropriate documentary evidence to establish such verification, and to post a notice of abatement at the place of the violation. DOL is required to issue regulations regarding abatement verification and posting within one year of enactment.

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SECTION 507. EMPLOYEE CONTEST OF CITATIONS

To conform the bases upon which employers and employees may contest citations, Section 507 makes clear that employees may do so based on the characterization of the violation (non-serious, serious, willful or repeated), the sections of the Act or regulations listed as the basis for the citation, or the proposed penalty.

SECTION 508. EMPLOYEE PARTICIPATION

The Act currently allows employees to participate in OSH Review Commission hearings. Section 508 allows employees to participate in other OSHRC proceedings as well.

SECTION 509. EMPLOYEE CONTEST OF DOL-EMPLOYER AGREEMENTS

Section 509 requires DOL to notify affected employees if it intends to modify or withdraw a citation as a result of an agreement with the cited employer. Such employees may challenge the agreement within 15 days if it fails to effectuate the purposes of the Act.

If DOL rejects the challenge, such employees may (within 15 days) seek an OSHRC hearing. DOL is precluded from carrying out the agreement if the OSHRC determines that it would not effectuate the purposes of the Act.

SECTION 510. IMMINENT DANGERS

Section 510 requires OSHA inspectors, upon discovery of a workplace hazard which poses an imminent danger, to notify the employer and request immediate abatement of the hazard. If the employer refuses to abate the hazard, the inspector (upon approval by DOL) may immediately post a notice or tag identifying the hazard as posing an imminent danger. Employers who fail to abate such a tagged hazard, or remove all employees from exposure thereto, shall be fined between $10,000 and $50,000 per day for non-abatement. In addition, employers are prohibited from discriminating in any manner against an employee who refuses to perform a duty that would expose him or her to the tagged hazard.

SECTION 511. VIOLATIONS OF OSH PROGRAM AND COMMITTEE REQUIREMENTS

Section 511 makes clear that DOL may issue citations and assess penalties for violations of new sections 27 (OSH programs) and 28 (OSH committees).

SECTION 512. OSHA CRIMINAL PENALTIES

Section 512 expands the maximum criminal penalties for violations of the Act. The maximum imprisonment penalties are increased as follows:

Willful violation that causes death: increased from 6 months to 10 years (first conviction) and 1 year to 20 years (additional convictions).

Advance notice of an inspection: increased from 6 months to 2 years.

False statement: increased from 6 months to 1 year.

Willful violation that causes serious injury: a new criminal offense is created with maximum imprisonment of 5 years (first conviction) and 10 years (additional convictions). "Serious bodily injury" is defined to mean bodily injury that involves a substantial risk of death, protracted unconsciousness, protracted and obvious physical disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

In 1984, the maximum criminal fine limits (ranging from $1,000 to $20,000) for OSHA violations were superceded by the higher maximum criminal fine limits ($250,000 per individual, $500,000 per organization) contained in the Sentencing Reform Act of 1984 (18 U.S.C. section 3571). Section 512 clarifies the applicability of these higher limits to OSHA violations. In addition, this section provides that individuals convicted of OSHA offenses will be personally liable for any criminal fines assessed against them.

Title VI: Anti-Discrimination Protection

SECTION 601. ANTI-DISCRIMINATION PROVISIONS

Section 601 extends the coverage of the Act's anti-discrimination provisions to (a) an employee's reporting of injuries or unsafe conditions, and (b) an employee's refusal, after first unsuccessfully asking the employer to eliminate an unsafe condition, to perform duties which the employee reasonably believes would expose him or her to a bona fide danger of injury or serious impairment of health.

Section 601 also revises the procedures for the handling of discrimination complaints. The period for filing such complaints is increased from 30 to 180 days following the alleged discrimination. DOL is required to investigate the complaint and report findings within 60 days.

If DOL issues a preliminary order finding a violation, such order becomes final unless within 30 days a party files objections thereto and request a hearing, in which case DOL is required to issue a final order within 120 days of such hearing. DOL is authorized to (a) require employers to correct violations and reinstate discrimination victims, (b) award back pay, compensatory damages, costs and expenses, and (c) seek judicial enforcement of final orders if necessary. Affected persons may seek judicial review in an appropriate U.S. Court of Appeals within 60 days following the issuance of a final order.

Finally, Section 601 provides that the legal burdens of proof set forth in the Whistleblower Protection Act of 1989, 5 U.S.C. section 1221(e), shall apply to adjudication of OSHA anti-discrimination complaints.

Title VII: Training

SECTION 701. TRAINING AND EDUCATION

Section 701 requires DOL to develop model curricula, training materials and educational programs for employees and OSH committee members.

Title VIII: Reporting and Data Collection

SECTION 801. DATA COLLECTION

Section 801 requires DOL to gather, and make publicly available, data in order to identify (a) high-risk industries, employers, operations, and occupations, (b) causes of injuries and illnesses, and (c) workers' compensation costs. DOL must also issue regulations requiring employers to report work-related deaths immediately to DOL, and to report serious incidents (requiring hospitalization of 2 or more employees) to DOL within 24 hours.

SECTION 802. ILLNESS RECORDS

The Act requires employers to keep records and file periodic reports on work-related deaths, injuries and illnesses. Section 802 adds to this list illnesses suspected to be work-related, unless the employer makes a reasonable determination that the illness is not work-related.

SECTION 803. ACCESS TO RECORDS

Section 803 provides that DOL, HHS, and employees shall have access to employer OSH records.

Title IX: NIOSH

SECTION 901. HAZARD EVALUATION REPORTS

Section 901 requires NIOSH, after receiving a request for a determination as to the toxicity of a workplace substance, or the safety or health risk posed by a condition or physical agent, to provide a determination as soon as possible, and to provide an interim report if it cannot make a determination within 6 months.

SECTION 902. RESEARCH

Section 902 requires NIOSH to identify major factors contributing to work-related deaths and injuries through accident investigations and epidemiological research.

SECTION 903. EMPLOYEE NOTIFICATION PROGRAM

Section 903 requires NIOSH to establish a program to idetnify and notify employees at increased risk of suffering work-related deaths, injuries and illnesses, and to make recommendations as to medical surveillance of such employees.

SECTION 904. DOL RIGHT OF INSPECTION

Section 904 makes clear that NIOSH's authority to inspect records extends to its designees and contractors.

SECTION 905. NATIONAL SURVEILLANCE PROGRAM

Section 905 requires NIOSH to establish a national surveillance program to identify work-related deaths, injuries and illnesses, and to provide reports on the data collected pursuant to such program to DOL. This section also authorizes HHS to require employers to provide such data to NIOSH.

SECTION 906. REDESIGNATION OF NIOSH

NIOSH currently operates under the auspices of the Center for Disease Control. Section 906 provides for the redesignation of NIOSH as a separate agency within the Public Health Service.

Title X: State Plans

SECTION 1001. STATE PLAN COMMITTEES AND PROGRAMS

Under Section 1001, state plans must require employers to establish OSH programs and committees at least as effective as those required under this legislation.

SECTION 1002. STATE PLAN REQUIREMENTS

Under Section 1002, state plans must include reporting, anit-discrimination, and access to information provisions which are at least as effective as those provided under this legislation or other applicable federal laws.

SECTION 1003. COMPLAINTS AGAINST STATE PLANS

Section 1003 requires DOL to investigate complaints against state plans promptly if it finds reasonable grounds to believe that a state has not complied with its plan. (Complaints regarding enforcement must be investigated within 30 days.) DOL is further required to transmit findings to the complainant within 30 days of the completion of its investigation. If DOL finds that a state is not in compliance with its plan, it must so notify such state, and within 30 days the state must inform DOL of its response. DOL is also required to issue citations for serious violations if the state has failed to do so.

SECTION 1004. WITHDRAWAL OF STATE PLAN APPROVAL

Section 1004 provides that if DOL finds reasonable grounds to believe that a state has failed to comply substantially with its plan, it shall give the state 6 months to correct any deficiencies. If the state fails to correct such deficiencies within 6 months, DOL shall commence proceedings to withdraw approval of such state's plan, unless exceptional circumstances exist. During the pendency of any proceedings to withdraw approval of a state plan, DOL shall exercise concurrent jurisdiction with the state plan.

SECTION 1005. ADOPTION OF FEDERAL STANDARDS

Section 1005 provides that when a federal standard is adopted, state plans must either adopt an equally effective standard within 6 months or adopt the federal standard until such time as a comparable standard is adopted.

SECTION 1006. CONFORMING STATE PLANS

Section 1006 permits states 1 year from the effective date of the legislation to bring their plans into compliance with the legislation.

Title XI: Victims' Rights

SECTION 1101. VICTIMS' RIGHTS

Section 1101 extends certain rights to employees who suffer injuries or illnesses on the job, and to the families of employees killed on the job. If DOL investigates the incident, such individuals are entitled to (a) meet with DOL prior to DOL's decision as to whether or not to issue a citation, (b) receive copies of citations, reports, and notices of contest, (c) participate in OSHRC proceedings, and (d) meet with DOL and the employer before any settlement is agreed to.

Title XII: Effective Date

SECTION 1201. EFFECTIVE DATE

Section 1201 provides an effective date for this legislation 90 days after enactment.

Mr. METZENBAUM. Mr. President, I am proud to join with Senator KENNEDY today as an original cosponsor of the Comprehensive Occupational Safety and Health Reform Act.

Twenty-one years ago, Congress enacted the Occupational Safety and Health Act with the following purpose: "To assure so far as possible every working man and woman in the Nation safe and healthful working conditions."

Since then, we have made some progress toward achieving that goal. Employers have become more aware of safety and health problems, and many employers have tried to address those problems.

But our promise of a safe and healthy workplace for all American workers remains unfulfilled. Two decades after passage of the act, injury and death rates remain shockingly high, and have been rising since 1983. The American workplace is becoming a "little shop of horrors."

In 1989, the most recent year for which statistics are available, 10,400 workers were killed on the job, an average of 40 workers each work day. At this rate, an American worker is killed on the job every 36 minutes.

Another 1,700,000 working men and women suffered disabling injuries on the job in 1989, an average of 6,538 workers each work day. At this rate, a working man or woman in this country suffers a disabling injury on the job every 13 seconds.

Hundreds of thousands more working men and women died or became disabled as a result of job-related illnesses and diseases such as cancer, lead poisoning, and respiratory disease. At present, we lack even the data to know how bad this problem really is.

This level of carnage is completely unacceptable. These are not just statistics—these are our mothers and fathers, our sons and daughters, our wives and husbands. The fates they are suffering are unspeakably horrible: they are being crushed by falling walls, killed in fireball explosions, dismembered by machines, asphyxiated by gas, buried alive in collapsing trenches, electrocuted, burned, and crippled or killed by disease.

The simple fact is that many of these tragedies are preventable. We must do more to fulfill OSHA's original promise of providing safe and healthy working conditions for every working American.

Prior to last year, when the maximum civil penalties were increased, OSHA had never been amended. The comprehensive legislation we are introducting today is long overdue. It addresses a number of major problems with the act and OSHA's enforcement scheme.

Prehaps the most fundamental problem OSHA faces is a lack of resources. OSHA has only 1,200 inspectors to enforce compliance by roughly 3.5 million employers, providing protection for some 55 million employees. Collectively, State occupational safety and health agencies have only 1,100 inspectors to enforce compliance by 2.3 million employers, providing protection for 34 million workers.

These numbers mean that even the most high-risk employers are not likely to see an OSHA inspector show up to inspect their facilites. Indeed, as the number of employers and workers subject to OSHA's jurisdiction has grown, the agency's funding has shrunk in real dollars, with the agency receiving $248. million in fiscal year 1989.

We must recognize that large increases in OSHA's funding are unlikely given our current fiscal problems. OSHA's enforcement strategy will continue to be based largely on voluntary compliance by employers and workers. But employers and workers often lack adequate information about workplace health and safety hazards and how best to abate them.

The bill we are introducing today will dramatically improve the cooperative efforts of employers and employees to address workplace safety and health issues. First, the bill requires employers to establish occupational safety and health programs to reduce or eliminate hazards, and to prevent injuries and illnesses to employees. Employee training and education will be provided as part of these programs. OSHA is authorized to modify the applicability of these requirements to classes of employers provided that employees' safety and health protection is not reduced.

The bill also reqires employers of 11 or more emplolyees to have safety and health committees made up of an equal number of employee and employer representatives. In unionized settings, employee representatives are to be designated by the employees' bargaining representative; otherwise they are to be elected by employees. Committees are authorized to review the employer's safety and health program, conduct inspections, and make advisory recommendations to the employer.

Many employees refrain from blowing the whistle on unsafe conditions for fear of losing their jobs or suffering other reprisals. The bill strengthens the act's anti-discrimination provision, by adopting protections and remedies modeled on the Surface Transportation Act. Employee reporting of unsafe conditions is protected, as well as refusals to work where the employee reasonably believes that there is a bona fide danger of injury or serious impairment of health.

The bill also revises the procedures for the handling of discrimination complaints, and authorizes OSHA to order reinstatement and assess back pay, compensatory damages and attorneys' fees against violators.

In addition to increasing the involvement and cooperation of employers and employees, we must also make sure that OSHA gets the most impact in terms of reducing work-related deaths, injuries and illnesses out of every dollar of funding it gets. Two decades of experience have exposed many problems with OSHA's standard-setting process and enforcement scheme. This legislation strengthens OSHA's authority in a number of respects.

OSHA's existing standard-setting process is woefully inadequate to keep up with the thousands of potentially hazardous new chemicals and other physical agents introduced into the American workplace annually. As of 1990, OSHA standards regulated only about 630 substances, fewer than 30 of which were regulated by comprehensive standards providing for such things as exposure monitoring and medical surveillance.

Even when OSHA has undertaken to provide a standard for a given safety or health hazard, its response is often inadequate. In 1976, for example, a Presidential task force determined that OSHA's 1971 machine guards standards covered only 15 percent of the machine types then in use. Fifteen years later, that standard has yet to be updated.

Moreover, many OSHA standards under development are delayed for years. For example, OSHA spent 9 years developing a lockout/tagout standard governing protections against the sudden activation of machinery, beginning consideration in 1980 and issuing a final standard in 1989. During that decade of delay, over 1,000 Americans lost their lives from accidents that could have been prevented, by OSHA's own calculations, had a standard been in place.

The bill streamlines OSHA's standard-setting process, shortening it to roughly 18 months. OSHA is also required to address certain specific hazards already on the agency's regulatory agenda—including exposure monitoring, medical surveillance, and ergonomic hazards—within certain time frames.

There are several significant problems with the act's hazard abatement procedures. First, employers can delay abatement of a health or safety hazard simply by contesting a citation issued by OSHA. That process can take months or years to complete. The bill would require employers to abate serious violations of the act when a citation is first issued if there is a substantial risk of harm. Employers seeking review of the citation in such cases would be entitled to expedited consideration of the review proceeding.

Similarly, if an OSHA inspector finds an imminent danger which could reasonably be expected to cause death or serious injury, the employer need not abate the hazard until the agency obtains a court order. The bill authorizes OSHA to "tag" imminent dangers immediately if the employer refuses to abate them, and to fine employers between $10,000 and $50,000 a day for nonabatement.

In addition, OSHA does few follow-up inspections to verify abatement, relying instead on inverified employer statements. The bill requires employers to provide documentary evidence to verify abatement, and to post notices of abatement.

This bill also addresses the agency's enforcement through the act's criminal provisions. Although OSHA has handed out large penalties in a number of cases—by citing employers on an instance-by-instance approach—the agency's general practices in assessing civil penalties and in seeking criminal prosecutions leave much to be desired. For example, in fiscal year 1988, the average assessed civil penalty for a serious violation was only $261. I hope that Congress' action last year in raising the limits of permissible civil penalties will produce meaningful fines which fulfill their deterrent purpose.

OSHA's use of the act's criminal penalties provisions has been even worse than the agency's use of civil penalties. In the past 2 decades, according to GAO, the agency has referred only 57 cases to the Department of Justice for criminal prosecution. The Department of Justice prosecuted less than half of these cases and obtained convictions in only 14 cases. By comparison, the State of California's OSH agency referred 92 cases for criminal prosecution in 1985-86 alone, and the State filed charges in 41 cases.

Even when OSHA does pursue criminal prosecutions, the agency typically seeks minimal monetary penalties. The Department of Justice has concluded that the Crime Control Act of 1984, which increased criminal fines for willful violations of Federal statutes to $250,000 for individuals and $500,000 for companies, applies to OSHA violations. Yet it appears that OSHA has yet to seek criminal sanctions under that law. This bill amends the act to send a strong message from Congress that OSHA must make meaningful use of these criminal sanctions.

Nor have OSHA and the Department of Justice sought imprisonment of egregious violators. Not a single employer had ever served time under OSHA's criminal provisions until 1989, when a convicted employer served 45 days in prison. The Department of Labor's own acting inspector general has acknowledged "an apalling lack of criminal enforcement" by OSHA.

This bill amends the act to lengthen the maximum allowable sentences, in order to encourage OSHA and the Department of Justice to make more meaningful use of the act's criminal provisions as a deterrent to violations. Current maximums are very short, allowing a 6-month maximum for a willful violation that causes a worker's death. By way of contrast, the maximum penalty under Federal law for maliciously harassing a wild burro is 1 year.

In addition, this bill for the first time permits criminal prosecution for a willful violation that causes serious bodily injury. Under present law, OSHA cannot seek a criminal prosecution against an employer for a willful violation of the act unless a fatality occurs. Thus, no matter how egregious the employer's violation is, no matter how many citations the employer has received in the past, and no matter how many workers are seriously and permanently injured as a result of the employer's actions, the Government cannot prosecute unless a worker dies.

OSHA also needs better data to enable the agency to target its limited inspection resources more effectively. Currently, OSHA attempts to target high-risk industries for inspections to make the best use of its resources. For example, manufacturing industries are targeted by their average lost workday injury rates. The construction industry is also heavily targeted by OSHA's inspection effort. But because of the small inspection force, and the size of OSHA's jurisdiction, even employers in these targeted industries are rarely inspected. Moreover, roughly a quarter of the agency's citations are for nonserious violations. This legislation requires employers to report all work-related deaths and all safety and health incidents in which two or more employees are hospitalized, and provides for improved data collection by OSHA and NIOSH, in order to improve inspection targeting.

Finally, this legislation extends the act's coverage in a number of respects. First, a long-standing gap in Federal occupational safety and health law is filled by extending coverage to Federal, State and local government employees. In addition, OSHA is permitted to cede private sector jurisdiction to other Federal agencies—(such as FAA—only with regard to particular hazards, and only if the alternative standard is as effective as OSHA's standard. The bill also clarifies that an employer operating at a multiemployer worksite has a duty to provide a safe workplace not just to its own employees, but to the employees of other employers operating at the site as well.

I am proud to stand here with Senator KENNEDY as we begin this effort. In the coming months, we intend to hold a number of hearings in order to explore these problems, and our proposed solutions, in greater depth. We hope the administration and the employer community will be active participants in this dialog.

But let us move swiftly to address these problems, so that we can fulfill Congress's promise made 21 years ago to assure every working American safe and healthful working conditions. With every day we wait, 40 more American workers die, and thousands more are disabled by injury and illness.

By Mr. DECONCINI (for himself, Mr. INOUYE, Mr. HATCH, Mr. KENNEDY, Mr. LEAHY, Mr. BURNS, Mr. GORTON, Mr. GORE, Mr. GRASSLEY, Mr. D'AMATO, and Mr. CRANSTON):

S. 1623. A bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes; to the Committee on the Judiciary.

AUDIO HOME RECORDING ACT

● Mr. DECONCINI. Mr. President, I am pleased today to introduce, along with my colleagues Senators INOUYE, HATCH, KENNEDY, LEAHY, BURNS, GORTON, GORE, GRASSLEY, D'AMATO, CRANSTON, and BREAUX, the Audio Home Recording Act of 1991. This legislation finally will resolve one of the most difficult and emotional arguments in copyright law, whether individuals have the right to tape for noncommerical purposes, copyrighted material. The copyright issues raised by home taping of sound recordings and the impact on copyright owners, songwriters, preformers, music publishers, and musicians have long frustrated those of us in Congress with responsibility over these matters. The bill that my colleagues and I are introducing today represents an historic compromise among the parties of this long standing dispute. As one who has struggled with the equities of this troubling issue, I am pleased that an agreement has been reached.

I first became involved in the issue of home taping of copyrighted material in 1981. At that time, the Ninth Circuit Court of Appeals issued a decision finding that the non-commercial private video taping of broadcast television shows constituted copyright infringement. I disagreed with the decision of the Ninth Circuit and immediately introduced legislation to overturn it. It is difficult to believe that the so-called Betamax decision was an-

TO: Distribution

FROM: T. G. Grumbles
DATE: August 26, 1991

Interoffice Communication

SUBJ: OSHA REFORM LEGISLATION

VISTA

Attached is a copy of a bill introduced by Senators Kennedy and Metzenbaum the first of this month. An SDA summary of the bill is also attached.

There is growing pressure to significantly revise the OSHA Act and this bill is a good example of the type of revisions that may occur. I'll keep you informed on the progress of this particular bill.

Tom

T. G. Grumbles

dlj

Attachment

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SDA GENERAL INFORMATION BULLETIN
Editor: Mary P. Kilcoyne

G-12 August 14, 1991

FEDERAL LEGISLATION

COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

BILLS TO TARGET "HIGH-RISK" WORKPLACES, IMPROVE HAZARD ABATEMENT PROCESSES & STRENGTHEN CRIMINAL PENALTIES INTRODUCED IN HOUSE & SENATE

LEGISLATION:

S 1622 - Senators Kennedy & Metzenbaum - 8/1/91
HR 1360 - Representative Ford (D-Michigan), et al - 8/1/91

The Comprehensive Occupational Safety and Health Reform Act (S 1622 and HR 3160) was introduced at a press conference by Senators Edward Kennedy (D-Massachusetts), Howard Metzenbaum (D-Ohio) and Representative William Ford (D-Michigan). Representative Joseph Gaydos (D-Pennsylvania) is one of the 18 other co-sponsors of HR 3160.

Among the areas addressed in the legislation are employer and employee participation; standard setting; enforcement; expansion of coverage; research, training and recordkeeping; and state plans.

DESCRIPTION:

Employee's Role:

The legislation would require employers to establish and maintain safety and health programs to reduce or eliminate hazards and prevent injuries and illnesses to employees.

Employers with 11 or more employees would be required to establish safety and health committees comprised of equal numbers of employee and employer representatives. The joint committees would be authorized to review the employer's safety and health program, conduct inspections, and make advisory recommendations to the employer.

Under the bill, employees would be able to seek Occupational Safety and Health Review Commission review of settlement agreements between employers and OSHA.

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(continued)

The bill would prohibit employers from "discharging or otherwise retaliating against" an employee who has reported an unsafe condition or because the employee, after seeking to obtain corrective action, has "refused to perform duties that he reasonably believes would expose employees to a bona fide danger or injury or serious impairment of health."

STANDARDS: The legislation would require OSHA to respond to petitions for health and safety standards within 90 days of receipt, and if the agency finds that a standard is warranted, to issue a proposed rule within 12 months of the petition and a final rule within six months after the comment period or hearing.

Would require the National Institute for Occupational Safety & Health to submit recommendations for revisions of permissible exposure limits for toxic substances at least once every three years, and OSHA to respond to the recommendations by issuing a proposed rule within six months and a final rule within one year after receiving the recommendations.

Under the bill, OSHA would have to issue standards on a number of health and safety issues within specified time frames.

ENFORCEMENT: The legislation would require that:

a) OSHA establish a special emphasis inspection program to target high-risk industries and operations.

b) Employers report all work-related fatalities immediately and all serious incidents resulting in hospitalization of two or more employees within 24 hours.

c) OSHA investigate all such incidents and fatalities.

d) Where OSHA determines an imminent danger of death or serious harm to employees, the agency "tag" the hazard and the employer take immediate corrective action.

e) Employees refusing to perform work exposing them to such a hazard be protected against discrimination.

(continued)

The bill would grant OSHA authority to fine an employer failing to take corrective action $10,000 to $50,000 per day.

The legislation also would incorporate S 445 (Senator Metzenbaum, 2/20/91), which proposed to increase the maximum criminal penalty available under the act for willful violations that cause death and would authorize criminal penalties for willful violations that cause serious bodily harm.

COVERAGE: The bill would expand coverage of the act to federal, state and local government employees and to employees working in federal nuclear facilities under the jurisdiction of the Department of Energy.

For industries regulated by other agencies, except for mining, the bill would allow OSHA to cede jurisdiction "only if OSHA certifies that the agency has and is enforcing a standard that is as effective as the applicable OSHA standard.

State plans would be required to incorporate provisions "at least as effective" as those outlined in the bill. NIOSH would be charged with establishing a program to "identify and notify employees who are at increased risk of suffering work-related injuries and illnesses." It also would be responsible for implementing a national surveillance program to identify and collect data on work-related injuries and illnesses.

STATUS: S 1622 - Referred to Committee on Labor & Human Resources
HR 3160 - Referred to Committee on Education & Labor

- -

A copy of S 1622 is attached.

The bill takes the GAO approach instead, with one purpose in mind: to provide tough fiscal oversight. There is at least an appearance of a conflict of interest when an agency such as HUD regulates a GSE like Fannie Mae and, at the same time, may want that GSE to take certain actions. An independent agency does not have that ongoing relationship and can better concentrate on minimizing the risk to Federal taxpayers. At the same time, using a board format allows the regulator to draw on the expertise of the Federal Reserve System, the Treasury Department, and the agencies with policy expertise.

This bill is not perfect. There may be ways to toughen it even further, and I hope the Banking Committee will examine the bill with that purpose in mind so that the Senate can vote on legislation with the toughest measures possible.

GSE's perform critical public policy roles, but they also impose very real and very serious financial risks on Federal taxpayers. I agree with Senator Kohl that, for once, Congress needs to fix a roof while the sun is shining—build a tough oversight program, while our GSE's are enjoying good health.

I commend Senator Kohl for his leadership in this area and for accommodating my concern for strong compensation oversight at the GSE's. I urge my colleagues to join Senator Kohl, Senator Glenn, and myself in working for the passage of legislation this year to strengthen Federal control of our GSE's.●

By Mr. KENNEDY (for himself and Mr. METZENBAUM):

S. 1622. A bill to amend the Occupational Safety and Health Act of 1970 to improve the provisions of such Act with respect to the health and safety of employees, and for other purposes; to the Committee on Labor and Human Resources.

COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

Mr. President, 20 years ago, Congress enacted the Occupational Safety and Health Act because an unconscionable number of workers were being killed, injured or made ill as a result of workplace conditions. The act represented a promise by the Government to millions of working men and women that we as a country were prepared to take the steps necessary to "assure so far as possible" a safe and healthful workplace for every working American.

Since the, significant strides have been made in reducing the rate of fatalities from workplace injuries. But more than 10,000 workers still die every year from injuries sustained on the job, and as many as 100,000 die of occupational disease. The percentage of annual workdays lost because of workplace injuries has actually increased since the early 70's. The stark fact is that as a nation, we continue to pay for the goods we consume and the services we use with the health and the lives of the workers who produce them.

As one of the sponsors of the 1970 legislation which created the Occupational Safety and Health Administration, I believed then and I continue to believe that a decent society should not tolerate that kind of human suffering and tragedy. That is why I am introducing today, with my distinguished colleague from Ohio, [Mr. METZENBAUM] the Comprehensive Occupational Safety and Health Reform Act to update and strengthen the 1970 law.

When that law originally was enacted, it was a landmark measure—the first comprehensive, nationwide program to prevent workplace injuries and illnesses. But since that time, America has changed, and so have the jobs that Americans do. We have also learned a great deal that we didn't know in 1970, about the nature and causes of occupational injury and disease, and about what needs to be done to more effectively identify and address workplace safety and health hazards.

The legislation we are introducing today is intended to address many of the weaknesses in the current law which have been identified in studies by the General Accounting Office, the Office of Technology Assessment, and the Administrative Conference, and in oversight hearings conducted by the Committee on Labor and Human Resources in 1988.

As described more fully in the section-by-section analysis, the bill includes provisions to streamline and expedite the standard-setting process, to require better targeting of limited resources to high-risk workplaces, to speed up and improve the hazard, abatement process, to strengthen criminal penalties for the most egregious violations of the Act, and to expand coverage of the Act to federal, state and local government employees.

Of particular significance are new provisions to shift the focus of the Act from one which relies on inspections and the threat of civil fines to bring about compliance with workplace safety and health standards, to one which recognizes that the objectives of the Act can never be fully achieved unless employers and employees take an active role in working cooperatively to identify workplace hazards and take corrective action before injuries or illnesses occur.

To encourage that kind of active involvement, our bill includes provisions that would significantly increase employer and employee involvement in two ways.

First, it would require employers to develop written safety and health programs identifying and addressing safety and health hazards in the workplace, and providing for employee education and training regarding those hazards. Second, it would require joint employer-employee safety and health committees to be established at worksites with 11 or more employees. The committees would have the authority to review the employer's injury and illness records, investigate employee complaints of safety and health hazards, conduct regular inspections of the workplace, and make advisory recommendations to correct hazards or alleviate unhealthy working conditions.

Two states—Oregon and Washington—already have statutes requiring workplace health and safety committees. They are required in several Canadian provinces, and in many European countries including Germany and Sweden. They also exist in various forms in many non-union and union firms in this country. California has recently enacted legislation requiring employers to have safety and health programs.

The proposals are based on two important concepts: employee empowerment and a workplace approach to occupational safety and health. They reflect a reasonable and realistic approach to the problems we face in trying to improve workplace safety and health in an era of limited government resources.

Work-related injuries and illnesses are not just a public health issue; they are also an economic issue. A recent study by the Rand Institute for Civil Justice found that in 1989, work-related injuries cost the nation $83 billion, or nearly 2 percent of GNP—$31 billion in medical and other direct costs, and a whopping $52 billion in lost work time. At a time when the nation's health care system is in crisis, and when American business is under intense competitive pressure from abroad, those figures are cause for serious concern.

Above all, it is the human costs that should give us pause, costs that are measured not in numbers, but in shattered families and broken lives—in blood that is shed, bodies that are mangled, and lungs that are destroyed.

With the introduciton of this legislation, we take a major new step toward fulfillment of the promise we made 20 years ago—of a safe and healthful workpace for every working American.

I urge my colleagues to cosponsor this legislation and I ask unanimous consent that a section-by-section analysis and the text of the bill be printed in the RECORD.

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

S. 1622

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Occupational Safety and Health Reform Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) during the past two decades progress has been made in reducing workplace fatalities, injuries and exposures to toxic substances through efforts of the Federal agencies, States, employers, employees and employee representatives;

(2) despite the progress described in paragraph (1), work-related injuries, illnesses and fatalities continue to occur at rates that are unacceptable and that impose a substantial burden upon employers, employees and the nation in terms of lost production, wage loss, medical expenses, compensation payments and disability;

(3) employers and employees are not sufficiently involved in joint efforts to identify and correct occupational safety and health hazards;

(4) employers and employees require better training to identify safety and health problems;

(5) Federal agency standard-setting has not kept pace with knowledge about safety and health hazards;

(6) enforcement of occupational safety and health standards has not been adequate to bring about timely abatement of hazardous conditions or to deter future violation of occupational health and safety standards;

(7) millions of American workers exposed to serious occupational safety and health hazards are excluded from full coverage under the Occupational Safety and Health Act of 1970; and

(8) the lack of accurate data and information on work related fatalities, injuries and illnesses has impeded efforts to prevent such fatalities, injuries and illnesses.

(b) PURPOSE.—It is the purpose of this Act to—

(1) increase the joint participation of employers and employees in identifying and correcting occupational safety and health hazards, by requiring the establishment of employer safety and health programs, joint employer-employee safety and health committees, and training and education programs;

(2) improve and expedite the setting of occupational safety and health standards;

(3) strengthen Federal and State agency enforcement of violations of safety and health standards;

(4) assure that all employees are afforded full coverage and protection from safety and health hazards under the Occupational Safety and Health Act of 1970 or other Federal laws; and

(5) improve information and data on work related injuries, illnesses and fatalities for purposes of enhancing occupational safety and health.

SEC. 3. REFERENCES.

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

TITLE I—SAFETY AND HEALTH PROGRAMS

SEC. 101. SAFETY AND HEALTH PROGRAMS.

Section 27 (29 U.S.C. 676) is amended to read as follows:

"SEC. 27. SAFETY AND HEALTH PROGRAMS.

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—Each employer shall, in accordance with this section, establish and carry out a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to employees.

"(2) MODIFICATIONS TO SAFETY AND HEALTH PROGRAMS.—The Secretary may, pursuant to regulations promulgated under subsection (c)(1), modify the application of the requirements of this section to classes of employers where the Secretary determines that, in light of the nature of the risks faced by the employees of such employers, such a modification would not reduce the employees' safety and health protection.

"(3) WORKSITES.—As used in this section and section 28, the term 'worksite' means a single physical location where business is conducted or where operations are performed by employees of an employer.

"(b) REQUIREMENTS.—A safety and health program established and carried out under subsection (a) shall be a written program that shall include—

"(1) methods and procedures for identifying, evaluating, and documenting safety and health hazards;

"(2) methods and procedures for correcting the safety and health hazards identified under paragraph (1);

"(3) methods and procedures for investigating work-related fatalities, injuries and illnesses;

"(4) methods and procedures for providing occupational safety and health services, including emergency response and first aid procedures;

"(5) methods and procedures for employee participation in the implementation of the safety and health program, including participation through any safety and health committee established under section 28;

"(6) methods and procedures for responding to the recommendations of the safety and health committee, where applicable;

"(7) methods and procedures for providing safety and health training and education to employees and to members of any safety and health committee established under section 28;

"(8) the designation of a representative of the employer who has the qualifications and responsibility to identify safety and health hazards and the authority to initiate corrective action where appropriate;

"(9) in the case of a worksite where employees of two or more employers work, procedures for each employer to protect employees at the worksite from hazards under the employer's control, including procedures to provide information on safety and health hazards to other employers and employees at the worksite; and

"(10) such other provisions as the Secretary requires to effectuate the purposes of the Act.

"(c) REGULATIONS ON EMPLOYER SAFETY AND HEALTH PROGRAMS.—

"(1) GENERAL REGULATIONS.—

"(A) ESTABLISHMENT.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate final regulations concerning the establishment and implementation of employer safety and health programs under this section.

"(B) TRAINING AND EDUCATION.—Regulations promulgated under subparagraph (A) shall include provisions for the training and education of employees, and of safety and health committee members, as required under subsection (b)(6). Such regulations shall—

"(i) provide for the training and education of employees, including safety and health committee members, in a manner that is readily understandable by such employees, concerning safety and health hazards, control measures, the employer's safety and health program, employee rights and applicable laws and regulations;

"(ii) provide for the training and education of safety and health committee, concerning methods and procedures for hazard recognition and control, the conduct of worksite safety and health inspections, the rights of the safety and health committee, and concerning other information necessary to enable such members to carry out the activities of the committee under section 28;

"(iii) require that training and education be provided to employees at the time of employment and to safety and health committee members at the time of selection; and

"(iv) require that refresher training be provided on at least an annual basis and that additional training be provided to employees and to safety and health committee members when there are changes in conditions or operations that may expose employees to new or different safety or health hazards or when there are changes in safety and health regulations or standards under this Act that apply to the employer.

"(2) NO LOSS OF PAY.—The time during which employees are participating in training and education activities under this subsection shall be considered as hours worked for purposes of wages, benefits, and other terms and conditions of employment. Such training and education shall be provided by an employer at no cost to the employees of the employer.".

TITLE II—SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES

SEC. 201. SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

(a) IN GENERAL.—Section 28 is amended to read as follows:

"SEC. 28. SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

"(a) REQUIREMENT.—Each employer of not less than 11 employees shall provide for the establishment of safety and health committees and the selection of employee safety and health representatives in accordance with this section.

"(b) SAFETY AND HEALTH COMMITTEES.—

"(1) IN GENERAL.—Each employer covered by this section shall establish a safety and health committee at each worksite of the employer, except that the Secretary may, by regulation, modify the application of this paragraph to—

"(A) an employer whose employees do not primarily report to or work at a fixed location;

"(B) worksites at which less than eleven employees of a covered employer are employed; or

"(C) worksites where employees of more than one employer are employed.

Each employer required to establish a safety and health committee under this section shall, pursuant to regulations promulgated by the Secretary, enable such committee to exercise the rights described in this section.

"(2) MEMBERSHIP.—A committee established under paragraph (1) shall consist of—

"(A) the employee safety and health representatives elected or appointed under subsection (c)(2); and

"(B) as determined appropriate by the employer, employer representatives, the number of which may not exceed the number of employee representatives described in subparagraph (A).

"(3) CHAIRPERSONS.—A committee established under paragraph (1) shall be cochaired by—

"(A) a representative selected by the employer; and

"(B) a representative selected by the employee members of such committee.

"(4) RIGHTS.—A committee established under paragraph (1) shall have the right, within reasonable limits and in a reasonable manner, to—

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"(A) review any safety and health program established under section 27 by the employer;

"(B) review incidents involving work-related fatalities, injuries and illnesses and complaints regarding safety or health hazards by employees;

"(C) review, upon the request of the committee or upon the request of the employer representatives or employee representatives of the committee, the employer's work injury and illness records, other than personally identifiable medical information, and other reports or documents relating to occupational safety and health;

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

"(E) conduct interviews with employees in conjunction with inspections of the worksite;

"(F) conduct meetings, at least once every 3 months, and maintain written minutes of such meetings;

"(G) observe the measurement of employee exposure to toxic materials and harmful physical agents;

"(H) establish procedures for exercising the rights of the committee;

"(I) make recommendations on behalf of the committee, and in making such recommendations, permit any member of such committee to submit the separate views of such member, or on behalf of the employer or employee representatives on such committee, to the employer for improvements in the employer's safety and health program and for the correction of hazards to employee safety or health, except that such recommendations shall be advisory only and the employer shall retain full authority to manage the worksite; and

"(J) accompany the Secretary or the Secretary's representative during any physical inspection of the worksite under section 8(a).

"(5) TIME FOR COMMITTEE ACTIVITIES.—The employer shall permit members of the committee established under paragraph (1) to take such time from work as is reasonably necessary to exercise the rights of the committee, without suffering any loss of pay or benefits for time spent on duties of the committee.

"(6) REGULATIONS.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate final regulations for the establishment and functioning of safety and health committees under this section. Such regulations shall include provisions concerning—

"(A) the establishment of such committees by an employer whose employees do not primarily report to or work at a fixed location;

"(B) the establishment of such committees with regard to worksites at which less than 11 employees of a covered employer are employed;

"(C) the establishment of committees at worksites where employees of more than one employer are employed; and

"(D) the employer's obligation to enable the committee to function properly and effectively, including the provision of facilities and materials necessary for the committee to conduct its activities, and the maintenance of records and minutes developed by the committee.

"(c) EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.—

"(1) IN GENERAL.—Safety and health committees established under this section shall include—

"(A) one employee safety and health representative where the average number of nonmanagerial employees of the employer at the worksite during the year ending January 1 was more than 10, but less than 50;

"(B) two employee safety and health representatives where the average number of nonmanagerial employees of the employer at the worksite during the year ending January 1 was more than 50, but less than 100;

"(C) an additional employee safety and health representative for each additional 100 such employees at the worksite, up to a maximum of six employee safety and health representatives, except as provided in paragraph (2)(C); and

"(D) where an employer's employees do not primarily report to or work at a fixed location, at worksites at which less than 11 employees of a covered employer are employed, or at worksites where employees of more than one employer are employed, a number of employee safety and health representatives as determined by the Secretary by regulation.

"(2) SELECTION.—Employee safety and health representatives shall be selected by and from among the employer's nonmanagerial employees, as follows:

"(A) Where none of the employer's employees at a worksite are represented by an exclusive bargaining representative, the employees shall elect employee safety and health representatives in an election held in conformity with procedures pursuant to regulations promulgated by the Secretary.

"(B) Where the employer's employees are represented by a single exclusive bargaining representative, the bargaining representative shall designate the employee safety and health representatives.

"(C) Where the employer's employees are represented by more than one exclusive representative or where some but not all of the employees are represented by an exclusive representative, each bargaining unit of represented employees (and any residual group of unrepresented employees) shall have a proportionate number of employee safety and health representatives based on the number of employees in each bargaining unit or group, except that each such unit or group of 11 or more employees shall have at least one representative. The selection process shall be conducted in accordance with the provisions of subparagraph (A) or (B) as applicable.

"(3) REGULATIONS.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate regulations concerning safety and health representatives. Such regulations shall include provisions concerning—

"(A) the number of employee safety and health representatives where an employer's employees do not primarily report to work at a fixed location;

"(B) the number of employee safety and health representatives with respect to worksites at which less than 11 employees of a covered employer are employed;

"(C) the number of employee safety and health representatives at worksites where employees of more than one employer are employed; and

"(D) the selection and election procedures for employee safety and health representatives, such election procedures to provide for a fair election by secret ballot and protect employee's equal rights to participate in the election without being subject to penalty, discipline, improper interference or reprisal.

"(d) ADDITIONAL RIGHTS.—The rights and remedies provided to employees and employee safety and health representatives by this section are in addition to, and not in lieu of, any other rights and remedies provided by contract, by other provisions of this Act or by other applicable law, and are not intended to alter or affect such rights and remedies.".

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not be construed to affect the amendments made by section 28 of the Occupational Safety and Health Act of 1970 as such section existed on the date of enactment of such Act.

TITLE III—COVERAGE

SEC. 301. EXTENSION OF COVERAGE TO PUBLIC EMPLOYEES.

(a) DEFINITION OF EMPLOYER.—Section 3(5) (29 U.S.C. 652(5)) is amended by striking "but does not include" and inserting "including".

(b) CONFORMING AMENDMENTS.—

(1) Section 19 (29 U.S.C. 668) is repealed.

(2) Section 410(b) of title 39, United States Code, is amended by striking paragraph (7) and inserting the following new paragraph:

"(7) the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);".

SEC. 302. APPLICATION OF ACT.

Section 4(b) (29 U.S.C. 653(b)(1)) is amended—

(1) in paragraph (1) to read as follows:

"(1) Where a Federal agency has promulgated and is enforcing standards or regulations affecting the occupational safety or health of some or all of the employees within that agency's regulatory jurisdiction, and the Secretary of Labor determines that a standard or regulation as promulgated and the manner in which such standard or regulation is being enforced provides protection to those employees that is at least as effective as the protection provided to those employees by the Secretary's enforcement of this Act, the Secretary may publish a notice in the Federal Register setting forth such determination and the reasons therefore and certifying that the Secretary has ceded jurisdiction to that Federal agency with respect to the specified hazards to which the designated employees are exposed. Such certification shall remain in effect unless and until rescinded by the Secretary.";

(2) by redesignating paragraphs (2) through (4) as paragraph (5) through (7), respectively; and

(3) by inserting after paragraph (1), the following new paragraphs:

"(2) The Secretary shall, by regulation, establish procedures by which any affected person may petition the Secretary to rescind a certification under paragraph (1). Upon receipt of such a petition the Secretary shall investigate the matter and shall, within 90 days after receipt of the petition, publish a decision with respect to the petition in the Federal Register.

"(3) Any person who may be adversely affected by a decision of the Secretary certifying that the Secretary has ceded jurisdiction to another Federal agency pursuant to paragraph (1), or by a decision of the Secretary denying a petition to rescind such a certification under paragraph (2), may at any time prior to the 60th day after such decision is published in the Federal Register file a petition challenging such decision with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business, for judicial review of such decision. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary's decision shall be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(4) Nothing in this Act shall apply to working conditions covered by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).".

SEC. 303. APPLICATION OF OSHA TO DOE NUCLEAR FACILITIES.

Paragraph (6) of section 4(b) (29 U.S.C. 653(b)(2)) (as redesignated by section 302(2)) is amended to read as follows:

"(6) Notwithstanding paragraph (1) or any other provision of this law, this Act shall apply with respect to employment performed in the Federal nuclear facilities under the control or jurisdiction of the Department of Energy.".

SEC. 304. EXTENSION OF EMPLOYER DUTIES TO ALL EMPLOYEES WORKING AT A PLACE OF EMPLOYMENT.

Paragraph (1) of section 5(a) (29 U.S.C. 654(a)(1)) is amended to read as follows:

"(1) shall furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees of the employer or to other employees at the place of employment.".

TITLE IV—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SEC. 401. TIMEFRAMES FOR SETTING STANDARDS.

(a) RECOMMENDATIONS AND PETITIONS FOR STANDARDS.—Paragraph (2) of section 6(b) (29 U.S.C. 655(b)(2)) is amended to read as follows:

"(2)(A) If the Secretary receives a recommendation of an advisory committee, the Secretary of Health and Human Services or the Administrator of the Environmental Protection Agency or a petition from an interested person that sets forth with reasonable particularity the facts that the person claims establish that an occupational safety or health standard should be promulgated, modified or revoked, the Secretary shall, not later than 90 days after receipt of such recommendation or petition, publish in the Federal Register a response stating whether the Secretary intends to publish a proposed rule promulgating, modifying or revoking such standard.

"(B) If the response of the Secretary under subparagraph (A) states that the Secretary does not intend to publish a proposed rule, the Secretary shall set forth the reasons for that decision. In all other cases, the Secretary shall, not later than 12 months after the receipt of a recommendation or petition under subparagraph (A), publish in the Federal Register a proposed rule promulgating, modifying or revoking the standard discussed in the petition or recommendation.".

(b) PROCEDURE FOR COMMENT AND HEARING.—Paragraph (3) of section 6(b) (29 U.S.C. 655(b)(3)) is amended—

(1) by redesignating such paragraph as subparagraph (B) of paragraph (3); and

(2) by inserting before such subparagraph, as so redesignated, the following new subparagraph:

"(A) Where information developed by or submitted to the Secretary indicates that a rule should be proposed promulgating, modifying, or revoking an occupational safety or health standard, the Secretary shall publish such a proposed rule in the Federal Register and shall afford interested persons a period of at least 30 days after publication to submit written data or comments.".

(c) TIME FRAME FOR ISSUING RULES.—Section 6(b)(4) (29 U.S.C. 655(b)(4)) is amended by striking "sixty days" both places such appears and inserting "180 days".

(d) REVIEW OF SECRETARY'S FAILURE OR REFUSAL TO ISSUE RULES.—Section 6 (29 U.S.C. 655) is amended—

(1) by adding at the end of subsection (f) the following new sentence: "Judicial review of the validity of an occupational safety and health standard may be obtained exclusively through a petition for review in the appropriate United States court of appeals, acting under this subsection or under subsection (h)."; and

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

"(h)(1) Any person who may be adversely affected by a determination by the Secretary under subsection (b)(2) not to propose a rule promulgating, modifying, or revoking a standard may at any time prior to the expiration of 60 days after such determination is published in the Federal Register file a petition seeking review of such determination with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary's determination shall be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(2) Any person who may be adversely affected by a failure of the Secretary to take any action required by this section within the time period prescribed by this section may at any time after such period of time has elapsed file a petition for review stating that such action has been unlawfully withheld or unreasonably delayed. Such petition may be filed with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The reviewing court shall compel the Secretary to take any action that is found to have been unlawfully withheld or unreasonably delayed. In deciding whether to compel such action the court shall consider whether the Secretary's failure to act is consistent with the time limits set forth in this section. The Secretary's desire to confer with, or to receive approval from any other Federal agency or Federal executive official, shall not justify the withholding or delaying of action by the Secretary, except where such consultation or solicitation of approval is required by Federal law.".

SEC. 402. BASIS FOR STANDARDS.

Paragraph (8) of section 3 (29 U.S.C. 652(8)) is amended to read as follows:

"(8) The term 'occupational safety and health standard' means a standard that addresses a significant risk to the safety or health of employees by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes that most adequately assure, to the extent feasible, safe and healthful employment and places of employment.".

SEC. 403. RECORDING OF WORK RELATED ILLNESSES.

Section 6(b)(7) (29 U.S.C. 655(b)(7)) is amended by inserting after the third sentence the following new sentence: "The standard shall also prescribe requirements for recording or reporting a work-related illness determined as a result of a medical examination or test conducted under the standard.".

SEC. 404. PUBLIC DISCLOSURE OF ALL COMMUNICATIONS ON STANDARDS.

Section 6(b) (29 U.S.C. 655(b)) is amended by adding at the end thereof the following new paragraph:

"(9) The Secretary shall place all written comments and communications, and a summary of all verbal communications, with parties outside the Department of Labor (including communications with other government agencies), regarding the promulgation, modification or revocation of a standard under this section, in the public record.".

SEC. 405. REVISION OF PERMISSIBLE EXPOSURE LIMITS.

Section 6 (29 U.S.C. 655) (as amended by section 401(d)) is further amended by adding at the end thereof the following new subsection:

"(i) In addition to other health and safety standards promulgated under subsection (b), the Secretary shall, in cooperation with the Secretary of Health and Human Services, modify and establish exposure limits for toxic materials and harmful physical agents on a regular basis, in accordance with the requirements of subsection (b)(5), in the following manner:

"(1) The Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall regularly evaluate available scientific evidence, data and information to determine if exposure limits for toxic materials and harmful physical agents promulgated under subsections (a) and (b) should be modified or established to protect exposed employees against material impairment of health or functional capacity. Such evaluations shall include a review of the scientific literature, standards of private and professional organizations, national consensus standards, standards adopted by other countries, and recommendations of State and Federal agencies.

"(2) Not less than once every 3 years the Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall develop and transmit to the Secretary recommendations identifying toxic materials and harmful physical agents, if any, for which exposure limits should be modified or established to protect employees from material impairment of health or functional capacity. For each such material or agent, the recommendation shall include a suggested permissible exposure limit, the basis for the suggested exposure limit and, where available, information on feasible control measures.

"(3) Not later than 30 days after the receipt of such recommendations, the Secretary shall publish such recommendations on exposure limits in the Federal Register and provide a period of 30 days for public comment. The Secretary shall evaluate the recommendations and public comments and not later than 6 months after the receipt of such recommendations, shall publish a proposed rule to maintain, modify or establish exposure limits for each toxic material and harmful physical agent as to which the Secretary of Health and Human Services has recommended that exposure limits be modified or established. If a proposed exposure limit is not the same as the exposure limit suggested by the Secretary of Health and Human Services, the Secretary shall explain why the suggested limit is not being proposed.

"(4) Not later than 1 year after the publication of the proposed exposure limits, the Secretary shall issue a final standard and such standard shall be subject to the requirements of subsection (b)(5). If a final exposure limit is not the same as the exposure limit suggested by the Secretary of Health and Human Services, the Secretary shall explain the reasons that the suggested exposure limit is not being adopted.

"(5) In addition to the periodic review of permissible exposure limits required by this subsection, the Secretary shall also establish or modify exposure limits for toxic materials and harmful physical agents whenever such action is warranted, pursuant to subsections (b)(5) and (g).".

ation and the number of enforcement personnel required for such inspections.

"(3) Inspections conducted under this subsection shall be in addition to other inspections conducted under this Act.

"(4) The Secretary shall annually submit a report to the Congress on the special emphasis inspection program as part of the Secretary's annual report required under section 26 which shall include the information on inspections described in paragraph (2) that were carried out in the preceding and current year.".

SEC. 505. INVESTIGATIONS OF FATALITIES AND SERIOUS INCIDENTS.

Section 8 (29 U.S.C. 657) (as amended by section 504) is further amended by adding at the end thereof the following new subsection:

"(i)(1) The Secretary shall investigate any work-related fatality or serious incident.

"(2) If a fatality or serious incident occurs in a place of employment covered by this Act, the employer shall notify the Secretary of the fatality or serious incident and shall take appropriate measures to prevent the destruction or alteration of any evidence that would assist in investigating the fatality or serious incident.

"(3) As used in this subsection, the term 'serious incident' means an incident that results in the hospitalization of two or more employees.".

SEC. 506. ABATEMENT OF SERIOUS HAZARDS DURING EMPLOYER CONTESTS.

(a) CITATIONS.—Section 9(a) (29 U.S.C. 658(a)) is amended by inserting after the third sentence the following new sentence: "If the Secretary or an authorized representative of the Secretary believes that an alleged violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of review proceedings should not suspend the running of the period for the correction of the violation, the citation shall so state.".

(b) CITATIONS AND ENFORCEMENT.—Section 10 (29 U.S.C. 659) is amended—

(1) in subsection (b), by striking out "(which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties)"; and

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

"(d)(1) Except as provided in paragraphs (2) and (3), the period permitted for the correction of a violation shall begin to run from the date of the receipt of the citation.

"(2) If the employer initiates timely review proceedings under this section in which the employer contests matters other than the proposed assessment of penalty or characterization of the violation and the proceedings are initiated by the employer in good faith and not solely for delay, the period permitted for the correction of a violation shall, except as provided in paragraph (3), not begin to run until the entry of a final order by the Commission.

"(3) If the citation states that the violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of review proceedings shall not suspend the running of the period for correction of the violation and if, simultaneous with initiating timely review proceedings under the citation, the employer files a statement asserting that the period for correction of the violation should be suspended during such proceedings, the Commission shall expedite the consideration and decision of the employer's review proceeding. In its decision resolving that proceeding, the Commission may modify the citation's provision that the period for the correction of the violation shall run from the date of the receipt of the citation, if the Commission determines, based on a consideration of the nature of the violation, that the nature and degree of risk posed to employees by the employer's refusal to undertake prompt correction of the violation, and the extent of any irreparable injury the employer would incur by undertaking correction of the violation during the pendency of review proceedings, that such provision is unreasonable in the circumstances.".

(c) PENALTIES.—Section 17(d) (29 U.S.C. 666(d)) is amended by striking out "(which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties)".

(d) VERIFICATION OF ABATEMENT.—Section 10 (as amended by subsection (b)) is further amended by adding at the end thereof the following new subsection:

"(e)(1) Each employer to whom a citation for a serious, willful or repeated violation has been issued under section 9 shall verify the abatement of such violation in writing to the Secretary not later than 30 days after the period for the correction of the violation has expired, with appropriate documentary evidence. Each such employer shall prominently post, at or near each place that a violation referred to in the citation occurred, a notice that the violation has been abated, and shall make available to employees and employee representatives for inspection a copy of the verification of abatement provided to the Secretary pursuant to this subsection.

"(2) Not later than 1 year after the effective date of this subsection, the Secretary shall promulgate final regulations regarding the requirements of this subsection, including provisions concerning—

"(A) the documentary evidence required to verify abatement of a violation; and

"(B) the posting of notice of abatement of a violation.".

SEC. 507. RIGHT TO CONTEST CITATIONS AND PENALTIES.

The first sentence of section 10(c) (29 U.S.C. 659(c)) is amended by inserting after "files a notice with the Secretary" the following: "alleging that the citation fails properly to designate the provisions of the Act, standard, rule, regulation or order that have been violated, or that the citation fails properly to designate the violation as serious, willful or repeated, or that the proposed penalty is not adequate, or".

SEC. 508. RIGHT OF EMPLOYEE REPRESENTATIVES TO PARTICIPATE IN OTHER PROCEEDINGS.

The last sentence of section 10(c) (29 U.S.C. 659(c)) is amended by inserting after "participate as parties to hearings" the following: "or other proceedings conducted".

SEC. 509. OBJECTIONS TO MODIFICATION OF CITATIONS.

Section 10 (29 U.S.C. 659) (as amended by section 506) is further amended by adding at the end thereof the following new subsection:

"(f)(1) If the Secretary intends to withdraw or to modify a citation as a result of any agreement with the cited employer, the rules of procedure prescribed by the Commission shall provide for prompt notice to affected employees or representatives of affected employees, and that such notice include the terms of the proposed agreement.

"(2) Not later than 15 working days after the receipt of the notice provided in accordance with paragraph (1), any employee or representative of employees, regardless of whether such employee or representative has previously elected to participate in the proceedings, shall have the right to file a notice with the Secretary alleging that the proposed agreement fails to effectuate the purposes of this Act, and stating the respects in which it fails to do so.

"(3) Upon receipt of a notice filed under paragraph (2), the Secretary shall consider the matter, and if the Secretary determines to proceed with the proposed agreement, shall respond with particularity to the statements presented in that notice.

"(4) Not later than 15 working days following the Secretary's response provided pursuant to paragraph (3), the employee or representative of employees shall upon filing a petition for service with the Commission have the right to a hearing as to whether adoption of the proposed agreement would effectuate the purposes of the Act, including a determination as to whether the proposed agreement would adequately abate the alleged violations.

"(5) If the Commission determines that a proposed agreement fails to effectuate the purposes of the Act, the proposed agreement shall not be entered as an order of the Commission, nor shall the citation be withdrawn or modified in accordance with the proposed agreement.".

SEC. 510. IMMINENT DANGER INSPECTIONS.

(a) CORRECTION OF CONDITIONS.—Section 13 (29 U.S.C. 662) is amended—

(1) by striking out subsection (c);

(2) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(3) by inserting before subsection (b), as so redesignated, the following new subsection:

"(a)(1) If any representative of the Secretary determines, on the basis of an inspection or investigation under this section, that a condition or practice in a place of employment is such that an imminent danger to safety or health exists that could reasonably be expected to cause death or serious physical harm or permanent impairment of the health or functional capacity of employees if not corrected immediately, the representative of the Secretary shall so inform the employer and affected employees and shall request that the condition or practice be corrected immediately or that employees be immediately removed from exposure to such danger.

"(2) If the employer refuses to comply with a request under paragraph (1), the representative of the Secretary shall consult by telephone or similarly direct medium of communication with the Secretary or the Secretary's designee to determine whether notice should be posted in the workplace pursuant to paragraph (3).

"(3) If the Secretary or the Secretary's designee so authorizes, the representative of the Secretary shall immediately cause notice to be posted in the workplace identifying the equipment, process or practice that is the source of the imminent danger. Such notice shall take the form of a tag or other device that will be seen by employees who might otherwise be exposed to the dangerous equipment, process or practice. The notice shall be removed only by the Secretary or a representative of the Secretary.

"(4) The fact that such notice has been posted shall be noted in any citation issued pursuant to section 9 with respect to the hazard involved.

"(5) No person shall discharge or in any manner discriminate against any employee because such employee has refused to perform a duty that would expose the employee to the condition or a practice that has been identified as the source of imminent danger by a notice posted pursuant to para-

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SEC. 406. EXPOSURE MONITORING AND MEDICAL SURVEILLANCE.

Section 6 (42 U.S.C. 655) (as amended by sections 401(d) and 405) is further amended by adding at the end thereof the following new subsection:

"(j)(1) Not later than 2 years after the effective date of this subsection, the Secretary shall promulgate final standards on exposure monitoring and medical surveillance programs in accordance with subsection (b)—

"(2) The standards on exposure monitoring promulgated under paragraph (1) shall include the following:

"(A) Requirements for a formal exposure assessment in a case where workers may be exposed to toxic materials or harmful physical agents that are subject to standards issued under this section, including toxic materials or harmful physical agents covered under section 1910.1200 of title 29, Code of Federal Regulations.

"(B) Requirements for regular monitoring and measurement of toxic materials or harmful physical agents for which an exposure limit has been established by the Secretary or adopted by the employer, where such monitoring and measurements will assist in protecting the health and safety of workers exposed to such toxic materials or harmful physical agents.

"(C) Requirements for a written compliance plan for reducing exposures where exposures are determined to exceed limits established by the Secretary or adopted by the employer.

"(D) Requirements for employees to be notified in writing of exposures above exposure limits established by the Secretary or adopted by the employer and the steps the employer is taking to reduce exposures.

"(E) Requirements for the maintenance of and access to exposure records according to the provisions of section 1910.20 of title 29, Code of Federal Regulations.

"(F) Requirements for any safety and health committee established under section 28 to review the exposure assessment and exposure monitoring program, to observe exposure monitoring, to receive and have access to copies of assessment and monitoring results, to review written compliance plans, and to make recommendations with respect to such programs and plans.

"(3) The standards on medical surveillance programs promulgated under paragraph (1) shall include the following:

"(A) Requirements for an evaluation of employee exposure assessments and exposure monitoring to identify which employees may be at risk of material impairment of health or functional capacity due to exposure to toxic materials or harmful physical agents.

"(B) Requirements for periodic medical examinations for employees identified to be at risk of material impairment of health or functional capacity due to exposure to toxic materials or harmful physical agents where such examinations are appropriate to identify or to prevent material impairment to health or functional capacity.

"(C) Requirements for the evaluation of the results of medical examinations to determine if an employee or a group of employees are exhibiting indications of present or potential material impairment of health or functional capacity due to exposure to toxic substances or harmful physical agents.

"(D) Requirements for the notification of employees of the results of medical examinations in a manner that is understood by the employees.

"(E) Provisions setting forth the qualifications for health care providers who may conduct medical examinations mandated by this section. Where feasible, the Secretary in cooperation with the Secretary of Health and Human Services shall establish criteria and procedures for the certification of health care providers who conduct medical examinations under this section.

"(F) Provisions to assure the confidentiality of personally identifiable medical information developed under this section.

"(G) Provisions to prohibit discrimination against employees based on the results of medical examinations and, as appropriate, provisions to provide for the protection of the wages, benefits, seniority and other relevant conditions of employment of employees who are transferred or removed from their jobs due to the result of medical examinations conducted under this section.

"(H) Records developed under this subsection shall be maintained and made available according to the provisions of section 1910.20 of title 29, Code of Federal Regulations.

"(I) Requirements for the safety and health committee established under section 28 to review the employer's medical surveillance program and to make recommendations with respect thereto.".

SEC. 407. STANDARD ON ERGONOMIC HAZARDS.

Section 6 (42 U.S.C. 655) (as amended by sections 401(d), 405 and 406) is further amended by adding at the end thereof the following new subsection:

"(k)(1) Not later than 1 year after the effective date of this subsection, the Secretary shall issue a final standard on ergonomic hazards to protect employees from work-related musculoskeletal disorders in accordance with subsection (b)(5).

"(2) The final standard issued under paragraph (1) shall include the following:

"(A) A requirement for an ergonomics program for employees who are exposed to ergonomic hazards, that shall include provisions for hazard identification, control measures, medical management, training and education, and employee participation.

"(B) Requirements for an evaluation of job processes, work station design, rate of work, and work methods to identify ergonomic risk factors that cause or are likely to cause musculoskeletal disorders.

"(C) Requirements for control measures to reduce stressors and musculoskeletal disorders including engineering controls, new equipment or work organization controls.

"(D) Requirements for an effective medical management program for musculoskeletal disorders including requirements for qualified health care providers, health surveillance, appropriate diagnosis, treatment, and followup.

"(E) Requirements for recording musculoskeletal disorders as an illness as defined under section 8(c)(2) and reporting such illnesses to the Secretary.

"(F) Requirements for the training and education of employees exposed to ergonomic hazards on ergonomic risk factors, control measures and the employer's medical management program.

"(G) Requirements for employee participation in the establishment and implementation of the employer's ergonomic program through any safety and health committee established under section 28.".

SEC. 408. TIMETABLE FOR SPECIFIC STANDARDS.

Section 6 (42 U.S.C. 655) (as amended by sections 401(d), 405, 406 and 407) is further amended by adding at the end thereof the following new subsection:

"(l) The Secretary shall issue the following safety and health standards under subsection (b):

"(1) Not later than November 30, 1991, the Secretary shall issue a final standard concerning bloodborne pathogens.

"(2) Not later than December 31, 1991, the Secretary shall issue final standards concerning:

"(A) permissible exposure limits, upd for construction, maritime and agricultur.

"(B) electric power generator, transmission and distribution;

"(C) logging operations;

"(D) face, head, eye and foot protection;

"(E) walking and working surfaces;

"(F) hazardous materials; and

"(G) motor vehicle inspection, maintenance and safety.

"(2) Not later than June 30, 1992, the Secretary shall issue final standards on:

"(A) cadmium;

"(B) confined space entry;

"(C) asbestos (remand);

"(D) accreditation of training for programs for hazardous waste operations; and

"(E) methylene chloride.

"(3) Not later than December 31, 1992, the Secretary shall issue final standards on:

"(A) respiratory protection;

"(B) 1,3-butadiene;

"(C) scaffolds;

"(D) fall protection; and

"(E) glycol ethers.

"(4) Not later than December 31, 1993, the Secretary shall issue final standards on:

"(A) indoor air quality; and

"(B) safety and health regulations for longshoring.

"(5) Nothing in this subsection shall be construed as limiting the Secretary from issuing additional safety and health standards under subsection (b).".

TITLE V—ENFORCEMENT

SEC. 501. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.

Section 8(e) (29 U.S.C. 657(e)) is amended by inserting after the first sentence the following new sentence: "Time spent by an employee on any such inspection shall be deemed to be hours worked for purposes of wages, benefits, and other terms and conditions of employment.".

SEC. 502. COMPLAINTS.

Section (8)(f)(1) (29 U.S.C. 657(f)(1)) is amended—

(1) in the first sentence, by inserting "the Act or" after "violation of"; and

(2) by inserting after the third sentence the following new sentence: "If the Secretary, upon notification from any other source determines that there are reasonable grounds to believe that an imminent danger (as described in section 13(a)) or serious violation (as described in section 17(k)) exists in a place of employment, the Secretary shall also make a special inspection in accordance with this section.".

SEC. 503. TIMEFRAME FOR RESPONSE.

The last sentence of section 8(f)(1) (29 U.S.C. 657(f)(1)) is amended by inserting before the period the following: "not later than 30 days after the receipt of the request for inspection".

SEC. 504. MANDATORY SPECIAL EMPHASIS.

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

"(h)(1) The Secretary shall establish and carry out a special emphasis inspection program for conducting inspections of industries or operations where existing hazards newly recognized or new hazards introduced into worksites warrant a more intensive than normal inspection program.

"(2) The Secretary shall annually designate the industries and operations for the special emphasis inspection program and identify the number of special emphasis inspections that the Secretary plans to conduct in each designated industry and opergraph (3). The right to refuse to perform such a duty shall be in addition to any other right to refuse to perform hazardous work that is afforded to employees by this Act, by standards or regulations issued pursuant to this Act, by contract, or by other applicable law.".

(4) in subsection (b), as so redesignated, by striking out the first sentence and inserting in lieu thereof the following new sentence: "The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which pose an imminent danger as described in subsection (a).".

(b) PENALTIES.—Subsection (e) of section 17 (29 U.S.C. 666) is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) In the event that an employer does not immediately correct the hazard referenced in a notice posted under section 13(a) or remove all employees from exposure thereto, the employer shall be assessed a civil penalty of not less than $10,000 and not more than $50,000 for each day during which an employee continues to be exposed to the hazard. This paragraph shall not apply if the Commission determines that the condition or practice was not of such a nature as to be covered by section 13(a).".

SEC. 511. CITATIONS AND PENALTIES FOR VIOLATIONS OF SECTION 27 AND SECTION 28.

(a) CITATIONS.—Section 9(a) (29 U.S.C. 658(a)) is amended by inserting ", 27 or 28" after "section 5".

(b) PENALTIES.—Section 17 (29 U.S.C. 666) is amended—

(1) in subsection (a), by inserting ", 27 or 28" after "section 5";

(2) in subsection (b), by inserting ", 27 or 28" after "section 5"; and

(3) in subsection (c), by inserting ", 27 or 28" after "section 5".

SEC. 512. OSHA CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 17 (29 U.S.C. 666) is amended—

(1) in subsection (e)—

(A) by striking "fine of not more than $10,000" and inserting "fine in accordance with section 3571 of title 18, United States Code,";

(B) by striking "six months" and inserting "10 years";

(C) by striking "fine of not more than $20,000" and inserting "fine in accordance with section 3571 of title 18, United States Code,"; and

(D) by striking "one year" and inserting "20 years";

(2) in subsection (f), by striking "fine of not more than $1,000 or by imprisonment for not more than six months," and inserting "fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 2 years,";

(3) in subsection (g), by striking "fine of not more than $10,000, or by imprisonment for not more than six months," and inserting "fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 1 year,";

(4) by redesignating subsections (h) through (l) as subsections (i) through (m), respectively;

(5) by inserting after subsection (g) the following new subsection:

"(h) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, and that violation causes serious bodily injury to any employee but does not cause death to any employee, shall, upon conviction, be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or by both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or by both."; and

(6) by adding at the end the following new subsection:

"(n) If a penalty or fine is imposed on a director, officer, or agent of an employer under subsection (e), (f), (g), or (h), such penalty or fine shall not be paid out of the assets of the employer on behalf of that individual.".

(b) DEFINITION.—Section 3 (29 U.S.C. 652) is amended by adding at the end thereof the following new paragraph:

"(15) The term 'serious bodily injury' means bodily injury that involves—

"(A) a substantial risk of death;

"(B) protracted unconsciousness;

"(C) protracted and obvious physical disfigurement; or

"(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.".

(c) JURISDICTION FOR PROSECUTION UNDER STATE AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C. 666) (as amended by subsection (a)) is further amended by adding at the end thereof the following new subsection:

"(o) Nothing in this Act shall preclude State and local law enforcement agencies from conducting criminal prosecutions in accordance with the laws of such State or locality.".

TITLE VI—PROTECTION OF EMPLOYEES FROM DISCRIMINATION

SEC. 601. ANTIDISCRIMINATION PROVISIONS.

Section 11(c) (29 U.S.C. 660(c)) is amended—

(1) in paragraph (1), by adding before the period the following: ", including reporting any injury, illness or unsafe condition to the employer, agent of the employer, the safety and health committee or employee safety and health representative";

(2) by striking out paragraphs (2) and (3), and inserting the following new paragraphs:

"(2) No person shall discharge or in any manner discriminate against an employee for refusing to perform the employee's duties because of the employee's reasonable apprehension that performing such duties would result in serious injury to the employee or other employees. The circumstances causing the employee's apprehension of serious injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee would conclude that there is a bona fide danger of an injury or serious impairment of health resulting from the circumstances. In order to qualify for protection, the employee must have sought from his employer, and have been unable to obtain, corrections of the circumstances causing the refusal to perform the employee's duties.

"(3) Any employee who believes that such employee has been discharged, disciplined, or otherwise discriminated against by any person in violation of this subsection may, within 180 days after such alleged violation occurs, file (or have filed by any person on the employee's behalf) a complaint with the Secretary alleging such discharge, discipline, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

"(4)(A) Not later than 60 days after the receipt of a complaint filed under paragraph (3), the Secretary shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and shall notify the complainant and the person alleged to have committed a violation of this section of such findings. Where the Secretary has concluded that there is reasonable cause to believe that a violation has occurred, the Secretary shall accompany such findings with a preliminary order providing the relief prescribed by this subsection. Thereafter, either the person alleged to have committed the violation or the complainant may, within 30 days, file objections to the findings or preliminary order, or both, and request a hearing on the record, except that the filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be expeditiously conducted. Where a hearing is not timely requested, the preliminary order shall be deemed a final order which is not subject to judicial review. Upon the conclusion of such hearing, the Secretary shall issue a final order within 120 days. In the interim, such proceedings may be terminated at any time on the basis of an agreenent entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

"(B) If, in response to a complaint filed under paragraph (1) or (2), the Secretary determines that a violation of this subsection has occurred, the Secretary shall order—

"(i) the person who committed such violation to take action to correct the violation;

"(ii) such person to reinstate the former complainant to the complainant's former position together with the compensation (including backpay), terms, conditions, and privileges of the complainant's employment; and

"(iii) compensatory damages.

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

"(5)(A) Any person adversely affected or aggrieved by an order issued after a hearing under paragraph (4)(B) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred, or the circuit in which such person resided on the date of such violation. The petition for review must be filed within 60 days from the issuance of the order of the Secretary. Such review shall be in accordance with the provisions of chapter 7, of title 5, United States Code, and shall be heard and decided expeditiously.

"(B) Whenever a person has failed to comply with an order issued under paragraph (4)(B), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur in order to enforce such order. In actions brought under this subsection, the district court shall have jurisdiction to grant all appropriate relief, including injunctive relief, reinstatement, back pay and compensatory damages.

"(6) The legal burdens of proof that prevail under section 1221(e) of title 5, United States Code, shall govern adjudication of protected activities under this subsection.".

TITLE VII—OSHA AND NIOSH TRAINING AND EDUCATION

SEC. 701. OSHA AND NIOSH TRAINING ACTIVITIES.

(a) EXPANSION.—Section 21 (29 U.S.C. 670) is amended—

(1) in subsection (a) by inserting after "qualified personnel to carry out the purpose of this Act," the following: ", including education programs for employees and members of safety and health committees, as appropriate."; and

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

"(d) The Secretary shall develop, directly or by grants or contracts, training materials, model curricula and programs to assist employers in providing the training and education required by section 27 and in complying with the standards issued under section 6.".

TITLE VIII—RECORDKEEPING AND REPORTING

SEC. 801. DATA COLLECTED BY SECRETARY.

Section 24(a) (29 U.S.C. 673) is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) For the purpose of setting safety and health standards, targeting inspections to individual establishments, evaluating standard setting and enforcement programs, and for other purposes, the Secretary shall collect information and conduct analyses that identify—

"(A) industries, employers, processes, operations, and occupations that have a high rate of injury or illness;

"(B) factors that cause or contribute to injuries and illnesses; and

"(C) workers' compensation costs associated with the injuries and illnesses.

"(3) The Secretary shall issue regulations that require each employer covered by this Act to report to the Secretary each work-related death of an employee of the employer immediately upon knowledge of the employer, and to report each serious incident that results in the hospitalization of two or more employees of the employer within 24 hours of the incident.

"(4) Data collected under this subsection shall be publicly available in a form suitable for further statistical analysis.".

SEC. 802. EMPLOYEE REPORTED ILLNESSES.

Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended—

(1) by striking "deaths, injuries and illnesses" and inserting "deaths and injuries"; and

(2) by inserting before the period at the end the following: ", and work related illnesses and suspected work related illnesses (including a work related illness reported by an employee or an employee's physician), unless the employer makes a reasonable determination that the illness is not work related".

SEC. 803. EMPLOYEE ACCESS.

Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by adding at the end the following new sentence: "The records and reports required under this section shall be made available to the Secretary, the Secretary of Health and Human Services, to employees and to employee representatives.".

TITLE IX—NIOSH

SEC. 901. HAZARD EVALUATION REPORTS.

Section 20(a)(6) (29 U.S.C. 669(a)(6)) is amended—

(1) in the second sentence, by inserting "and whether any hazardous condition or harmful physical agent found in the place of employment poses a risk to exposed employees" after "as used or found"; and

(2) by inserting after the second sentence, the following new sentence: "If a determination is not made within 6 months of the receipt of a request, the Secretary shall provide the employer and affected employees with an interim report on the known or suspected hazards and recommendations for control and an estimate of the time that a final determination will be made.".

SEC. 902. SAFETY RESEARCH AND EVALUATIONS.

Section 20(a) (29 U.S.C. 669(a)) is amended by adding at the end thereof the following new paragraph:

"(8) The Secretary of Health and Human Services shall identify major factors contributing to occupational injuries and fatalities through accident investigations, and epidemiological research.".

SEC. 903. INFORMATION AND EDUCATION ABOUT OCCUPATIONAL ILLNESSES.

Section 20(a) (29 U.S.C. 669(a)) (as amended by section 902) is further amended by adding at the end the following new paragraph:

"(9) The Secretary of Health and Human Services shall carry out a program to identify and notify employees at increased risk of occupational illnesses, injuries, and fatalities, including public information and education programs for groups of workers at increased risk. In carrying out the program, the Secretary shall notify subjects of studies conducted or funded by the Secretary who are found to be at increased risk and shall make recommendations on appropriate medical surveillance for groups of employees at increased risk.".

SEC. 904. CONTRACTOR RIGHTS.

Section 20(b) (29 U.S.C. 669(b)) is amended by inserting after "Secretary of Health and Human Services" the following: "or the designees or contractors of such Secretary,".

SEC. 905. NATIONAL SURVEILLANCE PROGRAM.

Section 20 (29 U.S.C. 669) is amended by adding at the end thereof the following new subsection:

"(f)(1) The Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall (in cooperation with other agencies of the Department of Health and Human Services and the Secretary of Labor) establish a national surveillance program to identify cases of occupational illnesses, fatalities, and serious injuries. In conducting the national surveillance program, the Secretary of Health and Human Services shall coordinate the activities of the Secretary with State health agencies and Federal and State workers' compensation agencies.

"(2)(A) The Secretary of Health and Human Services shall collect data each year on the number and characteristics of all occupational fatalities, selected occupational illnesses, and selected occupational injuries.

"(B) In selecting occupational diseases and injuries for the collection of data under subparagraph (A), the Secretary of Health and Human Services shall consider the known frequency of the disorder, the severity of the disorder, and the size of the population at risk.

"(3) The Secretary of Health and Human Services shall prepare reports and analysis of fatalities, occupational diseases, and injuries collected under the national surveillance program and transmit the information to the Secretary of Labor, State health agencies, employers, employees, and other interested parties.

"(4) The Secretary of Health and Human Services may issue regulations to require an employer, through a physician or other health professional employed by or under contract to the employer, to report information on occupational fatalities, illnesses and injuries in order to carry out the provisions of this subsection.".

SEC. 906. ESTABLISHMENT OF NIOSH AS A SEPARATE AGENCY WITHIN PUBLIC HEALTH SERVICE.

The second sentence of section 22(b) (29 U.S.C. 671(b)) is amended by inserting after "The Institute shall be" the following: "established as a separate agency within the Public Health Service and be".

TITLE X—STATE PLANS

SEC. 1001. STATE PLAN COMMITTEES AND PROGRAMS.

Section 18(c) (29 U.S.C. 667(c)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting a comma; and

(3) by adding at the end the following new paragraph:

"(9) provides for the development of safety and health programs, training programs, and safety and health committees that are at least as effective as those required under section 27 and 28, and".

SEC. 1002. ACCESS TO INFORMATION; EMPLOYEE RIGHTS.

Section 18(c) (29 U.S.C. 667(c)) (as amended by section 1001) is further amended by adding at the end thereof the following new paragraph:

"(10) provides for reporting requirements, protection of employee rights, and access to information that are at least as effective as those required under this Act or other Federal laws which govern access to information related to this Act.".

SEC. 1003. COMPLAINTS AGAINST A STATE PLAN.

Section 18 (29 U.S.C. 667) is amended—

(1) in the third sentence of subsection (e)—

(A) by inserting after "preceding sentence" the following: "and except as provided in subsections (f), (i) and (j)"; and

(B) by striking out "(except for the purpose of" and all that follows through "of this section)"; and

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

"(i)(1) If the Secretary receives a written complaint from an employer, employee, or employee representative that a State is deficient in its compliance with a provision of its State plan and the Secretary determines that there are reasonable grounds to believe that such a deficiency exists, the Secretary shall promptly investigate any such complaint. Complaints that allege a deficiency in an enforcement action by a State shall be investigated not later than 30 days after the receipt of such complaint.

"(2) The Secretary shall, not later than 30 days after the completion of an investigation under paragraph (1), transmit in writing to the State and to the complainant the findings of such investigations and recommendations for the correction of any deficiency that is identified. If the Secretary determines there are no reasonable grounds to believe that a deficiency exists the Secretary shall notify the complainant in writing of such determination.

"(3) Not later than 30 days after the receipt of a finding transmitted under paragraph (2), the State shall respond to the Secretary in writing concerning what action the State has taken in response to the Secretary's findings and recommendations.

"(4) If after receipt of the response of the State under paragraph (3), the Secretary believes a serious violation of the Act exists for which the State has failed to issue a citation, the Secretary shall with reasonable promptness issue a citation.".

SEC. 1004. ACTION AGAINST STATE PLAN.

Section 18(f) (29 U.S.C 667(f)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating the second sentence as paragraph (3) and indenting such appropriately;

(3) by inserting after paragraph (1), the following new paragraph:

"(2)(A) If the Secretary at any time finds reasonable grounds to believe that a State has failed to comply substantially with any provision of the State plan or any assurance contained therein, the Secretary shall give notice to the State of the deficiencies and shall allow 6 months for the correction of the deficiencies.

"(B) If after 6 months the Secretary determines that the State has not corrected the deficiencies and that grounds for withdrawing approval of the State plan exist, the Secretary shall institute proceedings pursuant to paragraph (3) for the withdrawal of approval of the plan, unless the Secretary determines in writing that exceptional circumstances exist that justify a decision not to institute such proceedings."; and

(4) by adding at the end thereof the following new paragraph:

"(4) During the pendency of proceedings pursuant to paragraph (3), the Secretary shall exercise jurisdiction, concurrent with the State, over the safety and health issues that are subject to the State plan.".

SEC. 1005. APPLICATION OF FEDERAL STANDARDS.

Section 18 (29 U.S.C. 667) (as amended by section 1003) is further amended by adding at the end thereof the following new subsection:

"(j) In the event a State, within 6 months after the promulgation of a safety and health standard by the Secretary under section 6, fails to adopt or promulgate a standard that is at least as effective as the Federal standard, the State shall enforce the Federal standard until a State standard is in effect that is at least as effective as the Federal standard.".

SEC. 1006. STATE PLAN CONFORMING AMENDMENTS.

Section 18 (29 U.S.C. 667) (as amended by section 1003 and 1005) is further amended by adding at the end thereof the following new subsection:

"(k) Each State which is exercising authority to operate a State safety and health plan under section 18 shall within 1 year of the effective date of this subsection modify the plan to conform with the requirements of this Act.".

TITLE XI—VICTIM'S RIGHTS

SEC. 1101. OCCUPATIONAL SAFETY AND HEALTH HAZARDS VICTIM'S RIGHTS

(a) IN GENERAL.—Section 29 is amended to read as follows:

"SEC. 29. OCCUPATIONAL SAFETY AND HEALTH HAZARDS VICTIM'S RIGHTS

"(a) DEFINITION.—As used in this section, the term "victim" means—

"(1) an employee who has sustained a work-related injury or illness which is the subject of an inspection or investigation conducted under section 8(i); or

"(2) a family member of an employee, if—

"(A) the employee is killed as a result of a work-related injury or illness which is the subject of an inspection or investigation conducted under section 8(i); or

"(B) the employee sustains a work-related injury which is the subject of an inspection or investigation conducted under section 8(i), and the employee cannot reasonably exercise the rights of the employee under this section.

"(b) VICTIM'S RIGHTS.—Notwithstanding any other provision of law, on request, a victim shall be afforded the right to—

"(1) meet with the Secretary or an authorized representative regarding the inspection or investigation conducted under section 8(i) concerning the employee's injury, illness or death, prior to the Secretary's decision to issue a citation or take no action; and

"(2) receive at no cost, a copy of any citations or reports, issued as a result of the inspection or investigation, at the time of issuance, and be informed of any notice of contest filed under section 10 that shall be accompanied by an explanation of the rights of employee and employee representatives to participate in proceedings conducted under section 10.

For the purposes of section 10, a victim shall have the same rights as an employee.

"(c) DISCUSSION ON MODIFICATION OF CITATION.—Prior to entering into an agreement to withdraw or modify a citation issued as a result of an inspection of a fatality or serious incident conducted under section 8(i), on request, the Secretary shall provide an opportunity to the victim to appear and make a statement before the parties conducting the settlement negotiations.

"(d) REMEDIES.—For a violation of this section, in addition to any other remedies that might be available to a victim under Federal or State law, a victim shall be entitled to—

"(1) declaratory relief;

"(2) injunctive relief;

"(3) any costs incurred by the victim in securing the documents referred to in subsections (b)(2) and (c); and

"(4) reasonable attorneys fees and costs.

"(e) NOTIFICATION.—The Secretary shall take reasonable actions to inform victims of their rights under this section.".

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not be construed to affect the amendments made by section 29 of the Occupational Safety and Health Act of 1970 as such section existed on the date of enactment of such Act.

TITLE XII—EFFECTIVE DATE

SEC. 1201. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date that is 90 days after the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF THE COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

SECTION 1. SHORT TITLE.

The legislation may be cited as the "Comprehensive Occupational Safety and Health Reform Act".

SECTION 2. FINDINGS AND PURPOSE.

Congress finds that despite progress made in reducing the rates of work-related deaths, injuries and exposures to toxic substances since 1970, such rates remain unacceptably high. In addition, employers and employees are insufficiently involved in joint efforts to identify and correct occupational safety and health hazards, and lack sufficient OSH training; standard-setting, enforcement, and data collection are inadequate; and millions of American workers lack adequate federal occupational safety and health protection.

The purposes of the legislation are to increase the joint participation of employers and employees in identifying and correcting workplace hazards, to improve standard-setting, enforcement and data collection, and to ensure adequate federal occupational safety and health protection for all workers.

SECTION 3. OSHA AMENDMENTS.

The legislation amends the Occupational Safety and Health Act of 1970 ("the Act") (29 U.S.C. section 651 et seq.).

Title I—Safety and Health Programs

SECTION 101. SAFETY AND HEALTH PROGRAMS.

Section 101 requires employers to establish and maintain occupational safety and health ("OSH") programs to reduce or eliminate hazards and to prevent injuries and illnesses to employees. Each program must be in writing, and must provide for (a) identification and correction of hazards, (b) employee training, education, and participation in the OSH program (to be considered as hours worked), (c) procedures for responding to and investigating OSH incidents, (d) designation of an employer OSH representative, and (e) OSH procedures for multi-employer worksites.

Within one year of enactment, DOL is required to issue regulations concerning employer OSH programs. DOL is authorized to modify the application of this section's requirements to classes of employers if DOL determines that employees' OSH protection would not be reduced.

The legislation requires employers to provide employee OSH training, including training for new employees and employees who face changed working conditions or modifications in applicable OSH regulations and standards, as well as annual refresher training. OSH committee members (as described in Section 201) must receive special training.

Title II—Joint Safety and Health Committees

SECTION 201. JOINT SAFETY AND HEALTH COMMITTEES.

Section 201 requries employers with more than 10 employees to establish joint employer-employee OSH committees. Each committee shall have the right to (a) review the employer's OSH program and OSH records, (b) conduct inspections and employee interviews periodically and in response to specific incidents, (c) observe OSHA inspections and exposure monitoring by the employer, and (d) make advisory recommendations to the employer. Time spent on committee activities shall be considered as time worked.

Although this section requires employers to establish a committee at each of its worksites, DOL is authorized to modify this requirement for worksites with fewer than 11 employees, multi-employer worksites, and employees who do not work at fixed locations.

For worksites of between 11 and 50 employees, the committee must include at least one employee representative. For worksites of between 51 and 99 employees, the committee must include at least two employee representatives. Committees at larger worksites must include an additional representative for each additional 100 employees at such worksites (up to a maximum of six).

Employer-designated representatives on the Committee are not to exceed employee representatives in number. In non-union settings, employee representatives are to be selected from among non-managerial employees by secret ballot election. In union settings, the exclusive bargaining agent shall designate such representatives. In mixed settings, each represented group (plus one residual group of unrepresented employees) shall have proportional representation on the committee, except that each group of 11 or more employees shall have at least one representative.

DOL is required to issue final regulations regarding OSH committees within one year of the effective date of the legislation. DOL's regulations must provide procedures (where applicable) for election of employee representatives, and require employers to make necessary facilities and materials available to committees.

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Title III OSHA—coverage

SECTION 301. PUBLIC EMPLOYEES

Section 301 provides comprehensive OSHA coverage to all federal, state and local employees for the first time.

SECTION 302. CEDING JURISDICTION TO OTHER FEDERAL AGENCIES

OSHA currently does not apply to private sector employees covered by another federal agency's OSH regulations. Section 302 replaces this rule, requiring DOL to certify, for each specified hazard as to which it wishes to cede jurisdiction, that another federal agency has an equally effective standard or regulation regulating that hazard. (Employees covered by MSHA, however, are expressly exempted.) This section also sets forth procedures which permit affected individuals to seek a rescission of a certification before DOL, as well as judicial review of DOL certifications and refusals to rescind a certification.

SECTION 303. COVERAGE OF DOE NUCLEAR FACILITIES

Section 303 specifically extends OSHA coverage to federal nuclear facilities under the jurisdiction of the Department of Energy.

SECTION 304. CLARIFICATION OF GENERAL DUTY CLAUSE

Section 304 makes clear that OSHA's general duty clause extends to multi-employer worksites, where hazardous conditions or practices may affect not only the employer's own employees but also other employees working at the site.

Title IV: OSHA standards

SECTION 401. STANDARD-SETTING PROCEDURES

Section 401 sets forth procedures regarding OSHA's standard-setting process. First, if an advisory committee, NIOSH, or EPA recommends (or any interested person petitions for) the promulgation, modification or revocation of a standard, DOL must publish a response within 90 days, and must issue a proposed rule within 12 months unless it concludes that no action is warranted.

Following the issuance of a proposed rule, DOL must permit a public comment period of at least 30 days, and must issue a final rule within 180 days after the comment period or hearing.

Section 401 also permits affected persons to seek judicial review of a decision by DOL not to propose a rule to promulgate, modify or revoke a standard as requested in a recommendation or petition. Such a decision may be set aside if it is found to be arbitrary, capricious, or an abuse of discretion. Affected persons may also seek judicial review if DOL fails to act within the time periods specified in this section, to compel DOL to take any action unlawfully withheld or unreasonably delayed.

Finally, Section 401 makes clear that challenges to the validity of a standard must be brought either within 60 days of the issuance of a final rule (as provided under section 6(f) of the Act), or by petitioning for the modification or revocation of a standard through the process set forth above.

SECTION 402. CONSIDERATIONS IN STANDARD-SETTING

Section 402 amends the definition of "occupational safety and health standard" to mean a standard which addresses a significant health or safety risk by requiring employers to adopt practices or processes that most adequately assure, to the extent feasible, a safe and healthful workplace.

SECTION 403. RECORDING WORK-RELATED ILLNESSES

Section 403 requires DOL standards to provide for recording or reporting of work-related illnesses determined as a result of medical examinations conducted under such standards.

SECTION 404. PUBLIC DISCLOSURE OF STANDARD-SETTING COMMUNICATIONS

Section 404 requires DOL to place all communications regarding the standard-setting process in the public record.

SECTION 405. REVISION OF PERMISSIBLE EXPOSURE LIMITS

Section 405 requires NIOSH to evaluate, on a regular basis, whether exposure limits for toxic materials and harmful physical agents should be modified or established. NIOSH must also transmit to DOL, at least every 3 years, recommendations as to exposure limits which should be modified or established.

DOL is required to publish such recommendations, allow 30 days for public comment, issue a proposed rule responding to such recommendations within 6 months of receiving them, and issue a final rule within 1 year of issuance of the proposed rule. DOL must explain its reasons for adopting any proposed or final exposure limit which differs from NIOSH's recommendations.

SECTION 406. EXPOSURE MONITORING AND MEDICAL SURVEILLANCE STANDARDS

Section 406 requires DOL to issue final standards on exposure monitoring and medical surveillance programs within 2 years of the legislation's effective date. The exposure monitoring standards must provide for formal exposure assessments, regular monitoring, a written compliance plan to reduce excessive exposures, employee notification of excessive exposures, recordkeeping, and participation of the joint OSH committee. The medical surveillance standards must provide for identification of at-risk employees, periodic medical examinations of such employees, notification to employees of examination results, certification of health care providers to perform medical examinations, confidentiality of personal employee medical records, prohibition of discrimination against any employee based on examination results, recordkeeping, and participation of the joint OSH committee.

SECTION 407. ERGONOMIC HAZARDS STANDARD

Section 407 requires DOL to issue a final standard on ergonomic hazards within 1 year of the legislation's effective date. The standard must provide for identificaiton of ergonomic hazards, a program for employees exposed to such hazards (including training and education of such employees), control measures to reduce such hazards (including an effective medical management program), recordkeeping, and participation of the joint OSH committee.

SECTION 408. ADDITIONAL STANDARDS

Section 408 requires DOL to issue certain additional standards by the dates listed below:

November 30, 1991, blood borne pathogens.

December 31, 1991, permissible exposure limits (update for construction, maritime, and agriculture); electric power; logging; head and foot protection; walking and working surfaces; hazardous materials; and motor vehicles.

June 30, 1992, cadmium; confined space entry, asbestos (remand); hazardous waste training program accreditation; and methylene chloride.

December 31, 1992, respiratory protection; 1,3-butadiene; scaffolds; fall protection; and glycol ethers.

December 31, 1993, indoor air quality; and longshoring.

Title V: Enforcement

SECTION 501. EMPLOYEE PARTICIPATION IN INSPECTIONS

Section 501 provides that time spent by an employee accompanying an OSHA representative on an inspection, as permitted by the Act, shall be treated as hours worked.

SECTION 502. IMMINENT DANGER AND SERIOUS VIOLATION COMPLAINTS

The Act requires DOL to make a special inspection upon receipt of a complaint from an employee or employee representative alleging an imminent danger or a serious violation which threatens physical harm, if DOL finds reasonable grounds to believe that such danger or violation exists. Section 502 extends this requirement to imminent dangers and violations DOL learns about from other sources, and makes clear that the complaint may allege a serious violation of either a standard or a provision of the Act.

SECTION 503. NOTIFICATION OF DOL FINDING OF NO REASONABLE GROUNDS

Section 503 requires DOL to notify the complainant within 30 days of the complaint if it concludes that there are no reasonable grounds to believe that such danger or violation exists.

SECTION 504. SPECIAL EMPHASIS INSPECTION PROGRAM

Section 504 requires DOL to establish and carry out a special emphasis inspection program targeting high-risk industries or operations, and to report annually to Congress thereon.

SECTION 505. DOL INVESTIGATION OF SERIOUS INCIDENTS

Section 505 requires employers to report any work-related death or serious incident (requiring hospitalization of at least two employees) to DOL, and requires DOL to investigate such incidents.

SECTION 506. ABATEMENT PROCEDURES

Section 506 revises the Act's abatement procedures by providing a general rule that the period permitted for correction of a violation shall begin to run from the date of receipt of the citation. An exception allows an employer to delay abatement until the entry of a final order by the OSH Review Commission if an employer contests a citation in good faith, unless (a) the employer contests only the proposed penalty or the characterization of the violation, or (b) the violation is serious and presents a substantial safety or health risk of harm.

Section 506 further provides that an employer charged with a serious violation which presents a substantial safety or health risk, and thus subject to an abatement period which begins to run upon issuance of a citation, may seek a delay or suspension of such period from the OSH Review Commission. In the event of such a request, the Commission shall expedite the proceeding and may modify the requirement of immediate commencement of the abatement period if it determines that such requirement was unreasonable under the circumstances.

This section also requires employers cited for serious, willful or repeat violations to verify to DOL the abatement of such violations within 30 days of the expiration of the abatement period, to provide appropriate documentary evidence to establish such verification, and to post a notice of abatement at the place of the violation. DOL is required to issue regulations regarding abatement verification and posting within one year of enactment.

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SECTION 507. EMPLOYEE CONTEST OF CITATIONS

To conform the bases upon which employers and employees may contest citations, Section 507 makes clear that employees may do so based on the characterization of the violation (non-serious, serious, willful or repeated), the sections of the Act or regulations listed as the basis for the citation, or the proposed penalty.

SECTION 508. EMPLOYEE PARTICIPATION

The Act currently allows employees to participate in OSH Review Commission hearings. Section 508 allows employees to participate in other OSHRC proceedings as well.

SECTION 509. EMPLOYEE CONTEST OF DOL-EMPLOYER AGREEMENTS

Section 509 requires DOL to notify affected employees if it intends to modify or withdraw a citation as a result of an agreement with the cited employer. Such employees may challenge the agreement within 15 days if it fails to effectuate the purposes of the Act.

If DOL rejects the challenge, such employees may (within 15 days) seek an OSHRC hearing. DOL is precluded from carrying out the agreement if the OSHRC determines that it would not effectuate the purposes of the Act.

SECTION 510. IMMINENT DANGERS

Section 510 requires OSHA inspectors, upon discovery of a workplace hazard which poses an imminent danger, to notify the employer and request immediate abatement of the hazard. If the employer refuses to abate the hazard, the inspector (upon approval by DOL) may immediately post a notice or tag identifying the hazard as posing an imminent danger. Employers who fail to abate such a tagged hazard, or remove all employees from exposure thereto, shall be fined between $10,000 and $50,000 per day for non-abatement. In addition, employers are prohibited from discriminating in any manner against an employee who refuses to perform a duty that would expose him or her to the tagged hazard.

SECTION 511. VIOLATIONS OF OSH PROGRAM AND COMMITTEE REQUIREMENTS

Section 511 makes clear that DOL may issue citations and assess penalties for violations of new sections 27 (OSH programs) and 28 (OSH committees).

SECTION 512. OSHA CRIMINAL PENALTIES

Section 512 expands the maximum criminal penalties for violations of the Act. The maximum imprisonment penalties are increased as follows:

Willful violation that causes death: increased from 6 months to 10 years (first conviction) and 1 year to 20 years (additional convictions).

Advance notice of an inspection: increased from 6 months to 2 years.

False statement: increased from 6 months to 1 year.

Willful violation that causes serious injury: a new criminal offense is created with maximum imprisonment of 5 years (first conviction) and 10 years (additional convictions). "Serious bodily injury" is defined to mean bodily injury that involves a substantial risk of death, protracted unconsciousness, protracted and obvious physical disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

In 1984, the maximum criminal fine limits (ranging from $1,000 to $20,000) for OSHA violations were superceded by the higher maximum criminal fine limits ($250,000 per individual, $500,000 per organization) contained in the Sentencing Reform Act of 1984 (18 U.S.C. section 3571). Section 512 clarifies the applicability of these higher limits to OSHA violations. In addition, this section provides that individuals convicted of OSHA offenses will be personally liable for any criminal fines assessed against them.

Title VI: Anti-Discrimination Protection

SECTION 601. ANTI-DISCRIMINATION PROVISIONS

Section 601 extends the coverage of the Act's anti-discrimination provisions to (a) an employee's reporting of injuries or unsafe conditions, and (b) an employee's refusal, after first unsuccessfully asking the employer to eliminate an unsafe condition, to perform duties which the employee reasonably believes would expose him or her to a bona fide danger of injury or serious impairment of health.

Section 601 also revises the procedures for the handling of discrimination complaints. The period for filing such complaints is increased from 30 to 180 days following the alleged discrimination. DOL is required to investigate the complaint and report findings within 60 days.

If DOL issues a preliminary order finding a violation, such order becomes final unless within 30 days a party files objections thereto and request a hearing, in which case DOL is required to issue a final order within 120 days of such hearing. DOL is authorized to (a) require employers to correct violations and reinstate discrimination victims, (b) award back pay, compensatory damages, costs and expenses, and (c) seek judicial enforcement of final orders if necessary. Affected persons may seek judicial review in an appropriate U.S. Court of Appeals within 60 days following the issuance of a final order.

Finally, Section 601 provides that the legal burdens of proof set forth in the Whistleblower Protection Act of 1989, 5 U.S.C. section 1221(e), shall apply to adjudication of OSHA anti-discrimination complaints.

Title VII: Training

SECTION 701. TRAINING AND EDUCATION

Section 701 requires DOL to develop model curricula, training materials and educational programs for employees and OSH committee members.

Title VIII: Reporting and Data Collection

SECTION 801. DATA COLLECTION

Section 801 requires DOL to gather, and make publicly available, data in order to identify (a) high-risk industries, employers, operations, and occupations, (b) causes of injuries and illnesses and (c) workers' compensation costs. DOL must also issue regulations requiring employers to report work-related deaths immediately to DOL, and to report serious incidents (requiring hospitalization of 2 or more employees) to DOL within 24 hours.

SECTION 802. ILLNESS RECORDS

The Act requires employers to keep records and file periodic reports on work-related deaths, injuries and illnesses. Section 802 adds to this list illnesses suspected to be work-related, unless the employer makes a reasonable determination that the illness is not work-related.

SECTION 803. ACCESS TO RECORDS

Section 803 provides that DOL, HHS, and employees shall have access to employer OSH records.

Title IX: NIOSH

SECTION 901. HAZARD EVALUATION REPORTS

Section 901 requires NIOSH, after receiving a request for a determination as to the toxicity of a workplace substance, or the safety or health risk posed by a condition or physical agent, to provide a determination as soon as possible, and to provide an interim report if it cannot make a determination within 6 months.

SECTION 902. RESEARCH

Section 902 requires NIOSH to identify major factors contributing to work-related deaths and injuries through accident investigations and epidemiological research.

SECTION 903. EMPLOYEE NOTIFICATION PROGRAM

Section 903 requires NIOSH to establish a program to idetnify and notify employees at increased risk of suffering work-related deaths, injuries and illnesses, and to make recommendations as to medical surveillance of such employees.

SECTION 904. DOL RIGHT OF INSPECTION

Section 904 makes clear that NIOSH's authority to inspect records extends to its designees and contractors.

SECTION 905. NATIONAL SURVEILLANCE PROGRAM

Section 905 requires NIOSH to establish a national surveillance program to identify work-related deaths, injuries and illnesses, and to provide reports on the data collected pursuant to such program to DOL. This section also authorizes HHS to require employers to provide such data to NIOSH.

SECTION 906. REDESIGNATION OF NIOSH

NIOSH currently operates under the auspices of the Center for Disease Control. Section 906 provides for the redesignation of NIOSH as a separate agency within the Public Health Service.

Title X: State Plans

SECTION 1001. STATE PLAN COMMITTEES AND PROGRAMS

Under Section 1001, state plans must require employers to establish OSH programs and committees at least as effective as those required under this legislation.

SECTION 1002. STATE PLAN REQUIREMENTS

Under Section 1002, state plans must include reporting, anit-discrimination, and access to information provisions which are at least as effective as those provided under this legislation or other applicable federal laws.

SECTION 1003. COMPLAINTS AGAINST STATE PLANS

Section 1003 requires DOL to investigate complaints against state plans promptly if it finds reasonable grounds to believe that a state has not complied with its plan. (Complaints regarding enforcement must be investigated within 30 days.) DOL is further required to transmit findings to the complainant within 30 days of the completion of its investigation. If DOL finds that a state is not in compliance with its plan, it must so notify such state, and within 30 days the state must inform DOL of its response. DOL is also required to issue citations for serious violations if the state has failed to do so.

SECTION 1004. WITHDRAWAL OF STATE PLAN APPROVAL

Section 1004 provides that if DOL finds reasonable grounds to believe that a state has failed to comply substantially with its plan, it shall give the state 6 months to correct any deficiencies. If the state fails to correct such deficiencies within 6 months, DOL shall commence proceedings to with draw approval of such state's plan, unless exceptional circumstances exist. During the pendency of any proceedings to withdraw approval of a state plan, DOL shall exercise concurrent jurisdiction with the state plan.

SECTION 1005. ADOPTION OF FEDERAL STANDARDS

Section 1005 provides that when a federal standard is adopted, state plans must either adopt an equally effective standard within 6 months or adopt the federal standard until such time as a comparable standard is adopted.

SECTION 1006. CONFORMING STATE PLANS

Section 1006 permits states 1 year from the effective date of the legislation to bring their plans into compliance with the legislation.

Title XI: Victims' Rights

SECTION 1101. VICTIMS' RIGHTS

Section 1101 extends certain rights to employees who suffer injuries or illnesses on the job, and to the families of employees killed on the job. If DOL investigates the incident, such individuals are entitled to (a) meet with DOL prior to DOL's decision as to whether or not to issue a citation, (b) receive copies of citations, reports, and notices of contest, (c) participate in OSHRC proceedings, and (d) meet with DOL and the employer before any settlement is agreed to.

Title XII: Effective Date

SECTION 1201. EFFECTIVE DATE

Section 1201 provides an effective date for this legislation 90 days after enactment.

Mr. METZENBAUM. Mr. President, I am proud to join with Senator KENNEDY today as an original cosponsor of the Comprehensive Occupational Safety and Health Reform Act.

Twenty-one years ago, Congress enacted the Occupational Safety and Health Act with the following purpose: "To assure so far as possible every working man and woman in the Nation safe and healthful working conditions."

Since then, we have made some progress toward achieving that goal. Employers have become more aware of safety and health problems, and many employers have tried to address those problems.

But our promise of a safe and healthy workplace for all American workers remains unfulfilled. Two decades after passage of the act, injury and death rates remain shockingly high, and have been rising since 1983. The American workplace is becoming a "little shop of horrors."

In 1989, the most recent year for which statistics are available, 10,400 workers were killed on the job, an average of 40 workers each work day. At this rate, an American worker is killed on the job every 36 minutes.

Another 1,700,000 working men and women suffered disabling injuries on the job in 1989, an average of 6,538 workers each work day. At this rate, a working man or woman in this country suffers a disabling injury on the job every 13 seconds.

Hundreds of thousands more working men and women died or became disabled as a result of job-related illnesses and diseases such as cancer, lead poisoning, and respiratory disease. At present, we lack even the data to know how bad this problem really is.

This level of carnage is completely unacceptable. These are not just statistics—these are our mothers and fathers, our sons and daughters, our wives and husbands. The fates they are suffering are unspeakably horrible: they are being crushed by falling walls, killed in fireball explosions, dismembered by machines, asphyxiated by gas, buried alive in collapsing trenches, electrocuted, burned, and crippled or killed by disease.

The simple fact is that many of these tragedies are preventable. We must do more to fulfill OSHA's original promise of providing safe and healthy working conditions for every working American.

Prior to last year, when the maximum civil penalties were increased, OSHA had never been amended. The comprehensive legislation we are introducting today is long overdue. It addresses a number of major problems with the act and OSHA's enforcement scheme.

Prehaps the most fundamental problem OSHA faces is a lack of resources. OSHA has only 1,200 inspectors to enforce compliance by roughly 3.5 million employers, providing protection for some 55 million employees. Collectively, State occupational safety and health agencies have only 1,100 inspectors to enforce compliance by 2.3 million employers, providing protection for 34 million workers.

These numbers mean that even the most high-risk employers are not likely to see an OSHA inspector show up to inspect their facilites. Indeed, as the number of employers and workers subject to OSHA's jurisdiction has grown, the agency's funding has shrunk in real dollars, with the agency receiving $248. million in fiscal year 1989.

We must recognize that large increases in OSHA's funding are unlikely given our current fiscal problems. OSHA's enforcement strategy will continue to be based largely on voluntary compliance by employers and workers. But employers and workers often lack adequate information about workplace health and safety hazards and how best to abate them.

The bill we are introducing today will dramatically improve the cooperative efforts of employers and employees to address workplace safety and health issues. First, the bill requires employers to establish occupational safety and health programs to reduce or eliminate hazards, and to prevent injuries and illnesses to employees. Employee training and education will be provided as part of these programs. OSHA is authorized to modify the applicability of these requirements to classes of employers provided that employees' safety and health protection is not reduced.

The bill also reqires employers of 11 or more emplolyees to have safety and health committees made up of an equal number of employee and employer representatives. In unionized settings, employee representatives are to be designated by the employees' bargaining representative; otherwise they are to be elected by employees. Committees are authorized to review the employer's safety and health program, conduct inspections, and make advisory recommendations to the employer.

Many employees refrain from blowing the whistle on unsafe conditions for fear of losing their jobs or suffering other reprisals. The bill strengthens the act's anti-discrimination provision, by adopting protections and remedies modeled on the Surface Transportation Act. Employee reporting of unsafe conditions is protected, as well as refusals to work where the employee reasonably believes that there is a bona fide danger of injury or serious impairment of health.

The bill also revises the procedures for the handling of discrimination complaints, and authorizes OSHA to order reinstatement and assess back pay, compensatory damages and attorneys' fees against violators.

In addition to increasing the involvement and cooperation of employers and employees, we must also make sure that OSHA gets the most impact in terms of reducing work-related deaths, injuries and illnesses out of every dollar of funding it gets. Two decades of experience have exposed many problems with OSHA's standard-setting process and enforcement scheme. This legislation strengthens OSHA's authority in a number of respects.

OSHA's existing standard-setting process is woefully inadequate to keep up with the thousands of potentially hazardous new chemicals and other physical agents introduced into the American workplace annually. As of 1990, OSHA standards regulated only about 630 substances, fewer than 30 of which were regulated by comprehensive standards providing for such things as exposure monitoring and medical surveillance.

Even when OSHA has undertaken to provide a standard for a given safety or health hazard, its response is often inadequate. In 1976, for example, a Presidential task force determined that OSHA's 1971 machine guards standards covered only 15 percent of the machine types then in use. Fifteen years later, that standard has yet to be updated.

Moreover, many OSHA standards under development are delayed for years. For example, OSHA spent 9 years developing a lockout/tagout standard governing protections against the sudden activation of machinery, beginning consideration in 1980 and issuing a final standard in 1989. During that decade of delay, over 1,000 Americans lost their lives from accidents that could have been prevented, by OSHA's own calculations, had a standard been in place.

The bill streamlines OSHA's standard-setting process, shortening it to roughly 18 months. OSHA is also required to address certain specific hazards already on the agency's regulatory agenda—including exposure monitoring, medical surveillance, and ergonomic hazards—within certain time frames.

There are several significant problems with the act's hazard abatement procedures. First, employers can delay abatement of a health or safety hazard simply by contesting a citation issued by OSHA. That process can take months or years to complete. The bill would require employers to abate serious violations of the act when a citation is first issued if there is a substantial risk of harm. Employers seeking review of the citation in such cases would be entitled to expedited consideration of the review proceeding.

Similarly, if an OSHA inspector finds an imminent danger which could reasonably be expected to cause death or serious injury, the employer need not abate the hazard until the agency obtains a court order. The bill authorizes OSHA to "tag" imminent dangers immediately if the employer refuses to abate them, and to fine employers between $10,000 and $50,000 a day for nonabatement.

In addition, OSHA does few follow-up inspections to verify abatement, relying instead on inverified employer statements. The bill requires employers to provide documentary evidence to verify abatement, and to post notices of abatement.

This bill also addresses the agency's enforcement through the act's criminal provisions. Although OSHA has handed out large penalties in a number of cases—by citing employers on an instance-by-instance approach—the agency's general practices in assessing civil penalties and in seeking criminal prosecutions leave much to be desired. For example, in fiscal year 1988, the average assessed civil penalty for a serious violation was only $261. I hope that Congress' action last year in raising the limits of permissible civil penalties will produce meaningful fines which fulfill their deterrent purpose.

OSHA's use of the act's criminal penalties provisions has been even worse than the agency's use of civil penalties. In the past 2 decades, according to GAO, the agency has referred only 57 cases to the Department of Justice for criminal prosecution. The Department of Justice prosecuted less than half of these cases and obtained convictions in only 14 cases. By comparison, the State of California's OSH agency referred 92 cases for criminal prosecution in 1985-86 alone, and the State filed charges in 41 cases.

Even when OSHA does pursue criminal prosecutions, the agency typically seeks minimal monetary penalties. The Department of Justice has concluded that the Crime Control Act of 1984, which increased criminal fines for willful violations of Federal statutes to $250,000 for individuals and $500,000 for companies, applies to OSHA violations. Yet it appears that OSHA has yet to seek criminal sanctions under that law. This bill amends the act to send a strong message from Congress that OSHA must make meaningful use of these criminal sanctions.

Nor have OSHA and the Department of Justice sought imprisonment of egregious violators. Not a single employer had ever served time under OSHA's criminal provisions until 1989, when a convicted employer served 45 days in prison. The Department of Labor's own acting inspector general has acknowledged "an apalling lack of criminal enforcement" by OSHA.

This bill amends the act to lengthen the maximum allowable sentences, in order to encourage OSHA and the Department of Justice to make more meaningful use of the act's criminal provisions as a deterrent to violations. Current maximums are very short, allowing a 6-month maximum for a willful violation that causes a worker's death. By way of contrast, the maximum penalty under Federal law for maliciously harassing a wild burro is 1 year.

In addition, this bill for the first time permits criminal prosecution for a willful violation that causes serious bodily injury. Under present law, OSHA cannot seek a criminal prosecution against an employer for a willful violation of the act unless a fatality occurs. Thus, no matter how egregious the employer's violation is, no matter how many citations the employer has received in the past, and no matter how many workers are seriously and permanently injured as a result of the employer's actions, the Government cannot prosecute unless a worker dies.

OSHA also needs better data to enable the agency to target its limited inspection resources more effectively. Currently, OSHA attempts to target high-risk industries for inspections to make the best use of its resources. For example, manufacturing industries are targeted by their average lost workday injury rates. The construction industry is also heavily targeted by OSHA's inspection effort. But because of the small inspection force, and the size of OSHA's jurisdiction, even employers in these targeted industries are rarely inspected. Moreover, roughly a quarter of the agency's citations are for nonserious violations. This legislation requires employers to report all work-related deaths and all safety and health incidents in which two or more employees are hospitalized, and provides for improved data collection by OSHA and NIOSH, in order to improve inspection targeting.

Finally, this legislation extends the act's coverage in a number of respects. First, a long-standing gap in Federal occupational safety and health law is filled by extending coverage to Federal, State and local government employees. In addition, OSHA is permitted to cede private sector jurisdiction to other Federal agencies—(such as FAA—only with regard to particular hazards, and only if the alternative standard is as effective as OSHA's standard. The bill also clarifies that an employer operating at a multiemployer worksite has a duty to provide a safe workplace not just to its own employees, but to the employees of other employers operating at the site as well.

I am proud to stand here with Senator KENNEDY as we begin this effort. In the coming months, we intend to hold a number of hearings in order to explore these problems, and our proposed solutions, in greater depth. We hope the administration and the employer community will be active participants in this dialog.

But let us move swiftly to address these problems, so that we can fulfill Congress's promise made 21 years ago to assure every working American safe and healthful working conditions. With every day we wait, 40 more American workers die, and thousands more are disabled by injury and illness.

By Mr. DECONCINI (for himself, Mr. INOUYE, Mr. HATCH, Mr. KENNEDY, Mr. LEAHY, Mr. BURNS, Mr. GORTON, Mr. GORE, Mr. GRASSLEY, Mr. D'AMATO, and Mr. CRANSTON):

S. 1623. A bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes; to the Committee on the Judiciary.

AUDIO HOME RECORDING ACT

● Mr. DECONCINI. Mr. President, I am pleased today to introduce, along with my colleagues Senators INOUYE, HATCH, KENNEDY, LEAHY, BURNS, GORTON, GORE, GRASSLEY, D'AMATO, CRANSTON, and BREAUX, the Audio Home Recording Act of 1991. This legislation finally will resolve one of the most difficult and emotional arguments in copyright law, whether individuals have the right to tape for noncommerical purposes, copyrighted material. The copyright issues raised by home taping of sound recordings and the impact on copyright owners, songwriters, preformers, music publishers, and musicians have long frustrated those of us in Congress with responsibility over these matters. The bill that my colleagues and I are introducing today represents an historic compromise among the parties of this long standing dispute. As one who has struggled with the equities of this troubling issue, I am pleased that an agreement has been reached.

I first became involved in the issue of home taping of copyrighted material in 1981. At that time, the Ninth Circuit Court of Appeals issued a decision finding that the non-commercial private video taping of broadcast television shows constituted copyright infringement. I disagreed with the decision of the Ninth Circuit and immediately introduced legislation to overturn it. It is difficult to believe that the so-called Betamax decision was an-

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