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mission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

### § 634. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 90-202, § 17, formerly § 16, Dec. 15, 1967, 81 Stat. 608; renumbered and amended Pub. L. 93-259, § 28(a)(5), (b)(1), Apr. 8, 1974, 88 Stat. 74; Pub. L. 95-256, § 7, Apr. 6, 1978, 92 Stat. 193.)

#### AMENDMENTS

1978—Pub. L. 95-256 struck out “, not in excess of \$5,000,000 for any fiscal year,” after “sums”.

1974—Pub. L. 93-259, § 28(a)(5), increased appropriations authorization to \$5,000,000 from \$3,000,000.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as a note under section 202 of this title.

#### TRANSFER OF FUNCTIONS

Functions relating to age discrimination administration and enforcement vested by this section in Secretary of Labor or Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

## CHAPTER 15—OCCUPATIONAL SAFETY AND HEALTH

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### § 651. Congressional statement of findings and declaration of purpose and policy

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

(Pub. L. 91-596, § 2, Dec. 29, 1970, 84 Stat. 1590.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(3), (11), and (12), was in the original "this Act", meaning Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended. For complete classification of this Act to the Code, see Short Title note set out under this section and Tables.

#### EFFECTIVE DATE

Pub. L. 91-596, § 34, Dec. 29, 1970, 84 Stat. 1620, provided that: "This Act [enacting this chapter and section 3142-1 of Title 42, The Public Health and Welfare, amending section 553 of this title, sections 5108, 5314, 5315, and 7902 of Title 5, Government Organization and Employees, sections 633 and 636 of Title 15, Commerce and Trade, section 1114 of Title 18, Crimes and Criminal Procedure, and section 1421 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 1114 of Title 18] shall take effect one hundred and twenty days after the date of its enactment [Dec. 29, 1970]."

#### SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-197, § 1, July 16, 1998, 112 Stat. 638, provided that: "This Act [amending section 670 of this title] may be cited as the 'Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998'."

#### SHORT TITLE

Pub. L. 91-596, § 1, Dec. 29, 1970, 84 Stat. 1590, provided: "That this Act [enacting this chapter and section 3142-1 of Title 42, The Public Health and Welfare, amending section 553 of this title, sections 5108, 5314, 5315, and 7902 of Title 5, Government Organization and Employees, sections 633 and 636 of Title 15, Commerce and Trade, section 1114 of Title 18, Crimes and Criminal Procedure, and section 1421 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 1114 of Title 18] may be cited as the 'Occupational Safety and Health Act of 1970'."

### § 652. Definitions

For the purposes of this chapter—

(1) The term "Secretary" mean<sup>1</sup> the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this chapter.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1),<sup>2</sup> has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on December 29, 1970.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this chapter.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this chapter.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this chapter.

(Pub. L. 91-596, § 3, Dec. 29, 1970, 84 Stat. 1591; Pub. L. 105-241, § 2(a), Sept. 28, 1998, 112 Stat. 1572.)

<sup>1</sup> So in original. Probably should be "means".

<sup>2</sup> So in original. The comma probably should not appear.

## AMENDMENTS

1998—Par. (5). Pub. L. 105-241 inserted “(not including the United States Postal Service)” after “the United States”.

## TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on January 5, 1973, to terminate not later than the expiration of the 2-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

**§ 653. Geographic applicability; judicial enforcement; applicability to existing standards; report to Congress on duplication and coordination of Federal laws; workmen's compensation law or common law or statutory rights, duties, or liabilities of employers and employees unaffected**

(a) This chapter shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Lue Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this chapter by the courts established for areas in which there are no United States district courts having jurisdiction.

(b)(1) Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 2021 of title 42, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act,<sup>1</sup> the Service Contract Act of 1965,<sup>1</sup> Public Law 91-54, Act of August 9, 1969, Public Law 85-742, Act of August 23, 1958, and the National Foundation on Arts and Humanities Act [20 U.S.C. 951 et seq.] are superseded on the effective date of corresponding standards, promulgated under this chapter, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this chapter shall be deemed to be occupational safety and health standards issued under this chapter, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this chapter, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve

coordination between this chapter and other Federal laws.

(4) Nothing in this chapter shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

(Pub. L. 91-596, § 4, Dec. 29, 1970, 84 Stat. 1592.)

## REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Act of June 30, 1936, commonly known as the Walsh-Healey Act, referred to in subsec. (b)(2), is act June 30, 1936, ch. 881, 49 Stat. 2036, which was classified principally to sections 35 to 45 of former Title 41, Public Contracts, and was substantially repealed and restated as chapter 65 (§ 6501 et seq.) of Title 41, Public Contracts, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of this Act to the Code, see Short Title of 1936 Act note set out under section 101 of Title 41 and Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The Service Contract Act of 1965, referred to in subsec. (b)(2), was Pub. L. 89-286, Oct. 22, 1965, 79 Stat. 1034, which was classified generally to chapter 6 (§ 351 et seq.) of former Title 41, Public Contracts, and was repealed and restated as chapter 67 (§ 6701 et seq.) of Title 41, Public Contracts, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

Public Law 91-54, Act of August 9, 1969, referred to in subsec. (b)(2), is Pub. L. 91-54, Aug. 9, 1969, 83 Stat. 96, which amended sections 1 and 2 and added section 107 of Pub. L. 87-581, Aug. 13, 1962, 76 Stat. 357. Sections 1 and 2 of Pub. L. 87-581 were set out as notes under section 327, and section 107 of Pub. L. 87-581 was classified to section 333, of former Title 40, Public Buildings, Property, and Works. Sections 1 and 2 of Pub. L. 87-581 were repealed, and section 107 of Pub. L. 87-581 was repealed and reenacted as sections 3704 and 3705 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Public Law 85-742, Act of August 23, 1958, referred to in subsec. (b)(2), is Pub. L. 85-742, Aug. 23, 1958, 72 Stat. 835, which amended section 941 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 941 of Title 33. For complete classification of this Act to the Code, see Tables.

The National Foundation on the Arts and the Humanities Act, referred to in subsec. (b)(2), is Pub. L. 89-209, Sept. 29, 1965, 79 Stat. 845, known as the National Foundation on the Arts and the Humanities Act of 1965, which is classified principally to subchapter I (§ 951 et seq.) of chapter 26 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 20 and Tables.

The effective date of this chapter, referred to in subsec. (b)(2), (3), is the effective date of Pub. L. 91-596, which is 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as an Effective Date note under section 651 of this title.

<sup>1</sup> See References in Text note below.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

EPA ADMINISTRATOR NOT EXERCISING "STATUTORY AUTHORITY" UNDER THIS SECTION IN EXERCISING ANY AUTHORITY UNDER TOXIC SUBSTANCES CONTROL ACT

In exercising any authority under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) in connection with amendment made by section 15(a) of Pub. L. 101-637, the Administrator of the Environmental Protection Agency not, for purposes of subsection (b)(1) of this section, to be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health, see section 15(b) of Pub. L. 101-637, set out as a note under section 2646 of Title 15, Commerce and Trade.

**§ 654. Duties of employers and employees**

**(a) Each employer—**

(1) shall furnish to each of his employees 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 his employees;

(2) shall comply with occupational safety and health standards promulgated under this chapter.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

(Pub. L. 91-596, § 5, Dec. 29, 1970, 84 Stat. 1593.)

**§ 655. Standards**

**(a) Promulgation by Secretary of national consensus standards and established Federal standards; time for promulgation; conflicting standards**

Without regard to chapter 5 of title 5 or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this chapter and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

**(b) Procedure for promulgation, modification, or revocation of standards**

The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of

information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this chapter, the Secretary may request the recommendations of an advisory committee appointed under section 656 of this title. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under



this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, post-

ing a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health and Human Services certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health and Human Services designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.

#### (c) Emergency temporary standards

(1) The Secretary shall provide, without regard to the requirements of chapter 5 of title 5, for an emergency temporary standard to take immediate effect upon publication in the Federal Regis-

ter if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with subsection (b), and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

#### (d) Variances from standards; procedure

Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

#### (e) Statement of reasons for Secretary's determinations; publication in Federal Register

Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this chapter, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

#### (f) Judicial review

Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be con-

clusive if supported by substantial evidence in the record considered as a whole.

#### (g) Priority for establishment of standards

In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.

(Pub. L. 91-596, § 6, Dec. 29, 1970, 84 Stat. 1593; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

#### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as an Effective Date note under section 651 of this title.

#### CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subssecs. (b)(1), (6)(C), (7), and (g) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

#### TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on January 5, 1973, to terminate not later than the expiration of the 2-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

#### PROHIBITION ON EXPOSURE OF WORKERS TO CHEMICAL OR OTHER HAZARDS FOR PURPOSE OF CONDUCTING EXPERIMENTS

Pub. L. 102-394, title I, § 102, Oct. 6, 1992, 106 Stat. 1799, provided that: "None of the funds appropriated under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used to grant variances, interim orders or letters of clarification to employers which will allow exposure of workers to chemicals or other workplace hazards in excess of existing Occupational Safety and Health Administration standards for the purpose of conducting experiments on workers' health or safety." Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title I, § 102, Nov. 26, 1991, 105 Stat. 1114.  
 Pub. L. 101-517, title I, § 102, Nov. 5, 1990, 104 Stat. 2196.  
 Pub. L. 101-166, title I, § 102, Nov. 21, 1989, 103 Stat. 1165.  
 Pub. L. 100-202, § 101(h) [title I, § 102], Dec. 22, 1987, 101 Stat. 1329-256, 1329-263.

Pub. L. 99-500, § 101(i) [H.R. 5233, title I, § 102], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, § 101(i) [H.R. 5233, title I, § 102], Oct. 30, 1986, 100 Stat. 3341-287.

Pub. L. 99-178, title I, § 102, Dec. 12, 1985, 99 Stat. 1109.

Pub. L. 98-619, title I, § 102, Nov. 8, 1984, 98 Stat. 3311.

#### OCCUPATIONAL HEALTH STANDARD CONCERNING EXPOSURE TO BLOODBORNE PATHOGENS

Pub. L. 102-170, title I, § 100, Nov. 26, 1991, 105 Stat. 1113, provided that:

"(a) Notwithstanding any other provision of law, on or before December 1, 1991, the Secretary of Labor, acting under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], shall promulgate a final occupational health standard concerning occupational exposure to blood-borne pathogens. The final standard shall be based on the proposed standard as published in the Federal Register on May 30, 1989 (54 FR 23042), concerning occupational exposures to the hepatitis B virus, the human immunodeficiency virus and other bloodborne pathogens.

"(b) In the event that the final standard referred to in subsection (a) is not promulgated by the date required under such subsection, the proposed standard on occupational exposure to bloodborne pathogens as published in the Federal Register on May 30, 1989 (54 FR 23042) shall become effective as if such proposed standard had been promulgated as a final standard by the Secretary of Labor, and remain in effect until the date on which such Secretary promulgates the final standard referred to in subsection (a).

"(c) Nothing in this Act [enacting section 962 of Title 30, Mineral Lands and Mining, amending section 290b of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 1070a of Title 20, Education and section 1383 of Title 42, and amending provisions set out as notes under section 1255a of Title 8, Aliens and Nationality, and section 1221-1 of Title 20] shall be construed to require the Secretary of Labor (acting through the Occupational Safety and Health Administration) to revise the employment accident reporting regulations published at 29 C.F.R. 1904.8."

#### RETENTION OF MARKINGS AND PLACARDS

Pub. L. 101-615, § 29, Nov. 16, 1990, 104 Stat. 3277, provided that: "Not later than 18 months after the date of enactment of this Act [Nov. 16, 1990], the Secretary of Labor, in consultation with the Secretary of Transportation and the Secretary of the Treasury, shall issue under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act [former 49 U.S.C. 1801 et seq.] to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or vessel, until the hazardous materials have been removed therefrom."

#### CHEMICAL PROCESS SAFETY MANAGEMENT

Pub. L. 101-549, title III, § 304, Nov. 15, 1990, 104 Stat. 2576, provided that:

"(a) **CHEMICAL PROCESS SAFETY STANDARD.**—The Secretary of Labor shall act under the Occupational Safety and Health Act of 1970 (29 U.S.C. 653) [29 U.S.C. 651 et seq.] to prevent accidental releases of chemicals which could pose a threat to employees. Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, shall promulgate, pursuant to the Occupational Safety and Health Act, a chemical process safety standard designed to protect employees from hazards associated with accidental releases of highly hazardous chemicals in the workplace.

"(b) **LIST OF HIGHLY HAZARDOUS CHEMICALS.**—The Secretary shall include as part of such standard a list of highly hazardous chemicals, which include toxic, flammable, highly reactive and explosive substances. The list of such chemicals may include those chemicals listed by the Administrator under section 302 of the Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C. 11002]. The Secretary may make additions to such list when a substance is found to pose a threat of serious injury or fatality in the event of an accidental release in the workplace.

"(c) **ELEMENTS OF SAFETY STANDARD.**—Such standard shall, at minimum, require employers to—

"(1) develop and maintain written safety information identifying workplace chemical and process hazards, equipment used in the processes, and technology used in the processes;

"(2) perform a workplace hazard assessment, including, as appropriate, identification of potential sources of accidental releases, an identification of any previous release within the facility which had a likely potential for catastrophic consequences in the workplace, estimation of workplace effects of a range of releases, estimation of the health and safety effects of such range on employees;

"(3) consult with employees and their representatives on the development and conduct of hazard assessments and the development of chemical accident prevention plans and provide access to these and other records required under the standard;

"(4) establish a system to respond to the workplace hazard assessment findings, which shall address prevention, mitigation, and emergency responses;

"(5) periodically review the workplace hazard assessment and response system;

"(6) develop and implement written operating procedures for the chemical process including procedures for each operating phase, operating limitations, and safety and health considerations;

"(7) provide written safety and operating information to employees and train employees in operating procedures, emphasizing hazards and safe practices;

"(8) ensure contractors and contract employees are provided appropriate information and training;

"(9) train and educate employees and contractors in emergency response in a manner as comprehensive and effective as that required by the regulation promulgated pursuant to section 126(d) of the Superfund Amendments and Reauthorization Act [of 1986] [Pub. L. 99-499, set out in a note below];

"(10) establish a quality assurance program to ensure that initial process related equipment, maintenance materials, and spare parts are fabricated and installed consistent with design specifications;

"(11) establish maintenance systems for critical process related equipment including written procedures, employee training, appropriate inspections, and testing of such equipment to ensure ongoing mechanical integrity;

"(12) conduct pre-start-up safety reviews of all newly installed or modified equipment;

"(13) establish and implement written procedures to manage change to process chemicals, technology, equipment and facilities; and

"(14) investigate every incident which results in or could have resulted in a major accident in the workplace, with any findings to be reviewed by operating personnel and modifications made if appropriate.

"(d) **STATE AUTHORITY.**—Nothing in this section may be construed to diminish the authority of the States and political subdivisions thereof as described in section 112(r)(11) of the Clean Air Act [42 U.S.C. 7412(r)(11)]."

#### WORKER PROTECTION STANDARDS

Pub. L. 99-499, title I, § 126(a)-(f), Oct. 17, 1986, 100 Stat. 1690-1692, as amended by Pub. L. 100-202, § 101(f) [title II, § 201], Dec. 22, 1987, 101 Stat. 1329-187, 1329-198, provided:

"(a) **PROMULGATION.**—Within one year after the date of the enactment of this section [Oct. 17, 1986], the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 655], promulgate standards for the health and safety protection of employees engaged in hazardous waste operations.

"(b) **PROPOSED STANDARDS.**—The Secretary of Labor shall issue proposed regulations on such standards which shall include, but need not be limited to, the following worker protection provisions:

"(1) **SITE ANALYSIS.**—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.



"(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

"(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

"(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

"(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

"(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

"(7) INFORMATIONAL PROGRAM.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

"(8) HANDLING.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

"(9) NEW TECHNOLOGY PROGRAM.—A program for the introduction of new equipment or technologies that will maintain worker protections.

"(10) DECONTAMINATION PROCEDURES.—Procedures for decontamination.

"(11) EMERGENCY RESPONSE.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

"(c) FINAL REGULATIONS.—Final regulations under subsection (a) shall take effect one year after the date they are promulgated. In promulgating final regulations on standards under subsection (a), the Secretary of Labor shall include each of the provisions listed in paragraphs (1) through (11) of subsection (b) unless the Secretary determines that the evidence in the public record considered as a whole does not support inclusion of any such provision.

"(d) SPECIFIC TRAINING STANDARDS.—

"(1) OFFSITE INSTRUCTION; FIELD EXPERIENCE.—Standards promulgated under subsection (a) shall include training standards requiring that general site workers (such as equipment operators, general laborers, and other supervised personnel) engaged in hazardous substance removal or other activities which expose or potentially expose such workers to hazardous substances receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. The requirements of the preceding sentence shall not apply to any general site worker who has received the equivalent of such training. Workers who may be exposed to unique or special hazards shall be provided additional training.

"(2) TRAINING OF SUPERVISORS.—Standards promulgated under subsection (a) shall include training standards requiring that onsite managers and supervisors directly responsible for the hazardous waste operations (such as foremen) receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations. The requirements of the preceding sentence shall not apply to any person who has received the equivalent of such training.

"(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers, onsite managers, and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard. The certification procedures shall be no less comprehensive than those adopted by the Environmental Protection Agency in its Model Accred-

itation Plan for Asbestos Abatement Training as required under the Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519, see Short Title of 1986 Amendment note, set out under section 2601 of Title 15, Commerce and Trade].

"(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

"(e) INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final regulations under this section within 60 days after the enactment of this section [Oct. 17, 1986] which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) 'Health and Safety Requirements for Employees Engaged in Field Activities' and existing standards under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] found in subpart C of part 1926 of title 29 of the Code of Federal Regulations. Such interim final regulations shall take effect upon issuance and shall apply until final regulations become effective under subsection (c).

"(f) COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES.—Not later than 90 days after the promulgation of final regulations under subsection (a), the Administrator shall promulgate standards identical to those promulgated by the Secretary of Labor under subsection (a). Standards promulgated under this subsection shall apply to employees of State and local governments in each State which does not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 667] providing for standards for the health and safety protection of employees engaged in hazardous waste operations."

## § 656. Administration

(a) **National Advisory Committee on Occupational Safety and Health; establishment; membership; appointment; Chairman; functions; meetings; compensation; secretarial and clerical personnel**

(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health and Human Services, without regard to the provisions of title 5 governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of this chapter. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.