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(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

# H. R.

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To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. SCOTT of Virginia (for himself, Mr. TAKANO, and Ms. WILSON of Florida) introduced the following bill; which was referred to the Committee on

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# A BILL

To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Robert C. Byrd Mine Safety Protection Act of 2017”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. 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 and investigations.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

- Sec. 201. Technical amendment.
- Sec. 202. Procedures and criteria for determining a pattern of violations.
- 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.
- Sec. 206. GAO Study on MSHA Mine Plan Approval.

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—MINERS' RIGHTS AND PROTECTIONS

- Sec. 401. Protection from retaliation.
- Sec. 402. Protection from loss of pay.
- Sec. 403. Underground coal miner employment standard for mines placed in pattern of violations status.

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.
- Sec. 504. Study on respirable dust standards.
- Sec. 505. Refresher training on miners' rights and responsibilities.
- Sec. 506. Authority to mandate additional training.
- Sec. 507. Brookwood-Sago Mine Safety Grants.
- Sec. 508. Certification of personnel.
- Sec. 509. Electronic records requirement.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.
- Sec. 602. Assistance to States.
- Sec. 603. Authorization of cooperative agreements by NIOSH Office of Mine Safety and Health.
- Sec. 604. Double encumbrance; succession plan.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, whenever in  
3 this Act an amendment is expressed as an amendment to  
4 a section or other provision, the reference shall be consid-  
5 ered to be made to a section or other provision of the Fed-  
6 eral Mine Safety and Health Act of 1977 (30 U.S.C. 801  
7 et seq.).

8 **TITLE I—ADDITIONAL INSPEC-**  
9 **TION AND INVESTIGATION**  
10 **AUTHORITY**

11 **SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.**

12 (a) IN GENERAL.—Section 103(b) (30 U.S.C.  
13 813(b)) is amended by striking “(b) For the purpose” and  
14 inserting the following:

15 “(b) ACCIDENT INVESTIGATIONS.—

16 “(1) IN GENERAL.—For all accident investiga-  
17 tions under this Act, the Secretary shall—

18 “(A) determine why the accident occurred;

19 “(B) determine whether there were viola-  
20 tions of law, mandatory health and safety  
21 standards, or other requirements, and if there  
22 is evidence of conduct that may constitute a  
23 violation of Federal criminal law, the Secretary  
24 may refer such evidence to the Attorney Gen-  
25 eral; and

1           “(C) make recommendations to avoid any  
2 recurrence.

3           “(2) INDEPENDENT ACCIDENT INVESTIGA-  
4 TIONS.—

5           “(A) IN GENERAL.—There shall be, in ad-  
6 dition to an accident investigation under para-  
7 graph (1), an independent investigation by an  
8 independent investigation panel (referred to in  
9 this subsection as the ‘Panel’) appointed under  
10 subparagraph (B) for—

11           “(i) any accident involving 3 or more  
12 deaths; or

13           “(ii) any accident that is of such se-  
14 verity or scale for potential or actual harm  
15 that, in the opinion of the Secretary of  
16 Health and Human Services, the accident  
17 merits an independent investigation.

18           “(B) APPOINTMENT.—

19           “(i) IN GENERAL.—As soon as prac-  
20 ticable after an accident described in sub-  
21 paragraph (A), the Secretary of Health  
22 and Human Services shall appoint 5 mem-  
23 bers for the Panel required under this  
24 paragraph from among individuals who  
25 have expertise in accident investigations,

1 mine engineering, or mine safety and  
2 health that is relevant to the particular in-  
3 vestigation.

4 “(ii) CHAIRPERSON.—The Panel shall  
5 include, and be chaired by, a representative  
6 from the Office of Mine Safety and Health  
7 Research, of the National Institute for Oc-  
8 cupational Safety and Health (referred to  
9 in this subsection as NIOSH).

10 “(iii) CONFLICTS OF INTEREST.—  
11 Panel members, and staff and consultants  
12 assisting the Panel with an investigation,  
13 shall be free from conflicts of interest with  
14 regard to the investigation, and be subject  
15 to the same standards of ethical conduct  
16 for persons employed by the Secretary.

17 “(iv) COMPOSITION.—The Secretary  
18 of Health and Human Services shall ap-  
19 point as members of the Panel—

20 “(I) 1 operator of a mine or indi-  
21 vidual representing mine operators,  
22 and

23 “(II) 1 representative of a labor  
24 organization that represents miners,

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

3 “(v) STAFF AND EXPENSES.—The Di-  
4 rector of NIOSH shall designate NIOSH  
5 staff to facilitate the work of the Panel.  
6 The Director may accept as staff personnel  
7 on detail from other Federal agencies or  
8 re-employ annuitants. The detail of per-  
9 sonnel under this paragraph may be on a  
10 non-reimbursable basis, and such detail  
11 shall be without interruption or loss of civil  
12 service status or privilege. The Director of  
13 NIOSH shall have the authority to procure  
14 on behalf of the Panel such materials, sup-  
15 plies or services, including technical ex-  
16 perts, as requested in writing by a majority  
17 of the Panel.

18 “(vi) COMPENSATION AND TRAVEL.—  
19 All members of the Panel who are officers  
20 or employees of the United States shall  
21 serve without compensation in addition to  
22 that received for their services as officers  
23 or employees of the United States. Each  
24 Panel member who is not an officer or em-  
25 ployee of the United States shall be com-

1            compensated at a rate equal to the daily equiv-  
2            alent of the annual rate of basic pay pre-  
3            scribed for level IV of the Executive Sched-  
4            ule under section 5315 of title 5, United  
5            States Code, for each day (including travel  
6            time) during which such member is en-  
7            gaged in the performance of duties of the  
8            Panel. The members of the Panel shall be  
9            allowed travel expenses, including per diem  
10          in lieu of subsistence, at rates authorized  
11          for employees of agencies under subchapter  
12          1 of chapter 57 of title 5, United States  
13          Code, while away from their homes or reg-  
14          ular places of business in the performance  
15          of services for the Panel.

16          “(C) DUTIES.—The Panel shall—

17                “(i) assess and identify any factors  
18                that caused the accident, including defi-  
19                ciencies in safety management systems,  
20                regulations, enforcement, industry prac-  
21                tices or guidelines, or organizational fail-  
22                ures;

23                “(ii) identify and evaluate any con-  
24                tributing actions or inactions of—

25                        “(I) the operator;

1                   “(II) any contractors or other  
2 persons engaged in mining-related  
3 functions at the site;

4                   “(III) any State agency with  
5 oversight responsibilities;

6                   “(IV) any agency or office within  
7 the Department of Labor;

8                   “(V) the Federal Mine Safety  
9 and Health Review Commission; or

10                   “(VI) any other person or entity  
11 (including equipment manufacturers);

12                   “(iii) review the determinations and  
13 recommendations by the Secretary under  
14 paragraph (1);

15                   “(iv) prepare a report that—

16                   “(I) includes the findings regard-  
17 ing the causal factors described in  
18 clauses (i) and (ii);

19                   “(II) identifies any strengths and  
20 weaknesses in the Secretary’s inves-  
21 tigation; and

22                   “(III) includes recommendations,  
23 including interim recommendations  
24 where appropriate, to industry, labor  
25 organizations, State and Federal

1 agencies, or Congress, regarding pol-  
2 icy, regulatory, enforcement, adminis-  
3 trative, or other changes, which in the  
4 judgment of the Panel, would prevent  
5 a recurrence at other mines; and

6 “(v) publish such findings and rec-  
7 ommendations (excluding any portions  
8 which the Attorney General requests that  
9 the Secretary withhold in relation to a  
10 criminal referral) and hold public meetings  
11 to inform the mining community and fami-  
12 lies of affected miners of the Panel’s find-  
13 ings and recommendations.

14 “(D) HEARINGS; APPLICABILITY OF CER-  
15 TAIN FEDERAL LAW.—The Panel shall have the  
16 authority to conduct public hearings or meet-  
17 ings, but shall not be subject to the Federal Ad-  
18 visory Committee Act. All public hearings of the  
19 Panel shall be subject to the requirements  
20 under section 552b of title 5, United States  
21 Code.

22 “(E) MEMORANDUM OF UNDER-  
23 STANDING.—Not later than 90 days after the  
24 date of enactment of the Robert C. Byrd Mine  
25 Safety Protection Act of 2017, the Secretary of

1 Labor and the Secretary of Health and Human  
2 Services shall conclude and publically issue a  
3 memorandum of understanding that—

4 “(i) outlines administrative arrange-  
5 ments which will facilitate a coordination  
6 of efforts between the Secretary of Labor  
7 and the Panel, ensures that the Secretary’s  
8 investigation under paragraph (1) is not  
9 delayed or otherwise compromised by the  
10 activities of the Panel, and establishes a  
11 process to resolve any conflicts between  
12 such investigations;

13 “(ii) ensures that Panel members or  
14 staff will be able to participate in inves-  
15 tigation activities (such as mine inspections  
16 and interviews) related to the Secretary of  
17 Labor’s investigation and will have full ac-  
18 cess to documents that are assembled or  
19 produced in such investigation, and en-  
20 sures that the Secretary of Labor will  
21 make all of the authority available to such  
22 Secretary under this section to obtain in-  
23 formation and witnesses which may be re-  
24 quested by such Panel; and

1           “(iii) establishes such other arrange-  
2           ments as are necessary to implement this  
3           paragraph.

4           “(F) PROCEDURES.—Not later than 90  
5           days after the date of enactment of the Robert  
6           C. Byrd Mine Safety Protection Act of 2017,  
7           the Secretary of Health and Human Services  
8           shall establish procedures to ensure the consist-  
9           ency and effectiveness of Panel investigations.  
10          In establishing such procedures, such Secretary  
11          shall consult with independent safety investiga-  
12          tion agencies, sectors of the mining industry,  
13          representatives of miners, families of miners in-  
14          volved in fatal accidents, State mine safety  
15          agencies, and mine rescue organizations. Such  
16          procedures shall include—

17                 “(i) authority for the Panel to use evi-  
18                 dence, samples, interviews, data, analyses,  
19                 findings, or other information gathered by  
20                 the Secretary of Labor, as the Panel deter-  
21                 mines valid;

22                 “(ii) provisions to ensure confiden-  
23                 tiality if requested by any witness, to the  
24                 extent permitted by law, and prevent con-

1           flicts of interest in witness representation;  
2           and

3                   “(iii) provisions for preservation of  
4           public access to the Panel’s records  
5           through the Secretary of Health and  
6           Human Services.

7                   “(G) SUBPOENAS; WITNESSES; CON-  
8           TEMPT.—

9                   “(i) SUBPOENA AUTHORITY.—For the  
10          purpose of making any investigation of any  
11          accident or other occurrence relating to  
12          health or safety in a coal or other mine  
13          under this paragraph, the Director of the  
14          National Institute for Occupational Safety  
15          and Health shall at the request of a major-  
16          ity of the Panel or upon his own initiative  
17          sign and issue subpoenas for the attend-  
18          ance and testimony of witnesses and the  
19          production of relevant papers, books, and  
20          documents, and administer oaths. Wit-  
21          nesses summoned shall be paid the same  
22          fees and mileage that are paid witnesses in  
23          the courts of the United States.

24                   “(ii) CONTUMACY.—In case of contu-  
25          macy or refusal to obey a subpoena served

1           upon any person under this section, the  
2           district court of the United States for any  
3           district in which such person is found or  
4           resides or transacts business, upon applica-  
5           tion by the United States and after notice  
6           to such person, shall have jurisdiction to  
7           issue an order requiring such person to ap-  
8           pear and give testimony before the Direc-  
9           tor or Panel, or to appear and produce  
10          documents before the Director or Panel, or  
11          both, and any failure to obey such order of  
12          the court may be punished by such court  
13          as a contempt thereof.

14                 “(iii) ADDITIONAL INVESTIGATIVE AU-  
15                 THORITY.—In carrying out inspections and  
16                 investigations under this subsection, the  
17                 staff of the Director or Panel and attor-  
18                 neys representing the Director or Panel  
19                 are authorized to question any individual  
20                 privately. Under this subparagraph, any  
21                 individual who is willing to speak with or  
22                 provide a statement to the Director or  
23                 Panel’s staff or their attorneys, may do so  
24                 without the presence, involvement, or  
25                 knowledge of the operator or the operator’s

1 agents or attorneys. The Director or Panel  
2 shall keep the identity of an individual pro-  
3 viding such a statement confidential to the  
4 extent permitted by law. Nothing in this  
5 paragraph prevents any individual from  
6 being represented by that individual's per-  
7 sonal attorney or other representative.

8 “(H) AUTHORIZATION OF APPROPRIA-  
9 TIONS.—There is authorized to be appropriated  
10 to carry out this subsection such sums as may  
11 be necessary.

12 “(3) POWERS AND PROCESSES.—For the pur-  
13 pose”.

14 (b) REPORTING REQUIREMENTS.—Section 511(a)  
15 (30 U.S.C. 958(a)) is amended by inserting after “501,”  
16 the following: “the status of implementation of rec-  
17 ommendations from each independent investigation panel  
18 under section 103(b) received in the preceding 5 years”.

19 **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**  
20 **ING INSPECTIONS AND INVESTIGATIONS.**

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

24 “(4) ADDITIONAL POWERS.—For purposes of  
25 making inspections and investigations, the Secretary

1 or the Secretary's designee, may sign and issue sub-  
2 poenas for the attendance and testimony of wit-  
3 nesses and the production of information, including  
4 all relevant data, papers, books, documents, and  
5 items of physical evidence, and administer oaths.  
6 Witnesses summoned shall be paid the same fees  
7 that are paid witnesses in the courts of the United  
8 States. In carrying out inspections and investiga-  
9 tions under this subsection, authorized representa-  
10 tives of the Secretary and attorneys representing the  
11 Secretary are authorized to question any individual  
12 privately. Under this section, any individual who is  
13 willing to speak with or provide a statement to such  
14 authorized representatives or attorneys representing  
15 the Secretary may do so without the presence, in-  
16 volvement, or knowledge of the operator or the oper-  
17 ator's agents or attorneys. The Secretary shall keep  
18 the identity of an individual providing such a state-  
19 ment confidential to the extent permitted by law.  
20 Nothing in this paragraph prevents any individual  
21 from being represented by that individual's personal  
22 attorney or other representative.”.

23 **SEC. 103. DESIGNATION OF MINER REPRESENTATIVE.**

24 Section 103(f) (30 U.S.C. 813(f)) is amended by in-  
25 serting before the last sentence the following: “If any

1 miner is entrapped, disabled, killed, or otherwise prevented  
2 as the result of an accident in such mine from designating  
3 such a representative directly, such miner's closest relative  
4 may act on behalf of such miner in designating such a  
5 representative. If any miner is not currently working in  
6 such mine as the result of an accident in such mine, but  
7 would be currently working in such mine but for such acci-  
8 dent, such miner may designate such a representative. A  
9 representative of miners shall have the right to participate  
10 in any accident investigation the Secretary initiates pursu-  
11 ant to subsection (b), including the right to participate  
12 in investigative interviews and to review all relevant pa-  
13 pers, books, documents and records produced in connec-  
14 tion with the accident investigation, unless the Secretary,  
15 in consultation with the Attorney General, excludes such  
16 representatives from the investigation on the grounds that  
17 inclusion would interfere with or adversely impact a crimi-  
18 nal investigation that is pending or under consideration.”.

19 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**  
20 **SPECTIONS AND INVESTIGATIONS.**

21 (a) HOURS OF INSPECTIONS.—Section 103(a) (30  
22 U.S.C. 813(a)) is amended by inserting after the third  
23 sentence the following: “Such inspections shall be con-  
24 ducted during the various shifts and days of the week dur-  
25 ing which miners are normally present in the mine to en-

1 sure that the protections of this Act are afforded to all  
2 miners working all shifts.”.

3 (b) REVIEW OF MINE PATTERN OF VIOLATIONS STA-  
4 TUS.—Section 103(a) is further amended by inserting be-  
5 fore the last sentence the following: “The Secretary shall,  
6 upon request by an operator, review with the appropriate  
7 mine officials the Secretary’s most recent evaluation for  
8 pattern of violations status (as provided in section 104(e))  
9 for that mine during the course of a mine’s regular quar-  
10 terly inspection of an underground mine or a biannual in-  
11 spection of a surface mine, or, at the discretion of the Sec-  
12 retary, during the pre-inspection conference.”.

13 (c) INJURY AND ILLNESS REPORTING.—Section  
14 103(d) (30 U.S.C. 813(d)) is amended by striking the last  
15 sentence and inserting the following: “The records to be  
16 kept and made available by the operator of the mine shall  
17 include man-hours worked and occupational injuries and  
18 illnesses with respect to the miners in their employ or  
19 under their direction or authority, and shall be maintained  
20 separately for each mine and be reported at a frequency  
21 determined by the Secretary, but at least annually. Inde-  
22 pendent contractors (within the meaning of section 3(d))  
23 shall be responsible for reporting accidents, occupational  
24 injuries and illnesses, and man-hours worked for each  
25 mine with respect to the miners in their employ or under

1 their direction or authority, and shall be reported at a fre-  
2 quency determined by the Secretary, but at least annually.  
3 Reports or records of operators and contractors required  
4 and submitted to the Secretary under this subsection shall  
5 be signed and certified as accurate and complete by a  
6 knowledgeable and responsible person possessing a certifi-  
7 cation, registration, qualification, or other approval, as  
8 provided for under section 118. Knowingly falsifying such  
9 records or reports shall be grounds for revoking such cer-  
10 tification, registration, qualification, or other approval  
11 under the standards established under subsection (b)(1)  
12 of such section.”.

13 (d) ORDERS FOLLOWING AN ACCIDENT.—Section  
14 103(k) (30 U.S.C. 813(k)) is amended by striking “, when  
15 present,”.

16 (e) CONFLICT OF INTEREST IN THE REPRESENTA-  
17 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is  
18 amended by adding at the end the following: “During in-  
19 spections and investigations under this section, and during  
20 any litigation under this Act, no attorney shall represent  
21 or purport to represent both the operator of a coal or other  
22 mine and any other individual, unless such individual has  
23 knowingly and voluntarily waived all actual and reasonably  
24 foreseeable conflicts of interest resulting from such rep-  
25 resentation. The Secretary is authorized to take such ac-

1 tions as the Secretary considers appropriate to ascertain  
2 whether such individual has knowingly and voluntarily  
3 waived all such conflicts of interest. If the Secretary finds  
4 that such an individual cannot be represented adequately  
5 by such an attorney due to such conflicts of interest, the  
6 Secretary may petition the appropriate United States Dis-  
7 trict Court which shall have jurisdiction to disqualify such  
8 attorney as counsel to such individual in the matter. The  
9 Secretary may make such a motion as part of an ongoing  
10 related civil action or as a miscellaneous action.”.

11 **TITLE II—ENHANCED**  
12 **ENFORCEMENT AUTHORITY**

13 **SEC. 201. TECHNICAL AMENDMENT.**

14 Section 104(d)(1) (30 U.S.C. 814(d)(1)) is amend-  
15 ed—

16 (1) in the first sentence—

17 (A) by striking “any mandatory health or  
18 safety standard” and inserting “any provision  
19 of this Act, including any mandatory health or  
20 safety standard or regulation promulgated  
21 under this Act”; and

22 (B) by striking “such mandatory health or  
23 safety standards” and inserting “such provi-  
24 sions, regulations, or mandatory health or safe-  
25 ty standards”; and

1           (2) in the second sentence, by striking “any  
2           mandatory health or safety standard” and inserting  
3           “any provision of this Act, including any mandatory  
4           health or safety standard or regulation promulgated  
5           under this Act.”.

6   **SEC. 202. PROCEDURES AND CRITERIA FOR DETERMINING**  
7                           **A PATTERN OF VIOLATIONS.**

8           Part 104 of chapter I of title 30, Code of Federal  
9           Regulations, as revised by the Federal Mine Safety and  
10          Health Administration and published at 78 Fed. Reg.  
11          5073 (January 23, 2013) shall have the force and effect  
12          of law and shall remain in effect subject to an Act of Con-  
13          gress.

14   **SEC. 203. INJUNCTIVE AUTHORITY.**

15          Section 108(a)(2) (30 U.S.C. 818(a)(2)) is amended  
16          by striking “a pattern of violation of” and all that follows  
17          and inserting “a course of conduct that in the judgment  
18          of the Secretary constitutes a continuing hazard to the  
19          health or safety of miners, including violations of this Act  
20          or of mandatory health and safety standards or regula-  
21          tions under this Act.”.

22   **SEC. 204. REVOCATION OF APPROVAL OF PLANS.**

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

24                   (1) by redesignating subsection (d) as sub-  
25                   section (e); and

1           (2) by inserting after subsection (c) the fol-  
2           lowing:

3           “(d) REVOCATION OF APPROVAL OF PLANS.—

4           “(1) REVOCATION.—If the Secretary finds that  
5           any program or plan of an operator, or part thereof,  
6           that was approved by the Secretary under this Act  
7           is based on inaccurate information or that cir-  
8           cumstances that existed when such plan was ap-  
9           proved have materially changed and that continued  
10          operation of such mine under such plan constitutes  
11          a hazard to the safety or health of miners, the Sec-  
12          retary shall revoke the approval of such program or  
13          plan.

14          “(2) WITHDRAWAL ORDERS.—Upon revocation  
15          of the approval of a program or plan under sub-  
16          section (a), the Secretary may immediately issue an  
17          order requiring the operator to cause all persons, ex-  
18          cept those persons referred to in section 104(c), to  
19          be withdrawn from such mine or an area of such  
20          mine, and to be prohibited from entering such mine  
21          or such area, until the operator has submitted and  
22          the Secretary has approved a new plan.”.

1 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**  
2 **IFY, OR REVOKE A COAL OR OTHER MINE**  
3 **PLAN.**

4 Section 105(e) (as redesignated by section 204(1))  
5 (30 U.S.C. 815(e)) is amended by adding at the end the  
6 following: “In any proceeding in which a party challenges  
7 the Secretary’s decision whether to approve, modify, or re-  
8 voke a coal or other mine plan under this Act, the Com-  
9 mission shall affirm the Secretary’s decision unless the  
10 challenging party establishes that such decision was arbi-  
11 trary, capricious, an abuse of discretion, or otherwise not  
12 in accordance with law.”.

13 **SEC. 206. GAO STUDY ON MSHA MINE PLAN APPROVAL.**

14 Not later than 1 year after the date of enactment  
15 of this Act, the Comptroller General shall provide a report  
16 to Congress on the timeliness of the Mine Safety and  
17 Health Administration’s approval of underground coal  
18 mines’ required plans and plan amendments, including—

19 (1) factors that contribute to any delays in the  
20 approval of these plans; and

21 (2) as appropriate, recommendations for im-  
22 proving timeliness of plan review and for achieving  
23 prompt decisions.

1                   **TITLE III—PENALTIES**

2   **SEC. 301. CIVIL PENALTIES.**

3           (a) TARGETED PENALTIES.—Section 110(b) (30  
4 U.S.C. 820(b)) is amended by adding at the end the fol-  
5 lowing:

6                   “(3) A civil penalty of not more than \$220,000  
7           may be assessed for—

8                           “(A) any change to a ventilation system or  
9                           ventilation control in a coal or other mine,  
10                           where such ventilation system or control is re-  
11                           quired by a ventilation plan, safety standard, or  
12                           order, and such change is made without prior  
13                           approval of the Secretary and diminishes the  
14                           level of protection below the minimum require-  
15                           ments of the approved ventilation plan or appli-  
16                           cable safety standard or order;

17                           “(B) a violation of a mandatory health and  
18                           safety standard requiring rock dusting in a coal  
19                           mine;

20                           “(C) a violation of the statutory prohibi-  
21                           tion on providing advance notice of an inspec-  
22                           tion; or

23                           “(D) a violation of a mandatory health and  
24                           safety standard requiring examinations of work  
25                           areas in an underground coal mine.”.

1 (b) INCREASED CIVIL PENALTIES DURING PATTERN  
2 OF VIOLATIONS STATUS.—Section 110(b) (30 U.S.C.  
3 820(b)) is further amended by adding at the end the fol-  
4 lowing:

5 “(3) Notwithstanding any other provision of this Act,  
6 an operator of a coal or other mine that is in pattern of  
7 violations status under section 104(e) shall be assessed an  
8 increased civil penalty for any violation of this Act, includ-  
9 ing any mandatory health or safety standard or regulation  
10 promulgated under this Act. Such increased penalty shall  
11 be twice the amount that would otherwise be assessed for  
12 the violation under this Act, including the regulations pro-  
13 mulgated under this Act, subject to the maximum civil  
14 penalty established for the violation under this Act.”.

15 (c) CIVIL PENALTY FOR RETALIATION.—Section  
16 110(a) (30 U.S.C. 820(a)) is further amended—

17 (1) by redesignating paragraph (4) as para-  
18 graph (5); and

19 (2) by inserting after paragraph (3) the fol-  
20 lowing:

21 “(4) If any person violates section 105(c), the Sec-  
22 retary shall propose, and the Commission shall assess, a  
23 civil penalty of not less than \$10,000 or more than  
24 \$100,000 for the first occurrence of such violation, and

1 not less than \$20,000 or more than \$200,000 for any sub-  
2 sequent violation, during any 3-year period.”.

3 (d) TECHNICAL CORRECTION.—Section 110(a)(1)  
4 (30 U.S.C. 820(a)(1)) is amended by inserting “including  
5 any regulation promulgated under this Act,” after “this  
6 Act,”.

7 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**  
8 **RECTORS, AND AGENTS.**

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

11 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,  
12 DIRECTORS, AND AGENTS.—

13 “(1) CIVIL PENALTIES.—Whenever an operator  
14 engages in conduct for which the operator is subject  
15 to civil penalties under this section, any director, of-  
16 ficer, or agent of such operator who knowingly au-  
17 thorizes, orders, or carries out such conduct, or who  
18 knowingly authorizes, orders, or carries out any pol-  
19 icy or practice that results in such conduct and hav-  
20 ing reason to believe it would so result, shall be sub-  
21 ject to the same civil penalties under this section as  
22 if it were an operator engaging in such conduct.

23 “(2) CRIMINAL PENALTIES.—Whenever an op-  
24 erator engages in conduct for which the operator is  
25 subject to criminal penalties under subsection (d),

1 any director, officer, or agent of such operator who  
2 knowingly authorizes, orders, or carries out such  
3 conduct, or who knowingly authorizes, orders, or  
4 carries out a policy or practice that results in such  
5 conduct, and knowing that it will so result, shall be  
6 subject to the same penalties under paragraph (1) or  
7 (2) of subsection (d) as if such person were an oper-  
8 ator engaging in such conduct.”.

9 **SEC. 303. CRIMINAL PENALTIES.**

10 (a) IN GENERAL.—Section 110 (30 U.S.C. 820) is  
11 amended by striking subsection (d) and—

12 (1) by inserting the following new heading:

13 “(d) CRIMINAL PENALTIES.—”;

14 (2) by inserting after the heading (as added by  
15 paragraph (1) of this subsection), the following new  
16 paragraph:

17 “(1) IN GENERAL.—Whoever, being an oper-  
18 ator, knowingly—

19 “(A) violates a mandatory health or safety  
20 standard, or

21 “(B) violates or fails or refuses to comply  
22 with any order issued under section 104 or sec-  
23 tion 107, or any order incorporated in a final  
24 decision issued under this Act (except an order

1           incorporated in a decision under subsection  
2           (a)(1) or section 105(e)),  
3           shall, upon conviction, be fined not more than  
4           \$250,000, or imprisoned for not more than 1 year,  
5           or both, except that if the operator commits the vio-  
6           lation after having been previously convicted of a  
7           violation under this paragraph and if, the operator  
8           knows or has reason to know that such subsequent  
9           violation has the potential to expose a miner to risk  
10          of serious injury, serious illness, or death, the oper-  
11          ator shall, upon conviction, be fined not more than  
12          \$1,000,000, or imprisoned for not more than 5  
13          years, or both.”;

14           (3) by inserting after paragraph (1) (as added  
15          by paragraph (2) of this subsection), the following  
16          new paragraph:

17           “(2) SIGNIFICANT RISK OF SERIOUS INJURY,  
18          SERIOUS ILLNESS, OR DEATH.—Whoever, being an  
19          operator, knowingly—

20                   “(A) tampers with or disables a required  
21                   safety device (except with express authorization  
22                   from the Secretary),

23                   “(B) violates a mandatory health or safety  
24                   standard, or

1           “(C) violates or fails or refuses to comply  
2           with an order issued under section 104 or 107,  
3           or any order incorporated in a final decision  
4           issued under this Act (except an order incor-  
5           porated in a decision under subsection (a)(1) or  
6           section 105(c)),

7           and thereby recklessly exposes a miner to significant  
8           risk of serious injury, serious illness, or death, shall,  
9           upon conviction, be fined not more than \$1,000,000  
10          or imprisoned for not more than 5 years, or both,  
11          except that if the operator commits the violation  
12          after having been previously convicted of a violation  
13          under this paragraph, the operator shall, upon con-  
14          viction, be fined not more than \$2,000,000, or im-  
15          prisoned for not more than 10 years, or both.”; and

16          (4) by inserting after paragraph (2) (as added  
17          by paragraph (3) of this subsection), the following  
18          new paragraph:

19                 “(3) CRIMINAL PENALTIES FOR RETALIA-  
20                 TION.—Whoever knowingly—

21                 “(A) with the intent to retaliate, interferes  
22                 with the lawful employment or livelihood of a  
23                 person, or the spouse, sibling, child, or parent  
24                 of a person, because any of them provides infor-  
25                 mation to an authorized representative of the

1 Secretary, to a State or local mine safety or  
2 health officer or official, or to other law en-  
3 forcement officer, in reasonable belief that the  
4 information is true and related to an apparent  
5 health or safety violation, or to an apparent  
6 unhealthful or unsafe condition, policy, or prac-  
7 tice under this Act, or

8 “(B) interferes, or threatens to interfere,  
9 with the lawful employment or livelihood of a  
10 person, or the spouse, sibling, child, or parent  
11 of a person, with the intent to prevent any of  
12 them from so providing such information,

13 shall be fined under title 18 or imprisoned for not  
14 more than 5 years, or both.”

15 (b) ADVANCE NOTICE OF INSPECTIONS.—

16 (1) IN GENERAL.—Section 110(e) (30 U.S.C.  
17 820(e)) is amended to read as follows:

18 “(e) Whoever knowingly, with intent to give advance  
19 notice of an inspection conducted or to be conducted under  
20 this Act, and thereby to impede, interfere with, or frus-  
21 trate such inspection, engages in, or directs another per-  
22 son to engage in, conduct that a reasonable person would  
23 expect to result in such advance notice, shall be fined  
24 under title 18, United States Code, or imprisoned for not  
25 more than 5 years, or both, except that a miner (other

1 than a director, officer or agent of the operator involved)  
2 who commits the offense at the direction of a superior  
3 shall be fined under title 18, or imprisoned not more than  
4 1 year, or both, unless the miner commits a second or  
5 subsequent offense under this subsection (without regard  
6 to whether the offense was committed at the direction of  
7 a superior) in which case the miner shall be fined for such  
8 second and subsequent offense under title 18, United  
9 States Code, or imprisoned for not more than 5 years, or  
10 both.”.

11 (2) POSTING OF ADVANCE NOTICE PEN-  
12 ALTIES.—Section 109 (30 U.S.C. 819) is amended  
13 by adding at the end the following:

14 “(e) POSTING OF ADVANCE NOTICE PENALTIES.—  
15 Each operator of a coal or other mine shall post, on the  
16 bulletin board described in subsection (a) and in a con-  
17 spicuous place near each staffed entrance onto the mine  
18 property, a notice stating, in a form and manner to be  
19 prescribed by the Secretary—

20 “(1) that it is unlawful pursuant to section  
21 110(e) for any person, with the intent to impede,  
22 interfere with, or frustrate an inspection conducted  
23 or to be conducted under this Act, to engage in, or  
24 direct another person to engage in, any conduct that

1 a reasonable person would expect to result in ad-  
2 vance notice of such inspection; and

3 “(2) the maximum penalties for a violation  
4 under such subsection.”.

5 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**  
6 **MENTS.**

7 Section 110(i) (30 U.S.C. 820(i)) is amended by  
8 striking “In assessing civil monetary penalties, the Com-  
9 mission shall consider” and inserting the following: “In  
10 any review of a citation and proposed penalty assessment  
11 contested by an operator, the Commission shall assess not  
12 less than the penalty derived by using the same method-  
13 ology (including any point system) prescribed in regula-  
14 tions under this Act, so as to ensure consistency in oper-  
15 ator penalty assessments, except that the Commission may  
16 assess a penalty for less than the amount that would result  
17 from the utilization of such methodology if the Commis-  
18 sion finds that there are extraordinary circumstances. If  
19 there is no such methodology prescribed for a citation or  
20 there are such extraordinary circumstances, the Commis-  
21 sion shall assess the penalty by considering”.

22 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**  
23 **TEREST.**

24 (a) PRE-FINAL ORDER INTEREST.—Section 110(j)  
25 (30 U.S.C. 820(j)) is amended by striking the second and

1 third sentences and inserting the following: “Pre-final  
2 order interest on such penalties shall begin to accrue on  
3 the date the operator contests a citation issued under this  
4 Act, including any mandatory health or safety standard  
5 or regulation promulgated under this Act, and shall end  
6 upon the issuance of the final order. Such pre-final order  
7 interest shall be calculated at the current underpayment  
8 rate determined by the Secretary of the Treasury pursu-  
9 ant to section 6621 of the Internal Revenue Code of 1986,  
10 and shall be compounded daily. Post-final order interest  
11 shall begin to accrue 30 days after the date a final order  
12 of the Commission or the court is issued, and shall be  
13 charged at the rate of 8 percent per annum.”.

14 (b) ENSURING PAYMENT OF PENALTIES.—

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

17 (A) by redesignating subsection (l) as sub-  
18 section (m); and

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

21 “(l) ENSURING PAYMENT OF PENALTIES.—

22 “(1) DELINQUENT PAYMENT LETTER.—If the  
23 operator of a coal or other mine fails to pay any civil  
24 penalty assessment that has become a final order of  
25 the Commission or a court within 45 days after such

1 assessment became a final order, the Secretary shall  
2 send the operator a letter advising the operator of  
3 the consequences under this subsection of such fail-  
4 ure to pay. The letter shall also advise the operator  
5 of the opportunity to enter into or modify a payment  
6 plan with the Secretary based upon a demonstrated  
7 inability to pay, the procedure for entering into such  
8 plan, and the consequences of not entering into or  
9 not complying with such plan.

10 “(2) WITHDRAWAL ORDERS FOLLOWING FAIL-  
11 URE TO PAY.—If an operator that receives a letter  
12 under paragraph (1) has not paid the assessment by  
13 the date that is 180 days after such assessment be-  
14 came a final order and has not entered into a pay-  
15 ment plan with the Secretary, the Secretary shall  
16 issue an order requiring such operator to cause all  
17 persons, except those referred to in section 104(c),  
18 to be withdrawn from, and to be prohibited from en-  
19 tering, the mine that is covered by the final order  
20 described in paragraph (1), until the operator pays  
21 such assessment in full (including interest and ad-  
22 ministrative costs) or enters into a payment plan  
23 with the Secretary. If such operator enters into a  
24 payment plan with the Secretary and at any time  
25 fails to comply with the terms specified in such pay-

1       ment plan, the Secretary shall issue an order requir-  
2       ing such operator to cause all persons, except those  
3       referred to in section 104(c), to be withdrawn from  
4       the mine that is covered by such final order, and to  
5       be prohibited from entering such mine, until the op-  
6       erator rectifies the noncompliance with the payment  
7       plan in the manner specified in such payment  
8       plan.”.

9               (2) *APPLICABILITY AND EFFECTIVE DATE.*—  
10       The amendments made by paragraph (1) shall apply  
11       to all unpaid civil penalty assessments under the  
12       Federal Mine Safety and Health Act of 1977 (30  
13       U.S.C. 801 et seq.), except that, for any unpaid civil  
14       penalty assessment that became a final order of the  
15       Commission or a court before the date of enactment  
16       of this Act, the time periods under section 110(l) of  
17       the Federal Mine Safety and Health Act of 1977 (as  
18       amended) (30 U.S.C. 820(l)) shall be calculated as  
19       beginning on the date of enactment of this Act in-  
20       stead of on the date of the final order.

## 21       **TITLE IV—MINERS’ RIGHTS AND** 22       **PROTECTIONS**

### 23       **SEC. 401. PROTECTION FROM RETALIATION.**

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

1 “(c) PROTECTION FROM RETALIATION.—

2 “(1) RETALIATION PROHIBITED.—

3 “(A) RETALIATION FOR COMPLAINT OR  
4 TESTIMONY.—No person shall discharge or in  
5 any manner discriminate against or cause to be  
6 discharged or cause discrimination against or  
7 otherwise interfere with the exercise of the stat-  
8 utory rights of any miner or other employee of  
9 an operator, representative of miners, or appli-  
10 cant for employment (including the spouse, sib-  
11 ling, child, or parent of such miner or employee,  
12 if such individual is employed or is applying for  
13 employment at a mine under the control of the  
14 operator), because—

15 “(i) such miner or other employee,  
16 representative, or applicant for employ-  
17 ment—

18 “(I) has filed or made a com-  
19 plaint, or is about to file or make a  
20 complaint, including a complaint noti-  
21 fying the operator or the operator’s  
22 agent, or the representative of the  
23 miners at the coal or other mine of an  
24 alleged danger or safety or health vio-  
25 lation in a coal or other mine;

1           “(II) instituted or caused to be  
2           instituted, or is about to institute or  
3           cause to be instituted, any proceeding  
4           under or related to this Act or has  
5           testified or is about to testify in any  
6           such proceeding or because of the ex-  
7           ercise by such miner or other em-  
8           ployee, representative, or applicant for  
9           employment on behalf of him or her-  
10          self or others of any right afforded by  
11          this Act, or has reported any injury or  
12          illness to an operator or agent;

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

17           “(IV) refused to violate any pro-  
18          vision of this Act, including any man-  
19          datory health and safety standard or  
20          regulation;

21           “(ii) such miner is the subject of med-  
22          ical evaluations and potential transfer  
23          under a standard published pursuant to  
24          section 101; or

1           “(iii) where the discharge, discrimina-  
2           tion or other retaliation was based on a  
3           suspicion or belief that such miner or other  
4           employee, representative, or applicant en-  
5           gaged in or is about to engage in any of  
6           the activities described in clause (i).

7           “(B) RETALIATION FOR REFUSAL TO PER-  
8           FORM DUTIES.—

9           “(i) IN GENERAL.—No person shall  
10          discharge or in any manner discriminate  
11          against a miner or other employee of an  
12          operator for refusing to perform the min-  
13          er’s or other employee’s duties if the miner  
14          or other employee has a good-faith and  
15          reasonable belief that performing such du-  
16          ties would pose a safety or health hazard  
17          to the miner or other employee or to any  
18          other miner or employee.

19          “(ii) STANDARD.—For purposes of  
20          clause (i), the circumstances causing the  
21          miner’s or other employee’s good-faith be-  
22          lief that performing such duties would pose  
23          a safety or health hazard shall be of such  
24          a nature that a reasonable person, under  
25          the circumstances confronting the miner or

1           other employee, would conclude that there  
2           is such a hazard. In order to qualify for  
3           protection under this paragraph, the miner  
4           or other employee, when practicable, shall  
5           have communicated or attempted to com-  
6           municate the safety or health concern to  
7           the operator and have not received from  
8           the operator a response reasonably cal-  
9           culated to allay such concern.

10           “(2) COMPLAINT.—Any miner or other em-  
11           ployee or representative of miners or applicant for  
12           employment who believes that he or she has been  
13           discharged, disciplined, or otherwise discriminated  
14           against by any person in violation of paragraph (1)  
15           may file a complaint with the Secretary alleging  
16           such discrimination not later than 180 days after  
17           the later of—

18                   “(A) the last date on which an alleged vio-  
19                   lation of paragraph (1) occurs; or

20                   “(B) the date on which the miner or other  
21                   employee or representative knows or should rea-  
22                   sonably have known that such alleged violation  
23                   occurred.

24           “(3) INVESTIGATION AND HEARING.—

1           “(A) COMMENCEMENT OF INVESTIGATION  
2           AND INITIAL DETERMINATION.—Upon receipt  
3           of such complaint, the Secretary shall forward  
4           a copy of the complaint to the respondent, and  
5           shall commence an investigation within 15 days  
6           of the Secretary’s receipt of the complaint, and,  
7           as soon as practicable after commencing such  
8           investigation, make the determination required  
9           under subparagraph (B) regarding the rein-  
10          statement of the miner or other employee.

11          “(B) REINSTATEMENT.—If the Secretary  
12          finds that such complaint was not frivolously  
13          brought, the Commission, on an expedited basis  
14          upon application of the Secretary, shall order  
15          the immediate reinstatement of the miner or  
16          other employee until there has been a final  
17          Commission order disposing of the underlying  
18          complaint of the miner or other employee. If ei-  
19          ther the Secretary or the miner or other em-  
20          ployee pursues the underlying complaint, such  
21          reinstatement shall remain in effect until the  
22          Commission has disposed of such complaint on  
23          the merits, regardless of whether the Secretary  
24          pursues such complaint by filing a complaint  
25          under subparagraph (D) or the miner or other

1 employee pursues such complaint by filing an  
2 action under paragraph (4). If neither the Sec-  
3 retary nor the miner or other employee pursues  
4 the underlying complaint within the periods  
5 specified in paragraph (4), such reinstatement  
6 shall remain in effect until such time as the  
7 Commission may, upon motion of the operator  
8 and after providing notice and an opportunity  
9 to be heard to the parties, vacate such com-  
10 plaint for failure to prosecute.

11 “(C) INVESTIGATION.—Such investigation  
12 shall include interviewing the complainant  
13 and—

14 “(i) providing the respondent an op-  
15 portunity to submit to the Secretary a  
16 written response to the complaint and to  
17 present statements from witnesses or pro-  
18 vide evidence; and

19 “(ii) providing the complainant an op-  
20 portunity to receive any statements or evi-  
21 dence provided to the Secretary and to  
22 provide additional information or evidence,  
23 or to rebut any statements or evidence.

24 “(D) ACTION BY THE SECRETARY.—If,  
25 upon such investigation, the Secretary deter-

1 mines that the provisions of this subsection  
2 have been violated, the Secretary shall imme-  
3 diately file a complaint with the Commission,  
4 with service upon the alleged violator and the  
5 miner or other employee, representative of min-  
6 ers, or applicant for employment alleging such  
7 discrimination or interference and propose an  
8 order granting appropriate relief.

9 “(E) ACTION OF THE COMMISSION.—The  
10 Commission shall afford an opportunity for a  
11 hearing on the record (in accordance with sec-  
12 tion 554 of title 5, United States Code, but  
13 without regard to subsection (a)(3) of such sec-  
14 tion) and thereafter shall issue an order, based  
15 upon findings of fact, affirming, modifying, or  
16 vacating the Secretary’s proposed order, or di-  
17 recting other appropriate relief. Such order  
18 shall become final 30 days after its issuance.  
19 The complaining miner or other employee, rep-  
20 resentative, or applicant for employment may  
21 present additional evidence on his or her own  
22 behalf during any hearing held pursuant to this  
23 paragraph.

24 “(F) RELIEF.—The Commission shall have  
25 authority in such proceedings to require a per-

1 son committing a violation of this subsection to  
2 take such affirmative action to abate the viola-  
3 tion and prescribe a remedy as the Commission  
4 considers appropriate, including—

5 “(i) the rehiring or reinstatement of  
6 the miner or other employee with back pay  
7 and interest and without loss of position or  
8 seniority, and restoration of the terms,  
9 rights, conditions, and privileges associated  
10 with the complainant’s employment;

11 “(ii) any other compensatory and con-  
12 sequential damages sufficient to make the  
13 complainant whole, and exemplary dam-  
14 ages where appropriate; and

15 “(iii) expungement of all warnings,  
16 reprimands, or derogatory references that  
17 have been placed in paper or electronic  
18 records or databases of any type relating  
19 to the actions by the complainant that  
20 gave rise to the unfavorable personnel ac-  
21 tion, and, at the complainant’s direction,  
22 transmission of a copy of the decision on  
23 the complaint to any person whom the  
24 complainant reasonably believes may have  
25 received such unfavorable information.

1           “(4) NOTICE TO AND ACTION OF COMPLAIN-  
2           ANT.—

3           “(A) NOTICE TO COMPLAINANT.—Not  
4           later than 90 days of the receipt of a complaint  
5           filed under paragraph (2), the Secretary shall  
6           notify, in writing, the miner or other employee,  
7           applicant for employment, or representative of  
8           miners of his determination whether a violation  
9           has occurred.

10           “(B) ACTION OF COMPLAINANT.—If the  
11           Secretary, upon investigation, determines that  
12           the provisions of this subsection have not been  
13           violated, the complainant shall have the right,  
14           within 30 days after receiving notice of the Sec-  
15           retary’s determination, to file an action in his  
16           or her own behalf before the Commission,  
17           charging discrimination or interference in viola-  
18           tion of paragraph (1).

19           “(C) HEARING AND DECISION.—The Com-  
20           mission shall afford an opportunity for a hear-  
21           ing on the record (in accordance with section  
22           554 of title 5, United States Code, but without  
23           regard to subsection (a)(3) of such section),  
24           and thereafter shall issue an order, based upon  
25           findings of fact, dismissing or sustaining the

1 complainant's charges and, if the charges are  
2 sustained, granting such relief as it deems ap-  
3 propriate as described in paragraph (3)(F).  
4 Such order shall become final 30 days after its  
5 issuance.

6 “(5) BURDEN OF PROOF.—In adjudicating a  
7 complaint pursuant to this subsection, the Commis-  
8 sion may determine that a violation of paragraph (1)  
9 has occurred only if the complainant demonstrates  
10 that any conduct described in paragraph (1) with re-  
11 spect to the complainant was a contributing factor  
12 in the adverse action alleged in the complaint. A de-  
13 cision or order that is favorable to the complainant  
14 shall not be issued pursuant to this subsection if the  
15 respondent demonstrates by clear and convincing  
16 evidence that the respondent would have taken the  
17 same adverse action in the absence of such conduct.

18 “(6) ATTORNEYS' FEES.—Whenever an order is  
19 issued sustaining the complainant's charges under  
20 this subsection, a sum equal to the aggregate  
21 amount of all costs and expenses, including attor-  
22 ney's fees, as determined by the Commission to have  
23 been reasonably incurred by the complainant for, or  
24 in connection with, the institution and prosecution of  
25 such proceedings shall be assessed against the per-

1 son committing such violation. The Commission  
2 shall determine whether such costs and expenses  
3 were reasonably incurred by the complainant without  
4 reference to whether the Secretary also participated  
5 in the proceeding.

6 “(7) EXPEDITED PROCEEDINGS; JUDICIAL RE-  
7 VIEW.—Proceedings under this subsection shall be  
8 expedited by the Secretary and the Commission. Any  
9 order issued by the Commission under this sub-  
10 section shall be subject to judicial review in accord-  
11 ance with section 106. Violations by any person of  
12 paragraph (1) shall be subject to the provisions of  
13 sections 108 and 110(a)(4).

14 “(8) PROCEDURAL RIGHTS.—The rights and  
15 remedies provided for in this subsection may not be  
16 waived by any agreement, policy, form, or condition  
17 of employment, including by any pre-dispute arbitra-  
18 tion agreement or collective bargaining agreement.

19 “(9) SAVINGS.—Nothing in this subsection shall  
20 be construed to diminish the rights, privileges, or  
21 remedies of any miner or employee who exercises  
22 rights under any Federal or State law or common  
23 law, or under any collective bargaining agreement.”.

1 **SEC. 402. PROTECTION FROM LOSS OF PAY.**

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

4 **“SEC. 111. ENTITLEMENT OF MINERS.**

5 “(a) PROTECTION FROM LOSS OF PAY.—

6 “(1) WITHDRAWAL ORDERS.—If a coal or other  
7 mine or area of such mine is closed by an order  
8 issued under section 103, 104, 107, 108, or 110, all  
9 miners working during the shift when such order  
10 was issued who are idled by such order shall be enti-  
11 tled, regardless of the result of any review of such  
12 order, to full compensation by the operator at their  
13 regular rates of pay for the period they are idled,  
14 but for not more than the balance of such shift. If  
15 such order is not terminated prior to the next work-  
16 ing shift, all miners on that shift who are idled by  
17 such order shall be entitled to full compensation by  
18 the operator at their regular rates of pay for the pe-  
19 riod they are idled, for not more than one half of  
20 such shift, or four hours, whichever is greater. If a  
21 coal or other mine or area of such mine is closed by  
22 an order issued under section 104, 107 (in connec-  
23 tion with a citation), 108, or 110, all miners who are  
24 idled by such order shall be entitled, regardless of  
25 the result of any review of such order, to full com-  
26 pensation by the operator at their regular rates of

1 pay and in accordance with their regular schedules  
2 of pay for the entire period for which they are idled,  
3 not to exceed 60 days.

4 “(2) CLOSURE IN ADVANCE OF ORDER.—If the  
5 Secretary finds that such mine or such area of a  
6 mine was closed by the operator in anticipation of  
7 the issuance of such an order, all miners who are  
8 idled by such closure shall be entitled to full com-  
9 pensation by the operator at their regular rates of  
10 pay and in accordance with their regular schedules  
11 of pay, from the time of such closure until such time  
12 as the Secretary authorizes reopening of such mine  
13 or such area of the mine, not to exceed 60 days, ex-  
14 cept where an operator promptly withdraws miners  
15 upon discovery of a hazard, and notifies the Sec-  
16 retary where required, and within the prescribed  
17 time period.

18 “(3) REFUSAL TO COMPLY.—Whenever an op-  
19 erator violates or fails or refuses to comply with any  
20 order issued under section 103, 104, 107, 108, or  
21 110, all miners employed at the affected mine who  
22 would have been withdrawn from, or prevented from  
23 entering, such mine or area thereof as a result of  
24 such order shall be entitled to full compensation by  
25 the operator at their regular rates of pay, in addi-

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

5       “(b) ENFORCEMENT.—

6               “(1) COMMISSION ORDERS.—The Commission  
7       shall have authority to order compensation due  
8       under this section upon the filing of a complaint by  
9       a miner or his representative and after opportunity  
10      for hearing on the record subject to section 554 of  
11      title 5, United States Code. Whenever the Commis-  
12      sion issues an order sustaining the complaint under  
13      this subsection in whole or in part, the Commission  
14      shall award the complainant reasonable attorneys’  
15      fees and costs.

16              “(2) FAILURE TO PAY COMPENSATION DUE.—  
17      Consistent with the authority of the Secretary to  
18      order miners withdrawn from a mine under this Act,  
19      the Secretary shall order a mine that has been sub-  
20      ject to a withdrawal order under section 103, 104,  
21      107, 108, or 110, and has reopened, to be closed  
22      again if compensation in accordance with the provi-  
23      sions of this section is not paid by the end of the  
24      next regularly scheduled payroll period following the  
25      lifting of a withdrawal order.

1       “(c) EXPEDITED REVIEW.—If an order is issued  
2 which results in payments to miners under subsection (a),  
3 the operators shall have the right to an expedited review  
4 before the Commission using timelines and procedures es-  
5 tablished pursuant to section 316(b)(2)(G)(ii).”.

6 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**  
7                   **STANDARD FOR MINES PLACED IN PATTERN**  
8                   **OF VIOLATIONS STATUS.**

9       The Federal Mine Safety and Health Act of 1977 is  
10 further amended by adding at the end of title I the fol-  
11 lowing:

12 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**  
13                   **STANDARD FOR MINES PLACED IN PATTERN**  
14                   **OF VIOLATIONS STATUS.**

15       “(a) IN GENERAL.—For purposes of ensuring min-  
16 ers’ health and safety and miners’ right to raise concerns  
17 thereof, when an underground coal mine is placed in pat-  
18 tern of violations status pursuant to section 104(e), and  
19 for 3 years after such placement, the operator of such  
20 mine may not discharge or constructively discharge a  
21 miner who is paid on an hourly basis and employed at  
22 such underground coal mine without reasonable job-re-  
23 lated grounds based on a failure to satisfactorily perform  
24 job duties, including compliance with this Act and with  
25 mandatory health and safety standards or other regula-

1 tions issued under this Act, or other legitimate business  
2 reason, where the miner has completed the employer's pro-  
3 bationary period, not to exceed 6 months.

4       “(b) CAUSE OF ACTION.—A miner aggrieved by a  
5 violation of subsection (a) may file a complaint in Federal  
6 district court in the district where the mine is located  
7 within 1 year of such violation.

8       “(c) REMEDIES.—In an action under subsection (b),  
9 for any prevailing miner the court shall take affirmative  
10 action to further the purposes of the Act, which may in-  
11 clude reinstatement with backpay and compensatory dam-  
12 ages. Reasonable attorneys' fees and costs shall be award-  
13 ed to any prevailing miner under this section.

14       “(d) PRE-DISPUTE WAIVER PROHIBITED.—A min-  
15 er's right to a cause of action under this section may not  
16 be waived with respect to disputes that have not arisen  
17 as of the time of the waiver.

18       “(e) CONSTRUCTION.—Nothing in this section shall  
19 be construed to limit the availability of rights and rem-  
20 edies of miners under any other State or Federal law or  
21 a collective bargaining agreement.”.

1 **TITLE** **V—MODERNIZING**  
2 **HEALTH AND SAFETY STAND-**  
3 **ARDS**

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

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

7 “(3)(A) Not later than 30 days after the issuance of  
8 the interim final rules promulgated under subparagraph  
9 (B), each operator of an underground coal mine shall im-  
10 plement a communication program at the underground  
11 coal mine to ensure that each miner is orally briefed on  
12 and made aware of, prior to traveling to or arriving at  
13 the miner’s work area and commencing the miner’s as-  
14 signed tasks—

15 “(i) any conditions that are hazardous, or that  
16 violate a mandatory health or safety standard or a  
17 plan approved under this Act, where the miner is ex-  
18 pected to work or travel; and

19 “(ii) the general conditions of that miner’s as-  
20 signed working section or other area where the  
21 miner is expected to work or travel.

22 “(B) Not later than 180 days after the date of enact-  
23 ment of the Robert C. Byrd Mine Safety Protection Act  
24 of 2017, the Secretary shall promulgate interim final rules  
25 implementing the requirements of subparagraph (A). The

1 Secretary shall issue a final rule not later than 2 years  
2 after such date.”.

3 **SEC. 502. ROCK DUST STANDARDS.**

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

6 (1) by striking “Where rock” and inserting the  
7 following: “ROCK DUST.—

8 “(1) IN GENERAL.—Where rock”;

9 (2) by striking “65 per centum” and all that  
10 follows and inserting “80 percent. Where methane is  
11 present in any ventilating current, the percentage of  
12 incombustible content of such combined dusts shall  
13 be increased 0.4 percent for each 0.1 percent of  
14 methane.”; and

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

16 “(2) METHODS OF MEASUREMENT.—

17 “(A) IN GENERAL.—Each operator of an  
18 underground coal mine shall take accurate and  
19 representative samples which shall measure the  
20 total incombustible content of combined coal  
21 dust, rock dust, and other dust in such mine to  
22 ensure that the coal dust is kept below explosive  
23 levels through the appropriate application of  
24 rock dust.

1           “(B) DIRECT READING MONITORS.—In  
2 order to ensure timely assessment and compli-  
3 ance, the Secretary shall, not later than 180  
4 days after the date of enactment of the Robert  
5 C. Byrd Mine Safety Protection Act of 2017,  
6 require operators to measure total incombust-  
7 tible content (or an equivalent measure of  
8 explosibility) in samples of combined coal dust,  
9 rock dust, and other dust, using direct reading  
10 monitors that the Secretary has approved for  
11 use in an underground coal mine, such as coal  
12 dust explosibility monitors.

13           “(C) REGULATIONS.—The Secretary shall,  
14 not later than 180 days after the date of enact-  
15 ment of the Robert C. Byrd Mine Safety Pro-  
16 tection Act of 2017, promulgate an interim  
17 final rule that prescribes methods for operator  
18 sampling of total incombustible content (or an  
19 equivalent measure of explosibility) in samples  
20 of combined coal dust, rock dust, and other  
21 dust using direct reading monitors and includes  
22 requirements for locations, methods, and inter-  
23 vals for mandatory operator sampling.

24           “(D) RECOMMENDATIONS.—Not later than  
25 1 year after the date of enactment of the Rob-

1           ert C. Byrd Mine Safety Protection Act of  
2           2017, the Secretary of Health and Human  
3           Services shall, based upon the latest research,  
4           recommend to the Secretary of Labor any revi-  
5           sions to the mandatory operator sampling loca-  
6           tions, methods, and intervals included in the in-  
7           terim final rule described in subparagraph (B)  
8           that may be warranted in light of such re-  
9           search.

10           “(3) LIMITATION.—Until a final rule is issued  
11           by the Secretary under section 502(b)(2) of the Rob-  
12           ert C. Byrd Mine Safety Protection Act of 2017, any  
13           measurement taken by a direct reading monitor de-  
14           scribed in paragraph (2) shall not be admissible to  
15           establish a violation in an enforcement action under  
16           this Act.

17           “(4) REPORT AND RULEMAKING AUTHORITY.—

18           “(A) REPORT.—Not later than 2 years  
19           after the date of enactment of the Robert C.  
20           Byrd Mine Safety Protection Act of 2017, the  
21           Secretary of Health and Human Services, in  
22           consultation with the Secretary of Labor, shall  
23           prepare and submit, to the Committee on Edu-  
24           cation and the Workforce of the House of Rep-  
25           resentatives and the Committee on Health,

1 Education, Labor, and Pensions of the Senate,  
2 a report—

3 “(i) regarding whether any direct  
4 reading monitor described in paragraph  
5 (2)(B) is sufficiently reliable and accurate  
6 for the enforcement of the mandatory  
7 health or safety standards by the Secretary  
8 of Labor under such Act, and whether ad-  
9 ditional improvement to such direct read-  
10 ing monitor, or additional verification re-  
11 garding reliability and accuracy, would be  
12 needed for enforcement purposes; and

13 “(ii) identifying any limitations or im-  
14 pediments for such use in underground  
15 coal mines.

16 “(B) AUTHORITY.—If the Secretary deter-  
17 mines that such direct reading monitor is suffi-  
18 ciently reliable and accurate for the enforce-  
19 ment of mandatory health and safety standards  
20 under this Act following such report or any up-  
21 date thereto, the Secretary shall promulgate a  
22 final rule authorizing the use of such direct  
23 reading monitor for purposes of compliance and  
24 enforcement, in addition to other methods for  
25 determining total incombustible content. Such

1 rule shall specify mandatory operator sampling  
2 locations, methods, and intervals.”.

3 (b) ROCK DUST RECORDKEEPING.—Section 304 is  
4 further amended—

5 (1) by redesignating subsection (e) as sub-  
6 section (f) and inserting after subsection (d) the fol-  
7 lowing:

8 “(e) ROCK DUST RECORDKEEPING.—Each coal mine  
9 shall be required to maintain and continuously update a  
10 record of the amount of rock dust purchased.”; and

11 (2) in subsection (f) (as so redesignated), by  
12 striking “Subsection (b) through (d)” and inserting  
13 “Subsections (b) through (e)”.

14 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

17 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

18 “(1) REGULATIONS REQUIRED.—Not later than  
19 1 year after the date of enactment of the Robert C.  
20 Byrd Mine Safety Protection Act of 2017, the Sec-  
21 retary shall, following consultation with the National  
22 Institute for Occupational Safety and Health, pro-  
23 mulgate regulations requiring that each operator of  
24 an underground coal mine install atmospheric moni-  
25 toring systems that—

1           “(A) protect miners where the miners nor-  
2 mally work and travel;

3           “(B) will assist in mine emergency re-  
4 sponse and the conduct of accident investiga-  
5 tions;

6           “(C) provide real-time information regard-  
7 ing methane, oxygen, and carbon monoxide lev-  
8 els, and airflow direction, as appropriate, with  
9 sensing, annunciating, and recording capabili-  
10 ties; and

11           “(D) can, to the maximum extent prac-  
12 ticable, withstand explosions and fires.

13           “(2) CONTENT OF REGULATIONS.—The Sec-  
14 retary shall evaluate and, as appropriate, require—

15           “(A) the installation of atmospheric moni-  
16 toring and recording devices on mining equip-  
17 ment;

18           “(B) the implementation of redundant sys-  
19 tems, such as the bundle tubing system, that  
20 can continuously monitor the mine atmosphere  
21 following incidents such as fires, explosions, en-  
22 trapments, and inundations; and

23           “(C) the implementation of other tech-  
24 nologies available to conduct continuous atmos-  
25 pheric monitoring.”.

1 **SEC. 504. STUDY ON RESPIRABLE DUST STANDARDS.**

2 Section 202 of the Federal Mine Safety and Health  
3 Act of 1977 (30 U.S.C. 842) is amended by adding at  
4 the end the following:

5 “(i) REPORTS.—

6 “(1) STUDY.—Beginning August 1, 2021, the  
7 Secretary of Labor shall undertake a retrospective  
8 study that evaluates the effectiveness of the Depart-  
9 ment of Labor’s final rule entitled ‘Lowering Miners’  
10 Exposure to Respirable Coal Mine Dust, Including  
11 Continuous Personal Dust Monitors’ (published May  
12 1, 2014; 79 Fed. Reg. 24813), the data regarding  
13 the use of continuous personal dust monitors (in this  
14 paragraph referred to as ‘CPDM’), and the rising  
15 number of cases of progressive massive fibrosis  
16 (PMF) to determine whether—

17 “(A) the 1.5 mg/m<sup>3</sup> respirable dust stand-  
18 ard that was included in the final rule should  
19 be further lowered to better protect miners’  
20 health;

21 “(B) the 100 μq/m<sup>3</sup> standard for quartz  
22 (crystalline silica) in respirable dust should be  
23 lowered to better protect better protect miners’  
24 health;

25 “(C) the frequency of CPDM sampling  
26 should be increased;

1           “(D) engineering controls and work prac-  
2           tices used by mine operators to achieve and  
3           maintain the required respirable coal mine dust  
4           levels should be modified;

5           “(E) samples taken on shifts longer than  
6           8 hours should be converted to an 8-hour equiv-  
7           alent concentration to protect miners who work  
8           longer shifts and

9           “(F) research and development should be  
10          undertaken to modify the CPDM to provide real  
11          time data on exposure to respirable quartz.

12          “(2) COMPLETION DEADLINE.—Not later than  
13          August 1, 2022, the Secretary shall transmit a re-  
14          port of the study required under paragraph (1) to  
15          the Committee on Health, Education, Labor, and  
16          Pensions of the Senate and the Committee on Edu-  
17          cation and the Workforce of the House of Rep-  
18          resentatives.

19          “(3) SUBSEQUENT STUDIES.—By August 1,  
20          2025, and every 3 years thereafter, the Secretary  
21          shall conduct a new study as described in paragraph  
22          (1) and report, by not later than one year after the  
23          commencement of the study, the findings of such  
24          study to the Committee on Health, Education,  
25          Labor, and Pensions of the Senate and the Com-

1       mittee on Education and the Workforce of the  
2       House of Representatives.

3           “(4) REVISED STANDARDS.—If any report of  
4       the Secretary under this subsection concludes that  
5       the applicable standard for respirable dust con-  
6       centration should be lowered to protect the health of  
7       miners, or that the incidence of pneumoconiosis  
8       among coal miners in the United States, as reported  
9       by the National Institute for Occupational Safety  
10      and Health, has not been reduced from such inci-  
11      dence prior to the implementation of the most recent  
12      applicable standard for respirable dust concentra-  
13      tion, the Secretary shall, consistent with the require-  
14      ments of this section and section 101, accordingly  
15      revise such standard and any applicable sampling or  
16      testing procedures not later than 24 months after  
17      the publication of such report of the Secretary under  
18      this subsection.”.

19   **SEC. 505. REFRESHER TRAINING ON MINERS’ RIGHTS AND**  
20                           **RESPONSIBILITIES.**

21       (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.  
22   825(a)(3)) is amended to read as follows:

23           “(3) all miners shall receive not less than 9  
24       hours of refresher training not less frequently than  
25       once every 12 months, and such training shall in-

1       clude one hour of training on the statutory rights  
2       and responsibilities of miners and their representa-  
3       tives under this Act and other applicable Federal  
4       and State law, pursuant to a program of instruction  
5       developed by the Secretary and delivered by an em-  
6       ployee of the Administration or by a trainer ap-  
7       proved by the Administration that is a party inde-  
8       pendent from the operator;”.

9       (b) NATIONAL HAZARD REPORTING HOTLINE.—Sec-  
10      tion 115 (30 U.S.C. 825) is further amended—

11           (1) by redesignating subsections (e) through (e)  
12           as subsections (d) through (f), respectively; and

13           (2) by inserting after subsection (b) the fol-  
14           lowing:

15           “(c) Any health and safety training program of in-  
16           struction provided under this section shall include dis-  
17           tribution to miners of information regarding miners’  
18           rights under the Act, as well as a toll-free hotline tele-  
19           phone number, which the Secretary shall maintain to re-  
20           ceive complaints from miners and the public regarding  
21           hazardous conditions, discrimination, safety or health vio-  
22           lations, or other mine safety or health concerns. Informa-  
23           tion regarding the hotline shall be provided in a portable,  
24           convenient format, such as a durable wallet card, to enable  
25           miners to keep the information on their person.”.

1           (c) TIMING OF INITIAL STATUTORY RIGHTS TRAIN-  
2 ING.—Notwithstanding section 115 of the Federal Mine  
3 Safety and Health Act (as amended by subsection (a)) (30  
4 U.S.C. 825) or the health and safety training program ap-  
5 proved under such section, an operator shall ensure that  
6 all miners already employed by the operator on the date  
7 of enactment of this Act shall receive the one hour of stat-  
8 utory rights and responsibilities training described in sec-  
9 tion 115(a)(3) of such Act not later than 180 days after  
10 such date.

11 **SEC. 506. AUTHORITY TO MANDATE ADDITIONAL TRAINING.**

12           (a) IN GENERAL.—Section 115 (30 U.S.C. 825) is  
13 further amended by redesignating subsections (e) and (f)  
14 (as redesignated) as subsections (f) and (g) and inserting  
15 after subsection (d) (as redesignated) the following:

16           “(e) AUTHORITY TO MANDATE ADDITIONAL TRAIN-  
17 ING.—

18                   “(1) IN GENERAL.—The Secretary is authorized  
19 to issue an order requiring that an operator of a  
20 coal or other mine provide additional training be-  
21 yond what is otherwise required by law, and speci-  
22 fying the time within which such training shall be  
23 provided, if the Secretary finds that—

24                           “(A)(i) a serious or fatal accident has oc-  
25 curred at such mine;

1           “(ii) such mine has experienced accident  
2           and injury rates, citations for violations of this  
3           Act (including mandatory health or safety  
4           standards or regulations promulgated under  
5           this Act), citations for significant and substan-  
6           tial violations, or withdrawal orders issued  
7           under this Act at a rate above the average for  
8           mines of similar size and type; or

9           “(iii) an operator has a history of failing to  
10          adequately train miners as required by the Act  
11          or regulations promulgated under this Act; and

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

14          “(2) WITHDRAWAL ORDER.—If the operator  
15          fails to provide training ordered under paragraph  
16          (1) within the specified time, the Secretary shall  
17          issue an order requiring such operator to cause all  
18          affected persons, except those persons referred to in  
19          section 104(c), to be withdrawn, and to be prohib-  
20          ited from entering such mine, until such operator  
21          has provided such training.”.

22          (b) CONFORMING AMENDMENTS.—Section 104(g)(2)  
23          (30 U.S.C. 814(g)(2)) is amended by striking “under  
24          paragraph (1)” both places it appears and inserting  
25          “under paragraph (1) or under section 115(e)”.

1 **SEC. 507. BROOKWOOD-SAGO MINE SAFETY GRANTS.**

2 Section 14(e)(2) of the Mine Improvement and New  
3 Emergency Response Act of 2006 (30 U.S.C. 965(e)(2))  
4 is amended by inserting before the period “, and under-  
5 ground mine rescue training activities which simulate  
6 mine accident conditions”.

7 **SEC. 508. CERTIFICATION OF PERSONNEL.**

8 (a) IN GENERAL.—Title I is further amended by add-  
9 ing at the end the following:

10 **“SEC. 118. CERTIFICATION OF PERSONNEL.**

11 “(a) CERTIFICATION REQUIRED.—Any person who is  
12 authorized or designated by the operator of a coal or other  
13 mine to perform any duties or provide any training that  
14 this Act, including a mandatory health or safety standard  
15 or regulation promulgated pursuant to this Act, requires  
16 to be performed or provided by a certified, registered,  
17 qualified, or otherwise approved person, shall be permitted  
18 to perform such duties or provide such training only if  
19 such person has a current certification, registration, quali-  
20 fication, or approval to perform such duties or provide  
21 such training consistent with the requirements of this sec-  
22 tion.

23 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-  
24 MENTS AND PROCEDURES.—

25 “(1) IN GENERAL.—Not later than 1 year after  
26 the date of enactment of the Robert C. Byrd Mine

1 Safety Protection Act of 2017, the Secretary shall  
2 issue mandatory standards to establish—

3 “(A) requirements for such certification,  
4 registration, qualification, or other approval, in-  
5 cluding the experience, examinations, and ref-  
6 erences that may be required as appropriate;

7 “(B) time limits for such certifications and  
8 procedures for obtaining and renewing such cer-  
9 tification, registration, qualification, or other  
10 approval; and

11 “(C) procedures and criteria for revoking  
12 such certification, registration, qualification, or  
13 other approval, including procedures that en-  
14 sure that the Secretary (or a State agency, as  
15 applicable) responds to requests for revocation  
16 and that the names of individuals whose certifi-  
17 cation or other approval has been revoked are  
18 provided to and maintained by the Secretary,  
19 and are made available to appropriate State  
20 agencies through an electronic database.

21 “(2) COORDINATION WITH STATES.—In devel-  
22 oping such standards, the Secretary shall consult  
23 with States that have miner certification programs  
24 to ensure effective coordination with existing State  
25 standards and requirements for certification. The

1 standards required under paragraph (1) shall pro-  
2 vide that the certification, registration, qualification,  
3 or other approval of the State in which the coal or  
4 other mine is located satisfies the requirement of  
5 subsection (a) if the State's program of certification,  
6 registration, qualification, or other approval is no  
7 less stringent than the standards established by the  
8 Secretary under paragraph (1).

9 “(c) OPERATOR FEES FOR CERTIFICATION.—

10 “(1) ASSESSMENT AND COLLECTION.—Begin-  
11 ning 180 days after the date of enactment of the  
12 Robert C. Byrd Mine Safety Protection Act of 2017,  
13 the Secretary shall assess and collect fees, in accord-  
14 ance with this subsection, from each operator for  
15 each person certified under this section. Fees shall  
16 be assessed and collected in amounts determined by  
17 the Secretary as necessary to fund the certification  
18 programs established under this section.

19 “(2) USE.—Amounts collected as provided in  
20 paragraph (1) shall only be available to the Sec-  
21 retary, as provided in paragraph (3), for making ex-  
22 penditures to carry out the certification programs  
23 established under this subsection.

24 “(3) AUTHORIZATION OF APPROPRIATIONS.—In  
25 addition to funds authorized to be appropriated

1 under section 114, there is authorized to be appro-  
2 priated to the Secretary for each fiscal year in which  
3 fees are collected under paragraph (1) an amount  
4 equal to the total amount of fees collected under  
5 paragraph (1) during that fiscal year. Such amounts  
6 are authorized to remain available until expended. If  
7 on the first day of a fiscal year a regular appropria-  
8 tion to the Administration has not been enacted, the  
9 Administration shall continue to collect fees (as off-  
10 setting collections) under this subsection at the rate  
11 in effect during the preceding fiscal year, until 5  
12 days after the date such regular appropriation is en-  
13 acted.

14 “(4) COLLECTING AND CREDITING OF FEES.—  
15 Fees authorized and collected under this subsection  
16 shall be deposited and credited as offsetting collec-  
17 tions to the account providing appropriations to the  
18 Mine Safety and Health Administration and shall  
19 not be collected for any fiscal year except to the ex-  
20 tent and in the amount provided in advance in ap-  
21 propriation Acts.

22 “(d) CITATION; WITHDRAWAL ORDER.—Any oper-  
23 ator who permits a person to perform any of the health  
24 or safety related functions described in subsection (a)  
25 without a current certification which meets the require-

1 ments of this section shall be considered to have com-  
2 mitted an unwarrantable failure under section 104(d)(1),  
3 and the Secretary shall issue an order requiring that the  
4 miner be withdrawn or reassigned to duties that do not  
5 require such certification.”.

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

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

9 (2) in subsection (c), by redesignating para-  
10 graphs (1) through (3) as subparagraphs (A)  
11 through (C), respectively;

12 (3) in subsection (g), by redesignating para-  
13 graphs (1) through (4) as subparagraphs (A)  
14 through (D), respectively; and

15 (4) by redesignating subsections (e) through (j)  
16 as paragraphs (1) through (8), respectively.

17 **SEC. 509. ELECTRONIC RECORDS REQUIREMENT.**

18 Section 103 is amended by adding at the end the fol-  
19 lowing:

20 “(l) Not later than 180 days after the date of enact-  
21 ment of the Act, the Secretary shall promulgate regula-  
22 tions requiring that mine operators retain records and  
23 data required by this Act, or otherwise required by the  
24 Secretary, that are created, stored or transmitted in elec-  
25 tronic form. Such records shall include records pertaining

1 to miner safety and health, tracking and communications,  
2 atmospheric monitoring of methane, carbon monoxide, ox-  
3 ygen, coal dust and other mine conditions, equipment  
4 usage history and operating parameters, equipment cali-  
5 bration and maintenance, and other information relevant  
6 to compliance with Federal mine health and safety laws  
7 and regulations. Not later than 2 years after the date of  
8 enactment of the Act, the Secretary shall promulgate a  
9 regulation regarding the minimum necessary capabilities  
10 of equipment to retain, store, and recover data created or  
11 transmitted in electronic form.”.

## 12 **TITLE VI—ADDITIONAL MINE** 13 **SAFETY PROVISIONS**

### 14 **SEC. 601. DEFINITIONS.**

15 (a) DEFINITION OF OPERATOR.—Section 3(d) is  
16 amended to read as follows:

17 “(d) ‘operator’ means—

18 “(1) any owner, lessee, or other person  
19 that—

20 “(A) operates or supervises a coal or  
21 other mine; or

22 “(B) controls such mine by making or  
23 having the authority to make management  
24 or operational decisions that affect, directly

1 or indirectly, the health or safety at such  
2 mine; or

3 “(2) any independent contractor per-  
4 forming services or construction at such mine;”.

5 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.  
6 802(e)) is amended by striking “the miners” and inserting  
7 “any miner”.

8 (c) DEFINITION OF IMMINENT DANGER.—Section  
9 3(j) (30 U.S.C. 802(j)) is amended—

10 (1) by striking “means the” and inserting  
11 “means—

12 “(1) the”;

13 (2) by striking the semicolon at the end and in-  
14 serting “; or”; and

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

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

22 (d) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.  
23 802(g)) is amended by inserting after “or other mine” the  
24 following: “, and includes any individual who is not cur-  
25 rently working in a coal or other mine but would be cur-

1 rently working in such mine, but for an accident in such  
2 mine”.

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

6 (1) in subsection (m), by striking “and” after  
7 the semicolon;

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

10 (3) in subsection (o), by striking the period at  
11 the end and inserting “; and”; and

12 (4) by adding at the end the following:

13 “(p) ‘significant and substantial violation’  
14 means a violation of this Act, including any manda-  
15 tory health or safety standard or regulation promul-  
16 gated under this Act, that is of such nature as could  
17 significantly and substantially contribute to the  
18 cause and effect of a coal or other mine safety or  
19 health hazard as described in section 104(d).”.

20 **SEC. 602. ASSISTANCE TO STATES.**

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

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph (1),  
24 by striking “, in coordination with the Sec-

1           retary of Health, Education, and Welfare and  
2           the Secretary of the Interior,”;

3           (B) in paragraph (2), by striking “and”  
4           after the semicolon;

5           (C) in paragraph (3), by striking the pe-  
6           riod and inserting “; and”; and

7           (D) by adding at the end the following:

8           “(4) to assist such State in developing and im-  
9           plementing any certification program for coal or  
10          other mines required for compliance with section  
11          118.”; and

12          (2) in subsection (h), by striking “\$3,000,000  
13          for fiscal year 1970, and \$10,000,000 annually in  
14          each succeeding fiscal year” and inserting  
15          “\$20,000,000 for each fiscal year”.

16 **SEC. 603. AUTHORIZATION OF COOPERATIVE AGREEMENTS**

17                   **BY NIOSH OFFICE OF MINE SAFETY AND**  
18                   **HEALTH.**

19          Section 22(h)(3) of the Occupational Safety and  
20          Health Act of 1970 (29 U.S.C. 671(h)(3)) is amended—

21           (1) in subparagraph (B), by striking “and” at  
22          the end;

23           (2) by redesignating subparagraph (C) as sub-  
24          paragraph (D); and

1           (3) by inserting after subparagraph (B) the fol-  
2           lowing:

3                   “(C) enter into cooperative agreements or  
4           contracts with international institutions and  
5           private entities to improve mine safety and  
6           health through the development and evaluation  
7           of new interventions; and”.

8   **SEC. 604. DOUBLE ENCUMBRANCE; SUCCESSION PLAN.**

9           (a) **AUTHORIZATION.**—Notwithstanding any per-  
10          sonnel procedures, rules, or guidance, the Secretary of  
11          Labor is authorized to double encumber a position or uti-  
12          lize early replacement hiring for authorized representa-  
13          tives and technical specialist positions in the Mine Safety  
14          and Health Administration. The number of such positions  
15          shall be consistent with the staffing requirements set forth  
16          in the succession plan under subsection (b).

17          (b) **SUCCESSION PLAN.**—Not later than 90 days after  
18          the date of enactment of this Act, the Secretary of Labor  
19          shall develop and provide to Congress a succession plan  
20          for the Mine Safety and Health Administration for the  
21          next five years to assure timely replacement of qualified  
22          employees critical to maintaining the agency’s mission  
23          which shall—

24                   (1) estimate employee turnover for each year;

- 1           (2) set benchmarks for maximum allowable per-  
2           centage of vacancies, and a maximum ratio of train-  
3           ees to authorized representatives;
- 4           (3) utilize double encumbrance or early replace-  
5           ment hiring for authorized representatives and tech-  
6           nical specialists;
- 7           (4) implement tracking systems to assure that  
8           staffing levels of authorized representatives and  
9           technical specialists do not fall below the minimum  
10          required to conduct necessary inspections, thor-  
11          oughly review mine plans, and conduct accident and  
12          special investigations; and
- 13          (5) identify resources necessary to implement  
14          such plan. Such succession plan shall be updated bi-  
15          ennially.