safety issues through a unique cross-training and exchange program between OSHA and the business community. These last two initiatives are predicated on the common sense notion that the more we know and the more we collaborate toward a common goal, the more likely it is that we will achieve the desired result.

While I believe that the interests of workplace safety compel us to dramatically increase our efforts at encouraging voluntary compliance, we cannot be unmindful that the Occupational Safety and Health Act is a regulatory statute; and that, like all regulation, there are points at which the process becomes adversarial. I certainly believe there should be a less adversarial process, however, when it does occur I believe it needs to be fair and regular. In the regulatory context, the power and resources of the Federal Government can be overwhelming, particularly to small businesses. We need to make sure that the adversarial playing field is a level one, and that the legitimate expectations of fairness and regularity of process are adequately met. For this reason, the bills which I have introduced today contain a number of provisions aimed at ensuring this result. Thus, the bill provides for the recovery of attorney's fees by small businesses that prevail in litigation against the government in an OSHA claim, and codifies procedural flexibility and fairness in the issuance and processing of disputed claims. The legislation also recognizes that no one, least of all employees, are well served by lengthy delays in the resolution of contested claims by increasing the size of the Review Commission and making additional changes designed to insure the issuance of more timely decisions. The legislation also returns the Review Commission to the status of a fully independent adjudicatory body as envisioned in the original OSHA legislation by insuring that its decisions are accorded appropriate legal deference. The legislation also injects some much needed flexibility into the administration and enforcement of the statute by permitting the use of alternative, site-specific compliance methods, giving inspectors a degree of compliance discretion, and encouraging the prompt correction of certain non-serious violations.

In addition to these changes that are based upon procedural and regulatory fairness, the legislation also contains provisions designed to address the root cause of many industrial injuries, and others aimed at bringing a much-needed measure of simplicity and uniformity to our workplace safety laws.

In the first instance, for too long we have held the one-dimensional view that work conditions and employer practices are the principal, if not exclusive, factors in workplace safety. The reality is that unsafe individual behavior also has an extraordinary impact. For example, it is estimated that 47 percent of all serious workplace accidents, and 40 percent of all workplace fatalities involve drugs or alcohol. Some 38 to 50 percent of all workers' compensation claims are related to drug or alcohol abuse in the workplace. An industrial accident typically takes only a split second to occur. The safest conceivable conditions and systems can be rendered useless in that instant by an employee whose judgment or reactions are impaired.

Apart from substance abuse, we also cannot ignore the fact that any employer's safety policies and procedures can be rendered useless whenever someone breaks the rules.

If we are serious about workplace safety we have to understand that the employer is not the only factor in the equation. And, if we propose to achieve workplace safety solely by regulating employer conduct, then we fail to adequately address the entire issue. At a minimum, we need to provide employers some tools and encouragement to control the safety-related behavior of others. We cannot mandate that employers take disciplinary action against their employees who violate safety rules, but we can encourage them to enforce such rules appropriately and consistently. We likewise cannot compel employers to institute drug and alcohol testing programs, but we can remove the legal barriers to their doing so. Today's legislation, by codifying the third party misconduct defense, and authorizing the establishment of substance testing, provides exactly the type of tools and encouragement that are necessary.

It may be the employer's workplace, but workplace safety is everybody's job. We need laws that reflect the fact that a safer workplace is everybody's responsibility. For this reason today's legislation also contains a provision that allows OSHA to issue citations and impose limited fines on employees that violate rules and procedures regarding the use of company-supplied personal protective equipment. As noted, the authority here, although limited, is nonetheless intended to make clear the notion that safety is everybody's responsibility.

Lastly, our current law provides that employers must communicate workplace hazards to their employees. This is an important, and appropriate goal. ''Communication,'' however, requires the delivery of clear, and meaningful information to the recipient. Unfortunately, in many respects our hazard communication efforts have become so complicated that the complexity stands in the way of the original notion that employees need plain information about workplace hazards so that they can take adequate precautions to protect themselves. This process has become even more complicated by the globalization of our economy, and the fact that many hazardous substances routinely in use in our workplaces originate outside our borders. These are likewise realities that we must address, and that the legislation offered today does. Thus, the HazCom Simplification and Modernization Act that is a part of the legislative package introduced today provides for the simplification of current hazard communication standards and it creates a commission designed to review and make recommendations regarding the implementation of the global harmonization of chemical labeling, hazard communication and a variety of related issues. I am particularly proud of the fact that this bill is the product of considerable bi-partisan effort, and I am particularly pleased to have Senator MURRAY as its cosponsor. I am deeply grateful for all her efforts in bringing this legislation to this point.

It is my belief that the three bills introduced today reflect the correct and balanced approach to the goal of increased work place safety that all of us want to achieve.

I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2065

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Occupational Safety Partnership Act''.

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

SEC. 2. PURPOSE.

Section 2(b) of the Act (29 U.S.C. 651(b)) is amended—

(1) in paragraph (13), by striking the period and inserting ''; and''; and

(2) by adding at the end the following:

''(14) by increasing the joint cooperation of employers, employees, and the Secretary of Labor in the effort to ensure safe and healthful working conditions for employees.''.

SEC. 3. THIRD PARTY CONSULTATION SERVICES PROGRAM.

(a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is amended by inserting after section 8 the following:

''SEC. 8A. THIRD PARTY CONSULTATION SERVICES PROGRAM.

''(a) PURPOSE.—It is the purpose of this section to encourage employers to conduct voluntary safety and health audits using the expertise of qualified safety and health consultants and to proactively seek individualized solutions to workplace safety and health concerns.

''(b) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Secretary shall establish and implement, by regulation, a program that qualifies individuals to provide consultation services to employers to assist employers in the identification and correction of safety and health hazards in the workplaces of employers.

''(2) ELIGIBILITY.—The following individuals shall be eligible to be qualified under this program as certified safety and health consultants:

''(A) An individual who is licensed by a State authority as a physician, industrial hygienist, professional engineer, safety engineer, safety professional, or registered nurse.

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

''(C) An individual who is qualified in an occupational health or safety field by an organization whose program has been accredited by a nationally recognized private accreditation organization or by the Secretary.

''(D) An individual who has not less than 10 years experience in workplace safety and health.

''(E) Other individuals determined to be qualified by the Secretary.

''(3) GEOGRAPHICAL SCOPE OF CONSULTATION SERVICES.—A consultant qualified under this program may provide consultation services in any State.

''(4) LIMITATION BASED ON EXPERTISE.—A consultant qualified under this program may only provide consultation services to an employer with respect to a worksite if the work performed at that worksite coincides with the particular expertise of the individual.

''(c) SAFETY AND HEALTH REGISTRY.—The Secretary shall develop and maintain a registry that includes all consultants that are qualified under the program under subsection (b)(1) to provide the consultation services described in subsection (b) and shall publish and make such registry readily available to the general public.

''(d) DISCIPLINARY ACTIONS.—The Secretary may revoke the status of a consultant, or the participation of an employer in the third party consultation program, if the Secretary determines that the consultant or employer—

''(1) has failed to meet the requirements of the program; or

''(2) has committed malfeasance, gross negligence, collusion or fraud in connection with any consultation services provided by the qualified consultant.

''(e) PROGRAM REQUIREMENTS.—

''(1) GENERAL REQUIREMENTS.—The consultation services described in subsection (b), and provided by a consultant qualified under this program shall, at a minimum, consist of the following elements:

''(A) A comprehensive, on-site, survey and audit of the participating employer's workplace and operations by the consultant.

''(B) The preparation of a consultation report by the consultant.

The Secretary may, by regulation, prescribe additional requirements for qualifying services.

''(2) CONSULTATION REPORT.—

''(A) IN GENERAL.—Following the consultant's physical survey of the employer's workplace and operations, the consultant shall prepare and deliver to the employer a written report summarizing the consultant's health and safety findings and recommendations. Such consultation report shall, at a minimum, contain the following elements:

''(i) The findings of the consultant's health and safety audit, and, where applicable, appropriate remedial recommendations.

''(ii) A recommended health and safety program and an action plan as described in this paragraph.

The Secretary may, by regulation, prescribe additional required elements for qualifying reports.

''(B) AUDIT AND RECOMMENDATIONS.—The consultation report shall include an evaluation of the workplace of the participating employer to determine if the employer is in compliance with the requirements of this Act, including any regulations promulgated pursuant to this Act. The report shall identify any practice or condition the consultant believes to be a violation of this Act, and will set out any appropriate corrective measures to address such identified practice or condition.

''(C) SAFETY AND HEALTH PROGRAM.—The consultation report shall contain a recommended safety and health plan designed to reduce injuries, illness, and fatalities and to otherwise manage workplace health and safety. Such safety and health program shall—

''(i) be appropriate to the conditions of the workplace involved;

''(ii) be in writing, and contain policies, procedures, and practices designed to recognize and protect employees from occupational safety and health hazards, such procedures to include provisions for the identification, evaluation, and prevention or control of workplace hazards;

''(iii) be based upon the professional judgment of the consultant and include such elements as are necessary to the specific worksite involved as determined by the consultant and employer;

''(iv) contain provisions for the periodic review and modification of the program as circumstances warrant;

''(v) be developed and implemented with the participation of affected employees;

''(vi) make provision for the effective safety and health training of all personnel, and the dissemination of appropriate health and safety information to all personnel; and

''(vii) contain appropriate procedures for the reporting of potential hazards, accidents and near accidents

The Secretary may, by regulation, prescribe additional specific elements that may be required for any qualifying program.

''(D) ACTION PLAN.—The consultation report shall also contain a written action plan that shall—

''(i) outline the specific steps that must be accomplished by the employer prior to receiving a certificate of compliance;

''(ii) be established in consultation with the employer; and

''(iii) address in detail—

''(I) the employer's correction of all identified safety and health conditions or practices that are in violation of this Act, with applicable timeframes; and

''(II) the steps necessary for the employer to implement an effective safety and health program, with applicable timeframes.

''(3) CERTIFICATE OF COMPLIANCE.—Upon completion of the steps described in the Action Plan the qualified consultant shall issue to the employer a Certificate of Compliance in a form prescribed by the Secretary.

''(f) EXEMPTION FROM CIVIL PENALTIES FOR COMPLIANCE.—

''(1) IN GENERAL.—If an employer receives a certificate of compliance, the employer shall be exempt from the assessment of any civil penalty under section 17 for a period of 2 years after the date on which the employer receives such certificate.

''(2) EXCEPTIONS.—An employer shall not be exempt under paragraph (1)—

''(A) if the employer has not made a good faith effort to remain in compliance as required under the certificate of compliance; or

''(B) if there has been a fundamental change in the hazards of the workplace after the issuance of the certificate.

''(g) RIGHT TO INSPECT.—Nothing in this section shall be construed to affect the rights of the Secretary to inspect and investigate worksites covered by a certificate of compliance.

''(h) RENEWAL REQUIREMENTS.—An employer that is granted a certificate of compliance under this section may receive a 2 year renewal of the certificate if a qualified consultant conducts a complete onsite safety and health survey to ensure that the safety and health program has been effectively maintained or improved, workplace hazards are under control, and elements of the safety and health program are operating effectively.

''(i) NON-FIXED WORKSITES.—With respect to employer worksites that do not have a fixed location, a certificate of compliance shall only apply to that worksite which satisfies the criteria under this section and such certificate shall not be portable to any other worksite. This section shall not apply to employers that perform essentially the same work, utilizing the same equipment, at each non-fixed worksite.

''(j) ACCESS TO RECORDS.—Any records relating to consultation services provided by an individual qualified under this program, or records, reports, or other information prepared in connection with safety and health inspections, audits, or reviews conducted by or for an employer and not required under this Act, shall not be admissible in a court of law or administrative proceeding or enforcement proceeding against the employer except that such records may be used as evidence for purposes of a disciplinary action under subsection (d).''.

SEC. 4. PREVENTION OF ALCOHOL AND SUBSTANCE ABUSE.

The Act (29 U.S.C. 651 et seq.) is amended by adding at the end the following:

''SEC. 34. ALCOHOL AND SUBSTANCE ABUSE TESTING.

''(a) PROGRAM PURPOSE.—In order to secure a safe workplace, employers may establish and carry out an alcohol and substance abuse testing program in accordance with subsection (b).

''(b) FEDERAL GUIDELINES.—

''(1) REQUIREMENTS.—An alcohol and substance abuse testing program described in subsection (a) shall meet the following requirements:

''(A) SUBSTANCE ABUSE.—A substance abuse testing program shall permit the use of onsite or offsite testing.

''(B) ALCOHOL.—The alcohol testing component of the program shall take the form of alcohol breath analysis and shall conform to any guidelines developed by the Secretary of Transportation for alcohol testing of mass transit employees under the Department of Transportation and Related Agencies Appropriations Act, 1992.

''(2) DEFINITION.—For purposes of this section the term 'alcohol and substance abuse testing program' means any program under which test procedures are used to take and analyze blood, breath, hair, urine, saliva, or other body fluids or materials for the purpose of detecting the presence or absence of alcohol or a drug or its metabolites. In the case of urine testing, the confirmation tests must be performed in accordance with the mandatory guidelines for Federal workplace testing programs published by the Secretary of Health and Human Services on April 11, 1988, at section 11979 of title 53, Code of Federal Regulations (including any amendments to such guidelines). Proper laboratory protocols and procedures shall be used to assure accuracy and fairness, and, laboratories must be subject to the requirements of subpart B of the mandatory guidelines, State certification, the Clinical Laboratory Improvements Act of the College of American Pathologists.

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

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

''(2) an employee, including managerial personnel, to submit to and pass an alcohol or substance abuse test—

''(A) on a for-cause basis or where the employer has reasonable suspicion to believe

that such employee is using or is under the influence of alcohol or a controlled substance;

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

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

''(D) during the participation of an employee in an alcohol or substance abuse treatment program, and for a reasonable period of time (not to exceed 5 years) after the conclusion of such program; or

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

''(d) CONSTRUCTION.—Nothing in this section shall be construed to require an employer to establish an alcohol and substance abuse testing program for applicants or employees or make employment decisions based on such test results.

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

''(f) INVESTIGATIONS.—The Secretary is authorized to conduct testing of employees (including managerial personnel) of an employer for use of alcohol or controlled substances during any investigations of a work-related fatality or serious injury. Such testing shall be done as soon as practicable after the incident giving rise to such work-related fatality or serious injury.''.

SEC. 5. VOLUNTARY PROTECTION PROGRAMS.

(a) COOPERATIVE AGREEMENTS.—The Secretary of Labor shall establish cooperative agreements with employers to encourage the establishment of comprehensive safety and health management systems that include—

(1) requirements for systematic assessment of hazards;

(2) comprehensive hazard prevention, mitigation, and control programs;

(3) active and meaningful management and employee participation in the voluntary program described in subsection (b); and

(4) employee safety and health training.

(b) VOLUNTARY PROTECTION PROGRAM.—

(1) IN GENERAL.—The Secretary of Labor shall establish and carry out a voluntary protection program (consistent with subsection (a)) to encourage excellence and recognize the achievement of excellence in both the technical and managerial protection of employees from occupational hazards.

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

(A) APPLICATION.—Employers who volunteer under the program shall be required to submit an application to the Secretary of Labor demonstrating that the worksite with respect to which the application is made meets such requirements as the Secretary of Labor may require for participation in the program.

(B) ONSITE EVALUATIONS.—There shall be onsite evaluations by representatives of the Secretary of Labor to ensure a high level of protection of employees. The onsite visits shall not result in enforcement of citations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(C) INFORMATION.—Employers who are approved by the Secretary of Labor for participation in the program shall assure the Secretary of Labor that information about the safety and health program shall be made readily available to the Secretary of Labor to share with employees.

(D) REEVALUATIONS.—Periodic reevaluations by the Secretary of Labor of the employers shall be required for continued participation in the program.

(3) EXEMPTIONS.—A site with respect to which a program has been approved shall, during participation in the program be exempt from inspections or investigations and certain paperwork requirements to be determined by the Secretary of Labor, except that this paragraph shall not apply to inspections or investigations arising from employee complaints, fatalities, catastrophes, or significant toxic releases.

SEC. 6. EXPANDED ACCESS TO VVP FOR SMALL BUSINESSES.

The Secretary of Labor shall establish and implement, by regulation, a program to increase participation by small businesses (as the term is defined by the Administrator of the Small Business Administration) in the voluntary protection program through outreach and assistance initiatives and the development of program requirements that address the needs of small businesses.

SEC. 7. TECHNICAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 21(c) of the Act (29 U.S.C. 670(c)) is amended—

(1) by striking ''(c) The'' and inserting ''(c)(1) The'';

(2) by striking ''(1) provide'' and inserting ''(A) provide'';

(3) by striking ''(2) consult'' and inserting ''(B) consult''; and

(4) by adding at the end the following:

''(2)(A) The Secretary shall, through the authority granted under section 7(c) and paragraph (1), enter into cooperative agreements with States for the provision of consultation services by such States to employers concerning the provision of safe and healthful working conditions.

''(B)(i) As provided in clause (ii), the Secretary shall reimburse a State that enters into a cooperative agreement under subparagraph (A) in an amount that equals 90 percent of the costs incurred by the State for the provision of consultation services under such agreement.

''(ii) A State shall be reimbursed by the Secretary for 90 percent of the costs incurred by the State for the provision of—

''(I) training approved by the Secretary for State personnel operating under a cooperative agreement; and

''(II) specified out-of-State travel expenses incurred by such personnel.

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

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

''(e)(1) Not later than 90 days after the date of enactment of this subsection, the Secretary shall establish and carry out a pilot program in 3 States to provide expedited consultation services, with respect to the provision of safe and healthful working conditions, to employers that are small businesses (as the term is defined by the Administrator of the Small Business Administration). The Secretary shall carry out the program for a period not to exceed 2 years.

''(2) The Secretary shall provide consultation services under paragraph (1) not later than 4 weeks after the date on which the Secretary receives a request from an employer.

''(3) The Secretary may impose a nominal fee to an employer requesting consultation services under paragraph (1). The fee shall be in an amount determined by the Secretary. Employers paying a fee shall receive priority consultation services by the Secretary.

''(4) In lieu of issuing a citation under section 9 to an employer for a violation found by the Secretary during a consultation under paragraph (1), the Secretary shall permit the employer to carry out corrective measures to correct the conditions causing the violation. The Secretary shall conduct not more than 2 visits to the workplace of the employer to determine if the employer has carried out the corrective measures. The Secretary shall issue a citation as prescribed under section 5 if, after such visits, the employer has failed to carry out the corrective measures.

''(5) Not later than 90 days after the termination of the program under paragraph (1), the Secretary shall prepare and submit a report to the appropriate committees of Congress that contains an evaluation of the implementation of the pilot program.''.

SEC. 8. CONTINUING EDUCATION AND PROFESSIONAL CERTIFICATION FOR CERTAIN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PERSONNEL.

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

''(i) Any Federal employee responsible for enforcing this Act shall, not later than 2 years after the date of enactment of this subsection or 2 years after the initial employment of the employee involved, meet the eligibility requirements prescribed under subsection (b)(2) of section 8A.

''(j) The Secretary shall ensure that any Federal employee responsible for enforcing this Act who carries out inspections or investigations under this section, receive professional education and training at least every 5 years as prescribed by the Secretary.''.

SEC. 9. OSHA AND INDUSTRY TRAINING EXCHANGE DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary of Labor, acting through the Occupational Safety and Health Administration, is authorized to develop and implement at least one training and educational exchange program with a specialty trade in the construction industry for the purpose of—

(1) facilitating the exchange of expertise and ideas related to the interpretation, application, and implementation of Federal occupational safety and health standards and regulations applicable to the specialty trade involved (referred to in this section as ''OSHA Rules'');

(2) improving collaboration and coordination between the Occupational Safety and Health Administration and such specialty trade regarding OSHA Rules;

(3) identifying OSHA Rules which the specialty trade and Occupational Safety and Health Administration compliance officers have repeatedly found to be difficult to interpret, apply, or implement;

(4) allowing qualified safety directors from the specialty trade to train such compliance officers and others within the Administration responsible for writing and interpreting OSHA Rules, both on the jobsite and off, on the unique nature of the specialty trade and the difficulties contractors and safety directors encounter when attempting to comply with OSHA Rules as well as the best practices within the specialty trade;

(5) seeking the means to ensure greater compliance with the identified OSHA Rules, and reducing the number of citations based on any misunderstanding by such compliance officers as to the scope and application of an OSHA Rule or the unique nature of the workplace construction; and

(6) establishing within the Occupational Safety and Health Administration Training Institute a trade-specific curriculum to be taught jointly by qualified trade safety directors and compliance officers.

(b) INITIAL PROGRAM.—The initial training and educational exchange program shall be established under subsection (a) with the masonry construction industry.

(c) REPORTS.—Upon the expiration of the 2-year program under subsection (a), the Administrator of the Occupational Safety and Health Administration, jointly with specialty trades that participate in programs under such subsection, shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Workforce of the House of Representatives a report on the activities and results of the training and educational exchange program.

(d) DEFINITION.—In this section, the term ''qualified safety director'' means an individual who has, at a minimum, taken the 10-hour Occupational Safety and Health Administration course and been employed a minimum of 5 years as a safety director in the construction industry.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section.

(f) TERMINATION.—The programs established under subsection (a) shall terminate on the date that is 2 years after the date on which the first program is so established.

S. 2066

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Occupational Safety Fairness Act''.

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

SEC. 2. WORKSITE-SPECIFIC COMPLIANCE METHODS.

Section 9 of the Act (29 U.S.C. 658) is amended by adding at the end the following:

''(d) A citation issued under subsection (a) to an employer who violates section 5, any standard, rule, or order promulgated pursuant to section 6, or any regulation promulgated under this Act shall be vacated if such employer demonstrates that the employees of such employer were protected by alternative methods that are substantially equivalent or more protective of the safety and health of the employees than the methods required by such standard, rule, order, or regulation in the factual circumstances underlying the citation.

''(e) Subsection (d) shall not be construed to eliminate or modify other defenses that may exist to any citation.''.

SEC. 3. DISCRETIONARY COMPLIANCE ASSISTANCE.

Subsection (a) of section 9 of the Act (29 U.S.C. 658(a)) is amended—

(1) by striking the last sentence;

(2) by striking ''If, upon'' and inserting ''(1) If, upon''; and

(3) by adding at the end the following:

''(2) Nothing in this Act shall be construed as prohibiting the Secretary or the authorized representative of the Secretary from providing technical or compliance assistance to an employer in correcting a violation discovered during an inspection or investigation under this Act without issuing a citation, as prescribed in this section.

''(3) The Secretary or the authorized representative of the Secretary—

''(A) may issue a warning in lieu of a citation with respect to a violation that has no significant relationship to employee safety or health; and

''(B) may issue a warning in lieu of a citation in cases in which an employer in good faith acts promptly to abate a violation if the violation is not a willful or repeated violation.''.

SEC. 4. EXPANDED INSPECTION METHODS.

(a) PURPOSE.—It is the purpose of this section to empower the Secretary of Labor to achieve increased employer compliance by using, at the Secretary's discretion, more efficient and effective means for conducting inspections.

(b) GENERAL.—Section 8(f) of the Act (29 U.S.C. 657(f) is amended—

(1) by adding at the end the following:

''(3) The Secretary or an authorized representative of the Secretary may, as a method of investigating an alleged violation or danger under this subsection, attempt, if feasible, to contact an employer by telephone, facsimile, or other appropriate methods to determine whether—

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

''(B) there are reasonable grounds to believe that a hazard exists.

''(4) The Secretary is not required to conduct an inspection under this subsection if the Secretary believes that a request for an inspection was made for reasons other than the safety and health of the employees of an employer or that the employees of an employer are not at risk.''.

SEC. 5. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) INCREASE IN NUMBER OF MEMBERS AND REQUIREMENT FOR MEMBERSHIP.—Section 12 of the Act (29 U.S.C. 661) is amended—

(1) in the second sentence of subsection (a)—

(A) by striking ''three members'' and inserting ''five members''; and

(B) by inserting ''legal'' before ''training'';

(2) in the first sentence of subsection (b), by striking ''except that'' and all that follows through the period and inserting the following: ''except that the President may extend the term of a member for no more than 365 consecutive days to allow a continuation in service at the pleasure of the President after the expiration of the term of that member until a successor nominated by the President has been confirmed to serve. Any vacancy caused by the death, resignation, or removal of a member before the expiration of a term for which a member was appointed shall be filled only for the remainder of such term.''; and

(3) by striking subsection (f), and inserting the following:

''(f) For purposes of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least a majority of the members participating but in no case fewer than two.''.

(b) NEW POSITIONS.—Of the two vacancies for membership on the Occupational Safety and Health Review Commission created by subsection (a)(1)(A), one shall be appointed by the President for a term expiring on April 27, 2009, and the other shall be appointed by the President for a term expiring on April 27, 2011.

(c) EFFECTIVE DATE FOR LEGAL TRAINING REQUIREMENT.—The amendment made by subsection (a)(1)(B), requiring a member of the Commission to be qualified by reason of a background in legal training, shall apply beginning with the two vacancies referred to in subsection (b) and all subsequent appointments to the Commission.

SEC. 6. AWARD OF ATTORNEYS' FEES AND COSTS.

The Act (29 U.S.C. 651 et seq.) is amended by redesignating sections 32, 33, and 34 as sections 33, 34, and 35, respectively, and by inserting after section 31 the following new section:

''AWARD OF ATTORNEYS' FEES AND COSTS

''SEC. 32.

''(a) ADMINISTRATIVE PROCEEDINGS.—An employer who—

''(1) is the prevailing party in any adversary adjudication instituted under this Act, and

''(2) had not more than 100 employees and a net worth of not more than $7,000,000 at the time the adversary adjudication was initiated,

shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the Secretary was substantially justified or special circumstances make an award unjust. For purposes of this section the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.

''(b) PROCEEDINGS.—An employer who—

''(1) is the prevailing party in any proceeding for judicial review of any action instituted under this Act, and

''(2) had not more than 100 employees and a net worth of not more than $7,000,000 at the time the action addressed under subsection (1) was filed,

shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) of this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust.

''(c) APPLICABILITY.—

''(1) COMMISSION PROCEEDINGS.—Subsection (a) shall apply to proceedings commenced on or after the date of enactment of this section.

''(2) COURT PROCEEDINGS.—Subsection (b) shall apply to proceedings for judicial review commenced on or after the date of enactment of this section.''.

SEC. 7. JUDICIAL DEFERENCE.

Section 11(a) of the Act (29 U.S.C. 660(a)) is amended in the sixth sentence by inserting before the period the following: '', and the conclusions of the Commission with respect to questions of law that are subject to agency deference under governing court precedent shall be given deference if reasonable''.

SEC. 8. CONTESTING CITATIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.

(a) IN GENERAL.—Section 10 of the Act (29 U.S.C. 659) is amended—

(1) in the second sentence of subsection (a), by inserting after ''assessment of penalty'' the following: ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)''; and

(2) in the second sentence of subsection (b), by inserting after ''assessment of penalty'' the following: ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to a citation or proposed assessment of penalty issued by the Occupational Safety and Health Administration that is issued on or after the date of the enactment of this Act.

SEC. 9. RIGHT TO CORRECT VIOLATIVE CONDITION.

Section 9 of the Act (29 U.S.C. 658), as amended by section 2, is amended by adding at the end the following:

''(f) The Commission may not assess a penalty under section 17(c) for a non-serious violation that is not repeated or willful if the

employer corrects the violative condition and provides the Secretary an abatement certification within 72 hours.''.

SEC. 10. WRITTEN STATEMENT TO EMPLOYER FOLLOWING INSPECTION.

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

''(i) At the closing conference after the completion of an inspection, the inspector shall—

''(1) inform the employer or a representative of the employer of the right of such employer to request a written statement described in paragraph (2); and

''(2) provide to the employer or a representative of the employer, upon the request of such employer or representative, with a written statement that clearly and concisely provides the following information:

''(A) The results of the inspection, including each alleged hazard, if any, and each citation that will be issued, if any.

''(B) The right of the employer to contest a citation, a penalty assessment, an amended citation, and an amended penalty assessment.

''(C) An explanation of the procedure to follow in order to contest a citation and a penalty assessment, including when and where to contest a citation and the required contents of the notice of intent to contest.

''(D) The Commission's responsibility to affirm, modify, or vacate the citation and proposed penalty, if any.

''(E) The informal review process.

''(F) The procedures before the Occupational Safety and Health Review Commission.

''(G) The right of the employer to seek judicial review.

''(j) No monetary penalty may be assessed with respect to any violation not identified in the written statement requested under subsection (i).''.

SEC. 11. TIME PERIODS FOR ISSUING CITATIONS.

Section—

(1) 9(a) of the Act (29 U.S.C. 658(a)) is amended—

(A) by striking ''upon inspection'' and inserting ''upon the initiation of inspection'';

(B) by striking ''with reasonable promptness'' and inserting ''within thirty working days''; and

(C) by inserting after the first sentence, the following: ''Such 30 day period may be waived by the Secretary for good cause shown, including, but not limited to, cases involving death, novel issues, large or complex worksites, or pursuant to an agreement by the parties to extend such period.''; and

(2) 10(a) of the Act (29 U.S.C. 659(a)) is amended—

(B) by striking ''within a reasonable time'' and inserting ''within thirty days''; and

(C) by inserting after the first sentence, the following: ''Such 30 days period may be waived by the Secretary for good cause shown, including, but not limited to, cases involving death, novel issues, large or complex worksites, or pursuant to an agreement by the parties to extend such period.''.

SEC. 12. TIME PERIODS FOR CONTESTING CITATIONS.

Section 10 of the Act (29 U.S.C. 659) is amended by striking ''fifteen'' each place it appears and inserting ''thirty''.

SEC. 13. PENALTIES.

Section 17 of the Act (29 U.S.C. 666) is amended by inserting the following:

''(m) The Secretary shall not use 'other than serious' citations as a basis for issuing repeat or willful citations.''.

SEC. 14. UNANTICIPATED CONDUCT.

Section 9 of the Act (29 U.S.C. 658) is amended by adding at the end the following:

''(d) No citation may be issued under this section for any violation that is the result of actions by any person that are contrary to established, communicated, and enforced work rules that would have prevented the violation. This subsection shall not be construed to eliminate or modify elements of proof currently required to support a citation.''.

SEC. 15. ADOPTION OF NON-GOVERNMENTAL STANDARDS.

The Act (29 U.S.C. 651 et seq.) is amended by adding after section 4 the following:

''SEC. 4A. ADOPTION OF NON-GOVERNMENTAL STANDARDS.

''The Secretary shall not promulgate or enforce any finding, guideline, standard, limit, rule, or regulation that is subject to incorporation by reference, or modification, as the result of a determination reached by any organization, unless the Secretary affirmatively finds that the determination has been made by an organization and procedure that complies with the requirements of section 3(9). Such finding and a summary of its basis shall be published in the Federal Register and shall be deemed a final agency action subject to review by a United States District Court in accordance with section 706 of title 5, United States Code.''.

SEC. 16. EMPLOYEE RESPONSIBILITY.

The Act (29 U.S.C. 651 et seq.) is amended by adding after section 9 the following:

''SEC. 9A. EMPLOYEE RESPONSIBILITY.

''(a) IN GENERAL.—Notwithstanding any other provision of this Act, an employee who, with respect to employer-provided personal protective equipment, willfully violates any requirement of section 5 or any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, may be assessed a civil penalty, as determined by the Secretary, but not to exceed $50 for each violation.

''(b) CITATIONS.—If, upon inspection or investigation, the Secretary or the authorized representative of the Secretary believes that an employee of an employer has, with respect to employer-provided personal protective equipment, violated any requirement of section 5 or any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, the Secretary shall within 30 days issue a citation to the employee. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this Act, standard, rule, regulation, or order alleged to have been violated. No citation may be issued under this section after the expiration of 6 months following the occurrence of any violation.

''(c) NOTIFICATION.—

''(1) IN GENERAL.—The Secretary shall notify an employee—

''(A) by certified mail of a citation under subsection (b) and the proposed penalty; and

''(B) that such employee has 30 working days within which to notify the Secretary that the employee wishes to contest the citation or proposed penalty.

''(2) FINAL ORDER.—If an employee does not file a notification described in paragraph (1)(B) with the Secretary within 30 working days, the citation and proposed penalty shall—

''(A) be deemed a final order of the Commission; and

''(B) not be subject to review by any court or agency.

''(d) CONTESTING OF CITATION.—

''(1) IN GENERAL.—If an employee files a notification described in paragraph (1)(B) with the Secretary within 30 working days, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford the employee an opportunity for a hearing in accordance with section 554 of title 5, United States Code.

''(2) ISSUANCE OF FINAL ORDER.—The Commission, after a hearing described in paragraph (1), shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief. Such order shall become final 30 days after issuance of the order.''.

S. 2067

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''HazCom Simplification and Modernization Act of 2005''.

SEC. 2. PURPOSE.

It is the purpose of this Act to assist chemical manufacturers and importers in preparing material safety data sheets pursuant to the requirements of the Hazard Communication standard published at section 1910.1200 of title 29, Code of Federal Regulations, and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations, and to improve the accuracy, consistency, and comprehensibility of such material safety data sheets and to establish a Commission for the purpose of studying and making recommendations regarding the implementation of the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals.

SEC. 3. HAZARD COMMUNICATION.

(a) IN GENERAL.—

(1) MODEL MATERIAL SAFETY DATA SHEETS FOR HIGHLY HAZARDOUS CHEMICALS.—The Secretary of Labor shall develop model material safety data sheets for the list of highly hazardous chemicals contained in Appendix A to the Process Safety Management of Highly Hazardous Chemicals standard published at section 1910.119 of title 29, Code of Federal Regulations. Such model material safety data sheets shall—

(A) comply with the requirements of the Hazard Communication standard published at section 1910.100 of such title 29 and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations;

(B) be presented in a consistent format that enhances the reliability and comprehensibility of information about chemical hazards in the workplace and protective measures; and

(C) be made available to the public, including through posting on the Occupational Safety and Health Administration's website and the Mine Safety and Health Administration's website, within 18 months after the date of enactment of this Act.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed to—

(A) modify or amend the Hazard Communication standard published at section 1910.1200 of title 29, Code of Federal Regulations, the Process Safety Management of Highly Hazardous Chemicals standard published at section 1910.119 of such title 29, the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations, or any other provision of law; and

(B) authorize the Secretary of Labor to include in the model material safety data sheet developed under this subsection any suggestion or recommendation as to permissible or appropriate workplace exposure levels for these chemicals, except as required by the Hazard Communication standard published at section 1910.1200 of such title 29, and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to

the Department of Labor such sums as may be necessary to carry out this subsection.

(b) GLOBALLY HARMONIZED SYSTEM COMMISSION.—

(1) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, there shall be established a commission, to be known as the Global Harmonization Commission (referred to in this subsection as the ''Commission''), to consider the implementation of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals to improve chemical hazard communication and to make recommendations to Congress.

(2) MEMBERSHIP.—The Commission shall be composed of 17 members of whom—

(A) 1 shall be the Secretary of Labor (referred to in this Act as the ''Secretary'');

(B) 1 shall be the Secretary of Transportation;

(C) 1 shall be the Secretary of Health and Human Services;

(D) 1 shall be the Administrator of the Environmental Protection Agency;

(E) 1 shall be the Chairman of the Consumer Product Safety Commission;

(F) 1 shall be the Chairman of the Chemical Safety and Hazard Investigation Board (or his or her designee);

(F) 11 shall be appointed by the Secretary of Labor, of whom—

(i) 2 shall be representatives of manufacturers of hazardous chemicals, including a representative of small businesses;

(ii) 2 shall be representatives of employers who are extensive users of hazardous chemicals supplied by others, including a representative of small businesses;

(iii) 2 shall be representatives of labor organizations;

(iv) 2 shall be individuals who are qualified in an occupational health or safety field by an organization whose program has been accredited by a nationally recognized private accreditation organization or by the Secretary, who have expertise in chemical hazard communications;

(v) 1 shall be a representative of mining industry employers;

(vi) 1 shall be a representative of mining industry employees; and

(vii) 1 shall be a safety and health professional with expertise in mining.

(3) CHAIR AND VICE-CHAIR.—The members of the Commission shall select a chair and vice-chair from among its members.

(4) DUTIES.—

(A) STUDY AND RECOMMENDATIONS.—The Commission shall conduct a thorough study of, and shall develop recommendations on, the following issues relating to the global harmonization of hazardous chemical communication:

(i) Whether the United States should adopt any or all of the elements of the United Nation's Globally Harmonized System of Classification and Labeling of Chemicals (referred to in this subsection and the ''Globally Harmonized System'').

(ii) How the Globally Harmonized System should be implemented by the Federal agencies with relevant jurisdiction, taking into consideration the role of the States acting under delegated authority.

(iii) How the Globally Harmonized System compares to existing chemical hazard communication laws and regulations, including the Hazard Communication standard published at section 1910.1200 of title 29, Code of Federal Regulations and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations.

(iv) The impact of adopting the Globally Harmonized System on the consistency, effectiveness, comprehensiveness, timing, accuracy, and comprehensibility of chemical hazard communication in the United States.

(v) The impact of adopting the Globally Harmonized System on occupational safety and health in the United States.

(vi) The impact of adopting the Globally Harmonized System on tort, insurance, and workers compensation laws in the United States.

(vii) The impact of adopting the Globally Harmonized System on the ability to bring new products to the market in the United States.

(viii) The cost and benefits of adopting the Globally Harmonized System to businesses, including small businesses, in the United States.

(ix) How effective compliance assistance, training, and outreach can be used to help chemical manufacturers, importers, and users, particularly small businesses, understand and comply with the Globally Harmonized System.

(B) REPORT.—Not later than 18 months after the date of enactment of this Act, the Commission shall submit to the appropriate committees of Congress a report containing a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation as the Commission considers appropriate.

(5) POWERS.—

(A) HEARINGS.—The Commission shall hold at least one public hearing, and may hold additional hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section. The Commission shall, to the maximum extent possible, use existing data and research to carry out this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this section. Upon request by the Commission, the head of such department or agency shall promptly furnish such information to the Commission.

(C) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(6) PERSONNEL MATTERS.—

(A) COMPENSATION; TRAVEL EXPENSES.—Each member of the Commission shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(B) STAFF AND EQUIPMENT.—The Department of the Labor shall provide all financial, administrative, and staffing requirements for the Commission including—

(i) office space;

(ii) furnishings; and

(iii) equipment.

(7) TERMINATION.—The Commission shall terminate on the date that is 90 days after the date on which the Commission submits the report required under paragraph (3)(B).

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Labor, such sums as may be necessary to carry out this subsection.

(c) HAZARD COMMUNICATION DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—Section 20(a) of the Act (29 U.S.C. 670(a)) is amended by adding at the end the following:

''(8) Subject to the availability of appropriations, the Secretary, after consultation with others, as appropriate, shall award grants to one or more qualified applicants in order to carry out a demonstration project to develop, implement, or evaluate strategies or programs to improve chemical hazard communication in the workplace through the use of technology, which may include electronic or Internet-based hazard communication systems.''.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the amendment made by paragraph (1).

By Ms. COLLINS (for herself, Mr. VOINOVICH, and Mr. AKAKA):

S. 2068. A bill to preserve existing judgeships on the Superior Court of the District of Columbia; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, today I am pleased to introduce legislation that would preserve existing seats on the District of Columbia Superior Court. I am pleased to be joined in this effort by Senators VOINOVICH and AKAKA.

The Superior Court is the trail court of general jurisdiction over local matters in the District of Columbia. The associate judges on the court are selected through a two-step review process. When a vacancy on the court occurs, usually because of a retiring judge, the District of Columbia Judicial Nominations Commission solicits applicants to fill the vacancy. The commission narrows the possible number of candidates to three and sends those three names to the President. The President then selects one of those three candidates and sends the nominee to the Senate for confirmation. Existing law caps the total number of judges on the superior court at 59.

Unfortunately, two nominees currently pending in the Committee on Homeland Security and Governmental Affairs and an additional candidate expected to be nominated in the coming months may not be able to be seated on the court even if they are confirmed by the Senate. The three seats that these candidates are intended to fill were left open by retiring judges, so they are not new seats on the court.

The cause of this unusual problem is the District of Columbia Family Court Act, enacted during the 107th Congress. That act created three new seats for the family court, which is a division of the superior court, but failed to increase the overall cap on the number of judges seated on the court. As a result, the Family Court Act effectively eliminated three existing seats in the other divisions of the court, including the criminal and civil divisions.

As a result of this situation, the Committee on Homeland Security and Governmental Affairs currently has two nominations pending for the superior court but no seats left to fill. I also understand that there is yet another nomination expected in the coming months. Since existing law sets strict requirements on both the DC Judicial Nominations Commission as well as the White House on how quickly they must process potential candidates and make a nomination, it is unclear whether they have legal grounds to halt their processes.

This is a highly unusual situation for this body to have nominations pending