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H. R. 115

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

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

SEPTEMBER 9, 1993

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

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal and Postal
3 Service Employees Occupational Safety and Health Act of
4 1993”.

5 **SEC. 2. FEDERAL OCCUPATIONAL SAFETY AND HEALTH**
6 **PROGRAMS.**

7 (a) NEW SUBCHAPTER.—Chapter 79 of title 5,
8 United States Code, is amended—

9 (1) by inserting before section 7901 the follow-
10 ing:

11 “SUBCHAPTER I—GENERAL PROVISIONS”;

12 (2) by striking out section 7902; and

13 (3) by adding at the end the following:

14 “SUBCHAPTER II—FEDERAL OCCUPATIONAL
15 SAFETY AND HEALTH

16 **“§ 7911. Employee rights and obligations**

17 “Each employee of an agency—

18 “(1) shall have the right to employment and a
19 place of employment which are free from recognized
20 safety and health hazards that are causing or are
21 likely to cause death or serious physical harm to em-
22 ployees;

23 “(2) shall comply with occupational safety and
24 health standards and all rules, regulations, and or-
25 ders issued pursuant to this subchapter and section
26 6 of the Occupational Safety and Health Act of

1 1970, and all executive orders issued pertaining to
2 occupational safety and health, which are applicable
3 to the employee's own actions and conduct; and

4 “(3) shall have the right to report unsafe or
5 unhealthful working conditions to appropriate offi-
6 cials without fear of reprisal.

7 The rights of employees under this section are in addition
8 to any other rights which such employees may have.

9 **“§ 7912. Duties of agencies**

10 “(a) The head of each agency shall—

11 “(1) furnish employees of such agency employ-
12 ment and a place of employment which are free from
13 all recognized hazards that cause or are likely to
14 cause death or serious physical harm to any such
15 employees;

16 “(2) comply with occupational safety and health
17 standards and rules, regulations, and orders issued
18 pursuant to this subchapter or section 6 of the Oc-
19 cupational Safety and Health Act of 1970, except
20 that an agency or safety and health program of an
21 agency may incorporate, apply, and provide for safe-
22 ty and health standards more stringent than those
23 promulgated under such section 6 pursuant to col-
24 lective bargaining;

1 “(3) acquire, maintain and require the use of
2 such safety equipment, personal protective equip-
3 ment and clothing, and devices as are reasonably
4 necessary to protect employees of such agency from
5 unsafe or unhealthful conditions in the performance
6 of their duties; and

7 “(4) ensure that the safety and health program
8 established under subsection (c) and the agency em-
9 ployees who administer such program have the
10 funds, authority, training, and qualified personnel to
11 effectively carry out the requirements of this sub-
12 chapter.

13 “(b)(1) The head of each agency shall appoint a Des-
14 ignated Agency Safety and Health Officer (hereinafter in
15 this subchapter referred to as a ‘DASHO’). The DASHO
16 shall perform such functions as the head of the agency
17 may from time to time prescribe in establishing and carry-
18 ing out the agency health and safety program.

19 “(2) The head of each agency shall appoint such
20 other subordinate Deputy Designated Agency Safety and
21 Health Officials each of which shall (hereinafter in this
22 subchapter be referred to as a ‘Deputy DASHO’) at var-
23 ious organizational levels as are necessary to assure that
24 the agency’s health and safety program is carried out at
25 all organizational levels.

1 “(c)(1) The head of each agency shall establish and
2 carry out a comprehensive, agency-wide occupational safe-
3 ty and health program to reduce or eliminate hazards and
4 to prevent injuries and illnesses to employees in each agen-
5 cy worksite. Such programs shall be established and car-
6 ried out in consultation with employees and, if employees
7 are represented by a bargaining agent, such programs
8 shall be consistent with the bargaining unit structure in
9 the agency or worksite and shall be subject to collective
10 bargaining.

11 “(2) Each agency shall establish, by regulation, and
12 carry out a written safety and health program in each
13 worksite that includes—

14 “(A) methods and procedures for identifying,
15 evaluating, and documenting safety and health haz-
16 ards, including investigating work-related illnesses,
17 injuries, and deaths and inspecting worksites under
18 subsection (d);

19 “(B) methods and procedures for correcting the
20 safety and health hazards identified under subpara-
21 graph (A), including responding to situations that
22 present serious or imminent danger to employees;

23 “(C) methods and procedures for providing
24 emergency response first-aid and other occupational
25 health services;

1 “(D) methods and procedures for employee par-
2 ticipation in the implementation of the agency’s
3 safety and health program, including participation
4 through a safety and health committee established
5 under section 7913, where applicable;

6 “(E) methods and procedures for providing
7 safety and health training and education to employ-
8 ees and to members of a safety and health commit-
9 tee established under section 7913;

10 “(F) the designation of representatives of the
11 agency who have the qualifications, responsibility,
12 and equipment to identify safety and health hazards
13 and the authority to initiate corrective action, where
14 appropriate;

15 “(G) in the case of a worksite where employees
16 of 2 or more agencies work, procedures for each
17 agency to protect employees at the worksite from
18 hazards under the agency’s control, including proce-
19 dures to provide information on safety and health
20 hazards to other agencies and employees at the
21 worksite; and

22 “(H) such provisions as the Secretary requires
23 to effectuate the purposes of this subchapter.

24 “(3) Each such program shall provide for the devel-
25 opment of abatement plans to eliminate any working con-

1 ditions that are unsafe or unhealthful. Such plans shall
2 provide for the establishment of time periods for actions
3 to be undertaken and for review by the head of the agency
4 of actions taken to determine if such conditions were elimi-
5 nated. The safety and health committee of the agency and
6 the employee bargaining agent (if any) shall be notified
7 of actions taken under the plans and of the results of the
8 review by the head of the agency.

9 “(4) The head of each agency shall file with the Sec-
10 retary of Labor the safety and health program adopted
11 by the agency. The Secretary shall review the program for
12 conformance with this subchapter and shall report annu-
13 ally to the head of each agency and the Congress on the
14 findings of the review.

15 “(5)(A) The Secretary shall, within 12 months after
16 the effective date of the Federal and Postal Service Em-
17 ployees Occupation Safety and Health Act of 1993, issue
18 final regulations on agency safety and health programs re-
19 quired by this subsection which shall take effect no later
20 than 18 months after such effective date.

21 “(B) The regulations of the Secretary under subpara-
22 graph (A) respecting an agency’s safety and health pro-
23 gram shall—

24 “(i) provide for training and education of em-
25 ployees, including posting of notices, in a manner

1 that is readily understood by such employees con-
2 cerning safety and health hazards, control measures,
3 the agency's safety and health program, employee
4 rights and obligations, the protections afforded
5 under section 7920, and applicable laws and regula-
6 tions, and provide at the time of selection to employ-
7 ees who are selected to be safety and health commit-
8 tee members the training and education that is nec-
9 essary to carry out the activities of the committee
10 under section 7913;

11 “(ii) require that refresher training be provided
12 on at least an annual basis and that additional
13 training be provided to employees and to safety and
14 health committee members when there are changes
15 in conditions or operations that may expose employ-
16 ees to new or different safety or health hazards or
17 when there are changes in safety and health regula-
18 tions or standards under this subchapter that apply
19 to the agency; and

20 “(iii) provide that any specific program or
21 training requirements imposed by regulations issued
22 under section 6 of the Occupational Safety and
23 Health Act of 1970 may be combined or coordinated
24 with the agency's safety and health program.

1 “(C) The agency shall permit employees to take such
2 time from work as is reasonably necessary to receive train-
3 ing and education and participate in the agency’s safety
4 and health program. Training and education provided in
5 accordance with the regulations of the Secretary shall be
6 considered hours worked and shall be provided by an agen-
7 cy at no cost, and with no loss of pay, benefits, or senior-
8 ity, to employees of the agency.

9 “(6) The head of each agency shall develop and im-
10 plement a program for evaluating the effectiveness of the
11 agency’s safety and health programs on an annual basis.

12 “(d)(1) In order to carry out the purposes of this sub-
13 chapter, the head of each agency shall ensure that each
14 worksite of such agency is inspected at least annually, and
15 at such additional times in a year—

16 “(A) as needed—

17 “(i) in the case of a worksite where there
18 is an unreasonable or serious risk of accident,
19 injury, or illness; or

20 “(ii) to ensure the abatement of hazardous
21 conditions; and

22 “(B) as may be required under paragraph (2).

23 Inspections may be conducted on an announced or unan-
24 nounced basis.

1 “(2)(A) Any employee of an agency and any rep-
2 resentative of such employee may report to the DASHO
3 or Deputy DASHO in such agency any unsafe or
4 unhealthy working condition and may request an inspec-
5 tion under paragraph (1) of the worksite where such con-
6 dition exists. Upon the request of the individual making
7 such report, the agency shall not disclose the identity of
8 any individual who makes such report except to an author-
9 ized representative of the Secretary of Labor.

10 “(B) If a report is made under subparagraph (A),
11 an inspection shall be conducted under paragraph (1)—

12 “(i) within 12 hours after the receipt of such
13 report in the case of a condition which presents an
14 imminent danger to the safety and health of employ-
15 ees of the agency;

16 “(ii) within 3 calendar days after the receipt of
17 such report in the case of a condition which presents
18 a potentially serious risk to the safety and health of
19 employees of agency; or

20 “(iii) within 20 calendar days after the receipt
21 of such report in the case of a condition other than
22 1 described in clause (i) or (ii).

23 “(C)(i) If an inspection is conducted under paragraph
24 (1), and it is determined on the basis of such inspection
25 that a danger at the worksite exists that could reasonably

1 be expected to cause serious physical harm or death, the
2 inspector conducting such inspection shall notify the em-
3 ployee in charge of such worksite, the affected employees
4 in such worksite, the representative of such employees (if
5 any), the worksite's safety and health committee, and the
6 agency DASHO, of such danger. The employee in charge
7 of such a worksite or an employee authorized to act on
8 such employee's behalf shall take such action as may be
9 appropriate to remove employees from such danger and
10 to abate such danger.

11 “(ii) An inspector who determines that a danger de-
12 scribed in clause (i) exists at a worksite shall record in
13 writing the procedures followed in the inspection which led
14 to the discovery of such danger and the findings which
15 are the basis for the determination that such danger
16 exists.

17 “(iii) Each agency shall follow such procedures as the
18 Secretary of Labor has prescribed for the posting of no-
19 tices of dangers found in an inspection conducted under
20 paragraph (1).

21 “(e)(1) Each agency shall make, keep and preserve,
22 and make available to the Secretary or the Secretary of
23 Health and Human Services, such records regarding its
24 activities relating to this subchapter as the Secretary, in
25 cooperation with the Secretary of Health and Human

1 Services, may prescribe by regulation as necessary or ap-
2 propriate for the enforcement of this subchapter or for de-
3 veloping information regarding the causes and prevention
4 of occupational accidents and illnesses.

5 “(2) Each agency shall maintain accurate records of,
6 and to make periodic reports on, work-related deaths, inju-
7 ries, and illnesses, and a work-related illness reported by
8 an employee or an employee’s physician, unless the agency
9 makes a reasonable determination that the illness is not
10 work related. The records and reports required under this
11 section shall be made available to the Secretary, to the
12 Secretary of Health and Human Services, to employees
13 and their representatives and to agency safety and health
14 committees.

15 “(3) Each agency shall maintain accurate records of
16 employee exposures to potentially toxic materials or harm-
17 ful physical agents which are required to be monitored or
18 measured under section 6 of the Occupational Health and
19 Safety Act of 1970. Each agency shall provide employees
20 or their representatives with an opportunity to observe
21 such monitoring or measuring, and to have access to the
22 records thereof, and shall also make appropriate provision
23 for each employee or former employee to have access to
24 such records as will indicate that individual’s own expo-
25 sure to toxic materials or harmful physical agents. Each

1 agency shall promptly notify any employee who has been
2 or is being exposed to toxic materials or harmful physical
3 agents in concentrations or at levels which exceed those
4 prescribed by an applicable occupational safety and health
5 standard promulgated under section 6 of the Occupational
6 Health and Safety Act of 1970, and shall inform any em-
7 ployee who is being thus exposed, of the corrective action
8 being taken.

9 **“§ 7913. Safety and health committees**

10 “(a) The head of each agency shall establish a safety
11 and health committee (hereinafter in this section referred
12 to as the ‘committee’) at each worksite at which 11 or
13 more employees are employed, except as provided in sub-
14 section (d). The head of each agency shall make available
15 to such committees all information and assistance relevant
16 and necessary for carrying out the duties of the commit-
17 tees.

18 “(b)(1) Each committee shall have the right, within
19 reasonable limits and in a reasonable manner, to—

20 “(A) review any safety and health program es-
21 tablished under section 7912;

22 “(B) review incidents resulting in work-related
23 deaths, injuries, and illnesses, and complaints re-
24 garding safety or health hazards by employees or
25 committee members;

1 “(C) review, upon request of agency or em-
2 ployee representatives on the committee, the agen-
3 cy’s work injury and illness records, other than per-
4 sonally identifiable medical information, and other
5 reports or documents relating to occupational safety
6 and health;

7 “(D) conduct inspections of the worksite at
8 least once every 3 months and in response to com-
9 plaints regarding safety or health hazards by em-
10 ployees or committee members;

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

13 “(F) conduct meetings at least once every 3
14 months and maintain written minutes of such meet-
15 ings;

16 “(G) call special meetings, where necessary,
17 with advance notice to members of the committee,
18 employees, and representatives of employee bargain-
19 ing agents;

20 “(H) observe the measurement of employee ex-
21 posure to toxic materials and harmful physical
22 agents;

23 “(I) establish procedures for the committee;

24 “(J) make, and receive a response from the
25 agency to—

1 “(i) recommendations on behalf of the
2 committee (including the separate views of any
3 member of the committee); or

4 “(ii) recommendations on behalf of the
5 agency or employee representatives on such
6 committee, to the agency for improvements in
7 the agency safety and health program and for
8 the correction of hazards to employee safety or
9 health;

10 “(K) accompany the head of the agency or the
11 head of the agency’s representative during any phys-
12 ical inspection of the worksite under section
13 7912(d), and the Secretary or the Secretary’s rep-
14 resentative during any physical inspection of the
15 worksite under section 7914;

16 “(L) review any allegation of reprisals taken
17 against employees who have taken action in accord-
18 ance with this subchapter;

19 “(M) request inspections by the head of the
20 agency or the Secretary of Labor as needed to en-
21 sure a hazard-free workplace;

22 “(N) upon direction of at least one-half of the
23 members of the committee, report to the Secretary
24 of Labor on—

1 “(i) deficiencies in the safety and health
2 program;

3 “(ii) deficiencies in actions of the agency in
4 connection with reprisals taken against employ-
5 ees; and

6 “(iii) deficiencies in actions of the agency
7 in connection with reports of hazardous working
8 conditions;

9 “(O) comment on proposed standards, where
10 applicable; and

11 “(P) attempt to correct a condition which was
12 the subject of a complaint, and if the committee can-
13 not correct such condition, refer the complaint to the
14 DASHO involved.

15 “(2) The agency shall permit members of the commit-
16 tee to take such time from work as is reasonably necessary
17 to carry out the functions of the committee, without suf-
18 fering any loss of pay or benefits for time spent on duties
19 of the committee.

20 “(c)(1) Each committee shall consist of the employee
21 safety and health representatives elected or appointed
22 under paragraph (3) and, up to an equal number of
23 agency representatives.

24 “(2) Each committee shall, in any calendar year, in-
25 clude—

1 “(A) 1 employee safety and health representa-
2 tive at each worksite where the average number of
3 nonmanagerial employees of the agency during the
4 preceding calendar year was more than 10, but less
5 than 51;

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

11 “(C) at each worksite where the average num-
12 ber of nonmanagerial employees of the agency during
13 the preceding calendar year was more than 100, 2
14 employee safety and health representatives plus 1
15 additional representative for every unit of 100 by
16 which such average exceeds 100, except that not
17 more than a total of 6 employee safety and health
18 representatives shall be allowed under this subpara-
19 graph.

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

24 “(A) Where none of the agency’s employees at
25 a worksite are represented by an exclusive bargain-

1 ing representative, the employees shall select em-
2 ployee safety and health representatives. An em-
3 ployee shall have the right to seek to be an employee
4 safety and health representative and to otherwise
5 participate in the selection process without being
6 subject to penalties, discipline, employer inter-
7 ference, or reprisal of any kind.

8 “(B) Where the agency’s employees are rep-
9 resented by a single exclusive bargaining representa-
10 tive, the bargaining representative shall designate
11 the employee safety and health representatives.

12 “(d) The Secretary shall, within 12 months after the
13 effective date of the Federal and Postal Service Employees
14 Occupational Safety and Health Act of 1993, issue regula-
15 tions on safety and health committees. Such regulations
16 shall be effective within 18 months after such effective
17 date. Such regulations shall include provisions relating
18 to—

19 “(1) the functioning of committees, including
20 the selection of employee safety and health rep-
21 resentatives, the terms of employee safety and health
22 representatives, and maintenance of records; and

23 “(2) the functioning of committees and the
24 number of employee safety and health representa-
25 tives—

1 “(A) where an agency’s employees do not
2 primarily report to or work at a fixed location;

3 “(B) with regard to worksites with less
4 than 11 employees of an agency;

5 “(C) where employees of more than 1
6 agency employer are employed; and

7 “(D) where more than 1 exclusive bargain-
8 ing representative has been certified to rep-
9 resent the agency’s employees or where some
10 but not all of the employees are represented by
11 an exclusive bargaining representative.

12 “(e) The rights and remedies provided to employees
13 and employee safety and health representatives by this
14 section are in addition to any other rights and remedies
15 provided by contract, by other provisions of this sub-
16 chapter, or by other applicable law, and are not intended
17 to alter or affect such rights and remedies.

18 **“§ 7914. Inspections and investigations by the Sec-**
19 **retary**

20 “(a) In order to carry out the purposes of this sub-
21 chapter, the Secretary is authorized—

22 “(1) to enter without delay any facility, site, es-
23 tablishment or other area, work place, or environ-
24 ment where work is performed by an employee of an
25 agency; and

1 “(2) to inspect and investigate, within reason-
2 able limits and in a reasonable manner, any such
3 place of employment and all pertinent conditions,
4 structures, machines, apparatus, devices, equipment,
5 and materials therein, and to question privately any
6 such agency employee or official.

7 “(b) In making any inspection or investigation under
8 this subchapter, the Secretary may require the attendance
9 and testimony of witnesses and the production of evidence
10 under oath. Witnesses who are not employees of the agen-
11 cy shall be paid the same fees and mileage that are paid
12 witnesses in the courts of the United States. In case of
13 contumacy, or a failure or refusal of any person to obey
14 such an order, any district court of the United States or
15 the United States courts of any territory or possession,
16 within the jurisdiction of which such person is found, re-
17 sides, or transacts business, upon the application by the
18 Secretary, shall have jurisdiction to issue to such person
19 an order requiring such person to appear to produce evi-
20 dence if, as, and when so ordered, and to give testimony
21 relating to the matter under investigation or in question,
22 and any failure to obey such order of the court may be
23 punished by such court as a contempt thereof.

24 “(c)(1) Subject to regulations issued by the Sec-
25 retary, a representative of the agency and a representative

1 authorized by its employees shall be given an opportunity
2 to accompany the Secretary or an authorized representa-
3 tive of the Secretary during the physical inspection of any
4 workplace under subsection (a) for the purpose of aiding
5 such inspection. Time spent by an employee on any such
6 inspection shall be deemed to be time worked and no em-
7 ployee shall suffer any loss of pay, benefits, or seniority
8 for having participated in the inspection. Where there is
9 no authorized employee representative, the Secretary or
10 the Secretary's authorized representative shall consult
11 with a reasonable number of employees concerning mat-
12 ters of health and safety in the workplace.

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

17 “(d)(1) Any employees or representative of employees
18 who believe that a violation of this subchapter or a safety
19 or health standard exists that threatens physical harm, or
20 that an imminent danger exists, may request an inspection
21 by giving notice to the Secretary or the Secretary's author-
22 ized representative of such violation or danger. Any such
23 notice shall set forth with reasonable particularity the
24 grounds for the notice, and a copy of the notice if written
25 or a summary of the notice if oral shall be provided the

1 agency no later than at the time of inspection, except that,
2 upon the request of the person giving such notice, such
3 person's name and the names of any employees referred
4 to therein shall not appear in such copy or on any record
5 published, released, or made available pursuant to sub-
6 section (e). If upon receipt of such notification the Sec-
7 retary determines there are reasonable grounds to believe
8 that such violation or danger exists, the Secretary shall
9 make a special inspection in accordance with the provi-
10 sions of this section as soon as practicable to determine
11 if such violation or danger exists. If the Secretary deter-
12 mines there are no reasonable grounds to believe that a
13 violation or danger exists, the Secretary shall notify the
14 employees or representative of the employees in writing
15 of such determination within 30 days after receipt of the
16 request for inspection. The Secretary shall make a special
17 inspection in accordance with this section upon notifica-
18 tion from any Federal or State agency that there are rea-
19 sonable grounds to believe that a violation of this sub-
20 chapter or safety and health standard under section 6 of
21 the Occupational Safety and Health Act of 1970 exists
22 that threatens physical harm.

23 “(2) Prior to or during any inspection of a workplace,
24 any employees or representative of employees employed in
25 such workplace may notify the Secretary or any represent-

1 ative of the Secretary responsible for conducting the in-
2 spection, in writing, of any violation of this subchapter
3 which they have reason to believe exists in such workplace.
4 The Secretary shall, by regulation, establish procedures
5 for informal review of any refusal by a representative of
6 the Secretary to issue a citation with respect to any such
7 alleged violation and shall furnish the employees or rep-
8 resentative of employees requesting such review a written
9 statement of the reasons for the Secretary's final dispo-
10 sition of the case.

11 “(e)(1) The Secretary and the Secretary of Health
12 and Human Services are authorized to compile, analyze,
13 and publish, either in summary or detailed form, all re-
14 ports or information obtained under this subchapter.

15 “(2) The Secretary and the Secretary of Health and
16 Human Services shall each prescribe such rules and regu-
17 lations as each may deem necessary to carry out their re-
18 sponsibilities under this subchapter, including rules and
19 regulations dealing with the inspection of an agency's
20 workplace.

21 “(f)(1) The Secretary shall establish and carry out
22 a special emphasis inspection program for conducting in-
23 spections of agency operations where—

24 “(A) existing hazards, or

1 “(B) newly recognized or new hazards intro-
2 duced into worksites,
3 warrant more intensive than normal inspections, as deter-
4 mined by the Secretary.

5 “(2) The Secretary shall annually designate the oper-
6 ations for the special emphasis inspection program and
7 identify the number of special emphasis inspections that
8 the Secretary plans to conduct in each designated oper-
9 ation and the number of enforcement personnel required
10 for such inspections.

11 “(3) Inspections conducted under paragraph (1) shall
12 be in addition to other programmed and complaint inspec-
13 tions conducted under this subchapter.

14 “(4) The Secretary shall annually submit a report to
15 the Committee on Post Office and Civil Service of the
16 House of Representatives and the Committee on Govern-
17 ment Affairs of the Senate on the special emphasis inspec-
18 tion program as part of the Secretary’s annual report re-
19 quired under section 7919 which includes information on
20 inspections conducted pursuant to paragraph (2) which
21 were carried out during the preceding year.

22 “(g)(1) For the purposes of this subsection, the term
23 ‘serious incident’ means an incident that results in the
24 hospitalization of 2 or more employees.

1 “(2) The Secretary shall investigate any work-related
2 death or serious incident which is attributable to unsafe
3 or unhealthful working conditions.

4 “(3) If any such death or serious incident occurs in
5 a place of employment covered by this subchapter, the
6 agency shall notify the Secretary of the death or serious
7 incident and shall take appropriate measures to prevent
8 the destruction or alteration of any evidence that would
9 assist in investigating the death or serious incident. The
10 appropriate measures required by this paragraph do not
11 prevent an agency from taking action at a worksite to pre-
12 vent injury to employees or substantial damage to prop-
13 erty. If an agency takes such action, the agency shall no-
14 tify the Secretary of the action.

15 “(h)(1) Random, unannounced inspections of a sta-
16 tistically valid sample of Federal worksites shall be con-
17 ducted at workplaces which are representative of work-
18 places in agencies and on an annual basis. In the course
19 of such an inspection, the implementation of the safety
20 and health program of the agency being inspected shall
21 be reviewed.

22 “(2) The assessment of the Secretary of Labor of a
23 worksite’s compliance with the applicable agency safety
24 and health program shall be reported to the head of the

1 agency, to employees or their representatives, and to agen-
2 cy safety and health committees.

3 **“§ 7915. Citations**

4 “(a) If, upon inspection or investigation, the Sec-
5 retary or the Secretary’s authorized representative believes
6 that an agency has violated a requirement of section 7911,
7 7912, or 7913, of any standard, rule or order promulgated
8 pursuant to section 6 of the Occupational Health and
9 Safety Act of 1970, or of any regulations prescribed pur-
10 suant to such Act, the Secretary shall with reasonable
11 promptness issue a citation to the agency. Each citation
12 shall be in writing and shall describe with particularity
13 the nature of the violation, including a reference to the
14 provision of law, standard, rule, regulation, or order al-
15 leged to have been violated. In addition, the citation shall
16 fix a reasonable time for the abatement of the violation.
17 The Secretary may prescribe procedures for the issuance
18 of a notice in lieu of a citation with respect to de minimis
19 violations which have no direct or immediate relationship
20 to safety or health.

21 “(b) Each citation issued under this section, or a
22 copy or copies thereof, shall be prominently posted, as pre-
23 scribed in regulations issued by the Secretary, at or near
24 each place a violation referred to in the citation occurred.

1 “(c) No citation may be issued under this section
2 after the expiration of 6 months following the occurrence
3 of any violation. The 6-month time limit shall not apply
4 to a notification of penalty.

5 “(d) A citation issued under this section to an agency
6 that violates the requirements of paragraph (1) or (3) of
7 section 7911 or section 7912(a), any standard, rule, or
8 order promulgated pursuant to section 6 of the Occupa-
9 tional Health and Safety Act of 1970, or any other regula-
10 tion promulgated under such Act shall be vacated if such
11 agency demonstrates that—

12 “(1) employees of such agency have been pro-
13 vided with the proper training and equipment to pre-
14 vent such a violation;

15 “(2) work rules designed to prevent such a vio-
16 lation have been established and adequately commu-
17 nicated to employees by such agency and have been
18 effectively enforced when a violation of work rules
19 has been discovered;

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

22 “(4) reasonable steps have been taken by such
23 agency to discover any violation of a work rule.

1 **“§ 7916. Procedure for enforcement**

2 “(a) If, after an inspection or investigation, the Sec-
3 retary issues a citation under section 7915, the Secretary
4 shall, within a reasonable time after the termination of
5 such inspection or investigation, notify the agency by cer-
6 tified mail of the penalty, if any, proposed to be assessed
7 under section 7916e and that the agency has 15 working
8 days within which to notify the Secretary that such agency
9 wishes to contest the citation or proposed assessment of
10 penalty. If, within 15 working days after the receipt of
11 the notice issued by the Secretary the agency fails to no-
12 tify the Secretary that the agency intends to contest the
13 citation or proposed assessment of penalty, and no notice
14 is filed by any employee or representative of employees
15 under subsection (c) within such time, the citation and
16 the assessment, as proposed, shall be deemed a final order
17 of the Occupational Safety and Health Commission and
18 not subject to review by any court or agency.

19 “(b) If an agency has failed to correct a violation for
20 which a citation has been issued within the period per-
21 mitted for its correction (which period for other than seri-
22 ous violations shall not begin to run until the entry of a
23 final order by the Commission in the case of any review
24 proceedings under this section initiated by the agency in
25 good faith and not solely for delay or avoidance of pen-
26 alties), the Secretary shall notify the agency by certified

1 mail of such failure and of the penalty proposed to as-
2 sessed under section 7916e by reason of such failure, and
3 that the agency has 15 working days within which to no-
4 tify the Secretary that such agency wishes to contest the
5 Secretary's notification or the proposed assessment of pen-
6 alty. If, within 15 working days after the receipt of notifi-
7 cation issued by the Secretary, the agency fails to notify
8 the Secretary that it intends to contest the notification
9 or proposed assessment of penalty, the notification and as-
10 sessment, as proposed, shall be deemed a final order of
11 the Commission and not subject to review by any court
12 or agency.

13 “(c) If an agency notifies the Secretary that it in-
14 tends to contest a citation issued under section 7915(a)
15 or a modification of a citation or notification issued under
16 subsection (a) or (b) of this section, or if, within 15 work-
17 ing days after the issuance of a citation under section
18 7915(a), any employee or representative of employees files
19 a notice with the Secretary alleging that the citation fails
20 properly to designate the violation as serious, willful, or
21 repeated, or that the proposed penalty is not adequate,
22 or alleging that the period of time fixed in the citation
23 for the abatement of the violation is unreasonable, the
24 Secretary shall immediately advise the Commission of
25 such notification, and the Commission shall afford an op-

1 opportunity for a hearing (in accordance with section 554,
2 but without regard to subsection (a)(3) of such section).
3 The pendency of a contest before the Commission shall
4 not bar the Secretary from inspecting a place of employ-
5 ment or from issuing a citation under section 7915. The
6 Commission shall thereafter issue an order, based on find-
7 ings of fact, affirming, modifying, or vacating the Sec-
8 retary's citation or proposed penalty, or directing other
9 appropriate relief, and such order shall become final 30
10 days after its issuance. Upon a showing by an agency of
11 a good faith effort to comply with the abatement require-
12 ments of a citation, and that abatement has not been com-
13 pleted because of factors beyond the agency's reasonable
14 control, the Secretary, after an opportunity for a hearing
15 as provided in this subsection, shall issue an order affirm-
16 ing or modifying the abatement requirements in such cita-
17 tion. The rules of procedure prescribed by the Commission
18 shall provide affected employees or representatives of af-
19 fected employees an opportunity to participate as parties
20 to proceedings under this subsection.

21 “(d) For each violation which the Secretary charac-
22 terizes as serious, willful, or repeated, the period permitted
23 for the correction of the violation shall begin to run upon
24 receipt of the citation. The filing of a notice of contest
25 by an agency shall not operate as a stay of the period

1 for correction of the violation. The Commission, on the
2 basis of an agency's motion, may stay the running of such
3 period. In determining whether a stay should be issued,
4 the Commission shall consider—

5 “(1) whether the agency has demonstrated a
6 likelihood of success on the merits;

7 “(2) whether the agency will suffer irreparable
8 harm absent a stay;

9 “(3) whether issuance of the stay will substan-
10 tially injure the other parties interested in the pro-
11 ceeding; and

12 “(4) the public interest.

13 “(e) Each agency to which a citation for a serious,
14 willful, or repeated violation has been issued under section
15 7915 shall verify the abatement of such violation in writ-
16 ing to the Secretary not later than 10 days after the pe-
17 riod for correction of the violation has expired. In addition,
18 each such agency shall prominently post, within 10 days
19 after the verification of abatement, at or near each place
20 a violation occurred a notice that the violation has been
21 abated, and shall make available to employees and em-
22 ployee representatives for inspection a copy of the verifica-
23 tion of abatement provided to the Secretary pursuant to
24 this subsection. The Secretary shall issue regulations to
25 implement this subsection within one year of the date of

1 the enactment of the Federal and Postal Service Employ-
2 ees Occupational Safety and Health Act of 1993.

3 “(f)(1) If the Secretary intends to withdraw or to
4 modify a citation as a result of any agreement with the
5 cited agency, the rules of procedure prescribed by the
6 Commission shall provide for prompt notice to affected
7 employees or representatives of affected employees, which
8 notice shall include the terms of the proposed agreement.

9 “(2) Within 15 working days of receipt of the notice
10 provided in accordance with paragraph (1), any employee
11 or representative of employees, regardless of whether such
12 employee or representative has previously elected to par-
13 ticipate in the proceedings, shall have the right to file a
14 notice with the Secretary alleging that the proposed agree-
15 ment fails to effectuate the purposes of this subchapter
16 and stating the respects in which it fails to do so.

17 “(3) Upon receipt of a notice filed under paragraph
18 (2), the Secretary shall consider the matter, and if the
19 Secretary determines to proceed with the proposed agree-
20 ment, the Secretary shall respond with particularity to the
21 statements presented in that notice.

22 “(4) Within 15 working days following the Sec-
23 retary’s response provided pursuant to paragraph (3), the
24 employee or representative of employees shall, upon a re-
25 quest to the Commission, have the right to a hearing as

1 to whether adoption of the proposed agreement would ef-
2 fectuate the purposes of this subchapter, including a de-
3 termination as to whether the proposed agreement would
4 adequately abate the alleged violations.

5 “(5) If the Commission determines that a proposed
6 agreement fails to effectuate the purposes of this sub-
7 chapter, the proposed agreement shall not be entered as
8 an order of the Commission and the citation shall not be
9 withdrawn or modified in accordance with the proposed
10 agreement.

11 “(g) To the extent applicable, the provisions of sec-
12 tion 12 of the Occupational Safety and Health Act of 1970
13 shall govern proceedings before the Commission under this
14 subchapter.

15 **“§ 7916a. Judicial review**

16 “(a) Any person adversely affected or aggrieved by
17 an order of the Commission issued under subsection (c)
18 or (f) of section 7916 may obtain a review of such order
19 in any United States court of appeals for the circuit in
20 which the violation is alleged to have occurred or where
21 the agency has its principal office, or in the Court of Ap-
22 peals for the District of Columbia Circuit, by filing in such
23 court within 60 days following the issuance of such order
24 a written petition praying that the order be modified or
25 set aside. A copy of such petition shall be forthwith trans-

1 mitted by the clerk of the court to the Commission and
2 to the other parties, and thereupon the Commission shall
3 file in the court the record in the proceeding as provided
4 in section 2112 of title 28. Upon such filing, the court
5 shall have jurisdiction of the proceeding and of the ques-
6 tion determined therein, and shall have power to grant
7 such temporary relief or restraining order as it deems just
8 and proper, and to make and enter upon the pleadings,
9 testimony, and proceedings set forth in such record a de-
10 cree affirming, modifying, or setting aside in whole or in
11 part, the order of the Commission and enforcing the same
12 to the extent that such order is affirmed or modified. The
13 commencement of proceedings under this subsection shall
14 not, unless ordered by the court, operate as a stay of the
15 order of the Commission. No objection that has not been
16 urged before the Commission shall be considered by the
17 court, unless the failure or neglect to urge such objection
18 shall be excused because of extraordinary circumstances.
19 The findings of the Commission with respect to questions
20 of fact, if supported by substantial evidence on the record
21 considered as a whole, shall be conclusive. If any party
22 shall apply to the court for leave to adduce additional evi-
23 dence and shall show to the satisfaction of the court that
24 such additional evidence is material and that there were
25 reasonable grounds for the failure to adduce such evidence

1 in the hearing before the Commission, the court may order
2 such additional evidence to be taken before the Commis-
3 sion and to be made a part of the record. The Commission
4 may modify its findings as to the facts, or make new find-
5 ings, by reason of additional evidence so taken and filed,
6 and it shall file such modified or new findings, which find-
7 ings with respect to questions of fact, if supported by sub-
8 stantial evidence on the record considered as a whole, shall
9 be conclusive, and its recommendations, if any, for the
10 modification or setting aside of its original order. Upon
11 the filing of the record with it, the jurisdiction of the court
12 shall be exclusive and its judgment and decree shall be
13 final, except that the same shall be subject to review by
14 the Supreme Court of the United States, as provided in
15 section 1254 of title 28.

16 “(b) The Secretary may also obtain review or enforce-
17 ment of any final order of the Commission by filing a peti-
18 tion for such relief in the United States court of appeals
19 for the circuit in which the alleged violation occurred or
20 in which the agency has its principal office, and the provi-
21 sions of subsection (a) shall govern such proceedings to
22 the extent applicable. If no petition for review, as provided
23 in subsection (a), is filed within 60 days after service of
24 the Commission’s order, the Commission’s findings of fact
25 and order shall be conclusive in connection with any peti-

1 tion for enforcement which is filed by the Secretary after
2 the expiration of such 60-day period. In any such case,
3 as well as in the case of a noncontested citation or notifi-
4 cation by the Secretary which has become a final order
5 of the Commission under subsection (a) or (b) of section
6 7916, the clerk of the court, unless otherwise ordered by
7 the court, shall forthwith enter a decree enforcing the
8 order and shall transmit a copy of such decree to the Sec-
9 retary and the agency named in the petition. In any con-
10 tempt proceeding brought to enforce a decree of a court
11 of appeals entered pursuant to this subsection or sub-
12 section (a), the court of appeals may assess the penalties
13 provided in section 7916e, in addition to invoking any
14 other available remedies.

15 **“§ 7916b. Procedures to counteract imminent dangers**

16 “(a)(1) If the Secretary determines, on the basis of
17 an inspection or investigation under this subchapter, that
18 a condition or practice in a place of employment is such
19 that an imminent danger to safety or health exists that
20 could reasonably be expected to cause death or serious
21 physical harm or permanent impairment to the health or
22 functional capacity of employees if not corrected imme-
23 diately, the Secretary shall so inform the agency and af-
24 fected employees and representatives of affected employ-
25 ees, and shall request that the condition or practice be

1 corrected immediately or that employees be immediately
2 removed from exposure to such danger.

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

12 “(3) The fact that notice under paragraph (2) has
13 been posted shall be noted in any citation issued pursuant
14 to section 7915 with respect to the hazard involved.

15 “(4) No person shall discharge or in any manner dis-
16 criminate against any employee because such employee
17 has refused to perform a duty that has been identified as
18 the source of an imminent danger by a notice posted pur-
19 suant to paragraph (2). The right to refuse to perform
20 such a duty shall be in addition to any other right to
21 refuse to perform hazardous work that is afforded to em-
22 ployees by this subchapter, by standards or regulations is-
23 sued pursuant to this subchapter, by contract, or by other
24 applicable law.

1 “(b) The United States district courts shall have ju-
2 risdiction, upon petition of the Secretary, to restrain any
3 conditions or practices in any place of employment which
4 pose an imminent danger as described in subsection (a).
5 Any order issued under this section may require such
6 steps to be taken as may be necessary to avoid, correct,
7 or remove such imminent danger and prohibit the employ-
8 ment or presence of any individual in locations or under
9 conditions where such imminent danger exists, except indi-
10 viduals whose presence is necessary to avoid, correct, or
11 remove such imminent danger or to maintain the capacity
12 of a continuous process operation to resume normal oper-
13 ations without a complete cessation of operations, or
14 where a cessation of operations is necessary, to permit
15 such to be accomplished in a safe and orderly manner.

16 “(c) Upon the filing of any such petition, the district
17 court shall have jurisdiction to grant such injunctive relief
18 or temporary restraining order pending the outcome of an
19 enforcement proceeding pursuant to this subchapter. The
20 proceeding shall be as provided by Rule 65 of the Federal
21 Rules of Civil Procedure, except that no temporary re-
22 straining order issued without notice shall be effective for
23 a period longer than 5 days.

24 “(d) If the Secretary arbitrarily or capriciously fails
25 to seek relief under this section, any employee who may

1 be injured by reason of such failure, or the representative
2 of such employees, may bring an action against the Sec-
3 retary in the United States district court for the district
4 in which the imminent danger is alleged to exist or the
5 employer has its principal office, or for the District of Co-
6 lumbia, for a writ of mandamus to compel the Secretary
7 to seek such an order and for such further relief as may
8 be appropriate.

9 **“§ 7916c. Representation in civil litigation**

10 “Except as provided in section 518(a) of title 28, re-
11 lating to litigation before the Supreme Court, the Solicitor
12 of Labor may appear for and represent the Secretary in
13 any civil litigation brought under this subchapter.

14 **“§ 7916d. Variations, tolerances, and exemptions**

15 “The Secretary, on the record, after notice and op-
16 portunity for a hearing, may provide such reasonable limi-
17 tations and may make such rules and regulations allowing
18 reasonable variations, tolerances, and exemptions to and
19 from any or all provisions of this subchapter as the Sec-
20 retary may find necessary and proper to avoid serious im-
21 pairment of the national defense. Such action shall not
22 be in effect for more than 6 months without notification
23 to affected employees and an opportunity being afforded
24 for a hearing.

1 **“§ 7916e. Penalties**

2 “(a) Any agency that willfully or repeatedly violates
3 the requirements of section 7911, 7912, or 7913 of this
4 title, any standard, rule, or order promulgated pursuant
5 to section 6 of the Occupational Health and Safety Act
6 of 1970, or regulations prescribed pursuant to this sub-
7 chapter, may be assessed a civil penalty of not more than
8 \$70,000 for each violation, but not less than \$5,000 for
9 each willful violation.

10 “(b) Any agency that has received a citation for a
11 serious violation of the requirements of section 7911,
12 7912, or 7913 of this title, of any standard, rule, or order
13 promulgated pursuant to section 6 of the Occupational
14 Health and Safety Act of 1970, or of any regulations pre-
15 scribed pursuant to this subchapter, shall be assessed a
16 civil penalty of up to \$7,000 for each such violation.

17 “(c) Any agency that has received a citation for a
18 violation of the requirements of section 7911, 7912, or
19 7913 of this title, of any standard, rule, or order promul-
20 gated pursuant to section 6 of the Occupational Health
21 and Safety Act of 1970, or of regulations prescribed pur-
22 suant to this subchapter, and which violation is specifically
23 determined not to be of a serious nature, may be assessed
24 a civil penalty of up to \$7,000 for each violation.

25 “(d) Any agency that fails to correct a violation for
26 which a citation has been issued under section 7915(a)

1 within the period permitted for its correction (which pe-
2 riod for other than serious violations shall not begin to
3 run until the date of the final order of the Commission
4 in the case of any review proceeding under section 7916
5 initiated by the agency in good faith and not solely for
6 delay or avoidance of penalties), may be assessed a civil
7 penalty of not more than \$7,000 for each day during
8 which such failure or violation continues.

9 “(e) Any agency that willfully violates the require-
10 ments of section 7911, 7912, or 7913 of this title or any
11 standard, rule, or order promulgated pursuant to section
12 6 of the Occupational Health and Safety Act of 1970, or
13 of any regulations prescribed pursuant to this subchapter,
14 and which violation caused the death of any employee,
15 shall, upon conviction, be punished by a fine in accordance
16 with section 3571 of title 18.

17 “(f) Any person who gives advance notice of any in-
18 spection to be conducted under this subchapter, without
19 authority from the Secretary or the Secretary’s designee,
20 shall, upon conviction, be punished by a fine in accordance
21 with section 3571 of title 18, or by imprisonment for not
22 more than 2 years, or by both.

23 “(g) Whoever knowingly makes any false statement,
24 representation, or certification in any application, record,
25 report, plan, or other document filed or required to be

1 maintained pursuant to this subchapter shall, upon convic-
2 tion, be punished by a fine in accordance with section
3 3571 of title 18, or by imprisonment for not more than
4 1 year, or by both.

5 “(h) In the event that an agency does not imme-
6 diately correct a hazard described in section 7916b(a) or
7 remove all employees from exposure thereto, the agency
8 shall be assessed a civil penalty of not less than \$10,000
9 and not more than \$50,000 for each day during which
10 an employee continues to be exposed to the hazard.

11 “(i) Any agency that willfully violates the require-
12 ments of section 7911, 7912, or 7913 of this title, of any
13 standard, rule, or order promulgated pursuant to section
14 6 of the Occupational Health and Safety Act of 1970, or
15 of any regulation prescribed pursuant to this subchapter,
16 and which violation causes serious bodily injury to any em-
17 ployee but does not cause the death of any employee, shall,
18 upon conviction, be punished by a fine in accordance with
19 section 3571 of title 18.

20 “(j) Any agency that violates any of the posting re-
21 quirements, as prescribed under the provisions of this sub-
22 chapter, shall be assessed a civil penalty of up to \$7,000
23 for each violation.

24 “(k) The Commission shall have authority to assess
25 all civil penalties provided in this section, giving due con-

1 sideration to the appropriateness of the penalty with re-
2 spect to the gravity of the violation, the good faith of the
3 agency, and the history of previous violations.

4 “(l) For purposes of this section, a serious violation
5 shall be deemed to exist in a place of employment if there
6 is a substantial probability that death or serious physical
7 harm could result from a condition which exists, or from
8 one or more practices, means, methods, operations, or
9 processes which have been adopted or are in use, in such
10 place of employment unless the agency did not, and could
11 not with the exercise of reasonable diligence, know of the
12 presence of the violation.

13 “(m) Civil penalties owed under this subchapter shall
14 be paid to the Secretary for deposit into the Secretary’s
15 penalty fund established under section 7920b and may be
16 recovered in a civil action in the name of the United States
17 brought in the United States district court for the district
18 where the violation is alleged to have occurred or where
19 the agency has its principal office.

20 “(n) Nothing in this subchapter shall preclude State
21 and local law enforcement agencies from conducting crimi-
22 nal prosecutions in accordance with the laws of such State
23 or locality.

1 “(o) It is the sense of the Congress that no agency
2 should pay any fine under this subchapter out of any
3 funds appropriated for employee salaries or expenses.

4 **“§ 7916f. Office of Federal Programs**

5 “The Secretary shall establish within the Department
6 of Labor an Office of Federal Programs which shall have
7 jurisdiction on behalf of the Secretary over this subchapter
8 and which shall be headed by an Assistant Deputy Sec-
9 retary of Labor.

10 **“§ 7917. Special Federal occupational safety and**
11 **health enforcement procedures**

12 “(a)(1) The President shall appoint, by and with the
13 advice and consent of the Senate, a Special Counsel for
14 Federal Occupational Safety and Health Enforcement
15 (hereinafter in this subchapter referred to as the ‘Special
16 Counsel’). The Special Counsel may be removed by the
17 President only for inefficiency, neglect of duty, or malfea-
18 sance in office. The Special Counsel shall be in the De-
19 partment of Labor, and the Secretary of Labor shall pro-
20 vide the Special Counsel such administrative support serv-
21 ices as the Special Counsel may require.

22 “(2) The Special Counsel may petition any court of
23 appeals of the United States for the enforcement of any
24 order of the Occupational Safety and Health Review Com-
25 mission issued under section 7916 or for any appropriate

1 temporary relief, restraining order, or abatement against
2 any agency.

3 “(b) Any employee, or the representative of such em-
4 ployees, who may be adversely affected by a failure of an
5 agency, the Secretary, or the Commission to carry out any
6 duty under this subchapter, may bring an action in the
7 United States district court for the district in which such
8 failure is alleged to have occurred or the agency has its
9 principal place of business, or for the District of Columbia,
10 to compel such agency, the Secretary, or the Commission
11 to carry out such duty and for such further relief as may
12 be appropriate.

13 **“§ 7918. Administrator of General Services**

14 “(a) The Administrator of General Services shall not
15 provide any agency with space which contains any hazards
16 or conditions which violate this subchapter or the Occupa-
17 tional Safety and Health Act of 1970.

18 “(b) The Administrator of General Services shall in-
19 vestigate, upon request of an agency, any report of unsafe
20 or unhealthy conditions in a facility provided by the Ad-
21 ministrator. The Administrator shall abate any unsafe or
22 unhealthy condition disclosed by such an investigation or
23 submit to the agency a plan to abate such unsafe or
24 unhealthy condition.

1 “(c) The Administrator of General Services shall
2 maintain a log of any report by an agency of any unsafe
3 or unhealthy condition in a building occupied by the agen-
4 cy and provided by the Administrator. Any person who
5 leases a building to an agency under the direction of the
6 Administrator shall maintain such a log.

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

12 **“§ 7919. Annual report**

13 “Within 60 days following the convening of each reg-
14 ular session of each Congress, the Secretary and the Sec-
15 retary of Health and Human Services shall together pre-
16 pare and submit to the President for transmittal to the
17 Congress a report upon the subject matter of this sub-
18 chapter, the progress toward achievement of the purpose
19 of this subchapter, and any other relevant information.

20 **“§ 7920. Whistleblower protection**

21 “(a) No person shall discharge, discipline, or in any
22 manner discriminate against any employee with respect to
23 the employee’s compensation or other terms or conditions
24 of employment because such employee (or any person act-
25 ing on behalf of the employee) has filed any complaint or

1 caused to be instituted any proceedings relating to a viola-
2 tion of this subchapter or of any regulation promulgated
3 under this subchapter, or has testified or is about to tes-
4 tify in any such proceeding.

5 “(b) No person shall discharge, discipline, or in any
6 manner discriminate against an employee with respect to
7 the employee’s compensation or other terms or conditions
8 of employment for refusing to perform the employee’s du-
9 ties, if performing such duties would result in a substan-
10 tial and specific violation of this subchapter. In order to
11 qualify for protection under this subsection, the employee
12 must have sought from the employee’s employing agency,
13 and have been unable to obtain, correction of the cir-
14 cumstances causing such refusal.

15 “(c) The actions described in subsections (a) and (b)
16 shall be considered ‘prohibited personnel practices’ under
17 section 2302.

18 “(d) Nothing in this section shall be considered to
19 apply with respect to an officer or employee of the United
20 States Postal Service or the Postal Rate Commission.

21 **“§ 7920a. Victims’ rights**

22 “(a) For purposes of this section, the term ‘victim’
23 means—

24 “(1) an employee who has sustained a work-re-
25 lated injury or illness which is or was the subject of

1 an inspection or investigation conducted under sec-
2 tion 7914; and

3 “(2) a family member of any employee who died
4 as a result of a work-related injury or illness which
5 is or was the subject of an inspection or investiga-
6 tion (conducted under section 7914) into a death or
7 serious incident.

8 “(b) On request, a victim shall be afforded the right,
9 with respect to the work-related injury, illness, or death
10 referred to in paragraph (1) or (2) of subsection (a), as
11 applicable—

12 “(1) to meet with the Secretary or an author-
13 ized representative of the Secretary respecting the
14 inspection or investigation conducted under section
15 7914 with respect to such injury, illness, or death,
16 before the Secretary’s decision to issue a citation or
17 to take no action; and

18 “(2) to receive, at no cost, a copy of any cita-
19 tion or report issued as a result of such inspection
20 or investigation on the date the citation or report is
21 issued, and to be informed of any notice of contest
22 filed under section 7916.

23 “(c) Before entering into an agreement to withdraw
24 or modify a citation issued as a result of an inspection
25 or investigation of a death or serious incident under sec-

1 tion 7914, the Secretary, on request, shall provide an op-
2 portunity to the victim involved to appear and make a
3 statement before the parties conducting any settlement ne-
4 gotiations.

5 “(d) If this section is violated, a victim may be af-
6 fforded 1 or more of the following:

7 “(1) Declaratory relief.

8 “(2) Injunctive relief.

9 “(3) Recovery of any costs incurred in securing
10 the documents referred to in subsections (b)(2) and
11 (c).

12 “(4) Reasonable attorney’s fees and costs.

13 “(e) NOTIFICATION.—The Secretary shall take rea-
14 sonable actions to inform victims of their rights under this
15 section.

16 **“§ 7920b. Federal Occupational Safety and Health**
17 **Training Fund**

18 “(a) There is established in the Treasury of the Unit-
19 ed States an account to be known as the Federal Occupa-
20 tional Safety and Health Training Fund (hereinafter in
21 this subchapter referred to as the ‘Fund’). The Fund, and
22 any amounts deposited in it, including any interest earned
23 thereon, shall be available to the Secretary, subject to ap-
24 propriations Acts, to develop and implement agency train-

1 ing and education programs in occupational safety and
2 health.

3 “(b) Amounts in the Fund which are not currently
4 needed for the purpose of this section shall be kept on
5 deposit or invested in obligations of, or guaranteed by, the
6 United States and all earnings on such investments shall
7 be deposited in the Fund.

8 “(c) The Secretary shall transmit to the Committee
9 on Post Office and Civil Service of the House of Rep-
10 resentatives, not later than 4 months after the end of each
11 fiscal year, a report on the financial condition, uses, and
12 operation of the Fund during the preceding fiscal year.

13 **“§ 7921. Definitions**

14 “For the purpose of this subchapter—

15 “(1) the term ‘agency’ means an Executive
16 agency, the United Postal Service, and the Postal
17 Rate Commission;

18 “(2) the term ‘Commission’ means the Occupa-
19 tional Safety and Health Review Commission estab-
20 lished under the Occupational Safety and Health Act
21 of 1970;

22 “(3) the term ‘Secretary’ means the Secretary
23 of Labor; and

24 “(4) a hazard, violation, or condition shall be
25 considered to be ‘serious’ if there is a reasonable

1 probability that death or serious physical harm could
2 result therefrom.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for chapter 79 of title 5, United States Code, is
5 amended—

6 (1) by inserting after the chapter heading the
7 following: “SUBCHAPTER I—GENERAL PROVI-
8 SION”, and

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

“SUBCHAPTER II—FEDERAL OCCUPATIONAL SAFETY AND
HEALTH

“Sec.

“7911. Employee rights and obligations.

“7912. Duties of agencies.

“7913. Safety and health committees.

“7914. Inspections and investigations by the Secretary.

“7915. Citations.

“7916. Procedure for enforcement.

“7916a. Judicial review.

“7916b. Procedures to counteract imminent dangers.

“7916c. Representation in civil litigation.

“7916d. Variations, tolerances, and exemptions.

“7916e. Penalties.

“7916f. Office of Federal Programs.

“7917. Special Federal occupational safety and health enforcement procedures.

“7918. Administrator of General Services.

“7919. Annual report.

“7920. Whistleblower protection.

“7920a. Victims’ rights.

“7920b. Federal Occupational Safety and Health Training Fund.

“7921. Definitions.”.

10 **SEC. 3. POSTAL SERVICE OCCUPATIONAL SAFETY AND**
11 **HEALTH PROGRAMS.**

12 (a) DEFINITIONS.—For the purpose of this section—

13 (1) the term “Postal Service” means the United
14 States Postal Service;

1 (2) the term “major new mechanization, equip-
2 ment, or technology” means any major new mecha-
3 nization, equipment, or technology which, if imple-
4 mented by the Postal Service, would directly af-
5 fect—

6 (A) the way in which employees of the
7 Postal Service perform their work; or

8 (B) their safety or health;

9 (3) the term “joint labor-management postal
10 safety committee” means a committee—

11 (A) comprised of individuals representing
12 the Postal Service and representatives of labor
13 organizations representing employees of the
14 Postal Service;

15 (B) which operates on a national level; and

16 (C) a primary purpose of which involves
17 the evaluation and advancement of programs
18 designed to protect the safety and health of
19 postal employees; and

20 (4) the term “NIOSH” means the National In-
21 stitute of Occupational Safety and Health of the De-
22 partment of Health and Human Services.

23 (b) APPLICABILITY OF CERTAIN PROVISIONS OF
24 OSHA.—Paragraph (7) of section 410(b) of title 39,
25 United States Code, is amended to read as follows:

1 “(7) subchapter II of chapter 79 of title 5 (ex-
2 cluding section 7920 of such title);”.

3 (c) STANDARDS OF ERGONOMIC HAZARDS.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, the Postmaster
6 General, in consultation with the Secretary of Labor,
7 shall issue standards on ergonomic hazards to pro-
8 tect employees of the Postal Service from work-relat-
9 ed musculoskeletal disorders.

10 (2) SPECIFIC REQUIREMENTS.—Standards
11 under this subsection shall include requirements
12 for—

13 (A) a program relating to employees who
14 are exposed to ergonomic hazards, including
15 provisions for—

16 (i) hazard identification;

17 (ii) control measures;

18 (iii) medical management, training
19 and education; and

20 (iv) employee participation;

21 (B) an evaluation of such matters as job
22 processes, work-station design, rate of work,
23 and work methods, to identify risk factors that
24 cause or are likely to cause musculoskeletal dis-
25 orders;

1 (C) control measures to reduce stressors
2 and musculoskeletal disorders, including engi-
3 neering controls, new equipment, and work-or-
4 ganization controls;

5 (D) an effective medical-management pro-
6 gram for musculoskeletal disorders, including
7 requirements for qualified health-care providers,
8 health surveillance, and appropriate diagnosis,
9 treatment, and follow-up; and

10 (E) the training and education of employ-
11 ees who are exposed to ergonomic hazards, par-
12 ticularly with respect to risk factors and control
13 measures, and the Postal Service's medical-
14 management program as it relates to such haz-
15 ards.

16 (d) SMOKE AND FIRE WARNING DEVICES FOR THE
17 DEAF OR HEARING IMPAIRED.—

18 (1) IN GENERAL.—The Postal Service shall
19 take such measures as may be necessary to ensure
20 that, in order to protect the safety of the deaf or
21 hearing impaired from the hazards of smoke or fire,
22 warning devices satisfying the photometric, decibel-
23 level, and other applicable requirements under para-
24 graph (2) are present in all appropriate postal facili-
25 ties (as determined under paragraph (2)(B)).

1 (2) REGULATIONS.—The Postal Service shall
2 prescribe regulations to carry out the purposes of
3 this subsection. The regulations—

4 (A) shall be sufficient to ensure at least
5 the minimum level of safety provided by the
6 then current national consensus standards
7 (within the meaning of section 3(9) of the Oc-
8 cupational Safety and Health Act of 1970)
9 dealing with smoke and fire warning devices for
10 the deaf or hearing impaired, as identified by
11 the Postal Service in consultation with the Sec-
12 retary of Labor; and

13 (B) shall include criteria for identifying
14 which types of postal facilities shall be subject
15 to particular requirements under this para-
16 graph.

17 (3) REPORTS.—The Postal Service shall submit
18 a written report to the Committee on Post Office
19 and Civil Service of the House of Representatives
20 and the Committee on Governmental Affairs of the
21 Senate, not later than 2 years after the date of en-
22 actment of this Act, on the implementation of this
23 subsection.

1 (e) PROTECTIVE MEASURES RELATING TO THE IM-
2 PLEMENTATION OF ANY MAJOR NEW MECHANIZATION,
3 EQUIPMENT OR TECHNOLOGY.—

4 (1) IDENTIFICATION OF ERGONOMIC HAZ-
5 ARDS.—A joint labor-management postal safety com-
6 mittee may enter into contracts, agreements, or
7 other arrangements with NIOSH in order to iden-
8 tify, through appropriate research or experiments,
9 any ergonomic hazards or other safety or health haz-
10 ards which might be associated with any major new
11 mechanization, equipment, or technology being im-
12 plemented, or proposed to be implemented, by the
13 Postal Service.

14 (2) ACCESS TO PLANS.—To the extent prac-
15 ticable, before awarding any contract for the acquisi-
16 tion, installation, or implementation of any major
17 new mechanization, equipment, or technology, the
18 Postal Service shall notify the joint labor-manage-
19 ment postal safety committee of its intentions, in
20 order that such committee may—

21 (A) review the design plans for such mech-
22 anization, equipment, or technology (as the case
23 may be) to evaluate the likely impact on the
24 safety and health of postal employees; and

1 (B) submit written comments relating to
2 any safety or health hazards which might re-
3 sult, as well as suggestions on ways to mitigate
4 or eliminate such hazards.

5 (f) PROTECTION OF EMPLOYEES REFUSING TO
6 WORK DUE TO UNSAFE CONDITIONS.—It is the sense of
7 Congress that the Postal Service should not discharge or
8 in any manner discriminate against an employee for refus-
9 ing to perform the employee’s duties if—

10 (1) the employee believes that performing such
11 duties would result in serious injury to the employee
12 or other employees;

13 (2) the circumstances giving rise to that belief
14 are such that a reasonable person in those same cir-
15 cumstances would draw the same conclusion; and

16 (3) the employee has previously sought to have
17 the Postal Service correct the conditions involved.

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HR 115 SC—2

HR 115 SC—3

HR 115 SC—4

HR 115 SC—5