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S. 3443

To improve compliance with mine and occupational safety and health laws, empower workers to raise safety concerns, prevent future mine and other workplace tragedies, and establish rights of families of victims of workplace accidents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2012

Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mrs. MURRAY, and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To improve compliance with mine and occupational safety and health laws, empower workers to raise safety concerns, prevent future mine and other workplace tragedies, and establish rights of families of victims of workplace accidents, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Robert C. Byrd Mine and Workplace Safety and Health Act of 2012".

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. References.

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION AUTHORITY

Sec. 101. Independent accident investigations.
Sec. 102. Subpoena authority and miner rights during inspections and investigations.
Sec. 103. Designation of miner representative.
Sec. 104. Additional amendments relating to inspections, investigations, and recordkeeping.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

Sec. 201. Significant and substantial violations.
Sec. 202. A pattern of recurring noncompliance or accidents.
Sec. 203. Injunctive authority.
Sec. 204. Revocation of approval of plans.
Sec. 205. Challenging a decision to approve, modify, or revoke a coal or other mine plan.

TITLE III—PENALTIES

Sec. 301. Civil penalties.
Sec. 302. Civil and criminal liability of officers, directors, and agents.
Sec. 303. Criminal penalties.
Sec. 304. Commission review of penalty assessments.
Sec. 305. Delinquent payments and prejudgment interest.

TITLE IV—WORKER RIGHTS AND PROTECTIONS

Sec. 401. Protection from retaliation.
Sec. 402. Protection from loss of pay.

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

Sec. 501. Pre-shift review of mine conditions.
Sec. 502. Rock dust standards.
Sec. 503. Atmospheric monitoring systems and additional technological improvements.
Sec. 504. Technology related to respirable dust.
Sec. 505. Refresher training on miner rights and responsibilities.
Sec. 506. Additional training.
Sec. 507. Certification of personnel.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

Sec. 601. Definitions.
Sec. 602. Assistance to States.
Sec. 603. Black lung medical reports.
Sec. 604. Study on workforce needs.
Sec. 605. Mine Safety and Health Administration strategic planning.

TITLE VII—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Sec. 701. Enhanced protections from retaliation.
Sec. 702. Victims' rights.
Sec. 703. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.
Sec. 704. Conforming amendments.
Sec. 705. Civil penalties.
Sec. 706. Criminal penalties.
Sec. 707. Penalties.
Sec. 708. Effective date.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Employers have an obligation to ensure a safe and healthy work environment for all employees.

(2) To help fulfill that obligation, Congress must conduct oversight of executive branch agencies responsible for enforcing workplace safety laws and must revise and update Federal laws when necessary to protect the safety and health of the workforce of the United States.

(3) In response to several mining tragedies in early 2006, Congress quickly passed the most sweeping changes to mine safety laws in 30 years. The Mine Improvement and New Emergency Response Act of 2006 (Public Law 109–236, 120 Stat. 493), also known as the ''MINER Act'', was signed into law on June 15, 2006.

(4) As a result of the MINER Act—

(A) coal miners are entitled to at least 2 hours of readily-accessible oxygen supplies for use in emergencies and additional oxygen supplies every 30 minutes along escape routes;

(B) mines are required to implement emergency response plans and have 2 rescue teams located within one hour from the mine;

(C) mine operators are subjected to penalties for failing to quickly notify the Mine Safety and Health Administration about accidents; and

(D) a new grant program was created to provide mine safety training.

(5) Although the MINER Act made significant improvements to mine rescue capabilities, Congress was again reminded of the need to continually improve and vigorously enforce our Federal mine safety laws when, on April 5, 2010, an explosion ripped through the Upper Big Branch Mine in Montcoal, West Virginia, killing 29 brave West Virginia coal miners and seriously injuring another. This was the worst coal mining disaster in the United States in nearly 40 years.

(6) We must never forget those who have been impacted by this tragedy—family members, friends,

coworkers, loved ones, and most importantly, the individuals who perished in the Upper Big Branch explosion: Carl ''Pee Wee'' Acord, Jason Matthew Atkins, Christopher Lee Bell, Sr., Gregory Steven Brock, Kenneth A. Chapman, Sr., Robert Eugene Clark, Cory Davis, Charles Timothy Davis, Michael Lee Elswick, William Ildon Griffith, Steven J. ''Smiley'' Harrah, Edward ''Dean'' Jones, Richard Keith Lane, William Roosevelt Lynch, Joe Marcum, Ronald Lee Maynor, Nicolas D. McCroskey, James ''Eddie'' Mooney, Adam K. Morgan, Rex Lane Mullins, Joshua Scott Napper, Howard ''Boone'' Payne, Jr., Dillard Earl ''Dewey'' Persinger, Joel R. ''Jody'' Price, Gary Wayne Quarles, Deward Allan Scott, Grover Dale Skeens, Benny Ray Willingham, and Ricky L. Workman. Another miner, James Woods, was seriously injured in the explosion and a second survivor, Tim Blake, has been credited with heroically attempting to save the lives of his fellow miners by applying emergency breathing devices to them while they were unconscious.

(7) Five State, Federal, and independent entities have conducted investigations into the Upper Big Branch disaster. Together, these reports conclude that the Upper Big Branch disaster was a pre-

ventable explosion caused by a failure of the operator to follow known safety standards, including those that are intended to prevent large-scale explosions.

(8) The United States Attorney for the Southern District of West Virginia has launched a criminal investigation into the Upper Big Branch disaster, which to date has resulted in the conviction or guilty pleas from three employees or former employees of the Upper Big Branch mine.

(9) In the last two years, Congress has held 9 hearings into the Upper Big Branch disaster and on mine safety generally.

(10) Congress enacted, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203, 124 Stat. 1376), an amendment requiring publicly-traded mining companies to disclose serious safety violations to shareholders, the public, and the Securities and Exchange Commission.

(11) Congress appropriated $22,000,000 through the Supplemental Appropriations Act, 2010 (Public Law 111–212) to reduce the backlog of appeals at the Federal Mine Safety and Health Review Commission, investigate the Upper Big Branch dis-

aster, and purchase emergency response equipment. During the year that this funding was available, the Federal Mine Safety and Health Review Commission was able to hire 6 additional judges and support staff and, along with the Department of Labor, was able to dispose of 11,643 cases, including 6,924 cases that had been specifically targeted for backlog reduction.

(12) In September 2010, the Mine Safety and Health Administration issued an emergency temporary standard that strengthened rock dusting requirements to reduce the likelihood and severity of explosions in underground mines. In June 2011, the agency issued final regulations requiring mine operators to maintain incombustible content of combined dust of at least 80 percent in underground mines.

(13) During the 2-year period ending May 2012, the Mine Safety and Health Administration has increased its enforcement by implementing impact inspections that target violations at unsafe mines with poor compliance history or specific safety concerns. As of May 2012, the Administration had conducted 452 impact inspections resulting in 8,106 citations, 811 orders, and 32 safeguards.

(14) The Mine Safety and Health Administration has also—

(A) revised the screening criteria for placing mines onto pattern of violations status under section 104(e) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814(e)), which subjects unsafe mines to increased enforcement and oversight;

(B) created a new online tool to allow operators, miners, and the public to monitor whether a mine could be subject to a pattern of violations; and

(C) proposed new regulations that will eliminate regulatory loopholes that have allowed unsafe mines to avoid being placed onto pattern of violations status altogether.

(15) In April 2011, for the first time in history since the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) was enacted, the Mine Safety and Health Administration placed 2 mines onto pattern of violations status, and as of the end of 2011 had notified 94 mines that they faced a potential pattern of violations, which is the regulatory precursor to being placed onto pattern of violations status.

(16) The entities charged with investigating the Upper Big Branch disaster have made several recommendations to improve the safety of miners that can only be accomplished through the legislative process. At this time, Congress has not passed comprehensive mine safety legislation that is critical to improving the long-term structure of mine safety efforts and providing the maximum level of protection for our Nation's miners and their families.

SEC. 3. REFERENCES.

Except in title VII and as otherwise expressly provided, whenever in this Act an amendment is expressed as an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION AUTHORITY

SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.

(a) IN GENERAL.—Section 103(b) (30 U.S.C. 813(b)) is amended by striking "(b) For the purpose" and inserting the following:

"(b) ACCIDENT INVESTIGATIONS.—

"(1) IN GENERAL.—For all accident investigations under this Act, the Secretary shall—

"(A) determine why the accident occurred;

"(B) determine whether there were violations of law, mandatory health and safety standards, or other requirements, and if such violations are found, issue citations and penalties, and in cases involving possible criminal actions, refer such matters to the Attorney General; and

"(C) make recommendations to avoid any recurrence.

"(2) INDEPENDENT ACCIDENT INVESTIGATIONS.—

"(A) IN GENERAL.—There shall be, in addition to an accident investigation under paragraph (1), an independent investigation by an independent investigation panel (referred to in this subsection as the 'Panel') appointed under subparagraph (B) for—

"(i) any accident involving 3 or more deaths; or

"(ii) any accident that is of such severity or scale for potential or actual harm that, in the opinion of the Secretary of

Health and Human Services, the accident merits an independent investigation.

"(B) APPOINTMENT.—

"(i) IN GENERAL.—As soon as practicable after an accident described in subparagraph (A), the Secretary of Health and Human Services shall appoint 5 members for the Panel required under this paragraph from among individuals who have expertise in accident investigations, mine engineering, or mine safety and health that is relevant to the particular investigation.

"(ii) CHAIRPERSON.—The Panel shall include, and be chaired by, a representative from the Office of Mine Safety and Health Research, of the National Institute for Occupational Safety and Health (referred to in this subsection as 'NIOSH').

"(iii) CONFLICTS OF INTEREST.—Panel members, and staff and consultants assisting the Panel with an investigation, shall be free from conflicts of interest with regard to the investigation, and be subject

to the same standards of ethical conduct for persons employed by the Secretary.

"(iv) COMPOSITION.—The Secretary of Health and Human Services shall appoint as members of the Panel—

"(I) 1 operator of a mine or individual representing mine operators, and

"(II) 1 member of a labor organization or other representative of miners,

and may not appoint more than 1 of either such types of individuals as members of the Panel.

"(v) STAFF AND EXPENSES.—The Director of NIOSH shall designate NIOSH staff to facilitate the work of the Panel. The Director may accept as staff personnel on detail from other Federal agencies or re-employ annuitants. The detail of personnel under this paragraph may be on a non-reimbursable basis, and such detail shall be without interruption or loss of civil service status or privilege. The Director of NIOSH shall have the authority to procure

on behalf of the Panel such materials, supplies or services, including technical experts, as requested in writing by a majority of the Panel.

"(vi) COMPENSATION AND TRAVEL.—All members of the Panel who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States. Each Panel member who is not an officer or employee of the United States shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of duties of the Panel. The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter 1 of chapter 57 of title 5, United States Code, while away from their homes or reg-

ular places of business in the performance of services for the Panel.

"(C) DUTIES.—The Panel shall—

"(i) assess and identify any factors that caused the accident, including deficiencies in safety management systems, regulations, enforcement, industry practices or guidelines, or organizational failures;

"(ii) identify and evaluate any contributing actions or inactions of—

"(I) the operator;

"(II) any contractors or other persons engaged in mining-related functions at the site;

"(III) any State agency with oversight responsibilities;

"(IV) any agency or office within the Department of Labor; or

"(V) any other person or entity (including equipment manufacturers);

"(iii) review the determinations and recommendations by the Secretary under paragraph (1);

"(iv) prepare a report that—

"(I) includes the findings regarding the causal factors described in clauses (i) and (ii);

"(II) identifies any strengths and weaknesses in the Secretary's investigation; and

"(III) includes recommendations, including interim recommendations where appropriate, to industry, labor organizations, State and Federal agencies, or Congress, regarding policy, regulatory, enforcement, administrative, or other changes, which in the judgment of the Panel, would prevent a recurrence at other mines; and

"(v) publish such findings and recommendations (excluding any portions which the Attorney General requests that the Secretary withhold in relation to a criminal referral) and hold public meetings to inform the mining community and families of affected miners of the Panel's findings and recommendations.

"(D) HEARINGS; APPLICABILITY OF CERTAIN FEDERAL LAW.—The Panel shall have the

1 authority to conduct public hearings or meet-
2 ings, but shall not be subject to the Federal Ad-
3 visory Committee Act (5 U.S.C. App.). All pub-
4 lic hearings of the Panel shall be subject to the
5 requirements under section 552b of title 5,
6 United States Code.

7 "(E) MEMORANDUM OF UNDER-
8 STANDING.—Not later than 90 days after the
9 date of enactment of the Robert C. Byrd Mine
10 and Workplace Safety and Health Act of 2012,
11 the Secretary of Labor and the Secretary of
12 Health and Human Services shall conclude and
13 publically issue a memorandum of under-
14 standing that—

15 "(i) outlines administrative arrange-
16 ments which will facilitate a coordination
17 of efforts between the Secretary of Labor
18 and the Panel, ensures that the Secretary's
19 investigation under paragraph (1) is not
20 delayed or otherwise compromised by the
21 activities of the Panel, and establishes a
22 process to resolve any conflicts between
23 such investigations;

24 "(ii) ensures that Panel members or
25 staff will be able to participate in inves-

tigation activities (such as mine inspections and interviews) related to the Secretary of Labor's investigation and will have full access to documents that are assembled or produced in such investigation, and ensures that the Secretary of Labor will make all of the authority available to such Secretary under this section, including subpoena authority, to obtain information and witnesses which may be requested by such Panel; and

"(iii) establishes such other arrangements as are necessary to implement this paragraph.

"(F) PROCEDURES.—Not later than 90 days after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary of Health and Human Services shall establish procedures to ensure the consistency and effectiveness of Panel investigations. In establishing such procedures, such Secretary shall consult with independent safety investigation agencies, sectors of the mining industry, representatives of miners, families of miners involved in fatal accidents,

State mine safety agencies, and mine rescue organizations. Such procedures shall include—

"(i) authority for the Panel to use evidence, samples, interviews, data, analyses, findings, or other information gathered by the Secretary of Labor, as the Panel determines valid;

"(ii) provisions to ensure confidentiality if requested by any witness, to the extent permitted by law, and prevent conflicts of interest in witness representation; and

"(iii) provisions for preservation of public access to the Panel's records through the Secretary of Health and Human Services.

"(G) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection such sums as may be necessary.

"(3) POWERS AND PROCESSES.—For the purpose".

(b) REPORTING REQUIREMENTS.—Section 511(a) (30 U.S.C. 958(a)) is amended by inserting after "501," the following: "the status of implementation of rec-

ommendations from each independent investigation panel under section 103(b) received in the preceding 5 years,''.

SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DURING INSPECTIONS AND INVESTIGATIONS.

Section 103(b) (as amended by section 101(a)) (30 U.S.C. 813(b)) is further amended by adding at the end the following:

''(4) ADDITIONAL POWERS.—For the purpose of enabling the Secretary to perform any of the functions under this Act, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of information, including all relevant data, papers, books, documents, and items of physical evidence, and administer oaths. Witnesses summoned shall be paid the same fees that are paid witnesses in the courts of the United States. In carrying out inspections and investigations under this subsection, authorized representatives of the Secretary and attorneys representing the Secretary are authorized to question any individual privately. Under this section, any individual who is willing to speak with or provide a statement to such authorized representatives or attorneys representing the Secretary may do so without the presence, involve-

ment, or knowledge of the operator or the operator's agents or attorneys. The Secretary shall keep the identity of an individual providing such a statement confidential to the extent permitted by law. Nothing in this paragraph prevents any individual from being represented by that individual's personal attorney.''.

SEC. 103. DESIGNATION OF MINER REPRESENTATIVE.

Section 103(f) (30 U.S.C. 813(f)) is amended by inserting before the last sentence the following: ''If any miner is entrapped, disabled, killed, or otherwise prevented as the result of an accident in such mine from designating such a representative directly, such miner's closest relative may act on behalf of such miner in designating such a representative. If any miner is not currently working in such mine as the result of an accident in such mine, but would be currently working in such mine but for such accident, such miner may designate such a representative.''.

SEC. 104. ADDITIONAL AMENDMENTS RELATING TO INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING.

(a) HOURS OF INSPECTIONS.—Section 103(a) (30 U.S.C. 813(a)) is amended by inserting after the third sentence the following: ''Such inspections shall be conducted during the various shifts and days of the week during which miners are normally present in the mine to en-

sure that the protections of this Act are afforded to all miners working all shifts. If an inspection of a working section of a mine occurs during a shift on which a mechanized mining unit is producing, or customarily produces, coal on such section, then such inspection shall be conducted while such unit is producing coal at a rate that is reasonably consistent with the average rate of production at the mine during the previous quarter.''.

(b) INCREASED TARGETED INSPECTIONS.—Section 103(a) (as amended by subsection (a)) is further amended by inserting after the fifth sentence (as inserted by such subsection) the following: ''If the Secretary determines that the operator has not properly maintained a record of all violations of this Act (including any mandatory health or safety standard or regulation promulgated under this Act) for a mine, the Secretary shall provide, during the 3-month period following such determination, a minimum of one spot inspection by his authorized representative of all or part of such mine, during every 15 working days and at irregular intervals. Such inspections shall be in addition to any other inspections required under this section.''.

(c) CONFLICT OF INTEREST IN THE REPRESENTATION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is further amended by adding at the end the following: ''Dur-

ing inspections and investigations under this section, and during any litigation under this Act, no attorney shall represent or purport to represent both the operator of a coal or other mine and any other individual, unless such individual has knowingly and voluntarily waived all actual and reasonably foreseeable conflicts of interest resulting from such representation. The Secretary is authorized to take such actions as the Secretary considers appropriate to ascertain whether such individual has knowingly and voluntarily waived all such conflicts of interest. If the Secretary finds that such an individual cannot be represented adequately by such an attorney due to such conflicts of interest, the Secretary may petition the appropriate United States District Court which shall have jurisdiction to disqualify such attorney as counsel to such individual in the matter. The Secretary may make such a motion as part of an ongoing related civil action or as a miscellaneous action.''.

(d) INJURY AND ILLNESS REPORTING.—Section 103(d) (30 U.S.C. 813(d)) is amended by striking the last sentence and inserting the following: ''The records to be kept and made available by the operator of the mine shall include man-hours worked and occupational injuries and illnesses, and shall be maintained separately for each mine and be reported at a frequency determined by the Sec-

retary, but at least annually. Operators shall be responsible for reporting on all miners working at such mine regardless of their employer, except that independent contractors (within the meaning of section 3(d)) shall only be responsible for reporting on miners in their employ or under their direction or authority.''.

(e) ORDERS FOLLOWING AN ACCIDENT.—Section 103(k) (30 U.S.C. 813(k)) is amended by striking '', when present,''.

(f) ELECTRONIC DATABASE.—Section 103 (30 U.S.C. 813) is amended by adding at the end the following:

''(l) The Secretary shall establish and maintain a publicly available electronic database containing current and historical data on the safety records of each coal or other mine. Such database shall be user-friendly and searchable, and shall have the ability to provide aggregate data for each mine, each operator, and each controller of a mine and the ability to compare safety data between mines, operators, and controllers.''.

(g) FEDERAL-STATE COORDINATION.—Section 103 is further amended by adding at the end the following:

''(m)(1) To the maximum extent practicable, when the Secretary identifies a mine as having a significant or persistent safety or health problem—

"(A) an authorized representative of the Secretary shall request a meeting with the appropriate State-level regulator to share the concerns of the Secretary when the Secretary determines that such actions would improve conditions of the mine; and

"(B) the Secretary and the State-level regulator may develop a joint plan designed to correct the identified problem.

"(2) Nothing in this subsection shall be construed to require the Secretary to take action that could delay or compromise any civil or criminal enforcement action or proceeding.".

(h) OUTSIDE EXPERTS IN INVESTIGATIONS.—Section 112 (30 U.S.C. 822) is amended—

(1) by striking "Except as provided" and inserting the following:

"(a) CIVIL LITIGATION REPRESENTATION.—Except as provided"; and

(2) by adding at the end the following:

"(b) MINING EXPERTS IN INVESTIGATIONS.—The Attorney General shall designate 1 or more full-time employees with expertise in the mining industry to coordinate with the Department of Labor and assist United States attorneys in the investigation and prosecution of criminal violations under this Act.".

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

SEC. 201. SIGNIFICANT AND SUBSTANTIAL VIOLATIONS.

Section 104(d)(1) (30 U.S.C. 814(d)(1)) is amended—

(1) in the first sentence—

(A) by striking ''any mandatory health or safety standard'' and inserting ''any provision of this Act, including any mandatory health or safety standard or regulation promulgated under this Act''; and

(B) by striking ''such mandatory health or safety standards'' and inserting ''such provisions, regulations, or mandatory health or safety standards'';

(2) in the second sentence, by striking ''any mandatory health or safety standard'' and inserting ''any provision of this Act, including any mandatory health or safety standard or regulation promulgated under this Act,''; and

(3) by inserting after the first sentence the following: ''For purposes of this Act, a violation of a provision of this Act, including any mandatory health or safety standard or regulation promulgated under this Act, is of such nature as could signifi-

cantly and substantially contribute to the cause and effect of a safety or health hazard if there is a reasonable possibility that such violation could result in injury, illness, or death.''.

SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR ACCIDENTS.

Section 104(e) (30 U.S.C. 814(e)) is amended to read as follows:

''(e) PATTERN OF RECURRING NONCOMPLIANCE OR ACCIDENTS.—

''(1) PATTERN STATUS.—

''(A) IN GENERAL.—For purposes of this subsection, an operator of a coal or other mine shall be in pattern status if the operator has, as determined based on the regulations promulgated under paragraph (8)—

''(i) a pattern of—

''(I) citations for significant and substantial violations;

''(II) citations and withdrawal orders issued for unwarrantable failure to comply with mandatory health and safety standards under section 104(d);

"(III) citations for flagrant violations within the meaning of section 110(b);

"(IV) withdrawal orders issued under any other section of this Act; or

"(V) accidents, injuries, or illnesses; or

"(ii) a pattern consisting of any combination of citations, orders, accidents, injuries, or illnesses described in subclauses (I) through (V).

"(B) MITIGATING CIRCUMSTANCES.—Notwithstanding subparagraph (A), if the Secretary, after conducting an assessment of a coal or other mine that otherwise qualifies for pattern status, certifies that there are mitigating circumstances wherein the operator has eliminated any elevated risk to the health or safety of miners and has taken sufficient measures to ensure such elevated risk will not recur, the Secretary may deem such mine to not be in pattern status under this subsection. The Secretary shall issue any such certification of such mitigating circumstances that would preclude the placement of a mine in pattern status as a

written finding, which shall, not later than 10 days after the certification is made, be—

"(i) published in the Federal Register; and

"(ii) transmitted to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

"(2) ACTIONS FOLLOWING PLACEMENT OF MINE IN PATTERN STATUS.—For any coal or other mine that is in pattern status, the Secretary shall—

"(A) notify the operator of such mine that the mine is being placed in pattern status;

"(B) issue an order requiring such operator to cause all persons to be withdrawn from such mine, except those persons referred to in subsection (c) or authorized by an order of the Secretary issued under this subsection;

"(C) issue a remediation order described in paragraph (3) to such operator; and

"(D) require that the number of regular inspections of such mine required under section 103 be increased to 8 per year for an under-

ground mine and 4 per year for a surface mine while the mine is in pattern status.

Notice advising operators that they face potential placement in pattern status shall not be a requirement for issuing a withdrawal order to operators under this subsection.

"(3) REMEDIATION ORDER.—

"(A) IN GENERAL.—A remediation order issued to an operator under paragraph (2)(C) may require the operator to carry out one or more of the following requirements, pursuant to a timetable for commencing and completing such actions or as a condition of miners reentering the mine:

"(i) Provide specified training, including training not otherwise required under this Act.

"(ii) Institute and implement an effective health and safety management program approved by the Secretary, including—

"(I) the employment of safety professionals, certified persons, and adequate numbers of personnel for the

mine, as may be required by the Secretary;

"(II) specific inspection, recordkeeping, reporting and other requirements for the mine as the Secretary may establish; and

"(III) other requirements to ensure compliance and to protect the health and safety of miners or prevent accidents or injuries as the Secretary may determine are necessary.

"(iii) Facilitate any effort by the Secretary to communicate directly with miners employed at the mine outside the presence of the mine operators or its agents, for the purpose of obtaining information about mine conditions, health and safety practices, and advising miners of their rights under this Act.

"(B) MODIFICATION OF AND FAILURE TO COMPLY WITH REMEDIATION ORDER.—The Secretary may modify the remediation order, as necessary, to protect the health and safety of miners. If the mine operator fails to fully comply with the remediation order during the time

a mine is in pattern status, the Secretary shall reinstate the withdrawal order under paragraph (2)(B).

"(C) EXTENSION OF DEADLINES.—An extension of a deadline under the remediation order may be granted on a temporary basis and only upon a showing that the operator took all feasible measures to comply with the order and only to the extent that the operator's failure to comply is beyond the control of the operator.

"(4) CONDITIONS FOR LIFTING WITHDRAWAL ORDER.—A withdrawal order issued under paragraph (2)(B) shall not be lifted until the Secretary verifies that—

"(A) any and all violations or other conditions in the mine identified in the remediation order have been or are being fully abated or corrected as outlined in the remediation order; and

"(B) the operator has completed any other actions under the remediation order that are required for reopening the mine.

"(5) PERFORMANCE EVALUATION.—

"(A) PERFORMANCE BENCHMARKS.—The Secretary shall evaluate the performance of

each operator whose mine is in pattern status every 90 days during which the mine is producing and determine if, for such 90-day period—

"(i) the operator's rate of citations for significant and substantial violations—

"(I) are, on average, in the top performing 35th percentile of such rates, respectively, for all mines of similar size and type; or

"(II) have been reduced by 70 percent since such mine was placed on pattern status;

"(ii) the operator's accident and injury rates are, on average, in the top performing 35th percentile of such rates, respectively, for all mines of similar size and type; and

"(iii) no citation or withdrawal order for a violation under section 104(d), no withdrawal order for imminent danger under section 107 arising from a significant and substantial violation, and no flagrant violations within the meaning of section 110(b), were issued for such mine.

"(B) REISSUANCE OF WITHDRAWAL ORDERS.—If an operator being evaluated fails to achieve the performance benchmarks described in subparagraph (A), the Secretary may reissue a withdrawal order under paragraph (2)(B) to remedy any recurring conditions that led to pattern status under this subsection, and may modify the remediation order, as necessary, to protect the health and safety of miners.

"(6) TERMINATION OF PATTERN STATUS.—

"(A) PERFORMANCE BENCHMARKS.—The Secretary shall remove an operator of a coal or other mine from pattern status if, for a 1-year period during which the mine is producing—

"(i) the operator's rate of citations for significant and substantial violations—

"(I) are, on average, in the top performing 25th percentile of such rates, respectively, for all mines of similar size and type; or

"(II) have been reduced by 80 percent since such mine was placed on pattern status;

"(ii) the operator's accident and injury rates are, on average, in the top per-

forming 25th percentile of such rates, respectively, for all mines of similar size and type; and

"(iii) no citation or withdrawal orders for violations under section 104(d), no withdrawal orders for imminent danger under section 107 arising from a significant and substantial violation, and no flagrant violations within the meaning of section 110(b), were issued for such mine.

"(B) CONTINUATION OF PATTERN STATUS.—Should the mine operator fail to meet the performance benchmarks described in subparagraph (A), the Secretary shall extend the mine's placement in pattern status until such benchmarks are achieved.

"(7) EXPEDITED REVIEW.—If any order under this subsection is contested, the review of such order shall be conducted on an expedited basis, in accordance with section 105(d).

"(8) REGULATIONS; INFORMATION ON PERFORMANCE.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and

Health Act of 2012, the Secretary shall issue interim final regulations that shall define—

"(i) the threshold criteria to trigger pattern status under paragraph (1) and cause a withdrawal order to be issued or reissued; and

"(ii) the performance benchmarks described in paragraphs (5)(A) and (6)(A).

"(B) THRESHOLD CRITERIA.—In establishing threshold criteria to trigger pattern status for mines with significantly poor compliance that contributes to unsafe or unhealthy conditions, the Secretary—

"(i) shall consider frequency and rates of citations described in paragraph (1)(A) and rates of reportable accidents and injuries within the preceding 180-day period;

"(ii) may include factors such as mine type, production levels, number of miners, hours worked by miners, number of mechanized mining units (or similar production characteristics), and the designation of a representative of miners at the mine;

"(iii) may include the mine's history of citations, violations, orders, and other

enforcement actions, or rates of reportable accidents and injuries, over any period determined relevant by the Secretary;

"(iv) may assign weight to various types of citations, orders, accidents, injuries, illnesses, or other factors; and

"(v) may include other factors the Secretary may determine appropriate to protect the safety and health of miners.

"(C) FINAL REGULATION.—Not later than 2 years after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary shall promulgate final regulations implementing this paragraph.

"(D) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—Not later than 2 years after the promulgation of the final regulations under subparagraph (C), the Comptroller General of the United States shall study the effectiveness of the threshold criteria established in this paragraph and issue to the Committee on Health, Education, Labor, and Pensions of the Senate and to the Committee on Education and the Workforce of the House of Representatives a

report on the results of the study. In conducting this study, the Comptroller General shall consult with all appropriate stakeholders.

"(9) PUBLIC DATABASE AND INFORMATION.—The Secretary shall establish and maintain a publically available electronic database containing the data used to determine pattern status for all coal or other mines. Such database shall be searchable, shall have the capacity to provide comparative data about the health and safety at mines of similar sizes and types. The Secretary shall also make publicly available—

"(A) a list of all mines the Secretary places in pattern status, updated not less frequently than quarterly; and

"(B) the metrics, including percentile information, used for the purposes of the performance benchmarks and threshold criteria described in paragraphs (5), (6), and (8).

"(10) OPERATOR FEES FOR ADDITIONAL INSPECTIONS.—

"(A) ASSESSMENT AND COLLECTION.—Beginning 120 days after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary shall as-

sess and collect fees, in accordance with this paragraph, from each coal or other mine in pattern status for the costs of additional inspections under this subsection. The Secretary shall issue, by rule, a schedule of fees to be assessed against coal or other mines of varying types and sizes, and shall collect and assess amounts under this paragraph based on the schedule.

"(B) MINES IN PATTERN STATUS INSPECTION FUND.—There is established in the Treasury of the United States a separate account for the deposit of fees collected under this paragraph to be known as the Mines in Pattern Status Inspection Fund. The Secretary shall deposit any fees collected pursuant to subparagraph (A) into the fund.

"(C) USE.—Amounts in the Mines in Pattern Status Inspection Fund shall be available to the Secretary, as provided in subparagraph (D), for making expenditures to carry out the additional inspections required under paragraph (2)(D).

"(D) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts appropriated, there is authorized to be appro-

priated from the Mines in Pattern Status Inspection Fund to the Assistant Secretary for Mine Safety and Health for each fiscal year in which fees are collected under subparagraph (A) an amount equal to the total amount collected during the previous fiscal year from fees assessed pursuant to this paragraph. Such amounts are authorized to remain available until expended.

''(E) CREDITING AND AVAILABILITY OF FEES.—Fees authorized and collected under this paragraph shall be available for obligation only to the extent and in the amount provided in advance in appropriations Acts.''.

SEC. 203. INJUNCTIVE AUTHORITY.

Section 108(a)(2) (30 U.S.C. 818(a)(2)) is amended by striking ''a pattern of violation of'' and all that follows and inserting ''a course of conduct that in the judgment of the Secretary constitutes a continuing hazard to the health or safety of miners, including violations of this Act or of mandatory health and safety standards or regulations under this Act.''.

SEC. 204. REVOCATION OF APPROVAL OF PLANS.

Section 105 (30 U.S.C. 815) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) REVOCATION OF APPROVAL OF PLANS.—

"(1) REVOCATION.—If the Secretary finds that any program or plan of an operator, or part thereof, that was approved by the Secretary under this Act is based on inaccurate information or that circumstances that existed when such plan was approved have materially changed and that continued operation of such mine under such plan constitutes a hazard to the safety or health of miners, the Secretary shall revoke the approval of such program or plan.

"(2) WITHDRAWAL ORDERS.—Upon revocation of the approval of a program or plan under subsection (a), the Secretary may immediately issue an order requiring the operator to cause all persons, except those persons referred to in section 104(c), to be withdrawn from such mine, and to be prohibited from entering such mine, until the operator has submitted and the Secretary has approved a new plan.".

SEC. 205. CHALLENGING A DECISION TO APPROVE, MODIFY, OR REVOKE A COAL OR OTHER MINE PLAN.

Section 105(e) (as redesignated by section 204(1)) (30 U.S.C. 815(e)) is amended by adding at the end the following: ''In any proceeding in which a party challenges the Secretary's decision to approve, modify, or revoke a coal or other mine plan under this Act, the Commission and the courts shall affirm the Secretary's decision unless the challenging party establishes that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.''.

TITLE III—PENALTIES

SEC. 301. CIVIL PENALTIES.

(a) MAXIMUM CIVIL PENALTIES.—Section 110(a)(1) (30 U.S.C. 820(a)(1)) is amended—

(1) by inserting ''including any regulation promulgated under this Act,'' after ''this Act,''; and

(2) by striking ''violation.'' and inserting ''violation, except that, in the case of a significant and substantial violation, the penalty shall be not more than $150,000 for each such violation.''.

(b) INCREASED CIVIL PENALTIES.—Section 110(b) (30 U.S.C. 820(b)) is amended—

(1) in paragraph (2), by inserting '', a change in ventilation in a coal or other mine that has not

received prior approval from the Secretary, or a failure to keep the records required for the mine by the Secretary in accordance with this Act, including keeping a record of all violations of this Act (including any mandatory health or safety standard or regulation promulgated under this Act)'' before the period at the end; and

(2) by adding at the end the following:

''(3) Notwithstanding any other provision of this Act, an operator of a coal or other mine that is in pattern status under section 104(e) and that fails to meet the performance benchmarks set forth by the Secretary under section 104(e)(5)(A) during any performance review of the mine following the first performance review shall be assessed an increased civil penalty for any violation of this Act, including any mandatory health or safety standard or regulation promulgated under this Act. Such increased penalty shall be twice the amount that would otherwise be assessed for the violation under this Act, including the regulations promulgated under this Act, subject to the maximum civil penalty established for the violation under this Act. This paragraph shall apply to violations at such mine that occur during the period beginning after the failed performance review following the first performance review, and ending when the Secretary determines at a

subsequent performance review that the mine meets the performance benchmarks.''.

(c) CIVIL PENALTY FOR RETALIATION.—Section 110(a) (30 U.S.C. 820(a)) is further amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following:

''(4) If any person violates section 105(c), the Secretary shall propose, and the Commission shall assess, a civil penalty of not less than $10,000 or more than $100,000 for the first occurrence of such violation, and not less than $20,000 or more than $200,000 for any subsequent violation, during any 3-year period.''.

SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DIRECTORS, AND AGENTS.

Section 110(c) (30 U.S.C. 820(c)) is amended to read as follows:

''(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DIRECTORS, AND AGENTS.—Whenever an operator violates a provision of this Act, including any mandatory health or safety standard or regulation promulgated under this Act, or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, any di-

rector, officer, or agent of such operator who knowingly authorized, ordered, or carried out such violation, failure, or refusal, or any policy or practice that contributed to the occurrence of such violation, failure, or refusal, shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under this section.''.

SEC. 303. CRIMINAL PENALTIES.

(a) INTENT REQUIREMENTS FOR CRIMINAL PENALTY STANDARDS.—Section 110(d) (30 U.S.C. 820(d)) is amended—

(1) by striking ''willfully'' and inserting ''knowingly'';

(2) by striking ''$250,000, or by imprisonment for not more than one year'' and inserting ''$1,000,000, or by imprisonment for not more than 5 years''; and

(3) by striking ''$500,000, or by imprisonment for not more than five years'' and inserting ''$2,000,000, or by imprisonment for not more than 10 years''.

(b) CRIMINAL PENALTY FOR RETALIATION.—Section 110(d) is further amended—

(1) by inserting ''(1)'' before ''Any operator''; and

(2) by adding at the end the following:

''(2) Whoever knowingly takes any action that is directly or indirectly harmful to any person, including action that interferes with the lawful employment or livelihood of any person, because such person has provided an authorized representative of the Secretary or another law enforcement officer with any information related to the existence of a health or safety violation or an unhealthful or unsafe condition, policy, or practice under this Act shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.''.

(c) ADVANCE NOTICE OF INSPECTIONS.—

(1) IN GENERAL.—Section 110(e) (30 U.S.C. 820(e)) is amended—

(A) by striking ''Unless'' and inserting ''(1) Unless''; and

(B) by adding at the end the following:

''(2) Unless otherwise authorized by this Act, any operator, agent or contractor of any operator, miner, inspector, employee of the Administration, or State mine inspector, that knowingly gives, causes to give, or attempts to give or cause to give advance notice of any inspection to be conducted under this Act shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.''.

(2) POSTING OF ADVANCE NOTICE PENALTIES.—Section 109 (30 U.S.C. 819) is amended by adding at the end the following:

"(e) POSTING OF ADVANCE NOTICE PENALTIES.—Each operator of a coal or other mine shall post, on the bulletin board described in subsection (a) and in a conspicuous place near each staffed entrance onto the mine property, a notice stating, in a form and manner to be prescribed by the Secretary—

"(1) that giving, causing to give, or attempting to give or cause to give advance notice of any inspection to be conducted under this Act is unlawful pursuant to section 110(e); and

"(2) the maximum penalties for a violation under such subsection.".

SEC. 304. COMMISSION REVIEW OF PENALTY ASSESSMENTS.

Section 110(i) (30 U.S.C. 820(i)) is amended by striking "In assessing civil monetary penalties, the Commission shall consider" and inserting the following: "In any review of a citation and proposed penalty assessment contested by an operator, the Commission shall assess not less than the penalty derived by using the same methodology (including any point system) prescribed in regulations under this Act, so as to ensure consistency in oper-

ator penalty assessments, except that the Commission may assess a penalty for less than the amount that would result from the utilization of such methodology if the Commission finds that there are extraordinary circumstances. If there is no such methodology prescribed for a citation or there are such extraordinary circumstances, the Commission shall assess the penalty by considering''.

SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT INTEREST.

(a) PRE-FINAL ORDER INTEREST.—Section 110(j) (30 U.S.C. 820(j)) is amended by striking the second and third sentences and inserting the following: ''Pre-final order interest on such penalties shall begin to accrue on the date the operator contests a citation issued under this Act, including any mandatory health or safety standard or regulation promulgated under this Act, and shall end upon the issuance of the final order. Such pre-final order interest shall be calculated at the current underpayment rate determined by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, and shall be compounded daily. Post-final order interest shall begin to accrue 30 days after the date a final order of the Commission or the court is issued, and shall be charged at the rate of 8 percent per annum.''.

(b) ENSURING PAYMENT OF PENALTIES.—

(1) AMENDMENTS.—Section 110 (30 U.S.C. 820) is further amended—

(A) by redesignating subsection (l) as subsection (m); and

(B) by inserting after subsection (k) the following:

"(l) ENSURING PAYMENTS OF PENALTIES.—

"(1) DELINQUENT PAYMENT LETTER.—If the operator of a coal or other mine fails to pay any civil penalty assessment that has become a final order of the Commission or a court within 90 days after such assessment became a final order, the Secretary shall send the operator a letter advising the operator of the consequences under this subsection of such failure to pay. The letter shall also advise the operator of the opportunity to enter into or modify a payment plan with the Secretary based upon a demonstrated inability to pay, the procedure for entering into such plan, and the consequences of not entering into or not complying with such plan.

"(2) WITHDRAWAL ORDERS FOLLOWING FAILURE TO PAY.—If an operator that receives a letter under paragraph (1) has not paid the assessment by the date that is 180 days after such assessment became a final order and has not entered into a pay-

ment plan with the Secretary, the Secretary shall issue an order requiring such operator to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, the mine that is covered by the final order described in paragraph (1), until the operator pays such assessment in full (including interest and administrative costs) or enters into a payment plan with the Secretary. If such operator enters into a payment plan with the Secretary and at any time fails to comply with the terms specified in such payment plan, the Secretary shall issue an order requiring such operator to cause all persons, except those referred to in section 104(c), to be withdrawn from the mine that is covered by such final order, and to be prohibited from entering such mine, until the operator rectifies the noncompliance with the payment plan in the manner specified in such payment plan.''.

(2) APPLICABILITY AND EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to all unpaid civil penalty assessments under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), except that, for any unpaid civil penalty assessment that became a final order of the

Commission or a court before the date of enactment of this Act, the time periods under section 110(n) of the Federal Mine Safety and Health Act of 1977 (as amended) (30 U.S.C. 820(n)) shall be calculated as beginning on the date of enactment of this Act instead of on the date of the final order.

TITLE IV—WORKER RIGHTS AND PROTECTIONS

SEC. 401. PROTECTION FROM RETALIATION.

Section 105(c) (30 U.S.C. 815(c)) is amended to read as follows:

''(c) PROTECTION FROM RETALIATION.—

''(1) RETALIATION PROHIBITED.—

''(A) RETALIATION FOR COMPLAINT OR TESTIMONY.—No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner or other employee of an operator, representative of miners, or applicant for employment, because—

''(i) such miner or other employee, representative, or applicant for employment—

"(I) has filed or made a complaint, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine;

"(II) instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner or other employee, representative, or applicant for employment on behalf of him or herself or others of any right afforded by this Act;

"(III) has testified or is about to testify before Congress or any Federal or State proceeding related to safety or health in a coal or other mine; or

"(IV) refused to violate any provision of this Act; or

"(ii) such miner is the subject of medical evaluations and potential transfer

under a standard published pursuant to section 101.

"(B) RETALIATION FOR REFUSAL TO PERFORM DUTIES.—

"(i) IN GENERAL.—No person shall discharge or in any manner discriminate against a miner or other employee of an operator for refusing to perform the miner's or other employee's duties if the miner or other employee has a good-faith and reasonable belief that performing such duties would pose a safety or health hazard to the miner or other employee or to any other miner or employee.

"(ii) STANDARD.—For purposes of clause (i), the circumstances causing the miner's or other employee's good-faith belief that performing such duties would pose a safety or health hazard shall be of such a nature that a reasonable person, under the circumstances confronting the miner or other employee, would conclude that there is such a hazard. In order to qualify for protection under this paragraph, the miner or other employee, when practicable, shall

have communicated or attempted to communicate the safety or health concern to the operator and have not received from the operator a response reasonably calculated to allay such concern.

"(2) COMPLAINT.—Any miner or other employee, representative of miners, or applicant for employment who believes that he or she has been discharged, disciplined, or otherwise discriminated against by any person in violation of paragraph (1) may file a complaint with the Secretary alleging such discrimination not later than 180 days after the later of the last date on which an alleged violation of such paragraph occurs or the date on which the miner or other employee or representative knows or should reasonably have known that such alleged violation occurred.

"(3) INVESTIGATION AND HEARING.—

"(A) COMMENCEMENT OF INVESTIGATION AND INITIAL DETERMINATION.—Upon receipt of such complaint, the Secretary shall—

"(i) forward a copy of the complaint to the respondent;

"(ii) commence an investigation within 15 days of the Secretary's receipt of the complaint; and

"(iii) as soon as practicable after commencing such investigation, make the determination required under subparagraph (B) regarding the reinstatement of the miner or other employee.

"(B) REINSTATEMENT.—If the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner or other employee until there has been a final Commission order disposing of the underlying complaint of the miner or other employee. If either the Secretary or the miner or other employee pursues the underlying complaint, such reinstatement shall remain in effect until the Commission has disposed of such complaint on the merits, regardless of whether the Secretary pursues such complaint by filing a complaint under subparagraph (D) or the miner or other employee pursues such complaint by filing an action under paragraph (4). If neither the Sec-

retary nor the miner or other employee pursues the underlying complaint within the periods specified in paragraph (4), such reinstatement shall remain in effect until such time as the Commission may, upon motion of the operator and after providing notice and an opportunity to be heard to the parties, vacate such complaint for failure to prosecute.

"(C) INVESTIGATION.—Such investigation shall include interviewing the complainant and—

"(i) providing the respondent an opportunity to submit to the Secretary a written response to the complaint and to present statements from witnesses or provide evidence; and

"(ii) providing the complainant an opportunity to receive any statements or evidence provided to the Secretary and rebut any statements or evidence.

"(D) ACTION BY THE SECRETARY.—If, upon such investigation, the Secretary determines that the provisions of this subsection have been violated, the Secretary shall immediately file a complaint with the Commission,

with service upon the alleged violator and the miner or other employee or representative of miners alleging such discrimination or interference, and propose an order granting appropriate relief.

"(E) ACTION OF THE COMMISSION.—The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The complaining miner or other employee, representative, or applicant for employment may present additional evidence on his or her own behalf during any hearing held pursuant to this paragraph.

"(F) RELIEF.—The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation and prescribe a remedy as the Commission considers appropriate, including—

"(i) the rehiring or reinstatement of the miner or other employee with back pay and interest and without loss of position or seniority, and restoration of the terms, rights, conditions, and privileges associated with the complainant's employment;

"(ii) any other compensatory and consequential damages sufficient to make the complainant whole, and exemplary damages where appropriate; and

"(iii) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant's direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.

"(4) NOTICE TO AND ACTION OF COMPLAINANT.—

"(A) NOTICE TO COMPLAINANT.—Not later than 90 days after the receipt of a com-

plaint filed under paragraph (2), the Secretary shall notify, in writing, the miner or other employee, applicant for employment, or representative of miners of his determination whether a violation has occurred.

"(B) ACTION OF COMPLAINANT.—If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days notice of the Secretary's determination, to file an action in his or her own behalf before the Commission, charging discrimination or interference in violation of paragraph (1).

"(C) HEARING AND DECISION.—The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant's charges and, if the charges are sustained, granting such relief as it deems appropriate as described in paragraph (3)(F). Such order shall become final 30 days after its issuance.

"(5) BURDEN OF PROOF.—In adjudicating a complaint pursuant to this subsection, the Commission may determine that a violation of paragraph (1) has occurred only if the complainant demonstrates that any conduct described in paragraph (1) with respect to the complainant was a contributing factor in the adverse action alleged in the complaint. A decision or order that is favorable to the complainant shall not be issued pursuant to this subsection if the respondent demonstrates by clear and convincing evidence that the respondent would have taken the same adverse action in the absence of such conduct.

"(6) ATTORNEY'S FEES.—Whenever an order is issued sustaining the complainant's charges under this subsection, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined by the Commission to have been reasonably incurred by the complainant for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation. The Commission shall determine whether such costs and expenses were reasonably incurred by the complainant without reference to whether the Secretary also participated in the proceeding.

"(7) EXPEDITED PROCEEDINGS; JUDICIAL REVIEW.—Proceedings under this subsection shall be expedited by the Secretary and the Commission. Any order issued by the Commission under this subsection shall be subject to judicial review in accordance with section 106. Violations by any person of paragraph (1) shall be subject to the provisions of sections 108 and 110(a)(4).

"(8) PROCEDURAL RIGHTS.—The rights and remedies provided for in this subsection may not be waived by any agreement, policy, form, or condition of employment, including by any pre-dispute arbitration agreement or collective bargaining agreement.

"(9) SAVINGS.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.".

SEC. 402. PROTECTION FROM LOSS OF PAY.

Section 111 (30 U.S.C. 821) is amended to read as follows:

"SEC. 111. ENTITLEMENT OF MINERS.

"(a) PROTECTION FROM LOSS OF PAY.—

"(1) WITHDRAWAL ORDER.—If a coal or other mine or area of such mine is closed by an order

issued under section 103, 104, 107, 108, or 110, all miners who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay and in accordance with their regular schedules of pay for the entire period for which they are idled.

"(2) CLOSURE IN ADVANCE OF ORDER.—If the Secretary finds that such mine or such area of a mine was closed by the operator in anticipation of the issuance of such an order, all miners who are idled by such closure shall be entitled to full compensation by the operator at their regular rates of pay and in accordance with their regular schedules of pay, from the time of such closure until such time as the Secretary authorizes reopening of such mine or such area of the mine.

"(3) REFUSAL TO COMPLY.—Whenever an operator violates or fails or refuses to comply with any order issued under section 103, 104, 107, 108, or 110, all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addi-

tion to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

''(b) ENFORCEMENT.—

''(1) COMMISSION ORDERS.—The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative and after opportunity for hearing subject to section 554 of title 5, United States Code. Whenever the Commission issues an order sustaining the complaint under this subsection in whole or in part, the Commission shall award the complainant reasonable attorneys' fees and costs.

''(2) FAILURE TO PAY COMPENSATION DUE.—Consistent with the authority of the Secretary to order miners withdrawn from a mine under this Act, the Secretary shall order a mine that has been subject to a withdrawal order under section 103, 104, 107, 108, or 110, and has reopened, to be closed again if compensation in accordance with the provisions of this section is not paid by the end of the next regularly scheduled payroll period following the lifting of a withdrawal order.''.

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

SEC. 501. PRE-SHIFT REVIEW OF MINE CONDITIONS.

Section 303(d) (30 U.S.C. 863(d)) is amended by adding at the end the following:

''(3)(A) Not later than 30 days after the issuance of the interim final rules promulgated under subparagraph (C), each operator of an underground coal mine shall implement a communication program at the underground coal mine to ensure that each miner entering the mine is made aware, at the start of such miner's shift, of the current conditions of the mine, including—

''(i) any conditions that are hazardous or that violate a mandatory health or safety standard or a plan approved under this Act; and

''(ii) the general conditions of that miner's assigned working section or other area.

''(B) In an effort to facilitate the communications described in subparagraph (A), each agent of the operator who is responsible for ensuring the safe and healthful working conditions at the mine, including mine foremen, assistant mine foremen, and mine examiners, shall, upon exiting the mine or workplace, verbally communicate with any oncoming agent replacing the exiting agent on duty

in order to update the oncoming agent on the conditions the exiting agent observed during the exiting agent's shift, including any conditions that are hazardous or that violate a mandatory health or safety standard or a plan approved under this Act. Such communications process shall be completed prior to the start of each shift at the mine and recorded in a book designated for that purpose and available for inspection by all interested parties. In the event the mine operation is idle prior to the start of any shift, the oncoming agent of the operator shall meet with the individual who was responsible for examining the mine to obtain the necessary information.

''(C) Not later than 90 days after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary shall promulgate interim final rules implementing the requirements of subparagraphs (A) and (B).''.

SEC. 502. ROCK DUST STANDARDS.

(a) STANDARDS.—Section 304(d) (30 U.S.C. 864(d)) is amended—

(1) by striking ''Where rock'' and inserting the following: ''ROCK DUST.—

''(1) IN GENERAL.—Where rock'';

(2) by striking ''65 per centum'' and all that follows and inserting ''80 percent. Where methane is

present in any ventilating current, the percentage of incombustible content of such combined dusts shall be increased 0.4 percent for each 0.1 percent of methane.''; and

(3) by adding at the end the following:

''(2) METHODS OF MEASUREMENT.—

''(A) IN GENERAL.—Each operator of an underground coal mine shall take accurate samples of the amount of coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials in the active workings of such mines, to ensure that the coal dust is kept below explosive levels through the appropriate application of rock dusting.

''(B) DIRECT READING MONITORS.—By the later of September 30, 2012, or the date that is 30 days after the Secretary of Health and Human Services has certified in writing that direct reading monitors are commercially available to measure total incombustible content in coal dust and the Department of Labor has approved such monitors for use in underground coal mines, the Secretary shall require opera-

tors to take coal dust samples using direct reading monitors.

"(C) REGULATIONS.—The Secretary shall, not later than 180 days after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012 promulgate an interim final rule that prescribes methods for sampling of total incombustible content of coal dust using direct reading monitors and includes requirements for locations, methods, and intervals for mandatory operator sampling.

"(D) RECOMMENDATIONS.—Not later than 1 year after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary of Health and Human Services shall, based upon the latest research, recommend to the Secretary of Labor any revisions to the mandatory operator sampling locations, methods, and intervals included in the interim final rule described in subparagraph (C) that may be warranted in light of such research.".

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of

Labor, shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, a report—

(1) regarding whether any direct reading device described in section 304(d)(2)(B) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 864(d)(2)(B)) is sufficiently reliable and accurate for the enforcement of the mandatory health or safety standards by the Secretary of Labor under such Act, and whether additional improvement to such direct reading device, or additional verification regarding reliability and accuracy, would be needed for enforcement purposes; and

(2) identifying any limitations or impediments for such use in underground coal mines.

(c) ADDITIONAL ROCK DUST REPORTING.—Section 103(h) (30 U.S.C. 813(h)) is amended by inserting after the first sentence the following: ''An operator of a coal or other mine shall, as part of the record-keeping requirements of this Act, maintain up-to-date records of the amount of rock dust purchased and dispersed.''.

SEC. 503. ATMOSPHERIC MONITORING SYSTEMS AND ADDITIONAL TECHNOLOGICAL IMPROVEMENTS.

Section 317 (30 U.S.C. 877) is amended by adding at the end the following:

"(u) ATMOSPHERIC MONITORING SYSTEMS.—

"(1) NIOSH RECOMMENDATIONS.—Not later than 6 months after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Director of the National Institute for Occupational Safety and Health, acting through the Office of Mine Safety and Health Research, shall issue recommendations to the Secretary regarding—

"(A) how to ensure that atmospheric monitoring systems are utilized in the underground coal mining industry to maximize the health and safety of underground coal miners; and

"(B) the implementation of redundant systems, such as the bundle tubing system, that can continuously monitor the mine atmosphere following incidents such as fires, explosions, entrapments, and inundations.

"(2) ATMOSPHERIC MONITORING SYSTEM REGULATIONS.—Not later than 270 days following the receipt of the recommendations described in paragraph (1), the Secretary shall promulgate regula-

tions requiring that each operator of an underground coal mine install atmospheric monitoring systems, consistent with such recommendations, that—

"(A) protect miners where the miners normally work and travel;

"(B) provide real-time information regarding methane and carbon monoxide levels, and airflow direction, as appropriate, with sensing, annunciating, and recording capabilities; and

"(C) can, to the maximum extent practicable, withstand explosions and fires.

"(v) ADDITIONAL TECHNOLOGICAL IMPROVEMENTS.—Not later than 2 years after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary shall promulgate regulations requiring that mining equipment used in a coal mine incorporate an atmospheric monitoring and recording device that samples and records the methane, oxygen, carbon monoxide and coal dust levels in the mine.".

SEC. 504. TECHNOLOGY RELATED TO RESPIRABLE DUST.

Section 202(d) (30 U.S.C. 842(d)) is amended—

(1) by striking "of Health, Education, and Welfare"; and

(2) by striking the second sentence and inserting the following: "Not later than 6 months after

the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary shall issue a final regulation lowering permissible exposure levels to respirable dust and updating sampling and testing procedures, in order to provide the maximum feasible protection from respirable dust, including coal and silica dust, that is achievable through environmental controls. Not later than 5 years after the date of issuance of such final regulation, and once every 5 years thereafter, the Secretary shall reexamine the incidence of pneumoconiosis in miners and, unless there is a decline in pneumoconiosis, shall update the regulation.''.

SEC. 505. REFRESHER TRAINING ON MINER RIGHTS AND RESPONSIBILITIES.

(a) IN GENERAL.—Section 115(a)(3) (30 U.S.C. 825(a)(3)) is amended to read as follows:

''(3) all miners shall receive not less than 9 hours of refresher training not less frequently than once every 12 months, and such training shall include one hour of training on the statutory rights and responsibilities of miners and their representatives under this Act and other applicable Federal and State law, pursuant to a program of instruction developed by the Secretary and delivered by an em-

ployee of the Administration or by a trainer approved by the Administration that is a party independent from the operator;''.

(b) TIMING OF INITIAL STATUTORY RIGHTS TRAINING.—Notwithstanding section 115 of the Federal Mine Safety and Health Act of 1977 (as amended by subsection (a)) (30 U.S.C. 825) or the health and safety training program approved under such section, an operator shall ensure that all miners already employed by the operator on the date of enactment of this Act shall receive the one hour of statutory rights and responsibilities training described in section 115(a)(3) of such Act not later than 180 days after such date.

SEC. 506. ADDITIONAL TRAINING.

(a) AUTHORITY TO MANDATE ADDITIONAL TRAINING.—

(1) IN GENERAL.—Section 115 (30 U.S.C. 825) is further amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following:

''(e) AUTHORITY TO MANDATE ADDITIONAL TRAINING.—

''(1) IN GENERAL.—The Secretary is authorized to issue an order requiring that an operator of a coal or other mine provide additional training be-

yond what is otherwise required by law, and specifying the time within which such training shall be provided, if the Secretary finds that—

"(A)(i) a serious or fatal accident has occurred at such mine; or

"(ii) such mine has experienced accident and injury rates, citations for violations of this Act (including mandatory health or safety standards or regulations promulgated under this Act), citations for significant and substantial violations, or withdrawal orders issued under this Act at a rate above the average for mines of similar size and type; and

"(B) additional training would benefit the health and safety of miners at the mine.

"(2) WITHDRAWAL ORDER.—If the operator fails to provide training ordered under paragraph (1) within the specified time, the Secretary shall issue an order requiring such operator to cause all affected persons, except those persons referred to in section 104(c), to be withdrawn, and to be prohibited from entering such mine, until such operator has provided such training.".

(2) CONFORMING AMENDMENTS.—Section 104(g)(2) (30 U.S.C. 814(g)(2)) is amended by

striking ''under paragraph (1)'' both places it appears and inserting ''under paragraph (1) or under section 115(e)''.

(b) ADDITIONAL TRAINING.—Section 115(a) (30 U.S.C. 825(a)) is amended—

(1) in paragraph (5), by striking the period and inserting ''; and''; and

(2) by adding at the end the following:

''(6) each miner in an underground coal mine shall receive quarterly training on the use of self-rescue devices, which shall be conducted in circumstances that approximate actual operating circumstances as closely as practicable, including practice during production events and during shift changes.''.

SEC. 507. CERTIFICATION OF PERSONNEL.

(a) IN GENERAL.—Title I is further amended by adding at the end the following:

''SEC. 117. CERTIFICATION OF PERSONNEL.

''(a) CERTIFICATION REQUIRED.—Any person who is authorized or designated by the operator of a coal or other mine to perform any duties or provide any training that this Act, including a mandatory health or safety standard or regulation promulgated pursuant to this Act, requires to be performed or provided by a certified, registered,

qualified, or otherwise approved person, shall be permitted to perform such duties or provide such training only if such person has a current certification, registration, qualification, or approval to perform such duties or provide such training consistent with the requirements of this section.

"(b) ESTABLISHMENT OF CERTIFICATION REQUIREMENTS AND PROCEDURES.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary shall issue mandatory standards to establish—

"(A) requirements for such certification, registration, qualification, or other approval, including the experience, examinations, and references that may be required as appropriate;

"(B) time limits for such certifications and procedures for obtaining and renewing such certification, registration, qualification, or other approval; and

"(C) procedures and criteria for revoking such certification, registration, qualification, or other approval, including procedures that en-

sure that the Secretary responds to requests for revocation.

"(2) COORDINATION WITH STATES.—In developing such standards, the Secretary shall consult with States that have miner certification programs to ensure effective coordination with existing State standards and requirements for certification. The standards required under paragraph (1) may provide that the certification, registration, qualification, or other approval of the State in which the coal or other mine is located satisfies the requirement of subsection (a) if the State's program of certification, registration, qualification, or other approval is no less stringent than the standards established by the Secretary under paragraph (1).

"(c) OPERATOR FEES FOR CERTIFICATION.—

"(1) ASSESSMENT AND COLLECTION.—Beginning 180 days after the date of enactment of the Robert C. Byrd Mine and Workplace Safety and Health Act of 2012, the Secretary shall assess and collect fees, in accordance with this subsection, from each operator for each person certified under this section. Fees shall be assessed and collected in amounts determined by the Secretary as necessary

to fund the certification programs established under this section.

"(2) MINE SAFETY AND HEALTH CERTIFICATION FUND.—There is established in the Treasury of the United States a separate account for the deposit of fees collected under this subsection to be known as the Mine Safety and Health Certification Fund. The Secretary shall deposit any fees collected pursuant to paragraph (1) into the fund.

"(3) USE.—Amounts in the Mine Safety and Health Certification Fund shall be available to the Secretary, as provided in paragraph (4), for making expenditures to carry out the certification programs established under this subsection.

"(4) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds appropriated under section 114, there is authorized to be appropriated from the Mine Safety and Health Certification Fund to the Assistant Secretary for Mine Safety and Health for each fiscal year in which fees are collected under paragraph (1) an amount equal to the total amount collected during the previous fiscal year from fees assessed pursuant to this subsection. Such amounts are authorized to remain available until expended.

"(5) CREDITING AND AVAILABILITY OF FEES.—Fees authorized and collected under this subsection shall be available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

"(d) CITATION; WITHDRAWAL ORDER.—Any operator who permits a person to perform any of the health or safety related functions described in subsection (a) without a current certification which meets the requirements of this section shall be considered to have committed an unwarrantable failure under section 104(d)(1), and the Secretary shall issue an order requiring that the miner be withdrawn or reassigned to duties that do not require such certification.".

(b) CONFORMING AMENDMENTS.—Section 318 (30 U.S.C. 878) is amended—

(1) by striking subsections (a) and (b);

(2) in subsection (c), by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(3) in subsection (g), by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(4) by redesignating subsections (c) through (j) as paragraphs (1) through (8), respectively.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

SEC. 601. DEFINITIONS.

(a) DEFINITION OF OPERATOR.—Section 3(d) (30 U.S.C. 802) is amended to read as follows:

''(d) 'operator' means—

''(1) any owner, lessee, or other person that—

''(A) operates or supervises a coal or other mine; or

''(B) controls such mine by making or having the authority to make management or operational decisions that affect, directly or indirectly, the health or safety at such mine; or

''(2) any independent contractor performing services or construction at such mine;''.

(b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C. 802(e)) is amended by striking ''the miners'' and inserting ''any miner''.

(c) DEFINITION OF MINER.—Section 3(g) (30 U.S.C. 802(g)) is amended by inserting after ''or other mine'' the following: '', and includes any individual who is not currently working in a coal or other mine but would be currently working in such mine, but for an accident in such mine''.

(d) DEFINITION OF IMMINENT DANGER.—Section 3(j) (30 U.S.C. 802(j)) is amended—

(1) by striking ''means the'' and inserting the following: ''means—

''(1) the'';

(2) by striking the semicolon at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(2) the existence of multiple conditions or practices (regardless of whether related to each other) that, when considered in the aggregate, could reasonably be expected to cause death or serious physical harm before such conditions or practices can be abated;''.

(e) DEFINITION OF SIGNIFICANT AND SUBSTANTIAL VIOLATIONS.—Section 3 (30 U.S.C. 802) is further amended—

(1) in subsection (m), by striking ''and'' after the semicolon;

(2) in subsection (n), by striking the period at the end and inserting a semicolon;

(3) in subsection (o), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

"(p) 'significant and substantial violation' means a violation of this Act, including any mandatory health or safety standard or regulation promulgated under this Act, that is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard as described in section 104(d).".

SEC. 602. ASSISTANCE TO STATES.

Section 503 (30 U.S.C. 953(a)) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ", in coordination with the Secretary of Health, Education, and Welfare and the Secretary of the Interior,";

(B) in paragraph (2), by striking "and" after the semicolon;

(C) in paragraph (3), by striking the period and inserting "; and"; and

(D) by adding at the end the following:

"(4) to assist such State in developing and implementing any certification program for coal or other mines required for compliance with section 117."; and

(2) in subsection (h), by striking "$3,000,000 for fiscal year 1970, and $10,000,000 in each suc-

ceeding fiscal year'' and inserting ''$20,000,000 for each fiscal year''.

SEC. 603. BLACK LUNG MEDICAL REPORTS.

Title IV of the Black Lung Benefits Act (30 U.S.C. 901 et seq.) is amended by adding at the end the following:

''SEC. 435. MEDICAL REPORTS.

''In any claim for benefits for a miner under this title, an operator that requires a miner to submit to a medical examination regarding the miner's respiratory or pulmonary condition shall, not later than 14 days after the miner has been examined, deliver to the claimant a complete copy of the examining physician's report. The examining physician's report shall be in writing and shall set out in detail the examiner's findings, including any diagnoses and conclusions and the results of any diagnostic imaging techniques and tests that were performed on the miner.''.

SEC. 604. STUDY ON WORKFORCE NEEDS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study on the workforce needs of the mining industry and Federal and State enforcement agencies, including the need for engineers and mine safety and health professionals.

(b) ISSUES TO BE STUDIED.—The study in subsection (a) shall include—

(1) an analysis of the training and expertise of the mine engineers and the safety and health workforce; and

(2) the need for a highly trained workforce of engineers and safety and health professionals within—

(A) the mining industry;

(B) the Mine Safety Health Administration; and

(C) State enforcement agencies responsible for mine safety and health.

(c) REPORT.—The Comptroller General of the United States shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and to the Committee on Education and the Workforce of the House of Representatives a report on the study in subsection (a).

(d) RECOMMENDATIONS.—As needed, the Comptroller General of the United States shall provide recommendations for improvement in the report in subsection (c).

SEC. 605. MINE SAFETY AND HEALTH ADMINISTRATION STRATEGIC PLANNING.

(a) STRATEGIC PLAN.—Not later than December 31, 2012, the Secretary of Labor, acting through the Assistant Secretary of Labor for Mine Safety and Health, shall submit to the Director of the Office of Management and Budget and to the Congress and post on the public website of the Mine Safety and Health Administration, a 5-year strategic plan for program activities. Such plan shall be—

(1) prepared in accordance with the requirements for agency strategic plans under section 306 of title 5, United States Code, except as otherwise provided in this section;

(2) aligned with the strategic plan of the Department of Labor; and

(3) revised at least once every 4 years.

(b) ANNUAL PERFORMANCE PLAN.—Beginning with the Mine Safety and Health Administration budget submission for fiscal year 2014, the Secretary of Labor, acting through the Assistant Secretary of Labor for Mine Safety and Health, shall submit to the Director of the Office of Management and Budget an annual performance plan covering each program activity set forth in the budget of the Mine Safety and Health Administration. Such plan shall—

(1) be prepared in accordance with the requirements for performance plans under section 1115 of title 31, United States Code, except as otherwise provided in this section;

(2) be consistent with the strategic plan of the Mine Safety and Health Administration under subsection (a); and

(3) include a strategic workforce plan that provides a clear line of sight between the performance goals and objectives of the Mine Safety and Health Administration and the human capital strategies employed to meet such goals and objectives.

(c) REPORT.—Not later than 150 days after the end of a fiscal year, beginning with fiscal year 2014, the Secretary of Labor, acting through the Assistant Secretary of Labor for Mine Safety and Health, shall prepare and submit to the President and the Congress and post on the public website of the Mine Safety and Health Administration, a report on the program performance for the previous fiscal year. Such report shall—

(1) be prepared in accordance with the requirements for program performance reports under section 1116 of title 31, United States Code; and

(2) address the extent to which the Mine Safety and Health Administration is using performance information to improve program performance.

TITLE VII—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

SEC. 701. ENHANCED PROTECTIONS FROM RETALIATION.

(a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(1)) is amended—

(1) by striking ''discharge'' and all that follows through ''because such'' and inserting the following: ''discharge or cause to be discharged, or in any manner discriminate against or cause to be discriminated against, any employee because—

''(A) such'';

(2) by striking ''this Act or has'' and inserting the following: ''this Act;

''(B) such employee has'';

(3) by striking ''such proceeding or because of the exercise'' and inserting the following: ''before Congress or in any Federal or State proceeding related to safety or health;

''(C) such employee has refused to violate any provision of this Act; or

"(D) of the exercise"; and

(4) by inserting before the period at the end the following: ", including the reporting of any injury, illness, or unsafe condition to the employer, agent of the employer, safety and health committee involved, or employee safety and health representative involved".

(b) PROHIBITION OF RETALIATION.—Section 11(c) of such Act (29 U.S.C. 660(c)) is amended by striking paragraph (2) and inserting the following:

"(2)(A) No person shall discharge, or cause to be discharged, or in any manner discriminate against, or cause to be discriminated against, an employee for refusing to perform the employee's duties if the employee has a reasonable apprehension that performing such duties would result in serious injury to, or serious impairment of the health of, the employee or other employees.

"(B) For purposes of subparagraph (A), the circumstances causing the employee's good-faith belief that performing such duties would pose a safety or health hazard shall be of such a nature that a reasonable person, under the circumstances confronting the employee, would conclude that there is such a hazard. In order to qualify for protection under this paragraph, the employee, when practicable, shall have communicated or attempted to com-

1 municate the safety or health concern to the employer and
2 have not received from the employer a response reasonably
3 calculated to allay such concern.''.

4 (c) PROCEDURE.—Section 11(c) of such Act (29
5 U.S.C. 660(c)) is amended by striking paragraph (3) and
6 inserting the following:

7 ''(3) COMPLAINT.—Any employee who believes
8 that the employee has been discharged, disciplined,
9 or otherwise discriminated against by any person in
10 violation of paragraph (1) or (2) may seek relief for
11 such violation by filing a complaint with the Sec-
12 retary under paragraph (5).

13 ''(4) STATUTE OF LIMITATIONS.—

14 ''(A) IN GENERAL.—An employee may take
15 the action permitted by paragraph (3) not later
16 than 180 days after the later of—

17 ''(i) the date on which an alleged vio-
18 lation of paragraph (1) or (2) occurs; or

19 ''(ii) the date on which the employee
20 knows or should reasonably have known
21 that such alleged violation occurred.

22 ''(B) REPEAT VIOLATION.—Except in
23 cases when the employee has been discharged,
24 a violation of paragraph (1) or (2) shall be con-

sidered to have occurred on the last date an alleged repeat violation occurred.

"(5) INVESTIGATION.—

"(A) IN GENERAL.—An employee may, within the time period required under paragraph (4), file a complaint with the Secretary alleging a violation of paragraph (1) or (2). If the complaint alleges a prima facie case, the Secretary shall conduct an investigation of the allegations in the complaint, which—

"(i) shall include—

"(I) interviewing the complainant;

"(II) providing the respondent an opportunity to—

"(aa) submit to the Secretary a written response to the complaint; and

"(bb) meet with the Secretary to present statements from witnesses or provide evidence; and

"(III) providing the complainant an opportunity to—

"(aa) receive any statements or evidence provided to the Secretary;

"(bb) meet with the Secretary; and

"(cc) rebut any statements or evidence; and

"(ii) may include issuing subpoenas for the purposes of such investigation.

"(B) DECISION.—Not later than 90 days after the filing of the complaint, the Secretary shall—

"(i) determine whether reasonable cause exists to believe that a violation of paragraph (1) or (2) has occurred; and

"(ii) issue a decision granting or denying relief.

"(6) PRELIMINARY ORDER FOLLOWING INVESTIGATION.—If, after completion of an investigation under paragraph (5)(A), the Secretary finds reasonable cause to believe that a violation of paragraph (1) or (2) has occurred, the Secretary shall issue a preliminary order providing relief authorized under paragraph (14) at the same time the Secretary issues a decision under paragraph (5)(B). If a de

novo hearing is not requested within the time period required under paragraph (7)(A)(i), such preliminary order shall be deemed a final order of the Secretary and is not subject to judicial review.

"(7) HEARING.—

"(A) REQUEST FOR HEARING.—

"(i) IN GENERAL.—A de novo hearing on the record before an administrative law judge may be requested—

"(I) by the complainant or respondent within 30 days after receiving notification of a decision granting or denying relief issued under paragraph 5(D) or paragraph (6) respectively;

"(II) by the complainant within 30 days after the date the complaint is dismissed without investigation by the Secretary under paragraph (5)(A); or

"(III) by the complainant within 120 days after the date of filing the complaint, if the Secretary has not issued a decision under paragraph (5)(B).

"(ii) REINSTATEMENT ORDER.—The request for a hearing shall not operate to stay any preliminary reinstatement order issued under paragraph (6).

"(B) PROCEDURES.—

"(i) IN GENERAL.—A hearing requested under this paragraph shall be conducted expeditiously and in accordance with rules established by the Secretary for hearings conducted by administrative law judges.

"(ii) SUBPOENAS; PRODUCTION OF EVIDENCE.—In conducting any such hearing, the administrative law judge may issue subpoenas. The respondent or complainant may request the issuance of subpoenas that require the deposition of, or the attendance and testimony of, witnesses and the production of any evidence (including any books, papers, documents, or recordings) relating to the matter under consideration.

"(iii) DECISION.—The administrative law judge shall issue a decision not later than 90 days after the date on which a

hearing was requested under this paragraph and promptly notify, in writing, the parties and the Secretary of such decision, including the findings of fact and conclusions of law. If the administrative law judge finds that a violation of paragraph (1) or (2) has occurred, the judge shall issue an order for relief under paragraph (14). If review under paragraph (8) is not timely requested, such order shall be deemed a final order of the Secretary that is not subject to judicial review.

''(8) ADMINISTRATIVE APPEAL.—

''(A) IN GENERAL.—Not later than 30 days after the date of notification of a decision and order issued by an administrative law judge under paragraph (7), the complainant or respondent may file, with objections, an administrative appeal with an administrative review body designated by the Secretary (referred to in this paragraph as the 'review board').

''(B) STANDARD OF REVIEW.—In reviewing the decision and order of the administrative law judge, the review board shall affirm the decision and order if it is determined that the fac-

tual findings set forth therein are supported by substantial evidence and the decision and order are made in accordance with applicable law.

"(C) DECISIONS.—If the review board grants an administrative appeal, the review board shall issue a final decision and order affirming or reversing, in whole or in part, the decision under review by not later than 90 days after receipt of the administrative appeal. If it is determined that a violation of paragraph (1) or (2) has occurred, the review board shall issue a final decision and order providing relief authorized under paragraph (14). Such decision and order shall constitute final agency action with respect to the matter appealed.

"(9) SETTLEMENT IN THE ADMINISTRATIVE PROCESS.—

"(A) IN GENERAL.—At any time before issuance of a final order, an investigation or proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the parties.

"(B) PUBLIC POLICY CONSIDERATIONS.—Neither the Secretary, an administrative law judge, or review board conducting a hearing

under this subsection shall accept a settlement that contains conditions conflicting with the rights protected under this Act or that are contrary to public policy, including a restriction on a complainant's right to future employment with employers other than the specific employers named in a complaint.

"(10) INACTION BY THE REVIEW BOARD OR ADMINISTRATIVE LAW JUDGE.—

"(A) IN GENERAL.—The complainant may bring a de novo action described in subparagraph (B) if—

"(i) an administrative law judge has not issued a decision and order within the 90-day time period required under paragraph (7)(B)(iii); or

"(ii) the review board has not issued a decision and order within the 90-day time period required under paragraph (8)(C).

"(B) DE NOVO ACTION.—Such de novo action may be brought at law or equity in the United States district court for the district where a violation of paragraph (1) or (2) allegedly occurred or where the complainant resided

on the date of such alleged violation. The court shall have jurisdiction over such action without regard to the amount in controversy and to order appropriate relief under paragraph (14). Such action shall, at the request of either party to such action, be tried by the court with a jury.

"(11) JUDICIAL REVIEW.—

"(A) TIMELY APPEAL TO THE COURT OF APPEALS.—Any party adversely affected or aggrieved by a final decision and order issued under this subsection may obtain review of such decision and order in the United States Court of Appeals for the circuit where the violation, with respect to which such final decision and order was issued, allegedly occurred or where the complainant resided on the date of such alleged violation. To obtain such review, a party shall file a petition for review not later than 60 days after the final decision and order was issued. Such review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the final decision and order.

"(B) LIMITATION ON COLLATERAL ATTACK.—An order and decision with respect to which review may be obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

"(12) ENFORCEMENT OF ORDER.—If a respondent fails to comply with an order issued under this subsection, the Secretary or the complainant on whose behalf the order was issued may file a civil action for enforcement in the United States district court for the district in which the violation was found to occur to enforce such order. If both the Secretary and the complainant file such action, the action of the Secretary shall take precedence. The district court shall have jurisdiction to grant all appropriate relief described in paragraph (14).

"(13) BURDENS OF PROOF.—

"(A) CRITERIA FOR DETERMINATION.—In making a determination or adjudicating a complaint pursuant to this subsection, the Secretary, administrative law judge, review board, or a court may determine that a violation of paragraph (1) or (2) has occurred only if the complainant demonstrates that any conduct described in paragraph (1) or (2) with respect to

the complainant was a contributing factor in the adverse action alleged in the complaint.

"(B) PROHIBITION.—Notwithstanding subparagraph (A), a decision or order that is favorable to the complainant shall not be issued in any administrative or judicial action pursuant to this subsection if the respondent demonstrates by clear and convincing evidence that the respondent would have taken the same adverse action in the absence of such conduct.

"(14) RELIEF.—

"(A) ORDER FOR RELIEF.—If the Secretary, administrative law judge, review board, or a court determines that a violation of paragraph (1) or (2) has occurred, the Secretary or court, respectively, shall have jurisdiction to order all appropriate relief, including injunctive relief, compensatory and exemplary damages, including—

"(i) affirmative action to abate the violation;

"(ii) reinstatement without loss of position or seniority, and restoration of the terms, rights, conditions, and privileges associated with the complainant's employ-

ment, including opportunities for promotions to positions with equivalent or better compensation for which the complainant is qualified;

"(iii) compensatory and consequential damages sufficient to make the complainant whole, (including back pay, prejudgment interest, and other damages); and

"(iv) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant's direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.

"(B) ATTORNEYS' FEES AND COSTS.—If the Secretary or an administrative law judge, review board, or court grants an order for relief under subparagraph (A), the Secretary, administrative law judge, review board, or court, re-

spectively, shall assess, at the request of the employee against the employer—

"(i) reasonable attorneys' fees; and

"(ii) costs (including expert witness fees)) reasonably incurred, as determined by the Secretary, administrative law judge, review board, or court, respectively, in connection with bringing the complaint upon which the order was issued.

"(15) PROCEDURAL RIGHTS.—The rights and remedies provided for in this subsection may not be waived by any agreement, policy, form, or condition of employment, including by any pre-dispute arbitration agreement or collective bargaining agreement.

"(16) SAVINGS.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.

"(17) ELECTION OF VENUE.—

"(A) IN GENERAL.—An employee of an employer who is located in a State that has a State plan approved under section 18 may file a complaint alleging a violation of paragraph (1) or (2) by such employer with—

"(i) the Secretary under paragraph (5); or

"(ii) a State plan administrator in such State.

"(B) REFERRALS.—If—

"(i) the Secretary receives a complaint pursuant to subparagraph (A)(i), the Secretary shall not refer such complaint to a State plan administrator for resolution; or

"(ii) a State plan administrator receives a complaint pursuant to subparagraph (A)(ii), the State plan administrator shall not refer such complaint to the Secretary for resolution.".

(d) RELATION TO ENFORCEMENT.—Section 17(j) of such Act (29 U.S.C. 666(j)) is amended by inserting before the period the following: ", including the history of violations under section 11(c)".

SEC. 702. VICTIMS' RIGHTS.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended by inserting after section 9 (29 U.S.C. 658) the following:

"SEC. 9A. VICTIMS' RIGHTS.

"(a) RIGHTS BEFORE THE SECRETARY.—A victim or the representative of a victim, shall be afforded the right,

with respect to an inspection or investigation conducted under section 8 to—

"(1) meet with the Secretary regarding the inspection or investigation conducted under such section before the Secretary's decision to issue a citation or take no action;

"(2) receive, at no cost, a copy of any citation or report, issued as a result of such inspection or investigation, at the same time as the employer receives such citation or report;

"(3) be informed of any notice of contest or addition of parties to the proceedings filed under section 10(c); and

"(4) be provided notification of the date and time or any proceedings, service of pleadings, and other relevant documents, and an explanation of the rights of the employer, employee and employee representative, and victim to participate in proceedings conducted under section 10(c).

"(b) RIGHTS BEFORE THE COMMISSION.—Upon request, a victim or representative of a victim shall be afforded the right with respect to a work-related bodily injury or death to—

"(1) be notified of the time and date of any proceeding before the Commission;

"(2) receive pleadings and any decisions relating to the proceedings; and

"(3) be provided an opportunity to appear and make a statement in accordance with the rules prescribed by the Commission.

"(c) MODIFICATION OF CITATION.—Before entering into an agreement to withdraw or modify a citation issued as a result of an inspection or investigation of an incident under section 8, the Secretary shall notify a victim or representative of a victim and provide the victim or representative of a victim with an opportunity to appear and make a statement before the parties conducting settlement negotiations. In lieu of an appearance, the victim or representative of the victim may elect to submit a letter to the Secretary and the parties.

"(d) SECRETARY PROCEDURES.—The Secretary shall establish procedures—

"(1) to inform victims of their rights under this section; and

"(2) for the informal review of any claim of a denial of such a right.

"(e) COMMISSION PROCEDURES AND CONSIDERATIONS.—The Commission shall—

1 "(1) establish procedures relating to the rights
2 of victims to be heard in proceedings before the
3 Commission; and
4 "(2) in rendering any decision, provide due con-
5 sideration to any statement or information provided
6 by any victim before the Commission.
7 "(f) FAMILY LIAISONS.—The Secretary shall des-
8 ignate at least 1 employee at each area office of the Occu-
9 pational Safety and Health Administration to serve as a
10 family liaison to—
11 "(1) keep victims informed of the status of in-
12 vestigations, enforcement actions, and settlement ne-
13 gotiations; and
14 "(2) assist victims in asserting their rights
15 under this section.
16 "(g) DEFINITION.—In this section, the term 'victim'
17 means—
18 "(1) an employee, including a former employee,
19 who has sustained a work-related injury or illness
20 that is the subject of an inspection or investigation
21 conducted under section 8; or
22 "(2) a family member (as further defined by
23 the Secretary) of a victim described in paragraph
24 (1), if—

"(A) the victim dies as a result of a incident that is the subject of an inspection or investigation conducted under section 8; or

"(B) the victim sustains a work-related injury or illness that is the subject of an inspection or investigation conducted under section 8, and the victim because of incapacity cannot reasonably exercise the rights under this section.".

SEC. 703. CORRECTION OF SERIOUS, WILLFUL, OR REPEATED VIOLATIONS PENDING CONTEST AND PROCEDURES FOR A STAY.

Section 10 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659) is amended by adding at the end the following:

"(d) CORRECTION OF SERIOUS, WILLFUL, OR REPEATED VIOLATIONS PENDING CONTEST AND PROCEDURES FOR A STAY.—

"(1) PERIOD PERMITTED FOR CORRECTION OF SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—For each violation which the Secretary designates as serious, willful, or repeated, the period permitted for the correction of the violation shall begin to run upon receipt of the citation.

"(2) FILING OF A MOTION OF CONTEST.—The filing of a notice of contest by an employer—

"(A) shall not operate as a stay of the period for correction of a violation designated as serious, willful, or repeated; and

"(B) may operate as a stay of the period for correction of a violation not designated by the Secretary as serious, willful, or repeated.

"(3) CRITERIA AND RULES OF PROCEDURE FOR STAYS.—

"(A) MOTION FOR A STAY.—An employer may file with the Commission a motion to stay a period for the correction of a violation designated as serious, willful, or repeated.

"(B) CRITERIA.—In determining whether a stay should be issued on the basis of a motion filed under subparagraph (A), the Commission shall consider whether—

"(i) the employer has demonstrated a substantial likelihood of success on its contest to the citation;

"(ii) the employer will suffer irreparable harm absent a stay; and

"(iii) a stay will adversely affect the health and safety of workers.

"(C) RULES OF PROCEDURE.—The Commission shall develop rules of procedure for con-

ducting a hearing on a motion filed under subparagraph (A) on an expedited basis. At a minimum, such rules shall provide:

"(i) That a hearing before an administrative law judge shall occur not later than 15 days following the filing of the motion for a stay (unless extended at the request of the employer), and shall provide for a decision on the motion not later than 15 days following the hearing (unless extended at the request of the employer).

"(ii) That a decision of an administrative law judge on a motion for stay is rendered on a timely basis.

"(iii) That if a party is aggrieved by a decision issued by an administrative law judge regarding the stay, such party has the right to file an objection with the Commission not later than 5 days after receipt of the administrative law judge's decision. Within 10 days after receipt of the objection, a Commissioner, if a quorum is seated pursuant to section 12(f), shall decide whether to grant review of the objection. If, within 10 days after receipt of the ob-

jection, no decision is made on whether to review the decision of the administrative law judge, the Commission declines to review such decision, or no quorum is seated, the decision of the administrative law judge shall become a final order of the Commission. If the Commission grants review of the objection, the Commission shall issue a decision regarding the stay not later than 30 days after receipt of the objection. If the Commission fails to issue such decision within 30 days, the decision of the administrative law judge shall become a final order of the Commission.

''(iv) For notification to employees or representatives of affected employees of requests for such hearings and shall provide affected employees or representatives of affected employees an opportunity to participate as parties to such hearings.''.

SEC. 704. CONFORMING AMENDMENTS.

Section 17(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666(d)) is amended to read as follows:

"(d) Any employer who fails to correct a violation designated by the Secretary as serious, willful, or repeated and for which a citation has been issued under section 9(a) within the period permitted for its correction (and a stay has not been issued by the Commission under section 10(d)) may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues. Any employer who fails to correct any other violation for which a citation has been issued under section 9(a) of this title within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay of avoidance of penalties) may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues.".

SEC. 705. CIVIL PENALTIES.

(a) IN GENERAL.—Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended—

(1) in subsection (a)—

(A) by striking "$70,000" and inserting "$120,000";

(B) by striking ''$5,000'' and inserting ''$8,000''; and

(C) by adding at the end the following: ''In determining whether a violation is repeated, the Secretary shall consider the employer's history of violations under this Act and under State occupational safety and health plans established under section 18. If such a willful or repeated violation caused or contributed to the death of an employee, such civil penalty amounts shall be increased to not more than $250,000 for each such violation, but not less than $50,000 for each such violation, except that for an employer with 25 or fewer employees such penalty shall not be less than $25,000 for each such violation.'';

(2) in subsection (b)—

(A) by striking ''$7,000'' and inserting ''$12,000''; and

(B) by adding at the end the following: ''If such a violation caused or contributed to the death of an employee, such civil penalty amounts shall be increased to not more than $50,000 for each such violation, but not less than $20,000 for each such violation, except

that for an employer with 25 or fewer employees such penalty shall not be less than $10,000 for each such violation.''; (3) in subsection (c), by striking ''$7,000'' and inserting ''$12,000''; (4) in subsection (d), as amended by section 704, by striking ''$7,000'' each place it occurs and inserting ''$12,000''; (5) by redesignating subsections (e) through (l) as subsections (f) through (m), respectively; and (6) in subsection (j) (as redesignated by paragraph (5)), by striking ''$7,000'' and inserting ''$12,000;''.

(b) INFLATION ADJUSTMENT.—Section 17 is further amended by inserting after subsection (d) the following:

''(e) Amounts provided under this section for civil penalties shall be adjusted by the Secretary at least once during each 4-year period beginning January 1, 2016, to account for the percentage increase or decrease in the Consumer Price Index for all urban consumers during such period.''.

SEC. 706. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as amended by sections 704 and 705) is further amended—

(1) by amending subsection (f) to read as follows:

''(f)(1) Any employer who knowingly violates any standard, rule, or order promulgated under section 6, or of any regulation prescribed under this Act, and that violation caused or contributed to the death of any employee, shall, upon conviction, be punished by a fine in accordance with title 18, United States Code, or by imprisonment for not more than 10 years, or both, except that if the conviction is for a violation committed after a first conviction of such person under this subsection or subsection (i), punishment shall be by a fine in accordance title 18, United States Code, or by imprisonment for not more than 20 years, or by both.

''(2) For the purpose of this subsection, the term 'employer' means, in addition to the definition contained in section 3, any officer or director.'';

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

(3) in subsection (h), by striking ''fine of not more than $10,000, or by imprisonment for not more than six months,'' and inserting ''fine in ac-

cordance with title 18, United States Code, or by imprisonment for not more than 5 years,'';

(4) by redesignating subsections (j) through (m) as subsections (k) through (n), respectively; and

(5) by inserting after subsection (i) the following:

''(j)(1) Any employer who knowingly violates any standard, rule, or order promulgated under section 6, or any regulation prescribed under this Act, and that violation causes or contributes to serious bodily harm to any employee but does not cause death to any employee, shall, upon conviction, be punished by a fine in accordance with title 18, United States Code, or by imprisonment for not more than 5 years, or by both, except that if the conviction is for a violation committed after a first conviction of such person under this subsection or subsection (e), punishment shall be by a fine in accordance with title 18, United States Code, or by imprisonment for not more than 10 years, or by both.

''(2) For the purpose of this subsection, the term 'employer' means, in addition to the definition contained in section 3, any officer or director.

''(3) For purposes of this subsection, the term 'serious bodily harm' means bodily injury or illness that involves—

"(A) a substantial risk of death;

"(B) protracted unconsciousness;

"(C) protracted and obvious physical disfigurement; or

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

(b) JURISDICTION FOR PROSECUTION UNDER STATE AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C. 666) (as amended by this Act) is further amended by adding at the end the following:

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

SEC. 707. PENALTIES.

Section 17(n) (as redesignated by section 706(a)(4)) (29 U.S.C. 666(n)) is amended by adding at the end the following: "Pre-final order interest on such penalties shall begin to accrue on the date the party contests a citation issued under this Act, and shall end upon the issuance of the final order. Such pre-final order interest shall be calculated at the current underpayment rate determined by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, and shall be com-

pounded daily. Post-final order interest shall begin to accrue 30 days after the date a final order of the Commission or the court is issued, and shall be charged at the rate of 8 percent per year.''.

SEC. 708. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided for in subsection (b), this title and the amendments made by this title shall take effect not later than 90 days after the date of the enactment of this Act.

(b) EXCEPTION FOR STATES AND POLITICAL SUBDIVISIONS.—A State that has a State plan approved under section 18 (29 U.S.C. 667) shall amend its State plan to conform with the requirements of this Act and the amendments made by this Act not later than 12 months after the date of the enactment of this Act. The Secretary of Labor may extend the period for a State to make such amendments to its State plan by not more than 12 months, if the State's legislature is not in session during the 12-month period beginning with the date of the enactment of this Act. Such amendments to the State plan shall take effect not later than 90 days after the adoption of such amendments by such State.

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