

115TH CONGRESS
2D SESSION

S. 2621

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for high gravity violations, to adjust penalties for inflation, to provide rights for victims or their family members, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2018

Ms. BALDWIN (for herself, Mrs. MURRAY, Mr. BROWN, Ms. WARREN, Mr. MARKEY, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for high gravity violations, to adjust penalties for inflation, to provide rights for victims or their family members, 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 “Protecting America’s Workers Act”.

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

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

TITLE I—COVERAGE OF PUBLIC EMPLOYEES, VOLUNTARY EMERGENCY RESPONDERS, AND APPLICATION OF ACT

Sec. 101. Coverage of public employees.
 Sec. 102. Authorized employee representative.
 Sec. 103. Application of Act.

TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS

Sec. 201. Enhanced protections from retaliation.

TITLE III—IMPROVING REPORTING, INSPECTION, AND ENFORCEMENT

Sec. 301. General duty of employers.
 Sec. 302. Occupational safety and health standards.
 Sec. 303. Posting of employee rights.
 Sec. 304. Employer reporting of work-related injuries, illnesses, deaths, and
 hospitalizations; prohibition on discouraging employee report-
 ing.
 Sec. 305. No loss of employee pay for inspections.
 Sec. 306. Investigations of fatalities and significant incidents.
 Sec. 307. Prohibition on unclassified citations.
 Sec. 308. Victims' rights.
 Sec. 309. Right to contest citations and penalties.
 Sec. 310. Correction of serious, willful, or repeated violations pending contest
 and procedures for a stay.
 Sec. 311. Inaction by the Review Commission.
 Sec. 312. Conforming amendments.
 Sec. 313. Civil penalties.
 Sec. 314. Criminal penalties.
 Sec. 315. Prejudgment interest.

TITLE IV—STATE PLANS

Sec. 401. Concurrent enforcement authority and review of State occupational
 safety and health plans.
 Sec. 402. Evaluation of repeated violations in State plans.

TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

Sec. 501. Health hazard evaluations by the National Institute for Occupational
 Safety and Health.

TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, whenever in
 3 this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of the Occupational Safety and
 7 Health Act of 1970 (29 U.S.C. 651 et seq.).

8 **TITLE I—COVERAGE OF PUBLIC**
 9 **EMPLOYEES, VOLUNTARY**
 10 **EMERGENCY RESPONDERS,**
 11 **AND APPLICATION OF ACT**

12 **SEC. 101. COVERAGE OF PUBLIC EMPLOYEES.**

13 (a) IN GENERAL.—Section 3(5) (29 U.S.C. 652(5))
 14 is amended by striking “but does not include” and all that
 15 follows through the period at the end and inserting “in-
 16 cluding the United States, a State, or a political subdivi-
 17 sion of a State.”.

18 (b) CONSTRUCTION.—Nothing in this Act shall be
 19 construed to affect the application of section 18 of the Oc-
 20 cupational Safety and Health Act of 1970 (29 U.S.C.
 21 667).

22 **SEC. 102. AUTHORIZED EMPLOYEE REPRESENTATIVE.**

23 Section 3 (29 U.S.C. 652) is amended by adding at
 24 the end the following:

1 “(15) AUTHORIZED EMPLOYEE REPRESENTA-
 2 TIVE.—The term ‘authorized employee representa-
 3 tive’—

4 “(A) means any person or organization
 5 that for the purposes of this Act represents 2
 6 or more employees at an establishment, factory,
 7 plant, construction site, or other workplace, or
 8 other environment where work is performed by
 9 employees for an employer; and

10 “(B) includes a representative authorized
 11 by employees, a representative of employees, or
 12 any other representative of employees under
 13 this Act.”.

14 **SEC. 103. APPLICATION OF ACT.**

15 Section 4(b) (29 U.S.C. 653(b)) is amended—

16 (1) by redesignating paragraphs (2), (3), and
 17 (4) as paragraphs (5), (6), and (7), respectively; and

18 (2) by striking paragraph (1) and inserting the
 19 following:

20 “(1) If a Federal agency has promulgated and is en-
 21 forcing a standard or regulation affecting occupational
 22 safety or health of some or all of the employees within
 23 that agency’s regulatory jurisdiction, and the Secretary
 24 determines that such a standard or regulation as promul-
 25 gated and the manner in which the standard or regulation

1 is being enforced provides protection to those employees
2 that is at least as effective as the protection provided to
3 those employees by this Act and the Secretary's enforce-
4 ment of this Act, the Secretary may publish a certification
5 notice in the Federal Register. The notice shall set forth
6 that determination and the reasons for the determination
7 and certify that the Secretary has ceded jurisdiction to
8 that Federal agency with respect to the specified standard
9 or regulation affecting occupational safety or health. In
10 determining whether to cede jurisdiction to a Federal
11 agency, the Secretary shall seek to avoid duplication of,
12 and conflicts between, health and safety requirements.
13 Such certification shall remain in effect unless and until
14 rescinded by the Secretary.

15 “(2) The Secretary shall, by regulation, establish pro-
16 cedures by which any person who may be adversely af-
17 fected by a decision of the Secretary certifying that the
18 Secretary has ceded jurisdiction to another Federal agency
19 pursuant to paragraph (1) may petition the Secretary to
20 rescind a certification notice under paragraph (1). Upon
21 receipt of such a petition, the Secretary shall investigate
22 the matter involved and shall, within 90 days after receipt
23 of the petition, publish a decision with respect to the peti-
24 tion in the Federal Register.

25 “(3) Any person who may be adversely affected by—

1 “(A) a decision of the Secretary certifying that
 2 the Secretary has ceded jurisdiction to another Fed-
 3 eral agency pursuant to paragraph (1); or

4 “(B) a decision of the Secretary denying a peti-
 5 tion to rescind such a certification notice under
 6 paragraph (1),

7 may, not later than 60 days after such decision is pub-
 8 lished in the Federal Register, file a petition challenging
 9 such decision with the United States court of appeals for
 10 the circuit in which such person resides or such person
 11 has a principal place of business, for judicial review of
 12 such decision. A copy of the petition shall be forthwith
 13 transmitted by the clerk of the court to the Secretary. The
 14 Secretary’s decision shall be set aside if found to be arbi-
 15 trary, capricious, an abuse of discretion, or otherwise not
 16 in accordance with law.

17 “(4) Nothing in this Act shall apply to working condi-
 18 tions covered by the Federal Mine Safety and Health Act
 19 of 1977 (30 U.S.C. 801 et seq.).”.

20 **TITLE II—INCREASING** 21 **WHISTLEBLOWER PROTECTIONS**

22 **SEC. 201. ENHANCED PROTECTIONS FROM RETALIATION.**

23 (a) ACTIONS.—Section 11(c)(1) (29 U.S.C.
 24 660(c)(1)) is amended to read as follows:

1 “(c) (1) No person shall discharge or cause to be dis-
2 charged, or in any manner discriminate against or cause
3 to be discriminated against, any employee or other indi-
4 vidual performing work for the person because—

5 “(A) such employee or other individual has filed
6 any complaint or instituted or caused to be insti-
7 tuted any proceeding under or related to this Act;

8 “(B) such employee or other individual has tes-
9 tified or is about to testify before Congress or in any
10 Federal or State proceeding related to safety or
11 health;

12 “(C) such employee or other individual has re-
13 fused to violate any provision of this Act; or

14 “(D) of the exercise of such employee or other
15 individual on behalf of himself or others of any right
16 afforded by this Act, including the reporting of any
17 injury, illness, or unsafe condition to the employer,
18 agent of the employer, safety and health committee
19 involved, or employee safety and health representa-
20 tive involved.”.

21 (b) PROHIBITION OF RETALIATION.—Section 11(c)
22 (29 U.S.C. 660(c)) is amended by striking paragraph (2)
23 and inserting the following:

24 “(2) PROHIBITION OF RETALIATION.—

1 “(A) IN GENERAL.—No person shall discharge,
2 or cause to be discharged, or in any manner dis-
3 criminate against, or cause to be discriminated
4 against, an employee or other individual performing
5 work for the person for refusing to perform the du-
6 ties of the employee or other individual if the em-
7 ployee or other individual has a reasonable appre-
8 hension that performing such duties would result in
9 serious injury to, or serious impairment of the
10 health of, the employee or other individual or other
11 employees or other such individuals.

12 “(B) CIRCUMSTANCES.—For purposes of sub-
13 paragraph (A), the circumstances causing the good-
14 faith belief of the employee or other individual that
15 performing such duties would pose a safety or health
16 hazard shall be of such a nature that a reasonable
17 person, under the circumstances confronting the em-
18 ployee or other individual, would conclude that there
19 is such a hazard. In order to qualify for protection
20 under this paragraph, the employee or other indi-
21 vidual, when practicable, shall have communicated or
22 attempted to communicate the safety or health con-
23 cern to the employer and have not received from the
24 employer a response reasonably calculated to allay
25 such concern.”.

1 (c) PROCEDURE.—Section 11(c) (29 U.S.C. 660(c))
 2 is amended by striking paragraph (3) and inserting the
 3 following:

4 “(3) COMPLAINT.—Any employee, or other indi-
 5 vidual performing work for a person, who believes
 6 that the employee or other individual has been dis-
 7 charged, disciplined, or otherwise discriminated
 8 against by any person in violation of paragraph (1)
 9 or (2) may seek relief for such violation by filing a
 10 complaint with the Secretary under paragraph (5).

11 “(4) STATUTE OF LIMITATIONS.—

12 “(A) IN GENERAL.—An employee or other
 13 individual performing work for a person may
 14 take the action permitted by paragraph (3) not
 15 later than 180 days after the later of—

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

18 “(ii) the date on which the employee
 19 or other individual knows or should reason-
 20 ably have known that such alleged violation
 21 occurred.

22 “(B) REPEAT VIOLATION.—Except in
 23 cases when the employee or other individual has
 24 been discharged, a violation of paragraph (1) or

(2) shall be considered to have occurred on the last date an alleged repeat violation occurred.

“(5) INVESTIGATION.—

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

“(i) shall include—

“(I) interviewing the complainant;

“(II) providing the respondent an opportunity to—

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

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

“(III) providing the complainant an opportunity to—

1 “(aa) receive any statements
2 or evidence provided to the Sec-
3 retary;

4 “(bb) meet with the Sec-
5 retary; and

6 “(cc) rebut any statements
7 or evidence; and

8 “(ii) may include issuing subpoenas
9 for the purposes of such investigation.

10 “(B) DECISION.—Not later than 90 days
11 after the filing of the complaint, the Secretary
12 shall—

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

16 “(ii) issue a decision granting or de-
17 nying relief.

18 “(6) PRELIMINARY ORDER FOLLOWING INVES-
19 TIGATION.—If, after completion of an investigation
20 under paragraph (5)(A), the Secretary finds reason-
21 able cause to believe that a violation of paragraph
22 (1) or (2) has occurred, the Secretary shall issue a
23 preliminary order providing relief authorized under
24 paragraph (14) at the same time the Secretary
25 issues a decision under paragraph (5)(B). If a de

1 novo hearing is not requested within the time period
2 required under paragraph (7)(A)(i), such prelimi-
3 nary order shall be deemed a final order of the Sec-
4 retary and is not subject to judicial review.

5 “(7) HEARING.—

6 “(A) REQUEST FOR HEARING.—

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

10 “(I) by the complainant or re-
11 spondent within 30 days after receiv-
12 ing notification of a decision granting
13 or denying relief issued under para-
14 graph (5)(B) or a preliminary order
15 under paragraph (6), respectively;

16 “(II) by the complainant within
17 30 days after the date the complaint
18 is dismissed without investigation by
19 the Secretary under paragraph (5)(A);
20 or

21 “(III) by the complainant within
22 120 days after the date of filing the
23 complaint, if the Secretary has not
24 issued a decision under paragraph
25 (5)(B).

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

5 “(B) PROCEDURES.—

6 “(i) IN GENERAL.—A hearing re-
7 quested under this paragraph shall be con-
8 ducted expeditiously and in accordance
9 with rules established by the Secretary for
10 hearings conducted by administrative law
11 judges.

12 “(ii) SUBPOENAS; PRODUCTION OF
13 EVIDENCE.—In conducting any such hear-
14 ing, the administrative law judge may issue
15 subpoenas. The respondent or complainant
16 may request the issuance of subpoenas
17 that require the deposition of, or the at-
18 tendance and testimony of, witnesses and
19 the production of any evidence (including
20 any books, papers, documents, or record-
21 ings) relating to the matter under consid-
22 eration.

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

1 hearing was requested under this para-
2 graph and promptly notify, in writing, the
3 parties and the Secretary of such decision,
4 including the findings of fact and conclu-
5 sions of law. If the administrative law
6 judge finds that a violation of paragraph
7 (1) or (2) has occurred, the judge shall
8 issue an order for relief under paragraph
9 (14). If review under paragraph (8) is not
10 timely requested, such order shall be
11 deemed a final order of the Secretary that
12 is not subject to judicial review.

13 “(8) ADMINISTRATIVE APPEAL.—

14 “(A) IN GENERAL.—Not later than 30
15 days after the date of notification of a decision
16 and order issued by an administrative law judge
17 under paragraph (7), the complainant or re-
18 spondent may file, with objections, an adminis-
19 trative appeal with an administrative review
20 body designated by the Secretary (referred to in
21 this paragraph as the ‘review board’).

22 “(B) STANDARD OF REVIEW.—In review-
23 ing the decision and order of the administrative
24 law judge, the review board shall affirm the de-
25 cision and order if it is determined that the fac-

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

4 “(C) DECISIONS.—If the review board
5 grants an administrative appeal, the review
6 board shall issue a final decision and order af-
7 firming or reversing, in whole or in part, the
8 decision under review by not later than 90 days
9 after receipt of the administrative appeal. If it
10 is determined that a violation of paragraph (1)
11 or (2) has occurred, the review board shall issue
12 a final decision and order providing relief au-
13 thorized under paragraph (14). Such decision
14 and order shall constitute final agency action
15 with respect to the matter appealed.

16 “(9) SETTLEMENT IN THE ADMINISTRATIVE
17 PROCESS.—

18 “(A) IN GENERAL.—At any time before
19 issuance of a final order, an investigation or
20 proceeding under this subsection may be termi-
21 nated on the basis of a settlement agreement
22 entered into by the parties.

23 “(B) PUBLIC POLICY CONSIDERATIONS.—
24 Neither the Secretary, an administrative law
25 judge, nor the review board conducting a hear-

1 ing under this subsection shall accept a settle-
 2 ment that contains conditions conflicting with
 3 the rights protected under this Act or that are
 4 contrary to public policy, including a restriction
 5 on a complainant’s right to future employment
 6 with employers other than the specific employ-
 7 ers named in a complaint.

8 “(10) INACTION BY THE REVIEW BOARD OR AD-
 9 MINISTRATIVE LAW JUDGE.—

10 “(A) IN GENERAL.—The complainant may
 11 bring a de novo action described in subpara-
 12 graph (B) if—

13 “(i) an administrative law judge has
 14 not issued a decision and order within the
 15 90-day time period required under para-
 16 graph (7)(B)(iii); or

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

21 “(B) DE NOVO ACTION.—Such de novo ac-
 22 tion may be brought at law or equity in the
 23 United States district court for the district
 24 where a violation of paragraph (1) or (2) alleg-
 25 edly occurred or where the complainant resided

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

8 “(11) JUDICIAL REVIEW.—

9 “(A) TIMELY APPEAL TO THE COURT OF
10 APPEALS.—Any party adversely affected or ag-
11 grieved by a final decision and order issued
12 under this subsection may obtain review of such
13 decision and order in the United States Court
14 of Appeals for the circuit where the violation,
15 with respect to which such final decision and
16 order was issued, allegedly occurred or where
17 the complainant resided on the date of such al-
18 leged violation. To obtain such review, a party
19 shall file a petition for review not later than 60
20 days after the final decision and order was
21 issued. Such review shall conform to chapter 7
22 of title 5, United States Code. The commence-
23 ment of proceedings under this subparagraph
24 shall not, unless ordered by the court, operate
25 as a stay of the final decision and order.

1 “(B) LIMITATION ON COLLATERAL AT-
 2 TACK.—An order and decision with respect to
 3 which review may be obtained under subpara-
 4 graph (A) shall not be subject to judicial review
 5 in any criminal or other civil proceeding.

6 “(12) ENFORCEMENT OF ORDER.—If a re-
 7 spondent fails to comply with an order issued under
 8 this subsection, the Secretary or the complainant on
 9 whose behalf the order was issued may file a civil ac-
 10 tion for enforcement in the United States district
 11 court for the district in which the violation was
 12 found to occur to enforce such order. If both the
 13 Secretary and the complainant file such action, the
 14 action of the Secretary shall take precedence. The
 15 district court shall have jurisdiction to grant all ap-
 16 propriate relief described in paragraph (14).

17 “(13) BURDENS OF PROOF.—

18 “(A) CRITERIA FOR DETERMINATION.—In
 19 making a determination or adjudicating a com-
 20 plaint pursuant to this subsection, the Sec-
 21 retary, or an administrative law judge, review
 22 board, or court, may determine that a violation
 23 of paragraph (1) or (2) has occurred only if the
 24 complainant demonstrates that any conduct de-
 25 scribed in paragraph (1) or (2) with respect to

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

3 “(B) PROHIBITION.—Notwithstanding sub-
 4 paragraph (A), a decision or order that is favor-
 5 able to the complainant shall not be issued in
 6 any administrative or judicial action pursuant
 7 to this subsection if the respondent dem-
 8 onstrates by clear and convincing evidence that
 9 the respondent would have taken the same ad-
 10 verse action in the absence of such conduct.

11 “(14) RELIEF.—

12 “(A) ORDER FOR RELIEF.—If the Sec-
 13 retary, or an administrative law judge, review
 14 board, or court, determines that a violation of
 15 paragraph (1) or (2) has occurred, the Sec-
 16 retary, administrative law judge, review board,
 17 or court, respectively, shall have jurisdiction to
 18 order all appropriate relief, including injunctive
 19 relief, and compensatory and exemplary dam-
 20 ages, including—

21 “(i) affirmative action to abate the
 22 violation;

23 “(ii) reinstatement without loss of po-
 24 sition or seniority, and restoration of the
 25 terms, rights, conditions, and privileges as-

1 sociated with the complainant's employ-
2 ment, including opportunities for pro-
3 motions to positions with equivalent or bet-
4 ter compensation for which the complain-
5 ant is qualified;

6 “(iii) compensatory and consequential
7 damages sufficient to make the complain-
8 ant whole, (including back pay, prejudg-
9 ment interest, and other damages); and

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

21 “(B) ATTORNEYS' FEES AND COSTS.—If
22 the Secretary or an administrative law judge,
23 review board, or court grants an order for relief
24 under subparagraph (A), the Secretary, admin-
25 istrative law judge, review board, or court, re-

spectively, shall assess, at the request of the employee, or other individual performing work for the employer, against the employer—

“(i) reasonable attorneys’ fees; and

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

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

“(16) SAVINGS.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee, or other individual performing work for a person, who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.

“(17) ELECTION OF VENUE.—

“(A) IN GENERAL.—An employee of an employer, or other individual performing work for the employer, who is located in a State that

1 has a State plan approved under section 18
 2 may file a complaint alleging a violation of
 3 paragraph (1) or (2) by such employer with—

4 “(i) the Secretary under paragraph
 5 (5); or

6 “(ii) a State plan administrator in
 7 such State.

8 “(B) REFERRALS.—If—

9 “(i) the Secretary receives a complaint
 10 pursuant to subparagraph (A)(i), the Sec-
 11 retary shall not refer such complaint to a
 12 State plan administrator for resolution; or

13 “(ii) a State plan administrator re-
 14 ceives a complaint pursuant to subpara-
 15 graph (A)(ii), the State plan administrator
 16 shall not refer such complaint to the Sec-
 17 retary for resolution.”.

18 (d) RELATION TO ENFORCEMENT.—Section 17(j)
 19 (29 U.S.C. 666(j)) is amended by inserting before the pe-
 20 riod the following: “, including the history of violations
 21 under section 11(c)”.

1 **TITLE III—IMPROVING REPORT-**
 2 **ING, INSPECTION, AND EN-**
 3 **FORCEMENT**

4 **SEC. 301. GENERAL DUTY OF EMPLOYERS.**

5 Section 5 (29 U.S.C. 654(a)(1)) is amended—

6 (1) in subsection (a), by amending paragraph
 7 (1) to read as follows:

8 “(1) shall furnish employment and a place of
 9 employment that are free from recognized hazards—

10 “(A) that are causing or are likely to cause
 11 death or serious physical harm and that the
 12 employer creates or controls; or

13 “(B) to which the employer exposes any
 14 employee of the employer or any other person
 15 performing work at the place of employment;
 16 and”; and

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

19 “(c) Each employee or other person exposed to a haz-
 20 ard in violation of subsection (a) may constitute a separate
 21 violation.”.

22 **SEC. 302. OCCUPATIONAL SAFETY AND HEALTH STAND-**
 23 **ARDS.**

24 Section 6(a) (29 U.S.C. 655(a)) is amended by strik-
 25 ing “Without regard” and all that follows through “af-

1 fected employees.” and inserting the following: “(1) With-
 2 out regard to chapters 5 and 6 of title 5, United States
 3 Code, or to the other subsections of this section, the Sec-
 4 retary shall—

5 “(A) as soon as practicable during the period
 6 beginning with the effective date of this Act and
 7 ending 2 years after such date, by rule promulgate
 8 as an occupational safety or health standard any na-
 9 tional consensus standard, and any established Fed-
 10 eral standard, unless the Secretary determines that
 11 the promulgation of such a standard would not re-
 12 sult in improved safety or health for specifically des-
 13 ignated employees; and

14 “(B) by rule, not later than 2 years after the
 15 effective date under section 601(a) of the Protecting
 16 America’s Workers Act, update any national con-
 17 sensus standard that has been promulgated or incor-
 18 porated by reference pursuant to this subsection, ex-
 19 cept that such a standard shall not be updated pur-
 20 suant to this subparagraph, if—

21 “(i) the standard has been superseded by
 22 a standard promulgated pursuant to subsection
 23 (b); or

1 “(ii) the Secretary determines such update
2 would not result in improved health or safety
3 for specifically designated employees.

4 “(2) In the event of conflict among any such stand-
5 ards, including national consensus standards, or in the
6 event of a consolidation of national consensus standards,
7 the Secretary shall promulgate the standard which assures
8 the greatest protection of the safety or health of the af-
9 fected employees.

10 “(3) No standard, rule, or regulation promulgated
11 under this Act, on or after the date of enactment of the
12 Protecting America’s Workers Act, shall reduce the pro-
13 tection afforded by a health or safety standard, rule, regu-
14 lation, or national consensus standard in effect on the day
15 before the date of enactment of such Act.”.

16 **SEC. 303. POSTING OF EMPLOYEE RIGHTS.**

17 Section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended by
18 adding at the end the following new sentence: “Such regu-
19 lations shall include provisions requiring employers to post
20 for employees or other individuals performing work for the
21 employer information on the protections afforded under
22 section 11(c).”.

1 **SEC. 304. EMPLOYER REPORTING OF WORK-RELATED INJU-**
2 **RIES, ILLNESSES, DEATHS, AND HOS-**
3 **PITALIZATIONS; PROHIBITION ON DISCOUR-**
4 **AGING EMPLOYEE REPORTING.**

5 Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by
6 adding at the end the following new sentences: “Such reg-
7 ulations shall require site-controlling employers to keep a
8 site log for all recordable injuries and illnesses occurring
9 among all employees on the particular site, including em-
10 ployees of the site-controlling employer or others who are
11 performing work at the particular site (including inde-
12 pendent contractors). Such regulations shall require em-
13 ployers to promptly notify the Secretary of any work-re-
14 lated death or work-related injury or illness that results
15 in the in-patient hospitalization of an employee for medical
16 treatment, amputation, or loss of an eye, and shall pro-
17 hibit the employer from adopting or implementing policies
18 or practices by the employer that have the effect of dis-
19 couraging accurate recordkeeping and the reporting of
20 work-related injuries or illnesses by any employee or in
21 any manner discriminates or provides for adverse action
22 against any employee for reporting a work-related injury
23 or illness. For purposes of this paragraph, the term ‘site-
24 controlling employer’ means the employer that has pri-
25 mary control over a work site at which employees of more

1 than one employer work, such as by hiring or coordinating
 2 the work of other employers working at the site.”.

3 **SEC. 305. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

4 Section 8(e) (29 U.S.C. 657(e)) is amended by insert-
 5 ing after the first sentence the following: “Time spent by
 6 an employee participating in or aiding any such inspection
 7 shall be deemed to be hours worked and no employee shall
 8 suffer any loss of wages, benefits, or other terms and con-
 9 ditions of employment for having participated in or aided
 10 any such inspection.”.

11 **SEC. 306. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**
 12 **CANT INCIDENTS.**

13 Section 8 (29 U.S.C. 657) is amended by adding at
 14 the end the following new subsection:

15 “(i) INVESTIGATION OF FATALITIES AND SERIOUS
 16 INCIDENTS.—

17 “(1) IN GENERAL.—The Secretary shall investigate
 18 any significant incident or an incident resulting in death
 19 that occurs in a place of employment.

20 “(2) EVIDENCE PRESERVATION.—If a significant in-
 21 cident or an incident resulting in death occurs in a place
 22 of employment, the employer shall promptly notify the
 23 Secretary of the incident involved and shall take appro-
 24 priate measures to prevent the destruction or alteration
 25 of any evidence that would assist in investigating the inci-

1 dent. The appropriate measures required by this para-
 2 graph do not prevent an employer from taking action on
 3 a worksite to prevent injury to employees or substantial
 4 damage to property or to avoid disruption of essential
 5 services necessary to public safety, provided that if an em-
 6 ployer takes such action, the employer shall notify the Sec-
 7 retary of the action in a timely fashion.

8 “(3) DEFINITIONS.—In this subsection:

9 “(A) INCIDENT RESULTING IN DEATH.—The
 10 term ‘incident resulting in death’ means an incident
 11 that results in the death of an employee.

12 “(B) SIGNIFICANT INCIDENT.—The term ‘sig-
 13 nificant incident’ means an incident that results in
 14 the in-patient hospitalization of 2 or more employees
 15 for medical treatment.”.

16 **SEC. 307. PROHIBITION ON UNCLASSIFIED CITATIONS.**

17 Section 9 (29 U.S.C. 658) is amended by adding at
 18 the end the following:

19 “(d) No citation for a violation of this Act may be
 20 issued, modified, or settled under this section without a
 21 designation enumerated in section 17 with respect to such
 22 violation.”.

1 **SEC. 308. VICTIMS' RIGHTS.**

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

5 **“SEC. 9A. VICTIMS' RIGHTS.**

6 “(a) RIGHTS BEFORE THE SECRETARY.—A victim,
7 or the representative of a victim, shall be afforded the
8 right, with respect to an inspection or investigation con-
9 ducted under section 8 to—

10 “(1) meet with the Secretary regarding the in-
11 spection or investigation conducted under such sec-
12 tion before the Secretary's decision to issue a cita-
13 tion or take no action;

14 “(2) receive, at no cost, a copy of any citation
15 or report, issued as a result of such inspection or in-
16 vestigation, at the same time as the employer re-
17 ceives such citation or report;

18 “(3) be informed of any notice of contest or ad-
19 dition of parties to the proceedings filed under sec-
20 tion 10(c); and

21 “(4) be provided notification of the date and
22 time or any proceedings, service of pleadings, and
23 other relevant documents, and an explanation of the
24 rights of the employer, employee and employee rep-
25 resentative, and victim to participate in proceedings
26 conducted under section 10(c).

1 “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-
2 quest, a victim or representative of a victim shall be af-
3 forded the right with respect to a work-related bodily in-
4 jury or death to—

5 “(1) be notified of the time and date of any
6 proceeding before the Commission;

7 “(2) receive pleadings and any decisions relat-
8 ing to the proceedings; and

9 “(3) be provided an opportunity to appear and
10 make a statement in accordance with the rules pre-
11 scribed by the Commission.

12 “(c) MODIFICATION OF CITATION.—Before entering
13 into an agreement to withdraw or modify a citation issued
14 as a result of an inspection or investigation of an incident
15 under section 8, the Secretary shall notify a victim or rep-
16 resentative of a victim and provide the victim or represent-
17 ative of a victim with an opportunity to appear and make
18 a statement before the parties conducting settlement nego-
19 tiations. In lieu of an appearance, the victim or represent-
20 ative of the victim may elect to submit a letter to the Sec-
21 retary and the parties.

22 “(d) SECRETARY PROCEDURES.—The Secretary shall
23 establish procedures—

24 “(1) to inform victims of their rights under this
25 section; and

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

3 “(e) COMMISSION PROCEDURES AND CONSIDER-
4 ATIONS.—The Commission shall—

5 “(1) establish procedures relating to the rights
6 of victims to be heard in proceedings before the
7 Commission; and

8 “(2) in rendering any decision, provide due con-
9 sideration to any statement or information provided
10 by any victim before the Commission.

11 “(f) FAMILY LIAISONS.—The Secretary shall des-
12 ignate at least 1 employee at each area office of the Occu-
13 pational Safety and Health Administration to serve as a
14 family liaison to—

15 “(1) keep victims informed of the status of in-
16 vestigations, enforcement actions, and settlement ne-
17 gotiations; and

18 “(2) assist victims in asserting their rights
19 under this section.

20 “(g) DEFINITION.—In this section, the term ‘victim’
21 means—

22 “(1) an employee, including a former employee,
23 who has sustained a work-related injury or illness
24 that is the subject of an inspection or investigation
25 conducted under section 8; or

“(2) a family member (as further defined by the Secretary) of a victim described in paragraph (1), if—

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

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

SEC. 309. RIGHT TO CONTEST CITATIONS AND PENALTIES.

Section 10(c) (29 U.S.C. 659(c)) is amended—

(1) in the first sentence—

(A) by inserting after “that he intends to contest a citation issued under section (9)(a)” the following: “(or a modification of a citation issued under this section)”;

(B) by inserting after “the issuance of a citation under section 9(a)” the following: “(including a modification of a citation issued under such section)”;

(C) by inserting after “files a notice with the Secretary alleging” the following: “that the citation fails to properly designate the violation

1 as serious, willful, or repeated, that the pro-
 2 posed penalty is not adequate, or”;

3 (2) by inserting after the first sentence, the fol-
 4 lowing: “The pendency of a contest before the Com-
 5 mission shall not bar the Secretary from inspecting
 6 a place of employment or from issuing a citation
 7 under section 9.”; and

8 (3) in the last sentence—

9 (A) by inserting “employers and” after
 10 “Commission shall provide”; and

11 (B) by inserting before the period at the
 12 end “, and notification of any modification of a
 13 citation”.

14 **SEC. 310. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
 15 **PEATED VIOLATIONS PENDING CONTEST AND**
 16 **PROCEDURES FOR A STAY.**

17 Section 10 (29 U.S.C. 659) is amended by adding
 18 at the end the following:

19 “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-
 20 PEATED VIOLATIONS PENDING CONTEST AND PROCE-
 21 DURES FOR A STAY.—

22 “(1) PERIOD PERMITTED FOR CORRECTION OF
 23 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—

24 For each violation which the Secretary designates as
 25 serious, willful, or repeated, the period permitted for

1 the correction of the violation shall begin to run
 2 upon receipt of the citation.

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

5 “(A) shall not operate as a stay of the pe-
 6 riod for correction of a violation designated as
 7 serious, willful, or repeated; and

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

11 “(3) CRITERIA AND RULES OF PROCEDURE FOR
 12 STAYS.—

13 “(A) MOTION FOR A STAY.—An employer
 14 that receives a citation alleging a violation des-
 15 ignated as serious, willful, or repeated and that
 16 files a notice of contest to the citation asserting
 17 that the time set for abatement of the alleged
 18 violation is unreasonable or challenging the ex-
 19 istence of the alleged violation may file with the
 20 Commission a motion to stay the period for the
 21 abatement of the violation.

22 “(B) CRITERIA.—In determining whether
 23 a stay should be issued on the basis of a motion
 24 filed under subparagraph (A), the Commission

1 may grant a stay only if the employer has dem-
2 onstrated—

3 “(i) a substantial likelihood of success
4 on the areas contested under subparagraph
5 (A); and

6 “(ii) that a stay will not adversely af-
7 fect the health and safety of workers.

8 “(C) RULES OF PROCEDURE.—The Com-
9 mission shall develop rules of procedure for con-
10 ducting a hearing on a motion filed under sub-
11 paragraph (A) on an expedited basis. At a min-
12 imum, such rules shall provide the following:

13 “(i) That a hearing before an admin-
14 istrative law judge shall occur not later
15 than 15 days following the filing of the
16 motion for a stay (unless extended at the
17 request of the employer), and shall provide
18 for a decision on the motion not later than
19 15 days following the hearing (unless ex-
20 tended at the request of the employer).

21 “(ii) That a decision of an administra-
22 tive law judge on a motion for stay is ren-
23 dered on a timely basis.

24 “(iii) That if a party is aggrieved by
25 a decision issued by an administrative law

1 judge regarding the stay, such party has
2 the right to file an objection with the Com-
3 mission not later than 5 days after receipt
4 of the administrative law judge's decision.
5 Within 10 days after receipt of the objec-
6 tion, a Commissioner, if a quorum is seat-
7 ed pursuant to section 12(f), shall decide
8 whether to grant review of the objection.
9 If, within 10 days after receipt of the ob-
10 jection, no decision is made on whether to
11 review the decision of the administrative
12 law judge, the Commission declines to re-
13 view such decision, or no quorum is seated,
14 the decision of the administrative law
15 judge shall become a final order of the
16 Commission. If the Commission grants re-
17 view of the objection, the Commission shall
18 issue a decision regarding the stay not
19 later than 30 days after receipt of the ob-
20 jection. If the Commission fails to issue
21 such decision within 30 days, the decision
22 of the administrative law judge shall be-
23 come a final order of the Commission.

24 “(iv) For notification to employees or
25 representatives of affected employees of re-

1 requests for such hearings and shall provide
 2 affected employees or representatives of af-
 3 fected employees an opportunity to partici-
 4 pate as parties to such hearings.”.

5 **SEC. 311. INACTION BY THE REVIEW COMMISSION.**

6 Section 10 (29 U.S.C. 659), as amended by section
 7 310, is further amended by adding at the end the fol-
 8 lowing:

9 “(e) INACTION BY REVIEW COMMISSION.—

10 “(1) IN GENERAL.—A petition for review of a
 11 decision or order issued by an administrative law
 12 judge that has been filed in a timely manner, but for
 13 which the Commission has failed to issue a final de-
 14 cision and order after 1 year of the acceptance of
 15 such petition because the Commission lacks a
 16 quorum, the decision or order for which such peti-
 17 tion has been filed—

18 “(A) shall be deemed a final decision or
 19 order of the Commission; and

20 “(B) may be appealed pursuant to section
 21 11(a).

22 “(2) EXCEPTION.—Paragraph (1) shall not
 23 apply with respect to motions to stay filed under
 24 subsection (d)(3).”.

1 **SEC. 312. CONFORMING AMENDMENTS.**

2 (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-
 3 FUL, OR REPEATED.—The first sentence of section 10(b)
 4 (29 U.S.C. 659(b)) is amended by inserting “, with the
 5 exception of violations designated as serious, willful, or re-
 6 peated,” after “(which period shall not begin to run”.

7 (b) JUDICIAL REVIEW.—The first sentence of section
 8 11(a) (29 U.S.C. 660(a)) is amended—

9 (1) by inserting “(or the failure of the Commis-
 10 sion, including an administrative law judge, to make
 11 a timely decision on a petition for a stay or other
 12 review)” after “an order of the Commission”;

13 (2) by striking “subsection (c)” and inserting
 14 “subsection (c), (d), or (e)”; and

15 (3) by inserting “(or in the case of a petition
 16 from a final Commission order regarding a stay
 17 under section 10(d), 15 days)” after “sixty days”.

18 (c) FAILURE TO CORRECT VIOLATIONS.—Section
 19 17(d) (29 U.S.C. 666(d)) is amended to read as follows:

20 “(d) Any employer who fails to correct a violation
 21 designated by the Secretary as serious, willful, or repeated
 22 and for which a citation has been issued under section 9(a)
 23 within the period permitted for its correction (and a stay
 24 has not been issued by the Commission under section
 25 10(d)) may be assessed a civil penalty of not more than
 26 \$7,000 for each day during which such failure or violation

1 continues. Any employer who fails to correct any other vio-
 2 lation for which a citation has been issued under section
 3 9(a) within the period permitted for its correction (which
 4 period shall not begin to run until the date of the final
 5 order of the Commission in the case of any review pro-
 6 ceeding under section 10 initiated by the employer in good
 7 faith and not solely for delay of avoidance of penalties)
 8 may be assessed a civil penalty of not more than \$7,000
 9 for each day during which such failure or violation con-
 10 tinues.”.

11 **SEC. 313. CIVIL PENALTIES.**

12 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) is
 13 amended—

14 (1) in subsection (a)—

15 (A) by striking “\$70,000” and inserting
 16 “\$126,749”;

17 (B) by striking “\$5,000” and inserting
 18 “\$9,054”; and

19 (C) by adding at the end the following: “In
 20 determining whether a violation is repeated, the
 21 Secretary or the Commission shall consider the
 22 employer’s history of violations under this Act
 23 and under State occupational safety and health
 24 plans established under section 18. If such a
 25 willful or repeated violation caused or contrib-

1 uted to the death of an employee, such civil
2 penalty amounts shall be increased to not more
3 than \$250,000 for each such violation, but not
4 less than \$50,000 for each such violation, ex-
5 cept that for an employer with 25 or fewer em-
6 ployees such penalty shall not be less than
7 \$25,000 for each such violation.”;

8 (2) in subsection (b)—

9 (A) by striking “\$7,000” and inserting
10 “\$12,675”; and

11 (B) by adding at the end the following: “If
12 such a violation caused or contributed to the
13 death of an employee, such civil penalty
14 amounts shall be increased to not more than
15 \$50,000 for each such violation, but not less
16 than \$20,000 for each such violation, except
17 that for an employer with 25 or fewer employ-
18 ees such penalty shall not be less than \$10,000
19 for each such violation.”;

20 (3) in subsection (c), by striking “\$7,000” and
21 inserting “\$12,675”;

22 (4) in subsection (d), as amended by section
23 312(c), by striking “\$7,000” each place it occurs
24 and inserting “\$12,675”;

1 (5) by redesignating subsections (e) through (i)
 2 as subsections (f) through (j), and subsections (j)
 3 through (l) as subsections (l) through (n) respec-
 4 tively; and

5 (6) in subsection (j) (as so redesignated) by
 6 striking “\$7,000” and inserting “\$12,000”.

7 (b) INFLATION ADJUSTMENT.—Section 17, as
 8 amended by subsection (a), is further amended by insert-
 9 ing after subsection (d) the following:

10 “(e) Amounts provided under this section for civil
 11 penalties shall be adjusted by the Secretary once each
 12 year, not later than January 15 of such year, to account
 13 for any percentage increase or decrease in the Consumer
 14 Price Index for all urban consumers, and consistent with
 15 the requirements of the Federal Civil Penalties Inflation
 16 Adjustment Act of 1990 (28 U.S.C. 2461 note).”.

17 **SEC. 314. CRIMINAL PENALTIES.**

18 (a) IN GENERAL.—Section 17 (29 U.S.C. 666), as
 19 amended by section 313, is further amended—

20 (1) by amending subsection (f) (as redesignated
 21 by section 313(a)(5)) to read as follows:

22 “(f)(1) Any employer who knowingly violates any
 23 standard, rule, or order promulgated under section 6 of
 24 this Act, or of any regulation prescribed under this Act,
 25 and that violation caused or significantly contributed to

1 the death of any employee, shall, upon conviction, be pun-
 2 ished by a fine in accordance with title 18, United States
 3 Code, or by imprisonment for not more than 10 years, or
 4 both, except that if the conviction is for a violation com-
 5 mitted after a first conviction of such person under this
 6 subsection or subsection (j), punishment shall be by a fine
 7 in accordance with title 18, United States Code, or by im-
 8 prisonment for not more than 20 years, or by both.

9 “(2) For the purpose of this subsection, the term ‘em-
 10 ployer’ means, in addition to the definition contained in
 11 section 3 of this Act, any officer or director.”;

12 (2) by amending subsection (g) (as redesignated
 13 by section 313(a)(5)) to read as follows:

14 “(g) Unless otherwise authorized by this Act, any
 15 person that knowingly gives, causes to give, or attempts
 16 to give or cause to give, advance notice of any inspection
 17 conducted under this Act with the intention of impeding,
 18 interfering with, or adversely affecting the results of such
 19 inspection, shall be fined under title 18, United States
 20 Code, imprisoned for not more than 5 years, or both.”;

21 (3) in subsection (h) (as redesignated by section
 22 313(a)(5)), by striking “fine of not more than
 23 \$10,000, or by imprisonment for not more than six
 24 months,” and inserting “fine in accordance with title

1 18, United States Code, or by imprisonment for not
2 more than 5 years,”; and

3 (4) by inserting after subsection (j) (as redesign-
4 nated by section 313(a)(5)) the following:

5 “(k)(1) Any employer who knowingly violates any
6 standard, rule, or order promulgated under section 6, or
7 any regulation prescribed under this Act, and that viola-
8 tion caused or significantly contributed to serious bodily
9 harm to any employee but does not cause death to any
10 employee, shall, upon conviction, be punished by a fine in
11 accordance with title 18, United States Code, or by impris-
12 onment for not more than 5 years, or by both, except that
13 if the conviction is for a violation committed after a first
14 conviction of such person under this subsection or sub-
15 section (f), punishment shall be by a fine in accordance
16 with title 18, United States Code, or by imprisonment for
17 not more than 10 years, or by both.

18 “(2) For the purpose of this subsection, the term ‘em-
19 ployer’ means, in addition to the definition contained in
20 section 3 of this Act, any officer or director.

21 “(3) For purposes of this subsection, the term ‘seri-
22 ous bodily harm’ means bodily injury or illness that in-
23 volves—

24 “(A) a substantial risk of death;

25 “(B) protracted unconsciousness;

1 “(C) protracted and obvious physical disfigure-
2 ment; or

3 “(D) protracted loss or impairment, either tem-
4 porary or permanent, of the function of a bodily
5 member, organ, or mental faculty.”.

6 (b) JURISDICTION FOR PROSECUTION UNDER STATE
7 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.
8 666), as amended by subsection (a), is further amended
9 by adding at the end the following:

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

14 **SEC. 315. PREJUDGMENT INTEREST.**

15 Section 17(n) (29 U.S.C. 666(n)) (as redesignated by
16 section 313(a)(5)) is amended by adding at the end the
17 following: “Pre-final order interest on such penalties shall
18 begin to accrue on the date the party contests a citation
19 issued under this Act, and shall end upon the issuance
20 of the final order. Such pre-final order interest shall be
21 calculated at the current underpayment rate determined
22 by the Secretary of the Treasury pursuant to section 6621
23 of the Internal Revenue Code of 1986, and shall be com-
24 pounded daily. Post-final order interest shall begin to ac-
25 crue 30 days after the date a final order of the Commis-

1 sion or the court is issued, and shall be charged at the
 2 rate of 8 percent per year.”.

3 **TITLE IV—STATE PLANS**

4 **SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND** 5 **REVIEW OF STATE OCCUPATIONAL SAFETY** 6 **AND HEALTH PLANS.**

7 Section 18 (29 U.S.C. 667) is amended—

8 (1) by amending subsection (f) to read as fol-
 9 lows:

10 “(f)(1) The Secretary shall, on the basis of reports
 11 submitted by the State agency and the Secretary’s own
 12 inspections, make a continuing evaluation of the manner
 13 in which each State that has a plan approved under this
 14 section is carrying out such plan. Such evaluation shall
 15 include an assessment of whether the State continues to
 16 meet the requirements of subsection (c) of this section and
 17 any other criteria or indices of effectiveness specified by
 18 the Secretary in regulations. Whenever the Secretary
 19 finds, on the basis of such evaluation, that in the adminis-
 20 tration of the State plan there is a failure to comply sub-
 21 stantially with any provision of the State plan (or any as-
 22 surance contained therein), the Secretary shall make an
 23 initial determination of whether the failure is of such a
 24 nature that the plan should be withdrawn or whether the
 25 failure is of such a nature that the State should be given

1 the opportunity to remedy the deficiencies, and provide no-
2 tice of the Secretary's findings and initial determination.

3 “(2) If the Secretary makes an initial determination
4 to reassert and exercise concurrent enforcement authority
5 while the State is given an opportunity to remedy the defi-
6 ciencies, the Secretary shall afford the State an oppor-
7 tunity for a public hearing within 15 days of such request,
8 provided that such request is made not later than 10 days
9 after the Secretary's notice to the State. The Secretary
10 shall review and consider the testimony, evidence, or writ-
11 ten comments, and not later than 30 days following such
12 hearing, make a determination to affirm, reverse, or mod-
13 ify the Secretary's initial determination to reassert and ex-
14 ercise concurrent enforcement authority under sections 8,
15 9, 10, 13, and 17 with respect to standards promulgated
16 under section 6 and obligations under section 5(a). Fol-
17 lowing such a determination by the Secretary, or in the
18 event that the State does not request a hearing within the
19 timeframe set forth in this paragraph, the Secretary may
20 reassert and exercise such concurrent enforcement author-
21 ity, while a final determination is pending under para-
22 graph (3) or until the Secretary has determined that the
23 State has remedied the deficiencies as provided under
24 paragraph (4). Such determination shall be published in
25 the Federal Register. The procedures set forth in sub-

1 section (g) shall not apply to a determination by the Sec-
2 retary to reassert and exercise such concurrent enforce-
3 ment authority.

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

18 “(4) If the Secretary makes a determination that the
19 State should be provided the opportunity to remedy the
20 deficiencies, the Secretary shall provide the State an op-
21 portunity to respond to the Secretary’s findings and the
22 opportunity to remedy such deficiencies within a time pe-
23 riod established by the Secretary, not to exceed 1 year.
24 The Secretary may extend and revise the time period to
25 remedy such deficiencies, if the State’s legislature is not

1 in session during this 1-year time period, or if the State
 2 demonstrates that it is not feasible to correct the defi-
 3 ciencies in the time period set by the Secretary, and the
 4 State has a plan to correct the deficiencies within a rea-
 5 sonable time period. If the Secretary finds that the State
 6 agency has failed to remedy such deficiencies within the
 7 time period specified by the Secretary and that the State
 8 plan continues to fail to comply substantially with a provi-
 9 sion of the State plan, the Secretary shall withdraw the
 10 State plan as provided for in paragraph (3).”; and

11 (2) by adding at the end the following new sub-
 12 section:

13 “(i) Not later than 18 months after the date of enact-
 14 ment of this subsection, and again 5 years thereafter, the
 15 Comptroller General of the United States shall complete
 16 and issue a review of the effectiveness of State plans to
 17 develop and enforce safety and health standards to deter-
 18 mine if they are at least as effective as the Federal pro-
 19 gram and to evaluate whether the Secretary’s oversight
 20 of State plans is effective. The Comptroller General’s eval-
 21 uation shall assess—

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

1 “(2) whether the Secretary’s investigations in
2 response to Complaints About State Program Ad-
3 ministration (CASPA) are adequate, whether signifi-
4 cant policy issues have been identified by head-
5 quarters, and whether corrective actions are fully
6 implemented by each State;

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

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

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

24 “(B) inspections, the number of pro-
25 grammed health and safety inspections at pri-

1 vate and public sector establishments, and
2 whether the State targets the highest hazard
3 private sector worksites and facilities in that
4 State;

5 “(C) budget and staffing, including wheth-
6 er the State is providing adequate budget re-
7 sources to hire, train, and retain sufficient
8 numbers of qualified staff, including timely fill-
9 ing of vacancies;

10 “(D) administrative review, including the
11 quality of decisions, consistency with Federal
12 precedence, transparency of proceedings, avail-
13 ability of decisions and records to the public,
14 adequacy of State defense, and whether the
15 State appropriately appeals adverse decisions;

16 “(E) anti-discrimination, including whether
17 discrimination complaints are processed in a
18 timely manner, whether supervisors and inves-
19 tigators are properly trained to investigate dis-
20 crimination complaints, whether a case file re-
21 view indicates merit cases are properly identi-
22 fied consistent with Federal policy and proce-
23 dure, whether employees are notified of their
24 rights, and whether there is an effective process

1 for employees to appeal the dismissal of a com-
 2 plaint;

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

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

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

20 **SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN**
 21 **STATE PLANS.**

22 Section 18(c) (29 U.S.C. 668(c)) is amended—

23 (1) in paragraph (7), by striking “, and” and
 24 inserting a comma;

1 (2) in paragraph (8), by striking the period at
 2 the end and inserting “, and”; and

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

5 “(9) provides that in determining whether a
 6 violation is repeated, the State shall consider the
 7 employer’s violations within the State, in conjunction
 8 with the employer’s history of violations under other
 9 States’ occupational safety and health plans ap-
 10 proved by the Secretary and the employer’s history
 11 of violations in those States where the Secretary has
 12 jurisdiction under this Act, in a manner that is at
 13 least as effective as provided under section 17.”.

14 **TITLE V—NATIONAL INSTITUTE**
 15 **FOR OCCUPATIONAL SAFETY**
 16 **AND HEALTH**

17 **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NA-**
 18 **TIONAL INSTITUTE FOR OCCUPATIONAL**
 19 **SAFETY AND HEALTH.**

20 Section 20(a)(6) (29 U.S.C. 669(a)(6)) is amended
 21 by striking the second sentence and inserting the fol-
 22 lowing: “The Secretary shall determine following a written
 23 request by any employer, authorized representative of cur-
 24 rent or former employees, physician, other Federal agency,
 25 or State or local health department, specifying with rea-

1 sonable particularity the grounds on which the request is
 2 made, whether any substance normally found in the place
 3 of employment has potentially toxic effects in such con-
 4 centrations as used or found, or whether any physical
 5 agents, equipment, or working condition found or used has
 6 potentially hazardous effects. The Secretary shall submit
 7 such determination both to employers and affected em-
 8 ployees as soon as possible.”.

9 **TITLE VI—EFFECTIVE DATE**

10 **SEC. 601. EFFECTIVE DATE.**

11 (a) GENERAL RULE.—Except as provided for in sub-
 12 section (b), this Act and the amendments made by this
 13 Act shall take effect not later than 90 days after the date
 14 of the enactment of this Act.

15 (b) EXCEPTION FOR STATES AND POLITICAL SUB-
 16 DIVISIONS.—The following are exceptions to the effective
 17 date described in subsection (a):

18 (1) A State that has a State plan approved
 19 under section 18 of the Occupational Safety and
 20 Health Act of 1970 (29 U.S.C. 667) shall amend its
 21 State plan to conform with the requirements of this
 22 Act and the amendments made by this Act not later
 23 than 12 months after the date of the enactment of
 24 this Act. The Secretary of Labor may extend the pe-
 25 riod for a State to make such amendments to its

1 State plan by not more than 12 months, if the
2 State's legislature is not in session during the 12-
3 month period beginning with the date of the enact-
4 ment of this Act. Such amendments to the State
5 plan shall take effect not later than 90 days after
6 the adoption of such amendments by such State.

7 (2) This Act and the amendments made by this
8 Act shall take effect not later than 36 months after
9 the date of the enactment of this Act with respect
10 to a workplace of a State, or a political subdivision
11 of a State, that does not have a State plan approved
12 under such section 18.

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