

111TH CONGRESS
2^D SESSION

H. R. 6495

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2010

Mr. GEORGE MILLER of California (for himself and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Education and Labor

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 2010”.

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. A pattern of recurring noncompliance or accidents.
- Sec. 203. Injunctive authority.
- Sec. 204. Revocation of approval of plans.
- Sec. 205. Challenging a decision to approve, modify, or revoke a coal or other mine plan.
- 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—WORKER 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 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. Technology related to respirable dust.
- Sec. 505. Refresher training on miner rights and responsibilities.
- Sec. 506. Authority to mandate additional training.
- Sec. 507. Certification of personnel.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.
- Sec. 602. Assistance to States.
- Sec. 603. Black lung medical reports.
- Sec. 604. Rules of application to certain mines.

1 SEC. 2. REFERENCES.

2 Except in title VII and as otherwise expressly pro-
3 vided, whenever in this Act an amendment is expressed

1 as an amendment to a section or other provision, the ref-
2 erence shall be considered to be made to a section or other
3 provision of the Federal Mine Safety and Health Act of
4 1977 (30 U.S.C. 801 et seq.).

5 **TITLE I—ADDITIONAL INSPEC-**
6 **TION AND INVESTIGATION**
7 **AUTHORITY**

8 **SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.**

9 (a) IN GENERAL.—Section 103(b) (30 U.S.C.
10 813(b)) is amended by striking “(b) For the purpose” and
11 inserting the following:

12 “(b) ACCIDENT INVESTIGATIONS.—

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

15 “(A) determine why the accident occurred;

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

23 “(C) make recommendations to avoid any
24 recurrence.

1 “(2) INDEPENDENT ACCIDENT INVESTIGA-
2 TIONS.—

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

9 “(i) any accident involving 3 or more
10 deaths; or

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

16 “(B) APPOINTMENT.—

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

1 health that is relevant to the particular in-
2 vestigation.

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

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

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

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

22 “(II) 1 representative of a labor
23 organization that represents miners,
24 and may not appoint more than 1 of either
25 such individuals as members of the Panel.

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

16 “(vi) COMPENSATION AND TRAVEL.—
17 All members of the Panel who are officers
18 or employees of the United States shall
19 serve without compensation in addition to
20 that received for their services as officers
21 or employees of the United States. Each
22 Panel member who is not an officer or em-
23 ployee of the United States shall be com-
24 pensated at a rate equal to the daily equiv-
25 alent of the annual rate of basic pay pre-

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

14 “(C) DUTIES.—The Panel shall—

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

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

23 “(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; or

8 “(V) any other person or entity
9 (including equipment manufacturers);

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

13 “(iv) prepare a report that—

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

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

20 “(III) includes recommendations,
21 including interim recommendations
22 where appropriate, to industry, labor
23 organizations, State and Federal
24 agencies, or Congress, regarding pol-
25 icy, regulatory, enforcement, adminis-

1 trative, or other changes, which in the
2 judgment of the Panel, would prevent
3 a recurrence at other mines; and

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

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

20 “(E) MEMORANDUM OF UNDER-
21 STANDING.—Not later than 90 days after the
22 date of enactment of the Robert C. Byrd Miner
23 Safety and Health Act of 2010, the Secretary
24 of Labor and the Secretary of Health and

1 Human Services shall conclude and publically
2 issue a memorandum of understanding that—

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

12 “(ii) ensures that Panel members or
13 staff will be able to participate in inves-
14 tigation activities (such as mine inspections
15 and interviews) related to the Secretary of
16 Labor’s investigation and will have full ac-
17 cess to documents that are assembled or
18 produced in such investigation, and en-
19 sures that the Secretary of Labor will
20 make all of the authority available to such
21 Secretary under this section, including sub-
22 poena authority, to obtain information and
23 witnesses which may be requested by such
24 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 2010,
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 poenas for the attendance and testimony of wit-
2 nesses and the production of information, including
3 all relevant data, papers, books, documents, and
4 items of physical evidence, and administer oaths.
5 Witnesses summoned shall be paid the same fees
6 that are paid witnesses in the courts of the United
7 States. In carrying out inspections and investiga-
8 tions under this subsection, authorized representa-
9 tives of the Secretary and attorneys representing the
10 Secretary are authorized to question any individual
11 privately. Under this section, any individual who is
12 willing to speak with or provide a statement to such
13 authorized representatives or attorneys representing
14 the Secretary may do so without the presence, in-
15 volvement, or knowledge of the operator or the oper-
16 ator's agents or attorneys. The Secretary shall keep
17 the identity of an individual providing such a state-
18 ment confidential to the extent permitted by law.
19 Nothing in this paragraph prevents any individual
20 from being represented by that individual's personal
21 attorney.".

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

23 Section 103(f) (30 U.S.C. 813(f)) is amended by in-
24 serting before the last sentence the following: "If any
25 miner is entrapped or otherwise prevented as the result

1 of an accident in such mine from designating such a rep-
2 resentative directly, such miner's closest relative may act
3 on behalf of such miner in designating such a representa-
4 tive. If any miner is not currently working in such mine
5 as the result of an accident in such mine, but would be
6 currently working in such mine but for such accident, such
7 miner may designate such a representative. A representa-
8 tive of miners shall have the right to participate in any
9 accident investigation the Secretary initiates pursuant to
10 subsection (b), including the right to participate in inves-
11 tigative interviews and to review all relevant papers, books,
12 documents and records produced in connection with the
13 accident investigation, unless the Secretary in consultation
14 with the Attorney General excludes such representatives
15 from the investigation on the grounds that inclusion would
16 interfere with or adversely impact a criminal investigation
17 that is pending or under consideration.”.

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

20 (a) HOURS OF INSPECTIONS.—Section 103(a) (30
21 U.S.C. 813(a)) is amended by inserting after the third
22 sentence the following: “Such inspections shall be con-
23 ducted during the various shifts and days of the week dur-
24 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 STATUS.—Section
4 103(a) is further amended by inserting before the last sen-
5 tence the following: “The Secretary shall, upon request by
6 an operator, review with the appropriate mine officials the
7 Secretary’s most recent evaluation for pattern status (as
8 provided in section 104(e)) for that mine during the
9 course of a mine’s regular quarterly inspection of an un-
10 derground mine or a biannual inspection of a surface
11 mine, or, at the discretion of the Secretary, during the
12 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. A PATTERN OF RECURRING NONCOMPLIANCE OR**
7 **ACCIDENTS.**

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

10 “(e) **PATTERN OF RECURRING NONCOMPLIANCE OR**
11 **ACCIDENTS.—**

12 “(1) **PATTERN STATUS.—**

13 “(A) **IN GENERAL.—**For purposes of this
14 subsection, a coal or other mine shall be placed
15 in pattern status if such mine has, as deter-
16 mined based on the regulations promulgated
17 under paragraph (8)—

18 “(i) a pattern of—

19 “(I) citations for significant and
20 substantial violations;

21 “(II) citations and withdrawal or-
22 ders issued for unwarrantable failure
23 to comply with mandatory health and
24 safety standards under section 104(d);

1 “(III) citations for flagrant viola-
2 tions within the meaning of section
3 110(b);

4 “(IV) withdrawal orders issued
5 under any other section of this Act
6 (other than orders issued under sub-
7 sections (j) or (k) of section 103); and

8 “(V) accidents and injuries; or

9 “(ii) a pattern consisting of any com-
10 bination of citations, orders, accidents, or
11 injuries described in subclauses (I) through
12 (V).

13 “(B) MITIGATING CIRCUMSTANCES.—Not-
14 withstanding subparagraph (A), if the Sec-
15 retary, after conducting an assessment of a coal
16 or other mine that otherwise qualifies for pat-
17 tern status, certifies that there are mitigating
18 circumstances wherein the operator has already
19 implemented remedial measures that have re-
20 duced risks to the health and safety of miners
21 to the point that such risks are no longer ele-
22 vated and has taken sufficient measures to en-
23 sure such elevated risk will not recur, the Sec-
24 retary may deem such mine to not be in pattern
25 status under this subsection. The Secretary

1 shall issue any such certification of such miti-
2 gating circumstances that would preclude the
3 placement of a mine in pattern status as a writ-
4 ten finding, which shall, not later than 10 days
5 after the certification is made, be—

6 “(i) made available on the public Web
7 site of the Mine Safety and Health Admin-
8 istration; and

9 “(ii) transmitted to the Committee on
10 Education and Labor of the House of Rep-
11 resentatives and the Committee on Health,
12 Education, Labor, and Pensions of the
13 Senate.

14 “(C) FREQUENCY.—Not less frequently
15 than every 6 months, the Secretary shall iden-
16 tify any mines which meet the criteria set forth
17 in paragraph (8).

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

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

23 “(B) issue an order requiring such oper-
24 ator to cause all persons to be withdrawn from
25 such mine, except those persons referred to in

1 subsection (c) or authorized by an order of the
2 Secretary issued under this subsection;

3 “(C) issue a remediation order described in
4 paragraph (3) to such operator within 3 days;
5 and

6 “(D) require that the number of regular
7 inspections of such mine required under section
8 103 be increased to 8 per year while the mine
9 is in pattern status.

10 Notice advising operators that they face potential
11 placement in pattern status shall not be a require-
12 ment for issuing a withdrawal order to operators
13 under this subsection.

14 “(3) REMEDIATION ORDER.—

15 “(A) IN GENERAL.—A remediation order
16 issued to an operator under paragraph (2)(C)
17 may require the operator to carry out one or
18 more of the following requirements, pursuant to
19 a timetable for commencing and completing
20 such actions or as a condition of miners reen-
21 tering the mine:

22 “(i) Provide specified training, includ-
23 ing training not otherwise required under
24 this Act.

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

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5 “(I) the employment of safety professionals, certified persons, and adequate numbers of personnel for the mine, as may be required by the Secretary;

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10 “(II) specific inspection, record-keeping, reporting and other requirements for the mine as the Secretary may establish; and

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

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19 “(iii) Facilitate any effort by the Secretary to communicate directly with miners employed at the mine outside the presence of the mine operators or its agents, for the purpose of obtaining information about mine conditions, health and safety prac-

1 tices, or advising miners of their rights
2 under this Act.

3 “(B) MODIFICATION OF AND FAILURE TO
4 COMPLY WITH REMEDIATION ORDER.—The Sec-
5 retary may modify the remediation order, as
6 necessary, to protect the health and safety of
7 miners. If the mine operator fails to fully com-
8 ply with the remediation order during the time
9 a mine is in pattern status, the Secretary shall
10 reinstate the withdrawal order under paragraph
11 (2)(B).

12 “(C) EXTENSION OF DEADLINES.—An ex-
13 tension of a deadline under the remediation
14 order may be granted on a temporary basis and
15 only upon a showing that the operator took all
16 feasible measures to comply with the order and
17 only to the extent that the operator’s failure to
18 comply is beyond the control of the operator.

19 “(4) CONDITIONS FOR LIFTING A WITHDRAWAL
20 ORDER.—A withdrawal order issued under para-
21 graph (2)(B) shall not be lifted until the Secretary
22 verifies that—

23 “(A) any and all violations or other condi-
24 tions in the mine identified in the remediation
25 order have been or are being fully abated or

1 corrected as outlined in the remediation order;
2 and

3 “(B) the operator has completed any other
4 actions under the remediation order that are re-
5 quired for reopening the mine.

6 “(5) PERFORMANCE EVALUATION.—

7 “(A) PERFORMANCE BENCHMARKS.—The
8 Secretary shall evaluate the performance of
9 each mine in pattern status every 90 days dur-
10 ing which the mine is producing and determine
11 if, for such 90-day period—

12 “(i) the rate of citations at such mine
13 for significant and substantial violations—

14 “(I) is in the top performing
15 35th percentile of such rates, respec-
16 tively, for all mines of similar size and
17 type; or

18 “(II) has been reduced by 70
19 percent from the date on which such
20 mine was placed in pattern status,
21 provided that the rate of such viola-
22 tions is not greater than the mean for
23 all mines of similar size and type;

24 “(ii) the accident and injury rates at
25 such mine are in the top performing 35th

1 percentile of such rates, respectively, for all
2 mines of similar size and type; and

3 “(iii) no citations or withdrawal or-
4 ders for a violation under section 104(d),
5 no withdrawal orders for imminent danger
6 under section 107 (issued in connection
7 with a citation), and no flagrant violations
8 within the meaning of section 110(b), were
9 issued for such mine.

10 “(B) REISSUANCE OF WITHDRAWAL OR-
11 DERS.—If an operator being evaluated fails to
12 achieve the performance benchmarks described
13 in subparagraph (A), the Secretary may reissue
14 a withdrawal order under paragraph (2)(B) to
15 remedy any recurring conditions that led to pat-
16 tern status under this subsection, and may
17 modify the remediation order, as necessary, to
18 protect the health and safety of miners.

19 “(6) TERMINATION OF PATTERN STATUS.—

20 “(A) PERFORMANCE BENCHMARKS.—The
21 Secretary shall remove a coal or other mine
22 from pattern status if, for a 1-year period dur-
23 ing which the mine is producing—

24 “(i) the rate of citations at such mine
25 for significant and substantial violations—

1 “(I) is in the top performing
2 25th percentile of such rates, respec-
3 tively, for all mines of similar size and
4 type; or

5 “(II) has been reduced by 80
6 percent from the date on which such
7 mine was placed in pattern status,
8 provided that the rate of such viola-
9 tions is not greater than the mean for
10 all mines of similar size and type;

11 “(ii) the accident and injury rates at
12 such mine are in the top performing 25th
13 percentile of such rates, respectively, for all
14 mines of similar size and type; and

15 “(iii) no citations or withdrawal or-
16 ders for violations under section 104(d), no
17 withdrawal orders for imminent danger
18 under section 107 (issued in connection
19 with a citation), and no flagrant violations
20 within the meaning of section 110(b), were
21 issued for such mine.

22 “(B) CONTINUATION OF PATTERN STA-
23 TUS.—Should the mine operator fail to meet
24 the performance benchmarks described in sub-
25 paragraph (A), the Secretary shall extend the

1 mine’s placement in pattern status until such
2 benchmarks are achieved.

3 “(C) CONSTRUCTION.—A withdrawal order
4 issued as the result of a condition that was en-
5 tirely beyond the operator’s ability to prevent or
6 control shall not preclude the operator from
7 being removed from pattern status, provided
8 the operator did not cause or allow miners to
9 be exposed to the condition in violation of any
10 provision of this Act or a mandatory health or
11 safety standard or regulation promulgated
12 under this Act.

13 “(7) EXPEDITED REVIEW.—If any order under
14 this subsection is contested, the review of such order
15 shall be conducted on an expedited basis, in accord-
16 ance with section 105(d).

17 “(8) REGULATIONS.—

18 “(A) IN GENERAL.—Not later than 120
19 days after the date of enactment of the Robert
20 C. Byrd Miner Safety and Health Act of 2010,
21 the Secretary shall issue interim final regula-
22 tions that shall define—

23 “(i) the threshold benchmarks to trig-
24 ger pattern status under paragraph (1)

1 and cause a withdrawal order to be issued
2 or reissued; and

3 “(ii) the performance benchmarks de-
4 scribed in paragraphs (5)(A) and (6)(A).

5 “(B) THRESHOLD BENCHMARKS.—In es-
6 tablishing threshold benchmarks to trigger pat-
7 tern status for mines with significantly poor
8 compliance that contributes to unsafe or
9 unhealthy conditions, the Secretary—

10 “(i) shall—

11 “(I) consider rates of citations
12 and orders described in paragraph
13 (1)(A) and rates of reportable acci-
14 dents and injuries within the pre-
15 ceding 180-day period; and

16 “(II) assign appropriate weight
17 to various types of citations, orders,
18 accidents, injuries, or other factors;
19 and

20 “(ii) may include—

21 “(I) factors such as mine type,
22 production levels, number of miners,
23 hours worked by miners, number of
24 mechanized mining units (or similar
25 production characteristics), and the

1 presence of a representative of miners
2 at the mine for purposes of collective
3 bargaining;

4 “(II) the mine’s history of cita-
5 tions, violations, orders, and other en-
6 forcement actions, or rates of report-
7 able accidents and injuries, over any
8 period determined relevant by the Sec-
9 retary; and

10 “(III) other factors the Secretary
11 may determine appropriate to protect
12 the safety and health of miners.

13 “(C) FINAL REGULATION.—Not later than
14 2 years after the date of enactment of the Rob-
15 ert C. Byrd Miner Safety and Health Act of
16 2010, the Secretary shall promulgate a final
17 regulation implementing this paragraph.

18 “(9) PUBLIC DATABASE AND INFORMATION.—
19 The Secretary shall establish and maintain a pub-
20 lically available electronic database containing the
21 data used to determine pattern status for all coal or
22 other mines which shall be updated as frequently as
23 practicable. Such database shall be searchable and
24 have the capacity to provide comparative data about
25 the health and safety at mines of similar sizes and

1 types. The Secretary shall also make publicly avail-
2 able—

3 “(A) a list of all mines the Secretary
4 places in pattern status, updated within 7 days
5 of placing an additional mine in pattern status;

6 “(B) the metrics, including percentile in-
7 formation, used for the purposes of the per-
8 formance benchmarks and threshold bench-
9 marks described in paragraphs (5), (6), and
10 (8); and

11 “(C) guidance for the use of such metrics
12 and benchmarks to assist operators in deter-
13 mining the performance their mines under cri-
14 teria established by the Secretary.

15 “(10) OPERATOR FEES FOR ADDITIONAL IN-
16 SPECTIONS.—

17 “(A) ASSESSMENT AND COLLECTION.—Be-
18 ginning 120 days after the date of enactment of
19 the Robert C. Byrd Miner Safety and Health
20 Act of 2010, the Secretary shall assess and col-
21 lect fees, in accordance with this paragraph,
22 from each coal or other mine in pattern status
23 for the costs of additional inspections under
24 this subsection. The Secretary shall issue, by
25 rule, a schedule of fees to be assessed against

1 coal or other mines of varying types and sizes,
2 and shall collect and assess amounts under this
3 paragraph based on the schedule.

4 “(B) USE.—Amounts collected as provided
5 in subparagraph (A) shall only be available to
6 the Secretary for making expenditures to carry
7 out the additional inspections required under
8 paragraph (2)(D).

9 “(C) AUTHORIZATION OF APPROPRIA-
10 TIONS.—In addition to any other amounts au-
11 thorized to be appropriated under this Act,
12 there is authorized to be appropriated to the
13 Assistant Secretary for Mine Safety and Health
14 for each fiscal year in which fees are collected
15 under subparagraph (A) an amount equal to
16 the total amount of fees collected under such
17 subparagraph during that fiscal year. Such
18 amounts are authorized to remain available
19 until expended. If on the first day of a fiscal
20 year a regular appropriation to the Commission
21 has not been enacted, the Commission shall
22 continue to collect fees (as offsetting collec-
23 tions) under this subsection at the rate in effect
24 during the preceding fiscal year, until 5 days

1 after the date such regular appropriation is en-
2 acted.

3 “(D) COLLECTION AND CREDITING OF
4 FEES.—Fees authorized and collected under
5 this paragraph shall be deposited and credited
6 as offsetting collections to the account providing
7 appropriations to the Mine Safety and Health
8 Administration and shall not be collected for
9 any fiscal year except to the extent and in the
10 amount provided in advance in appropriation
11 Acts.”.

12 **SEC. 203. INJUNCTIVE AUTHORITY.**

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

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

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

22 (1) by redesignating subsection (d) as sub-
23 section (e); and

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

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

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

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

21 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**
22 **IFY, OR REVOKE A COAL OR OTHER MINE**
23 **PLAN.**

24 Section 105(e) (as redesignated by section 204(1))
25 (30 U.S.C. 815(e)) is amended by adding at the end the

1 following: “In any proceeding in which a party challenges
2 the Secretary’s decision whether to approve, modify, or re-
3 voke a coal or other mine plan under this Act, the Com-
4 mission shall affirm the Secretary’s decision unless the
5 challenging party establishes that such decision was arbi-
6 trary, capricious, an abuse of discretion, or otherwise not
7 in accordance with law.”.

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

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

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

16 (2) as appropriate, recommendations for im-
17 proving timeliness of plan review and for achieving
18 prompt decisions.

19 **TITLE III—PENALTIES**

20 **SEC. 301. CIVIL PENALTIES.**

21 (a) **TECHNICAL CORRECTION.**—Section 110(a)(1)
22 (30 U.S.C. 820(a)(1)) is amended by inserting “including
23 any regulation promulgated under this Act,” after “this
24 Act,”.

1 (b) INCREASED CIVIL PENALTIES DURING PATTERN
2 STATUS.—Section 110(b) (30 U.S.C. 820(b)) is amended
3 by adding at the end the following:

4 “(3) Notwithstanding any other provision of this Act,
5 an operator of a coal or other mine that is in pattern sta-
6 tus under section 104(e) and that fails to meet the per-
7 formance benchmarks set forth by the Secretary under
8 section 104(e)(5)(A) during any performance review of the
9 mine following the first performance review shall be as-
10 sessed an increased civil penalty for any violation of this
11 Act, including any mandatory health or safety standard
12 or regulation promulgated under this Act. Such increased
13 penalty shall be twice the amount that would otherwise
14 be assessed for the violation under this Act, including the
15 regulations promulgated under this Act, subject to the
16 maximum civil penalty established for the violation under
17 this Act. This paragraph shall apply to violations at such
18 mine that occur during the time period after the operator
19 fails to meet the performance benchmarks in this para-
20 graph, and ending when the Secretary determines at a
21 subsequent performance review that the mine meets the
22 performance benchmarks under section 104(e)(5)(A).”.

23 (c) CIVIL PENALTY FOR RETALIATION.—Section
24 110(a) (30 U.S.C. 820(a)) is further amended—

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

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

5 “(4) If any person violates section 105(c), the Sec-
6 retary shall propose, and the Commission shall assess, a
7 civil penalty of not less than \$10,000 or more than
8 \$100,000 for the first occurrence of such violation, and
9 not less than \$20,000 or more than \$200,000 for any sub-
10 sequent violation, during any 3-year period.”.

11 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
12 **RECTORS, AND AGENTS.**

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

15 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,
16 DIRECTORS, AND AGENTS.—Whenever an operator vio-
17 lates a provision of this Act, including any mandatory
18 health or safety standard or regulation promulgated under
19 this Act, or knowingly violates or fails or refuses to comply
20 with any order issued under this Act or any order incor-
21 porated in a final decision issued under this Act, any di-
22 rector, officer, or agent of such operator who knowingly
23 authorized, ordered, or carried out such violation, failure,
24 or refusal, or any policy or practice that resulted in such
25 violation, failure, or refusal, shall be subject to the same

1 civil penalties, fines, and imprisonment that may be im-
2 posed upon a person under this section.”.

3 **SEC. 303. CRIMINAL PENALTIES.**

4 (a) IN GENERAL.—Section 110(d) (30 U.S.C.
5 820(d)) is amended to read as follows:

6 “(d) CRIMINAL PENALTIES.—(1) Whoever, being an
7 operator, knowingly violates a mandatory health or safety
8 standard, or knowingly violates or fails or refuses to com-
9 ply with any order issued under section 104 or section
10 107, or any order incorporated in a final decision issued
11 under this Act (except an order incorporated in a decision
12 under subsection (a)(1) or section 105(e)), shall, upon
13 conviction, be fined not more than \$250,000, or impris-
14 oned for not more than 1 year, or both, except that if
15 the operator commits the violation after having previously
16 committed a violation under this paragraph, the operator
17 shall, upon conviction, be fined not more than \$1,000,000,
18 or imprisoned for not more than 5 years, or both.

19 “(2) Whoever, being an operator—

20 “(A) knowingly tampers with or disables a re-
21 quired safety device (except with express authoriza-
22 tion from the Secretary);

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

1 “(C) knowingly violates or fails or refuses to
2 comply with an order issued under section 104 or
3 107, or any order incorporated in a final decision
4 issued under this Act (except an order incorporated
5 in a decision under subsection (a)(1) or section
6 105(c)), and thereby recklessly exposes a miner to
7 significant risk of serious injury, serious illness, or
8 death, shall, upon conviction, be fined not more than
9 \$1,000,000, or imprisoned for not more than 5
10 years, or both, except that if the operator commits
11 the violation after having previously committed a
12 violation under this paragraph, the operator shall,
13 upon conviction, be fined not more than \$2,000,000,
14 or imprisoned for not more than 10 years, or both.

15 “(3) Whoever, with intent to retaliate or to impede
16 or interfere with an investigation, interferes with the law-
17 ful employment or livelihood of a person, or threatens a
18 person with such action, because such person (or a spouse,
19 sibling, child, or parent of such person) provides informa-
20 tion to an authorized representative of the Secretary, a
21 State or local mine safety or health officer or official, or
22 other any other law enforcement officer in reasonable be-
23 lief that the information is true and related to an apparent
24 health or safety violation, or unhealthful or unsafe condi-
25 tion, policy, or practice under this Act, or takes or threat-

1 ens such person with such action to prevent such person
2 (or a spouse, sibling, child, or parent of such person) from
3 so providing such information, shall be fined under title
4 18, United States Code, or imprisoned for not more than
5 5 years, or both.”.

6 (b) ADVANCE NOTICE OF INSPECTIONS.—

7 (1) IN GENERAL.—Section 110(e) (30 U.S.C.
8 820(e)) is amended to read as follows:

9 “(e) Whoever, with intent to give advance notice of
10 an inspection conducted or to be conducted under this Act,
11 and thereby to impede, interfere with, or frustrate such
12 inspection, engages in, or directs another person to engage
13 in, conduct that a reasonable person would expect to result
14 in such advance notice, shall be fined under title 18,
15 United States Code, or imprisoned for not more than 5
16 years, or both.”.

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

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

1 “(1) that giving, causing to give, or attempting
2 to give or cause to give advance notice of any inspec-
3 tion to be conducted under this Act with the inten-
4 tion of impeding, interfering with, or adversely af-
5 fecting the results of such inspection is unlawful
6 pursuant to section 110(e); and

7 “(2) the maximum penalties for a violation
8 under such subsection.”.

9 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**
10 **MENTS.**

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

1 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**
2 **TEREST.**

3 (a) PRE-FINAL ORDER INTEREST.—Section 110(j)
4 (30 U.S.C. 820(j)) is amended by striking the second and
5 third sentences and inserting the following: “Pre-final
6 order interest on such penalties shall begin to accrue on
7 the date the operator contests a citation issued under this
8 Act, including any mandatory health or safety standard
9 or regulation promulgated under this Act, and shall end
10 upon the issuance of the final order. Such pre-final order
11 interest shall be calculated at the current underpayment
12 rate determined by the Secretary of the Treasury pursu-
13 ant to section 6621 of the Internal Revenue Code of 1986,
14 and shall be compounded daily. Post-final order interest
15 shall begin to accrue 30 days after the date a final order
16 of the Commission or the court is issued, and shall be
17 charged at the rate of 8 percent per annum.”.

18 (b) ENSURING PAYMENT OF PENALTIES.—

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

21 (A) by redesignating subsection (l) as sub-
22 section (m); and

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

25 “(l) ENSURING PAYMENT OF PENALTIES.—

1 “(1) DELINQUENT PAYMENT LETTER.—If the
2 operator of a coal or other mine fails to pay any civil
3 penalty assessment that has become a final order of
4 the Commission or a court within 45 days after such
5 assessment became a final order, the Secretary shall
6 send the operator a letter advising the operator of
7 the consequences under this subsection of such fail-
8 ure to pay. The letter shall also advise the operator
9 of the opportunity to enter into or modify a payment
10 plan with the Secretary based upon a demonstrated
11 inability to pay, the procedure for entering into such
12 plan, and the consequences of not entering into or
13 not complying with such plan.

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

1 ministrative costs) or enters into a payment plan
2 with the Secretary. If such operator enters into a
3 payment plan with the Secretary and at any time
4 fails to comply with the terms specified in such pay-
5 ment plan, the Secretary shall issue an order requir-
6 ing such operator to cause all persons, except those
7 referred to in section 104(c), to be withdrawn from
8 the mine that is covered by such final order, and to
9 be prohibited from entering such mine, until the op-
10 erator rectifies the noncompliance with the payment
11 plan in the manner specified in such payment
12 plan.”.

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

1 **TITLE IV—WORKER RIGHTS AND**
2 **PROTECTIONS**

3 **SEC. 401. PROTECTION FROM RETALIATION.**

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

6 “(c) PROTECTION FROM RETALIATION.—

7 “(1) RETALIATION PROHIBITED.—

8 “(A) RETALIATION FOR COMPLAINT OR
9 TESTIMONY.—No person shall discharge or in
10 any manner discriminate against or cause to be
11 discharged or cause discrimination against or
12 otherwise interfere with the exercise of the stat-
13 utory rights of any miner or other employee of
14 an operator, representative of miners, or appli-
15 cant for employment, because—

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

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

1 alleged danger or safety or health vio-
2 lation in a coal or other mine;

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

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

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

23 “(ii) such miner is the subject of med-
24 ical evaluations and potential transfer

1 under a standard published pursuant to
2 section 101.

3 “(B) RETALIATION FOR REFUSAL TO PER-
4 FORM DUTIES.—

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

15 “(ii) STANDARD.—For purposes of
16 clause (i), the circumstances causing the
17 miner’s or other employee’s good-faith be-
18 lief that performing such duties would pose
19 a safety or health hazard shall be of such
20 a nature that a reasonable person, under
21 the circumstances confronting the miner or
22 other employee, would conclude that there
23 is such a hazard. In order to qualify for
24 protection under this paragraph, the miner
25 or other employee, when practicable, shall

1 have communicated or attempted to com-
2 municate the safety or health concern to
3 the operator and have not received from
4 the operator a response reasonably cal-
5 culated to allay such concern.

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

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

16 “(B) the date on which the miner or other
17 employee or representative knows or should rea-
18 sonably have known that such alleged violation
19 occurred.

20 “(3) INVESTIGATION AND HEARING.—

21 “(A) COMMENCEMENT OF INVESTIGATION
22 AND INITIAL DETERMINATION.—Upon receipt
23 of such complaint, the Secretary shall forward
24 a copy of the complaint to the respondent, and
25 shall commence an investigation within 15 days

1 of the Secretary's receipt of the complaint, and,
2 as soon as practicable after commencing such
3 investigation, make the determination required
4 under subparagraph (B) regarding the rein-
5 statement of the miner or other employee.

6 “(B) REINSTATEMENT.—If the Secretary
7 finds that such complaint was not frivolously
8 brought, the Commission, on an expedited basis
9 upon application of the Secretary, shall order
10 the immediate reinstatement of the miner or
11 other employee until there has been a final
12 Commission order disposing of the underlying
13 complaint of the miner or other employee. If ei-
14 ther the Secretary or the miner or other em-
15 ployee pursues the underlying complaint, such
16 reinstatement shall remain in effect until the
17 Commission has disposed of such complaint on
18 the merits, regardless of whether the Secretary
19 pursues such complaint by filing a complaint
20 under subparagraph (D) or the miner or other
21 employee pursues such complaint by filing an
22 action under paragraph (4). If neither the Sec-
23 retary nor the miner or other employee pursues
24 the underlying complaint within the periods
25 specified in paragraph (4), such reinstatement

1 shall remain in effect until such time as the
2 Commission may, upon motion of the operator
3 and after providing notice and an opportunity
4 to be heard to the parties, vacate such com-
5 plaint for failure to prosecute.

6 “(C) INVESTIGATION.—Such investigation
7 shall include interviewing the complainant
8 and—

9 “(i) providing the respondent an op-
10 portunity to submit to the Secretary a
11 written response to the complaint and to
12 present statements from witnesses or pro-
13 vide evidence; and

14 “(ii) providing the complainant an op-
15 portunity to receive any statements or evi-
16 dence provided to the Secretary and rebut
17 any statements or evidence.

18 “(D) ACTION BY THE SECRETARY.—If,
19 upon such investigation, the Secretary deter-
20 mines that the provisions of this subsection
21 have been violated, the Secretary shall imme-
22 diately file a complaint with the Commission,
23 with service upon the alleged violator and the
24 miner or other employee or representative of
25 miners alleging such discrimination or inter-

1 ference and propose an order granting appro-
2 priate relief.

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

18 “(F) RELIEF.—The Commission shall have
19 authority in such proceedings to require a per-
20 son committing a violation of this subsection to
21 take such affirmative action to abate the viola-
22 tion and prescribe a remedy as the Commission
23 considers appropriate, including—

24 “(i) the rehiring or reinstatement of
25 the miner or other employee with back pay

1 and interest and without loss of position or
2 seniority, and restoration of the terms,
3 rights, conditions, and privileges associated
4 with the complainant's employment;

5 “(ii) any other compensatory and con-
6 sequential damages sufficient to make the
7 complainant whole, and exemplary dam-
8 ages where appropriate; and

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

20 “(4) NOTICE TO AND ACTION OF COMPLAIN-
21 ANT.—

22 “(A) NOTICE TO COMPLAINANT.—Not
23 later than 90 days of the receipt of a complaint
24 filed under paragraph (2), the Secretary shall
25 notify, in writing, the miner or other employee,

1 applicant for employment, or representative of
2 miners of his determination whether a violation
3 has occurred.

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

13 “(C) HEARING AND DECISION.—The Com-
14 mission shall afford an opportunity for a hear-
15 ing on the record (in accordance with section
16 554 of title 5, United States Code, but without
17 regard to subsection (a)(3) of such section),
18 and thereafter shall issue an order, based upon
19 findings of fact, dismissing or sustaining the
20 complainant’s charges and, if the charges are
21 sustained, granting such relief as it deems ap-
22 propriate as described in paragraph (3)(D).
23 Such order shall become final 30 days after its
24 issuance.

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

13 “(6) ATTORNEYS’ FEES.—Whenever an order is
14 issued sustaining the complainant’s charges under
15 this subsection, a sum equal to the aggregate
16 amount of all costs and expenses, including attor-
17 ney’s fees, as determined by the Commission to have
18 been reasonably incurred by the complainant for, or
19 in connection with, the institution and prosecution of
20 such proceedings shall be assessed against the per-
21 son committing such violation. The Commission
22 shall determine whether such costs and expenses
23 were reasonably incurred by the complainant without
24 reference to whether the Secretary also participated
25 in the proceeding.

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

9 “(8) PROCEDURAL RIGHTS.—The rights and
10 remedies provided for in this subsection may not be
11 waived by any agreement, policy, form, or condition
12 of employment, including by any pre-dispute arbitra-
13 tion agreement or collective bargaining agreement.

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

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

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

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

23 “(a) PROTECTION FROM LOSS OF PAY.—

24 “(1) WITHDRAWAL ORDERS.—If a coal or other
25 mine or area of such mine is closed by an order

1 issued under section 103, 104, 107, 108, or 110, all
2 miners working during the shift when such order
3 was issued who are idled by such order shall be enti-
4 tled, regardless of the result of any review of such
5 order, to full compensation by the operator at their
6 regular rates of pay for the period they are idled,
7 but for not more than the balance of such shift. If
8 such order is not terminated prior to the next work-
9 ing shift, all miners on that shift who are idled by
10 such order shall be entitled to full compensation by
11 the operator at their regular rates of pay for the pe-
12 riod they are idled, but for not more than four hours
13 of such shift. If a coal or other mine or area of such
14 mine is closed by an order issued under section 104,
15 107 (in connection with a citation), 108, or 110, all
16 miners who are idled by such order shall be entitled,
17 regardless of the result of any review of such order,
18 to full compensation by the operator at their regular
19 rates of pay and in accordance with their regular
20 schedules of pay for the entire period for which they
21 are idled, not to exceed 60 days.

22 “(2) CLOSURE IN ADVANCE OF ORDER.—If the
23 Secretary finds that such mine or such area of a
24 mine was closed by the operator in anticipation of
25 the issuance of such an order, all miners who are

1 idled by such closure shall be entitled to full com-
2 pensation by the operator at their regular rates of
3 pay and in accordance with their regular schedules
4 of pay, from the time of such closure until such time
5 as the Secretary authorizes reopening of such mine
6 or such area of the mine, not to exceed 60 days, ex-
7 cept where an operator promptly withdraws miners
8 upon discovery of a hazard, and notifies the Sec-
9 retary where required, and within the prescribed
10 time period.

11 “(3) REFUSAL TO COMPLY.—Whenever an op-
12 erator violates or fails or refuses to comply with any
13 order issued under section 103, 104, 107, 108, or
14 110, all miners employed at the affected mine who
15 would have been withdrawn from, or prevented from
16 entering, such mine or area thereof as a result of
17 such order shall be entitled to full compensation by
18 the operator at their regular rates of pay, in addi-
19 tion to pay received for work performed after such
20 order was issued, for the period beginning when
21 such order was issued and ending when such order
22 is complied with, vacated, or terminated.

23 “(b) ENFORCEMENT.—

24 “(1) COMMISSION ORDERS.—The Commission
25 shall have authority to order compensation due

1 under this section upon the filing of a complaint by
2 a miner or his representative and after opportunity
3 for hearing on the record subject to section 554 of
4 title 5, United States Code. Whenever the Commis-
5 sion issues an order sustaining the complaint under
6 this subsection in whole or in part, the Commission
7 shall award the complainant reasonable attorneys'
8 fees and costs.

9 “(2) FAILURE TO PAY COMPENSATION DUE.—
10 Consistent with the authority of the Secretary to
11 order miners withdrawn from a mine under this Act,
12 the Secretary shall order a mine that has been sub-
13 ject to a withdrawal order under section 103, 104,
14 107, 108, or 110, and has reopened, to be closed
15 again if compensation in accordance with the provi-
16 sions of this section is not paid by the end of the
17 next regularly scheduled payroll period following the
18 lifting of a withdrawal order.

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

1 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**
2 **STANDARD FOR MINES PLACED IN PATTERN**
3 **STATUS.**

4 The Federal Mine Safety and Health Act of 1977 is
5 further amended by adding at the end of title I the fol-
6 lowing:

7 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**
8 **STANDARD FOR MINES PLACED IN PATTERN**
9 **STATUS.**

10 “(a) IN GENERAL.—For purposes of ensuring min-
11 ers’ health and safety and miners’ right to raise concerns
12 thereof, when an underground coal mine is placed in pat-
13 tern status pursuant to section 104(e), and for 3 years
14 after such placement, the operator of such mine may not
15 discharge or constructively discharge a miner who is paid
16 on an hourly basis and employed at such underground coal
17 mine without reasonable job-related grounds based on a
18 failure to satisfactorily perform job duties, including com-
19 pliance with this Act and with mandatory health and safe-
20 ty standards or other regulations issued under this Act,
21 or other legitimate business reason, where the miner has
22 completed the employer’s probationary period, not to ex-
23 ceed 6 months.

24 “(b) CAUSE OF ACTION.—A miner aggrieved by a
25 violation of subsection (a) may file a complaint in Federal

1 district court in the district where the mine is located
2 within 1 year of such violation.

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

9 “(d) PRE-DISPUTE WAIVER PROHIBITED.—A min-
10 er’s right to a cause of action under this section may not
11 be waived with respect to disputes that have not arisen
12 as of the time of the waiver.

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

17 **TITLE V—MODERNIZING**
18 **HEALTH AND SAFETY STAND-**
19 **ARDS**

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

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

23 “(3)(A) Not later than 30 days after the issuance of
24 the interim final rules promulgated under subparagraph
25 (C), each operator of an underground coal mine shall im-

1 plement a communication program at the underground
2 coal mine to ensure that each miner is orally briefed on
3 and made aware of, prior to traveling to or arriving at
4 the miner’s work area and commencing the miner’s as-
5 signed tasks—

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

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

13 “(B) Not later than 180 days after the date of enact-
14 ment of the Robert C. Byrd Miner Safety and Health Act
15 of 2010, the Secretary shall promulgate interim final rules
16 implementing the requirements of subparagraph (A). The
17 Secretary shall issue a final rule not later than 2 years
18 after such date.”.

19 **SEC. 502. ROCK DUST STANDARDS.**

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

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

24 “(1) IN GENERAL.—Where rock”;

1 (2) by striking “65 per centum” and all that
2 follows and inserting “80 percent. Where methane is
3 present in any ventilating current, the percentage of
4 incombustible content of such combined dusts shall
5 be increased 0.4 percent for each 0.1 percent of
6 methane.”; and

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

8 “(2) METHODS OF MEASUREMENT.—

9 “(A) IN GENERAL.—Each operator of an
10 underground coal mine shall take accurate and
11 representative samples which shall measure the
12 total incombustible content of combined coal
13 dust, rock dust, and other dust in such mine to
14 ensure that the coal dust is kept below explosive
15 levels through the appropriate application of
16 rock dust.

17 “(B) DIRECT READING MONITORS.—By
18 the later of June 15, 2011, or the date that is
19 30 days after the Secretary of Health and
20 Human Services has certified in writing that di-
21 rect reading monitors are commercially avail-
22 able to measure total incombustible content in
23 samples of combined coal dust, rock dust, and
24 other dust and the Department of Labor has
25 approved such monitors for use in underground

1 coal mines, the Secretary shall require opera-
2 tors to take such dust samples using direct
3 reading monitors.

4 “(C) REGULATIONS.—The Secretary shall,
5 not later than 180 days after the date of enact-
6 ment of the Robert C. Byrd Miner Safety and
7 Health Act of 2010, promulgate an interim
8 final rule that prescribes methods for operator
9 sampling of total incombustible content in sam-
10 ples of combined coal dust, rock dust, and other
11 dust using direct reading monitors and includes
12 requirements for locations, methods, and inter-
13 vals for mandatory operator sampling.

14 “(D) RECOMMENDATIONS.—Not later than
15 1 year after the date of enactment of the Rob-
16 ert C. Byrd Miner Safety and Health Act of
17 2010, the Secretary of Health and Human
18 Services shall, based upon the latest research,
19 recommend to the Secretary of Labor any revi-
20 sions to the mandatory operator sampling loca-
21 tions, methods, and intervals included in the in-
22 terim final rule described in subparagraph (B)
23 that may be warranted in light of such re-
24 search.

1 “(3) LIMITATION.—Until a final rule is issued
2 by the Secretary under section 502(b)(2) of the Rob-
3 ert C. Byrd Miner Safety and Health Act of 2010,
4 any measurement taken by a direct reading monitor
5 described in paragraph (2) shall not be admissible to
6 establish a violation in an enforcement action under
7 this Act.”.

8 (b) REPORT AND RULEMAKING AUTHORITY.—

9 (1) REPORT.—Not later than 2 years after the
10 date of enactment of this Act, the Secretary of
11 Health and Human Services, in consultation with
12 the Secretary of Labor, shall prepare and submit, to
13 the Committee on Education and Labor of the
14 House of Representatives and the Committee on
15 Health, Education, Labor, and Pensions of the Sen-
16 ate, a report—

17 (A) regarding whether any direct reading
18 monitor described in section 304(d)(2)(B) of
19 the Federal Mine Safety and Health Act of
20 1977 (30 U.S.C. 864(d)(2)(B)) is sufficiently
21 reliable and accurate for the enforcement of the
22 mandatory health or safety standards by the
23 Secretary of Labor under such Act, and wheth-
24 er additional improvement to such direct read-
25 ing monitor, or additional verification regarding

1 reliability and accuracy, would be needed for
2 enforcement purposes; and

3 (B) identifying any limitations or impedi-
4 ments for such use in underground coal mines.

5 (2) **AUTHORITY.**—If the Secretary determines
6 that such direct reading monitor is sufficiently reli-
7 able and accurate for the enforcement of mandatory
8 health and safety standards under the Federal
9 Mines Safety and Health Act of 1977 following such
10 report or any update thereto, the Secretary shall
11 promulgate a final rule authorizing the use of such
12 direct reading monitor for purposes of compliance
13 and enforcement, in addition to other methods for
14 determining total incombustible content. Such rule
15 shall specify mandatory operator sampling locations,
16 methods, and intervals.

17 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

20 “(u) **ATMOSPHERIC MONITORING SYSTEMS.**—

21 “(1) **NIOSH RECOMMENDATIONS.**—Not later
22 than 1 year after the date of enactment of the Rob-
23 ert C. Byrd Miner Safety and Health Act of 2010,
24 the Director of the National Institute for Occupa-
25 tional Safety and Health, acting through the Office

1 of Mine Safety and Health Research, in consulta-
2 tion, including through technical working groups,
3 with operators, vendors, State mine safety agencies,
4 the Secretary, and labor representatives of miners,
5 shall issue recommendations to the Secretary regard-
6 ing—

7 “(A) how to ensure that atmospheric moni-
8 toring systems are utilized in the underground
9 coal mining industry to maximize the health
10 and safety of underground coal miners;

11 “(B) the implementation of redundant sys-
12 tems, such as the bundle tubing system, that
13 can continuously monitor the mine atmosphere
14 following incidents such as fires, explosions, en-
15 trapments, and inundations; and

16 “(C) other technologies available to con-
17 duct continuous atmospheric monitoring.

18 “(2) ATMOSPHERIC MONITORING SYSTEM REG-
19 ULATIONS.—Not later than 1 year following the re-
20 ceipt of the recommendations described in paragraph
21 (1), the Secretary shall promulgate regulations re-
22 quiring that each operator of an underground coal
23 mine install atmospheric monitoring systems, con-
24 sistent with such recommendations, that—

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

3 “(B) provide real-time information regard-
4 ing methane and carbon monoxide levels, and
5 airflow direction, as appropriate, with sensing,
6 annunciating, and recording capabilities; and

7 “(C) can, to the maximum extent prac-
8 ticable, withstand explosions and fires.”.

9 **SEC. 504. TECHNOLOGY RELATED TO RESPIRABLE DUST.**

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

11 (1) by striking “of Health, Education, and Wel-
12 fare”; and

13 (2) by striking the second sentence and insert-
14 ing the following: “Not later than 2 years after the
15 date of enactment of the Robert C. Byrd Miner
16 Safety and Health Act of 2010, the Secretary shall
17 promulgate final regulations that require operators,
18 beginning on the date such regulations are issued, to
19 provide coal miners with the maximum feasible pro-
20 tection from respirable dust, including coal and silica
21 dust, that is achievable through environmental con-
22 trols, and that meet the applicable standards.”.

1 **SEC. 505. REFRESHER TRAINING ON MINER RIGHTS AND**
2 **RESPONSIBILITIES.**

3 (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.
4 825(a)(3)) is amended to read as follows:

5 “(3) all miners shall receive not less than 9
6 hours of refresher training not less frequently than
7 once every 12 months, and such training shall in-
8 clude one hour of training on the statutory rights
9 and responsibilities of miners and their representa-
10 tives under this Act and other applicable Federal
11 and State law, pursuant to a program of instruction
12 developed by the Secretary and delivered by an em-
13 ployee of the Administration or by a trainer ap-
14 proved by the Administration that is a party inde-
15 pendent from the operator;”.

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

18 (1) by redesignating subsections (c) through (e)
19 as subsections (d) through (f), respectively; and

20 (2) by inserting after subsection (b) the fol-
21 lowing:

22 “(c) Any health and safety training program of in-
23 struction provided under this section shall include dis-
24 tribution to miners of information regarding miners’
25 rights under the Act, as well as a toll-free hotline tele-
26 phone number, which the Secretary shall maintain to re-

1 ceive complaints from miners and the public regarding
2 hazardous conditions, discrimination, safety or health vio-
3 lations, or other mine safety or health concerns. Informa-
4 tion regarding the hotline shall be provided in a portable,
5 convenient format, such as a durable wallet card, to enable
6 miners to keep the information on their person.”.

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

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

18 (a) **IN GENERAL.**—Section 115 (30 U.S.C. 825) is
19 further amended by redesignating subsections (e) and (f)
20 (as redesignated) as subsections (f) and (g) and inserting
21 after subsection (d) (as redesignated) the following:

22 “(e) **AUTHORITY TO MANDATE ADDITIONAL TRAIN-**
23 **ING.**—

24 “(1) **IN GENERAL.**—The Secretary is authorized
25 to issue an order requiring that an operator of a

1 coal or other mine provide additional training be-
2 yond what is otherwise required by law, and speci-
3 fying the time within which such training shall be
4 provided, if the Secretary finds that—

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

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

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

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

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

5 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

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

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

21 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-
22 MENTS AND PROCEDURES.—

23 “(1) IN GENERAL.—Not later than 1 year after
24 the date of enactment of the Robert C. Byrd Miner

1 Safety and Health Act of 2010, 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 Miner Safety and Health Act of
13 2010, the Secretary shall assess and collect fees, in
14 accordance with this subsection, from each operator
15 for each person certified under this section. Fees
16 shall be assessed and collected in amounts deter-
17 mined by the Secretary as necessary to fund the cer-
18 tification 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 Assistant Secretary for Mine Safety
3 and Health for each fiscal year in which fees are col-
4 lected under paragraph (1) an amount equal to the
5 total amount of fees collected under paragraph (1)
6 during that fiscal year. Such amounts are authorized
7 to remain available until expended. If on the first
8 day of a fiscal year a regular appropriation to the
9 Commission has not been enacted, the Commission
10 shall continue to collect fees (as offsetting collec-
11 tions) under this subsection at the rate in effect dur-
12 ing the preceding fiscal year, until 5 days after the
13 date such regular appropriation is enacted.

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 **TITLE VI—ADDITIONAL MINE**
 18 **SAFETY PROVISIONS**

19 **SEC. 601. DEFINITIONS.**

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

22 “(d) ‘operator’ means—

23 “(1) any owner, lessee, or other person
 24 that—

1 “(A) operates or supervises a coal or
2 other mine; or

3 “(B) controls such mine by making or
4 having the authority to make management
5 or operational decisions that affect, directly
6 or indirectly, the health or safety at such
7 mine; or

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

10 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.
11 802(e)) is amended by striking “the miners” and inserting
12 “any miner”.

13 (c) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.
14 802(g)) is amended by inserting after “or other mine” the
15 following: “, and includes any individual who is not cur-
16 rently working in a coal or other mine but would be cur-
17 rently working in such mine, but for an accident in such
18 mine”.

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

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

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

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

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

4 “(p) ‘significant and substantial violation’
5 means a violation of this Act, including any manda-
6 tory health or safety standard or regulation promul-
7 gated under this Act, that is of such nature as could
8 significantly and substantially contribute to the
9 cause and effect of a coal or other mine safety or
10 health hazard as described in section 104(d).”.

11 **SEC. 602. ASSISTANCE TO STATES.**

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

13 (1) in subsection (a)—

14 (A) in the matter preceding paragraph (1),
15 by striking “, in coordination with the Sec-
16 retary of Health, Education, and Welfare and
17 the Secretary of the Interior,”;

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

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

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

23 “(4) to assist such State in developing and im-
24 plementing any certification program for coal or

1 other mines required for compliance with section
2 118.”; and

3 (2) in subsection (h), by striking “\$3,000,000
4 for fiscal year 1970, and \$10,000,000 annually in
5 each succeeding fiscal year” and inserting
6 “\$20,000,000 for each fiscal year”.

7 **SEC. 603. BLACK LUNG MEDICAL REPORTS.**

8 Title IV of the Black Lung Benefits Act (30 U.S.C.
9 901 et seq.) is amended by adding at the end the fol-
10 lowing:

11 **“SEC. 435. MEDICAL REPORTS.**

12 “In any claim for benefits for a miner under this title,
13 an operator that requires a miner to submit to a medical
14 examination regarding the miner’s respiratory or pul-
15 monary condition shall, not later than 14 days after the
16 miner has been examined, deliver to the claimant a com-
17 plete copy of the examining physician’s report. The exam-
18 ining physician’s report shall be in writing and shall set
19 out in detail the examiner’s findings, including any diag-
20 noses and conclusions and the results of any diagnostic
21 imaging techniques and tests that were performed on the
22 miner.”.

23 **SEC. 604. RULES OF APPLICATION TO CERTAIN MINES.**

24 (a) INAPPLICABILITY OF AMENDMENTS TO CERTAIN
25 MINES.—

1 (1) SPECIAL RULE.—The amendments made by
2 this Act shall not apply to—

3 (A) surface mines, except for surface facili-
4 ties or impoundments physically connected to—

5 (i) underground coal or underground
6 metal mines; or

7 (ii) other underground mines which
8 are gassy mines; or

9 (B) underground mines which are not coal,
10 metal, or gassy mines.

11 (2) DEFINITION.—For purposes of this section,
12 the term “gassy mine” means a mine, tunnel, or
13 other underground workings in which a flammable
14 mixture has been ignited, or has been found with a
15 permissible flame safety lamp, or has been deter-
16 mined by air analysis to contain 0.25 percent or
17 more (by volume) of methane in any open workings
18 when tested at a point not less than 12 inches from
19 the roof, face of rib.

20 (b) RULE OF CONSTRUCTION RELATING TO APPLICA-
21 BILITY OF CERTAIN PROVISIONS TO SURFACE MINES.—
22 Title I is further amended by adding at the end the fol-
23 lowing:

1 **“SEC. 119. APPLICABILITY OF CERTAIN PROVISIONS TO**
2 **CERTAIN MINES.**

3 “(a) **RULE OF CONSTRUCTION.**—With respect to the
4 mines described in subsection (b), this Act as in effect on
5 the date before the date of enactment of the Robert C.
6 Byrd Miner Safety and Health Act of 2010, shall continue
7 to apply to such mines as then in effect.

8 “(b) **APPLICABLE MINES.**—

9 “(1) **IN GENERAL.**—The mines referred to in
10 subsection (a) are—

11 “(A) surface mines, except for surface fa-
12 cilities or impoundments physically connected
13 to—

14 “(i) underground coal or underground
15 metal mines; or

16 “(ii) other underground mines which
17 are gassy mines; and

18 “(B) underground mines which are not
19 coal, metal, or gassy mines.

20 “(2) **DEFINITION.**—As used in paragraph (1),
21 the term ‘gassy mine’ means a mine, tunnel, or
22 other underground workings in which a flammable
23 mixture has been ignited, or has been found with a
24 permissible flame safety lamp, or has been deter-
25 mined by air analysis to contain 0.25 percent or
26 more (by volume) of methane in any open workings

1 when tested at a point not less than 12 inches from
2 the roof, face of rib.

3 “(c) SAVINGS PROVISION.—Nothing in this section
4 shall impact the authority of the Secretary to promulgate
5 or modify regulations pursuant to the authority under any
6 such provisions as in effect on the date before the date
7 of enactment of the Robert C. Byrd Miner Safety and
8 Health Act of 2010, or shall be construed to alter or mod-
9 ify precedent with regards to the Commission or courts.”.

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