To require the Secretary of Labor to issue an interim occupational safety and health standard regarding worker exposure to combustible dust, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Worker Protection Against Combustible Dust Explosions and Fires Act of 2011”.

SEC. 2. FINDINGS.

Congress finds the following:
(1) An emergency exists concerning worker exposure to combustible dust explosions and fires, and there is a significant risk of death or severe injury to workers employed at facilities where combustible dusts are present.

(2) Following 3 catastrophic dust explosions that killed 14 workers in 2003, the Chemical Safety and Hazard Investigation Board (CSB) issued a report in November 2006, which identified 281 combustible dust incidents between 1980 and 2005 that killed 119 workers and injured 718. The CSB concluded that “combustible dust explosions are a serious hazard in American industry”. A quarter of the explosions occurred at food industry facilities, including sugar plants.

(3) In November 2006, the CSB recommended that the Occupational Safety and Health Administration (OSHA) issue a standard designed to prevent combustible dust fires and explosions in general industry, based on current National Fire Protection Association (NFPA) dust explosion standards.

(4) Fourteen workers were killed and more than 38 seriously injured in a catastrophic combustible dust explosion at Imperial Sugar in Port Wentworth, Georgia on February 7, 2008.
(5) An investigation by the CSB found that the explosion at Imperial Sugar was fueled by a massive accumulation of sugar dust throughout the packaging building, triggering a series of secondary explosions throughout the factory.

(6) The CSB’s final report of September 24, 2009, regarding the Imperial Sugar Refinery explosion reiterated its previous recommendation from November 2006 that OSHA proceed expeditiously “to promulgate a comprehensive standard to reduce or eliminate hazards from fire and explosion from combustible powders and dust”.

(7) Explosions continue to injure workers and cause property damage. In the 3 years since the February 7, 2008, explosion at Imperial Sugar, there have been 24 additional combustible dust explosions or fires resulting in 4 deaths and 65 injuries to workers through February 7, 2011, according to data released by the Chemical Safety Board.

(8) On October 21, 2009, OSHA issued an advance notice of proposed rulemaking in response to the CSB’s recommendation; however, a final rule will take at least 4 more years, during which it is foreseeable that additional workers will be seriously injured or killed.
(9) OSHA issued a grain handling facilities standard (29 C.F.R. 1910.272) in 1987 that has proven highly effective in reducing the risk of combustible grain dust explosions, according to an OSHA evaluation.

(10) No OSHA standard comprehensively addresses combustible dust explosion hazards in general industry.

(11) Voluntary NFPA standards exist that, when implemented, effectively reduce the likelihood and impact of combustible dust explosions. In particular—

(A) certain requirements currently apply to existing establishments, which NFPA refers to as a “retroactive” application, and include hazard assessment, housekeeping, control of static electricity, control of open flames and sparks, use of certain tools, employee training, and requirements for inspection and maintenance of equipment;

(B) other requirements include conventional ignition source control and dust emission control technologies, such as ventilation systems that capture fugitive dust, and enclosure of dust generating processes;
(C) many employers currently implement such requirements from NFPA standards to address combustible dust hazards in the workplace; and

(D) many employers maintain written combustible dust safety programs and involve employees in implementing the program, which are important aspects of a comprehensive combustible dust hazard control system.

(12) Implementation of such means of hazard control is both technologically and economically feasible and would substantially reduce risks related to combustible dust fires and explosions to workers.

SEC. 3. ISSUANCE OF INTERIM STANDARD ON COMBUSTIBLE DUST.

(a) Application and Rulemaking.—Not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall promulgate an interim final standard regulating occupational exposure to combustible dust hazards. The interim final standard shall, at a minimum, apply to manufacturing, processing, blending, conveying, repackaging, and handling of combustible particulate solids and their dusts, including organic dusts (such as sugar, candy, paper, soap, and dried blood), plastics, sulfur, wood, rubber, furniture, textiles, pesticides, pharma-
ceuticals, fibers, dyes, coal, metals (such as aluminum, chromium, iron, magnesium, and zinc), fossil fuels, and others determined by the Secretary, but shall not apply to processes already covered by the occupational safety and health standard on grain facilities contained in section 1910.272 of title 29, Code of Federal Regulations.

(b) APPLICATION.—The interim final standard required under this section shall be based on those portions of the National Fire Protection Association Standards in effect on the date of enactment of this Act that—

(1) apply to existing facilities; or

(2) call for source and dust emission control technologies, such as ventilation systems that capture fugitive dust, and enclosure of dust generating processes.

e) REQUIREMENTS.—The interim final standard required under this section shall include the following elements:

(1) Requirements for hazard assessment to identify, evaluate, and control combustible dust hazards.

(2) Requirements for a written program that includes provisions for hazardous dust inspection, testing, hot work, ignition control, and housekeeping, including the frequency and method or
methods used to minimize accumulations of combustible dust on ledges, floors, equipment, and other exposed surfaces.

(3) Requirements for engineering controls, administrative controls, and operating procedures, including means to control fugitive dust emissions and ignition sources, and the safe use and maintenance of process equipment and dust collection systems and filters.

(4) Requirements for workplace inspection and housekeeping to prevent accumulation of combustible dust in places of employment in such depths that it can present explosion, deflagration, or other fire hazards, including safe methods of dust removal.

(5) Requirements for participation of employees and their representatives in hazard assessment, development of and compliance with the written program, incident investigation, and other elements of hazard management.

(6) Requirements to provide written safety and health information and annual training to managers and employees and their representatives, including housekeeping procedures, hot work procedures, preventive, predictive, and periodic maintenance proce-
dures, common ignition sources, and lock-out, tag-out procedures.

(d) Applicability of Other Statutory Requirements.—The requirements applicable to occupational safety and health standards under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), the requirements of chapters 5 and 6 of title 5, United States Code, and titles 2 and 42, United States Code, shall not apply to the issuance of the interim final standard required under this section.

(e) Effective Date of Interim Standard.—The interim final standard shall take effect 30 days after issuance, except that such standard may include a reasonable phase-in period for implementation of required engineering controls. The interim final standard shall have the legal effect of an occupational safety and health standard, and shall apply until a final standard becomes effective under section 6 of the Occupational Safety and Health Act (29 U.S.C. 655).

SEC. 4. FINAL STANDARD ON COMBUSTIBLE DUST.

Not later than 18 months after the date on which the interim final standard is issued under section 3, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act (29 U.S.C. 655), issue a proposed rule for regulating combustible dust explosions
that includes the major elements contained in the interim final standard issued under section 3, and shall issue a final rule 3 years after the issuance of a proposed rule.