

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 5663
OFFERED BY MS. TITUS**

Page 106, after line 10, insert the following (and re-designate succeeding sections and conform the table of contents accordingly):

1 **SEC. 708. REVIEW OF STATE OCCUPATIONAL SAFETY AND**
2 **HEALTH PLANS.**

3 Section 18 of the Occupational Safety and Health Act
4 (29 U.S.C. 668) is amended—

5 (1) by amending subsection (f) to read as fol-
6 lows:

7 “(f)(1) The Secretary shall, on the basis of reports
8 submitted by the State agency and the Secretary’s own
9 inspections, make a continuing evaluation of the manner
10 in which each State that has a plan approved under this
11 section is carrying out such plan. Such evaluation shall
12 include an assessment of whether the State continues to
13 meet the requirements of subsection (c) of this section and
14 any other criteria or indices of effectiveness specified by
15 the Secretary in regulations. Whenever the Secretary
16 finds, on the basis of such evaluation, that in the adminis-
17 tration of the State plan there is a failure to comply sub-

1 stantially with any provision of the State plan (or any as-
2 surance contained therein), the Secretary shall make an
3 initial determination of whether the failure is of such a
4 nature that the plan should be withdrawn or whether the
5 failure is of such a nature that the State should be given
6 the opportunity to remedy the deficiencies, and provide no-
7 tice of the Secretary's findings and initial determination.

8 “(2) If the Secretary makes an initial determination
9 to reassert and exercise concurrent enforcement authority
10 while the State is given an opportunity to remedy the defi-
11 ciencies, the Secretary shall afford the State an oppor-
12 tunity for a public hearing within 15 days of such request,
13 provided that such request is made not later than 10 days
14 after Secretary's notice to the State. The Secretary shall
15 review and consider the testimony, evidence, or written
16 comments, and not later than 30 days following such hear-
17 ing, make a determination to affirm, reverse, or modify
18 the Secretary's initial determination to reassert and exer-
19 cise concurrent enforcement authority under sections 8, 9,
20 10, 13, and 17 with respect to standards promulgated
21 under section 6 and obligations under section 5(a). Fol-
22 lowing such a determination by the Secretary, or in the
23 event that the State does not request a hearing within the
24 time frame set forth in this paragraph, the Secretary may
25 reassert and exercise such concurrent enforcement author-

1 ity, while a final determination is pending under para-
2 graph (3) or until the Secretary has determined that the
3 State has remedied the deficiencies as provided under
4 paragraph (4). Such determination shall be published in
5 the Federal Register. The procedures set forth in section
6 18(g) shall not apply to a determination by the Secretary
7 to reassert and exercise such concurrent enforcement au-
8 thority.

9 “(3) If the Secretary makes an initial determination
10 that the plan should be withdrawn, the Secretary shall
11 provide due notice and the opportunity for a hearing. If
12 based on the evaluation, comments, and evidence, the Sec-
13 retary makes a final determination that there is a failure
14 to comply substantially with any provision of the State
15 plan (or any assurance contained therein), he shall notify
16 the State agency of the withdrawal of approval of such
17 plan and upon receipt of such notice such plan shall cease
18 to be in effect, but the State may retain jurisdiction in
19 any case commenced before the withdrawal of the plan in
20 order to enforce standards under the plan whenever the
21 issues involved do not relate to the reasons for the with-
22 drawal of the plan.

23 “(4) If the Secretary makes a determination that the
24 State should be provided the opportunity to remedy the
25 deficiencies, the Secretary shall provide the State an op-

1 opportunity to respond to the Secretary’s findings and the
2 opportunity to remedy such deficiencies within a time pe-
3 riod established by the Secretary, not to exceed 1 year.
4 The Secretary may extend and revise the time period to
5 remedy such deficiencies, if the State’s legislature is not
6 in session during this 1 year time period, or if the State
7 demonstrates that it is not feasible to correct the defi-
8 ciencies in the time period set by the Secretary, and the
9 State has a plan to correct the deficiencies within a rea-
10 sonable time period. If the Secretary finds that the State
11 agency has failed to remedy such deficiencies within the
12 time period specified by the Secretary and that the State
13 plan continues to fail to comply substantially with a provi-
14 sion of the State plan, the Secretary shall withdraw the
15 State plan as provided for in paragraph (3).”;

16 (2) by adding at the end the following new sub-
17 section:

18 “(i) Not later than 18 months after the date of enact-
19 ment of this subsection, and every 5 years thereafter, the
20 Comptroller General shall complete and issue a review of
21 the effectiveness of State plans to develop and enforce
22 safety and health standards to determine if they are at
23 least as effective as the Federal program and to evaluate
24 whether the Secretary’s oversight of State plans is effec-
25 tive. The Comptroller General’s evaluation shall assess—

1 “(1) the effectiveness of the Secretary’s over-
2 sight of State plans, including the indices of effec-
3 tiveness used by the Secretary;

4 “(2) whether the Secretary’s investigations in
5 response to Complaints About State Plan Adminis-
6 tration (CASPA) are adequate, whether significant
7 policy issues have been identified by headquarters
8 and corrective actions are fully implemented by each
9 State;

10 “(3) whether the formula for the distribution of
11 funds described in section 23(g) to State programs
12 is fair and adequate;

13 “(4) whether State plans are as effective as the
14 Federal program in preventing occupational injuries,
15 illnesses and deaths, and investigating discrimina-
16 tion complaints, through an evaluation of at least 20
17 percent of approved State plans, and which shall
18 cover—

19 “(A) enforcement effectiveness, including
20 handling of fatalities, serious incidents and
21 complaints, compliance with inspection proce-
22 dures, hazard recognition, verification of abate-
23 ment, violation classification, citation and pen-
24 alty issuance, including appropriate use of will-

1 ful and repeat citations, and employee involve-
2 ment;

3 “(B) inspections, the number of pro-
4 grammed health and safety inspections at pri-
5 vate and public sector establishments, and
6 whether the State targets the highest hazard
7 private sector work sites and facilities in that
8 State;

9 “(C) budget and staffing, including wheth-
10 er the State is providing adequate budget re-
11 sources to hire, train and retain sufficient num-
12 bers of qualified staff, including timely filling of
13 vacancies;

14 “(D) administrative review, including the
15 quality of decisions, consistency with Federal
16 precedence, transparency of proceedings, deci-
17 sions and records are available to the public,
18 adequacy of State defense, and whether the
19 State appropriately appeals adverse decisions;

20 “(E) anti discrimination, including whether
21 discrimination complaints are processed in a
22 timely manner, whether supervisors and inves-
23 tigators are properly trained to investigate dis-
24 crimination complaints, whether a case file re-
25 view indicates merit cases are properly identi-

1 fied consistent with Federal policy and proce-
2 dure, whether employees are notified of their
3 rights, and whether there is an effective process
4 for employees to appeal the dismissal of a com-
5 plaint;

6 “(F) program administration, including
7 whether the State’s standards and policies are
8 at least as effective as the Federal program and
9 are updated in a timely manner, and whether
10 National Emphasis Programs that are applica-
11 ble in such States are adopted and implemented
12 in a manner that is at least as effective as the
13 Federal program;

14 “(G) whether the State plan satisfies the
15 requirements for approval set forth in this sec-
16 tion and its implementing regulations; and

17 “(H) other such factors identified by the
18 Comptroller General, or as requested by the
19 Committee on Education and Labor of the
20 House of Representatives or the Committee on
21 Health, Education, Labor and Pensions of the
22 Senate.”.

