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[Report No. 110-457]

To establish improved mandatory standards to protect miners during emergencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2007

Mr. GEORGE MILLER of California (for himself, Mr. RAHALL, Ms. WOOLSEY, Mr. MURTHA, Mr. KUCINICH, Mr. CHANDLER, Mr. HARE, Mr. BISHOP of New York, Mr. MOLLOHAN, Mr. PAYNE, Mr. HOLT, Mr. SARBANES, and Mr. YARMUTH) introduced the following bill; which was referred to the Committee on Education and Labor

NOVEMBER 15, 2007

Additional sponsors: Ms. SHEA-PORTER, Mr. GRIJALVA, Mr. SPACE, Ms. SUTTON, Ms. LINDA T. SÁNCHEZ of California, Mr. DELAHUNT, Ms. DELAURO, Mr. ABERCROMBIE, Mr. BERMAN, Mr. ARCURI, Ms. CLARKE, and Mr. MATHESON

NOVEMBER 15, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italie]

[For text of introduced bill, see copy of bill as introduced on June 19, 2007]

A BILL

To establish improved mandatory standards to protect miners during emergencies, 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 *“Supplemental Mine Improvement and New Emergency*
6 *Response Act of 2007” or the “S-MINER Act”.*

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Definitions; references.

Sec. 4. Supplementing emergency response plans.

Sec. 5. Supplementing enforcement authority.

Sec. 6. Supplementing rescue, recovery, and incident investigation authority.

Sec. 7. Respirable dust standards.

Sec. 8. Other health requirements.

9 **SEC. 2. FINDINGS.**

10 *Congress finds that—*

11 (1) *while the MINER Act of 2006 (Public Law*
12 *109–236) was an essential first step in addressing the*
13 *many health and safety hazards that miners still face,*
14 *supplemental action is necessary and feasible to better*
15 *protect miners in coal and other mines;*

16 (2) *essential standards to protect miner health*
17 *established by the Federal Mine Safety and Health*
18 *Act of 1977 are out of date after 40 years, posing a*
19 *significant threat to miner health; and*

20 (3) *the Secretary of Labor has failed in recent*
21 *years to adequately fulfill the Secretary’s obligations*

1 “(I) Not later than 120 days after
2 the enactment of the S-MINER Act, a
3 plan shall, to be in approved status,
4 provide for a post accident commu-
5 nication system between underground
6 and surface personnel, and for an elec-
7 tronic tracking system permitting sur-
8 face personnel to determine the location
9 of any persons trapped underground,
10 that utilizes a system at least as effec-
11 tive as a ‘leaky feeder’ or wireless mesh
12 type communication and tracking sys-
13 tem currently in use in the industry.
14 These systems shall be enhanced phys-
15 ically, electronically, or redundantly,
16 to improve their survivability in the
17 event of a mine disaster. In addition,
18 to be in approved status, an emergency
19 response plan must be revised prompt-
20 ly to incorporate new technology which
21 the National Institute for Occupational
22 Safety and Health certifies can be
23 added to the existing system to im-
24 prove its ability to facilitate post-acci-
25 dent communication with or tracking

1 *of miners. No miner shall be dis-*
2 *ciplined based on information obtained*
3 *from an electronic communications*
4 *and tracking system.”.*

5 **(b) UNDERGROUND REFUGES.**—*Section 316(b)(2)(E)*
6 *(30 U.S.C. 876(b)(2)(E)) is amended by adding at the end*
7 *the following:*

8 *“(vi) Not later than June 15, 2008, the*
9 *Secretary shall issue interim final regula-*
10 *tions, consistent with the design criteria*
11 *recommended by National Institute for Oc-*
12 *cupational Safety and Health in its report*
13 *pursuant to section 13(b)(1) of the MINER*
14 *Act, and subject to the requirements of the*
15 *next sentence, requiring each emergency re-*
16 *sponse plan to provide for the installation*
17 *of portable rescue chambers meeting Na-*
18 *tional Institute for Occupational Safety and*
19 *Health design criteria, or refuge shelters*
20 *carved out of the mine workings and sealed*
21 *with bulkheads meeting National Institute*
22 *for Occupational Safety and Health design*
23 *criteria, or other refuge designs rec-*
24 *ommended by National Institute for Occu-*
25 *ptional Safety and Health that provide*

1 miners with equivalent or better protection,
2 in the working areas of underground coal
3 mines within 60 days following plan ap-
4 proval. In addition, a plan shall provide for
5 the maintenance of a mobile emergency shel-
6 ter within 500 feet of the nearest working
7 face in each working section of an under-
8 ground coal mine.”.

9 (c) *IMPROVEMENTS TO SEALS, VENTILATION CON-*
10 *TROLS, AND ROCK DUSTING TO LIMIT THE DAMAGE FROM*
11 *EXPLOSIONS.*—

12 (1) *REPEAL.*—*The MINER Act (30 U.S.C. 801*
13 *note) is amended by striking section 10 (concerning*
14 *sealing of abandoned areas).*

15 (2) *SEALS.*—*Section 303(z) (30 U.S.C. 863(z)) is*
16 *amended by adding at the end the following:*

17 “(4)(A) *The Secretary shall inspect all seals under con-*
18 *struction after the date of enactment of the S-MINER Act,*
19 *during at least part of their construction, to ensure the*
20 *mine operator is complying with the approved seal plan,*
21 *and shall develop an inspection protocol for this purpose.*

22 “(B) *Not later than 3 months of the date of enactment*
23 *of the S-MINER Act, the Secretary shall issue final rules*
24 *regarding approval, design, construction, inspection, main-*
25 *tenance and monitoring of underground coal mine seals*

1 *which shall meet the requirements of this paragraph. Except*
2 *as otherwise provided by this paragraph, these regulations*
3 *shall implement the most recent recommendations of the*
4 *National Institute of Occupational Safety and Health con-*
5 *cerning seal design, construction, inspection, maintenance*
6 *and monitoring. The regulations shall also provide that all*
7 *seals in a mine shall be monitored if they are not designed*
8 *or installed to withstand a constant total pressure of 240*
9 *pounds per square inch, using a static structural analysis.*
10 *Monitoring of seals shall be done by continuous monitoring*
11 *devices within one year of the date of enactment of this Act,*
12 *and prior thereto by qualified personnel at such intervals*
13 *as the Secretary determines are adequate to ensure safety.*
14 *The Secretary shall require mine operators to utilize a tam-*
15 *per-resistant method to retain records of all such moni-*
16 *toring and ensure they are available for examination and*
17 *verification by the agency. Monitoring of seals shall be done*
18 *both by—*

19 *“(i) sampling through at least 1 seal in each*
20 *bank of seals; and*

21 *“(ii) for new seals, unless infeasible due to prop-*
22 *erty rights, sampling through a sufficient number of*
23 *boreholes from the surface to the sealed areas under-*
24 *ground to effectively determine the gas concentrations*
25 *within the area.*

1 “(C) In addition, the regulations shall provide that—

2 “(i) seal sampling pipes shall be composed of
3 materials that minimize the risk of transmitting any
4 electrical charge, and no conductive materials may be
5 used to line boreholes within three feet of the surface;

6 “(ii) an action plan for sealing and repair be es-
7 tablished that will, among any other requirements,
8 include specific actions the mine operator will take to
9 protect miners during the critical time period imme-
10 diately after sealing or repair takes place, and which
11 shall be reviewed by personnel from the Mine Safety
12 and Health Administration who have the required ex-
13 pertise prior to approval; and

14 “(iii) methane pressures behind any seal re-
15 quired to be monitored shall be maintained in such
16 a manner as ensure that normal pressure variations
17 that can be reasonably anticipated in the area of the
18 seal do not bring the methane-air mixture into an ap-
19 propriate safety range surrounding the known explo-
20 sive range of such mixtures.”.

21 (3) VENTILATION CONTROLS.—Section 303(c) (30
22 U.S.C. 863) is amended by inserting at the end the
23 following new paragraph:

24 “(4) Not later than 1 year after the date of enactment
25 of the S-MINER Act, the Secretary shall publish interim

1 *final regulations to enhance the survivability of under-*
2 *ground mine ventilation controls. The Secretary shall re-*
3 *quire that stoppings be constructed using solid concrete*
4 *blocks laid wet and sealed with an appropriate bonding*
5 *agent on at least the side subjected to the velocity of the*
6 *intake air coursing through the entry, except that in the*
7 *case of stoppings constructed during barrier reduction and*
8 *pillar removal operations, such stoppings may be con-*
9 *structed using hollow block and an appropriate bonding*
10 *agent.”.*

11 (4) *ROCK DUSTING.—Section 304(d) (30 U.S.C.*
12 *864) is amended by adding at the end the following:*
13 *“Not later than June 15, 2009, the National Institute*
14 *for Occupational Safety and Health shall issue rec-*
15 *ommendations as to whether changes to these require-*
16 *ments are necessary to ensure an equivalent level of*
17 *protection in light of any changes to the size and*
18 *composition of coal dust since these requirements were*
19 *established, and the Secretary of Labor shall take ap-*
20 *propriate action, including the issuance of an emer-*
21 *gency temporary standard if warranted, to respond to*
22 *these recommendations.”.*

23 (d) *LIMITING CONVEYOR BELT RISKS.—*

24 (1) *FLAME RESISTANT CONVEYOR BELTS.—Sec-*
25 *tion 311(h) is amended by adding at the end the fol-*

1 *lowing: “Not later than January 31, 2008, the Sec-*
2 *retary shall publish interim final regulations to en-*
3 *sure that all conveyor belts in use in underground*
4 *coal mines are replaced no later than December 31,*
5 *2012, with belts that can meet the flame resistance re-*
6 *quirements recommended by the National Institute for*
7 *Occupational Safety and Health, and which limit*
8 *smoke and toxic emissions. Any conveyor belt in-*
9 *stalled in a coal mine after the date of enactment of*
10 *the S-MINER Act shall meet such requirements.”.*

11 *(2) BELT AIR.—Section 303(y) (30 U.S.C. 863)*
12 *is amended by adding at the end the following:*

13 *“(3) Not later than June 20, 2008, the Secretary shall*
14 *revise the regulations prescribed pursuant to this section to*
15 *require, in any coal mine, regardless of the date on which*
16 *it was opened, that belt haulage entries not be used to venti-*
17 *late active working places. The Secretary may agree to a*
18 *modification of this requirement, pursuant to the proce-*
19 *dures of section 101(c), if and only if—*

20 *“(A) the mine operator establishes to the satisfac-*
21 *tion of the Secretary that significant safety con-*
22 *straints require such usage; and*

23 *“(B) the mine operator agrees to comply with*
24 *criteria established by the Secretary which shall, at a*

1 *minimum, include the conditions recommended by the*
2 *Technical Study Panel established under section 514.*

3 *“(4) Plans that have been approved by the Secretary*
4 *prior to the date of enactment of the S-MINER Act that*
5 *permit the use of belt-air to ventilate active working places*
6 *in a mine are permitted to remain in use to complete cur-*
7 *rent mining up until the date of issuance of the regulation*
8 *required pursuant to paragraph (3).”.*

9 *(e) PRE-SHIFT REVIEW OF MINE CONDITIONS.—Sec-*
10 *tion 303(d) (30 U.S.C. 863(d)) is amended by adding at*
11 *the end the following new paragraph:*

12 *“(3) Not later than 90 days after the date of enactment*
13 *of the S-MINER Act, all mine operators shall be required*
14 *to implement a communication program at each of such*
15 *operators’ facilities to ensure that each person entering the*
16 *operation is made aware at the start of that person’s shift*
17 *of the current conditions of the mine in general and of that*
18 *person’s specific worksite in particular. In an effort to fa-*
19 *cilitate these communications, all agents of the operator*
20 *who are responsible for ensuring the safe and healthful*
21 *working conditions at the mine, including mine foremen,*
22 *assistant mine foremen, and mine examiners, shall, upon*
23 *exiting the mine or workplace, communicate with those re-*
24 *placing them on duty to verbally update them on the condi-*
25 *tions they observed during their shift, including any condi-*

1 *tions that are abnormal or hazardous. Prior to entering the*
2 *mine or other workplace the on-coming agent of the operator*
3 *shall meet with all members of the crew they are responsible*
4 *for and inform them of the general conditions at the oper-*
5 *ation and in their specific work area. This process shall*
6 *be completed prior to the start of each shift at the operation*
7 *and recorded in a book designated for that purpose and*
8 *available for inspection by all interested parties. In the*
9 *event the operation is idle prior to the start of any shift*
10 *the agent of the operator shall meet with the individual or*
11 *individuals who were responsible for examining the mine*
12 *to obtain the necessary information.”.*

13 *(f) ATMOSPHERIC MONITORING SYSTEMS.—Section*
14 *317 (30 U.S.C. 877) is amended by adding at the end the*
15 *following:*

16 *“(u) Not later than May 1, 2008, an operator of an*
17 *underground mine shall install atmospheric monitoring*
18 *systems in all underground areas where miners normally*
19 *work and travel that provide real-time information regard-*
20 *ing carbon monoxide levels, and that can, to the maximum*
21 *extent possible, withstand explosions and fires.”.*

22 *(g) METHANE MONITORS.—Section 303(h) (30 U.S.C.*
23 *863(h)) is amended by redesignating paragraph (2) as*
24 *paragraph (3), and inserting after paragraph (1) the fol-*
25 *lowing new paragraph:*

1 “(2) *Each miner who is working alone for part of a*
2 *shift shall be equipped with a multi-gas detector that meas-*
3 *ures current levels of methane, oxygen, and carbon mon-*
4 *oxide.*”.

5 (h) *LIGHTNING STUDY BY NATIONAL ACADEMY OF*
6 *SCIENCES.*—*Not later than 1 year after the date of enact-*
7 *ment of this Act, the National Academy of Sciences shall*
8 *submit to the Secretary and to Congress recommendations*
9 *on—*

10 (1) *actions that need to be taken to strengthen*
11 *existing requirements in law or regulations to ensure*
12 *that miners are protected, to the fullest extent per-*
13 *mitted, from the risks of lightning strikes near a*
14 *mine;*

15 (2) *recommendations for adopting any existing*
16 *technology to the mining environment to minimize*
17 *any such risks; and*

18 (3) *research needed for improved technology.*

19 (i) *ROOF AND RIB SUPPORT, BARRIER REDUCTION*
20 *AND PILLAR EXTRACTION, SPECIAL ATTENTION TO DEEP*
21 *MINING.*—

22 (1) *AMENDMENTS TO EXISTING LAW.*—*Section*
23 *302 is amended—*

24 (A) *by amending the section heading to*
25 *read “ROOF AND RIB SUPPORT, BARRIER REDUC-*

1 *TION AND PILLAR EXTRACTION, SPECIAL ATTEN-*
2 *TION TO DEEP MINING”;*

3 *(B) in subsection (a), by inserting after the*
4 *second sentence the following: “The Secretary*
5 *shall by regulation ensure the appropriate use of*
6 *roof screen in belt entries, travelroads, and des-*
7 *ignated intake and return escapeways in accord-*
8 *ance with the requirements of subsection (g).”;*
9 *and*

10 *(C) by inserting at the end the following:*

11 *“(g) Where screening is required, at least forty percent*
12 *of the width of the exposed roof shall be screened. Screening*
13 *to meet the requirements of this section must have a load*
14 *bearing capacity at least equivalent to a load of 2.5 tones*
15 *between bolts on a 4 foot pattern.*

16 *“(h)(1) An operator shall be required to have a current*
17 *and approved barrier reduction or pillar extraction plan,*
18 *or both, before performing such activities. The Secretary*
19 *shall only approve a barrier reduction or pillar extraction*
20 *plan if it provides adequate protection and minimizes the*
21 *risks for miners engaged in the activity, reflecting appro-*
22 *priate engineering analysis, computer simulations, and*
23 *consultations with technical experts in the agency, in the*
24 *National Institute for Occupational Safety and Health, and*
25 *in the Bureau of Land Management for any mines leasing*

1 *Federal coal resources, and only if the plan complies with*
2 *any specific requirements that may be adopted by the Sec-*
3 *retary for barrier reduction or pillar extraction activities*
4 *including requirements related to the depth of the mine, ge-*
5 *ology of the mine, mine height and methods, and emergency*
6 *response capabilities.*

7 “(2) *A copy of a proposed barrier reduction or pillar*
8 *extraction plan, or both, shall be provided to the authorized*
9 *representative of miners at least 10 days prior to submis-*
10 *sion to the Secretary for approval. The authorized rep-*
11 *resentative of miners may provide comments to the Sec-*
12 *retary who shall respond thereto.*

13 “(3) *The Secretary shall establish a special internal*
14 *review process for operator plans to protect miners from*
15 *the risks addressed by this section when working at depths*
16 *of more than 1500 feet and in other mines with a history*
17 *of mountain bumps.*

18 “(i) *Not later than 1 week before the commencement*
19 *of any barrier reduction or pillar extraction operations, the*
20 *mine operator shall notify the appropriate representative*
21 *of the Secretary of his intention to begin or resume barrier*
22 *reduction or pillar extraction. The Secretary shall docu-*
23 *ment such notification in writing, and shall, before barrier*
24 *reduction or pillar extraction operations begin, take action*
25 *to ensure that every person who will be participating in*

1 *such operations is trained in the operator's barrier reduc-*
2 *tion and/or and pillar extraction plan. The Secretary shall*
3 *observe the barrier reduction or pillar extraction operations*
4 *for a sufficient period of time to ensure that the mine oper-*
5 *ator is fully complying with the barrier reduction or pillar*
6 *extraction plan. The Secretary may preclude the commence-*
7 *ment of such operations or halt such operations at any time*
8 *the safety of miners comes into question."*

9 (2) *STUDY.*—*Not later than 1 year after the date*
10 *of enactment of this Act, the National Academy of*
11 *Sciences shall, in consultation with the National In-*
12 *stitute for Occupational Safety and Health, submit to*
13 *the Secretary and to Congress recommendations for—*

14 (A) *actions that need to be taken to*
15 *strengthen existing requirements in law or regu-*
16 *lations to ensure that miners are protected, to*
17 *the fullest extent permitted, from ground control*
18 *hazards, including the special hazards associated*
19 *with barrier reduction and pillar extraction;*

20 (B) *adopting any existing technology to the*
21 *mining environment to improve miner protec-*
22 *tions during barrier reduction and pillar extrac-*
23 *tion, and on research needed for improved tech-*
24 *nology to improve miner protections during such*
25 *operations;*

1 (C) adopting any existing technology to the
2 mining environment to improve miner protec-
3 tions during mining at depths below 1000 feet,
4 and on research needed for improved technology
5 to improve miner protections during such oper-
6 ations; and

7 (D) adopting any existing technology to the
8 mining environment to improve miner protec-
9 tions during secondary mining of coal resources,
10 and on research needed for improved technology
11 to improve miner protections during such oper-
12 ations.

13 (j) *SCSR INSPECTION PROGRAM.*—

14 (1) *IN GENERAL.*—*The Secretary shall—*

15 (A) establish a program to randomly re-
16 move and have tested by the National Institute
17 for Occupational Safety and Health field sam-
18 ples of each model of self-rescue device used in an
19 underground coal mine in order to ensure that
20 the self-rescue devices in coal mine inventories
21 are working in accordance with the approval cri-
22 teria for such devices;

23 (B) require a manufacturer of a self-rescue
24 device and the mine operator who owns a device
25 to contact the Secretary immediately upon noti-

1 *fication of any potential problem with any such*
2 *device, and provide a copy of such notice to the*
3 *representative of miners at the affected oper-*
4 *ation; and*

5 *(C) notify immediately all operators of un-*
6 *derground coal mines if the Secretary detects or*
7 *is advised of any problems with the self-rescue*
8 *devices.*

9 (2) *DETERMINATION.*—*For the purposes of para-*
10 *graph (1)(A), the National Institute for Occupational*
11 *Safety and Health shall determine the number of field*
12 *samples of each device to be removed for testing, and*
13 *the mines from which the samples are to be drawn to*
14 *ensure a random sample is obtained, and shall pro-*
15 *vide mine operators with self-rescue devices to replace*
16 *any removed for random testing. Should this testing*
17 *reveal a potential problem with a device that requires*
18 *additional testing, the Secretary shall remove such*
19 *additional samples from such mines as may be re-*
20 *quested by the National Institute for Occupational*
21 *Safety and Health, and it shall be the obligation of*
22 *mine operators to provide self-rescue devices to*
23 *promptly replace any removed as a result of such ad-*
24 *ditional testing.*

1 “(c) *ADVISORY COMMITTEE.*—Promptly after the date
2 of enactment of the *S-MINER Act* The Secretary shall es-
3 tablish an advisory committee to provide recommendations
4 as to the need to revise the regulations applicable to under-
5 ground metal and nonmetal mines to ensure that miners
6 in such mines are as protected in emergency situations as
7 will be underground coal miners following the full imple-
8 mentation of the *MINER Act*, the provisions of the *S-*
9 *MINER Act*, and related actions by the Secretary. The ad-
10 visory committee shall be established pursuant to the *Advi-*
11 *sory Committee Act*, and shall provide recommendations to
12 the Secretary and to Congress not later than 21 months
13 after the date of enactment of this Act, including rec-
14 ommendations as to any action by Congress that could fa-
15 cilitate the goal of providing equivalent protections to min-
16 ers in underground metal and nonmetal mines.”.

17 (l) *APPROVAL CENTER PRIORITIES.*—The Secretary
18 shall expedite the process for approving any—

19 (1) self-rescue device that permits the replenish-
20 ment of oxygen without requiring the device user to
21 remove the device; and

22 (2) underground communication device that pro-
23 vides for communication between underground and
24 surface personnel via a wireless two-way medium.

1 (m) *TECHNOLOGY AND MINE EMERGENCY HEALTH*
2 *AND SAFETY RESEARCH PRIORITIES.*—*In implementing its*
3 *research activities in the 5-year period beginning on the*
4 *date of enactment of this Act, the National Institute for Oc-*
5 *cupational Safety and Health shall give due consideration*
6 *to new technologies, and existing technologies that could be*
7 *adapted for use in underground coal or other mines, that*
8 *could facilitate the survival of miners in a mining emer-*
9 *gency. Such technologies include—*

10 (1) *self-contained self-rescue devices capable of*
11 *delivering enhanced performance;*

12 (2) *improved battery capacity and common con-*
13 *nection specifications to enable emergency commu-*
14 *nication devices for miners to be run from the same*
15 *portable power source as a headlamp, continuous dust*
16 *monitor, or other device carried by a miner;*

17 (3) *improved technology for assisting mine res-*
18 *cue teams, including devices to enhance vision during*
19 *rescue or recovery operations;*

20 (4) *improved technology, and improved protocols*
21 *for the use of existing technologies, to enable condi-*
22 *tions underground to be assessed promptly and con-*
23 *tinuously in emergencies, so as to facilitate the deter-*
24 *mination by appropriate officials of the instructions*
25 *to provide both to miners trapped underground and*

1 to mine rescue teams and others engaged in rescue ef-
2 forts;

3 (5) improvements to underground mine ventila-
4 tion controls separating mine entries to be more re-
5 sistant to mine fires and explosions, particularly in
6 those entries used for miner escapeways;

7 (6) mine-wide monitoring systems and strategies
8 that can monitor mine gases, oxygen, air flows, and
9 air quantities at strategic locations throughout the
10 mine that would be functional during normal mining
11 operations and following mine fires, explosions, roof
12 falls, and mine bursts, including systems utilizing
13 monitoring sensors that transfer data to the mine sur-
14 face and the installation of tubing to draw mine gas
15 samples that are distributed throughout the mine and
16 can quickly deliver samples to the mine surface; and

17 (7) protective strategies for the placement of
18 equipment, cables, and devices that are to be utilized
19 during mine emergencies such as communication sys-
20 tems, oxygen supplies, and mine atmosphere moni-
21 toring systems, to protect them from mine fires, roof
22 falls, explosions, and other damage.

23 **SEC. 5. SUPPLEMENTING ENFORCEMENT AUTHORITY.**

24 (a) *AUTHORITY OF INSPECTORS.*—Section 103(a) (30
25 U.S.C. 813(a)) is amended by adding at the end the fol-

1 *lowing: “No person shall limit or otherwise prevent the Sec-*
2 *retary from entry on a coal or other mine, or interfere with*
3 *the Secretary’s inspection activities, investigative activities,*
4 *or rescue or recovery activities.”.*

5 *(b) TRANSITION TO A NEW GENERATION OF INSPEC-*
6 *TORS.—Section 505 (30 U.S.C. 954) is amended—*

7 *(1) by striking “The Secretary” the first place it*
8 *appears and inserting “(a) The Secretary”; and*

9 *(2) by adding at the end the following:*

10 *“(b) Within 270 days of the enactment of the S-*
11 *MINER Act, the Secretary shall establish a Master Inspec-*
12 *tor program to ensure that the most experienced and skilled*
13 *employees in the Nation have the incentive, in terms of re-*
14 *sponsibilities and pay, to serve as mine safety and health*
15 *inspectors in this Nation’s mines.*

16 *“(c) In order to ensure that the Secretary has adequate*
17 *time to provide that a sufficient number of qualified and*
18 *properly trained inspectors of the Mine Safety and Health*
19 *Administration are in place before any inspectors employed*
20 *as of the date of enactment of the S-MINER Act retire,*
21 *any ceilings on the number of personnel that may be em-*
22 *ployed by the Administration with respect to mine inspec-*
23 *tors are abolished for the 5-year period beginning on the*
24 *date of enactment of such Act.*

1 “(d) In the event that, notwithstanding the actions
2 taken by the Secretary to hire and train qualified inspec-
3 tors, the Secretary is temporarily unable, at any time dur-
4 ing the 5-year period beginning on the date of enactment
5 of the S-MINER Act, to employ the number of inspectors
6 required to staff all district offices devoted to coal mines
7 at the offices’ highest historical levels without transferring
8 personnel from supervisory or plan review activities or di-
9 minishing current inspection resources devoted to other
10 types of mines, the Administration is authorized to hire re-
11 tired inspectors on a contractual basis to conduct mine in-
12 spections, and the retirement benefits of such retired inspec-
13 tors shall not be reduced as a result of such temporary con-
14 tractual employment.

15 “(e) During the 5-year period beginning on the date
16 of enactment of the S-MINER Act, the Secretary shall issue
17 a special report to the appropriate committees of Congress
18 each year, or at such more frequent intervals as the Sec-
19 retary or any such committee may consider appropriate,
20 providing information about the actions being taken under
21 this section, the size and training of the inspector workforce
22 at the Mine Safety and Health Administration, the level
23 of enforcement activities, and the number of requests by in-
24 dividual operators of mines for compliance assistance.”.

1 (c) *OFFICE OF MINER OMBUDSMAN.*—*Title V is*
2 *amended by adding at the end the following:*

3 **“SEC. 516. OFFICE OF MINER OMBUDSMAN.**

4 “(a) *ESTABLISHMENT OF MINER OMBUDSMAN.*—*There*
5 *shall be established, within the Office of the Inspector Gen-*
6 *eral of the Department of Labor, the position of Miner Om-*
7 *budsman. The President, by and with the advice and con-*
8 *sent of the Senate, shall appoint an individual with exper-*
9 *tise in mine safety and health to serve as the Miner Om-*
10 *budsman. The Ombudsman shall have authority to hire*
11 *such personnel as are required to administer his duties in*
12 *accordance with applicable law, provided they meet any*
13 *general requirements for employment within the Office of*
14 *the Inspector General.*

15 “(b) *DUTIES.*—*The Miner Ombudsman shall—*

16 “(1) *recommend to the Secretary appropriate*
17 *practices to ensure the confidentiality of the identity*
18 *of miners, and the families or personal representatives*
19 *of the miners, who contact mine operators, authorized*
20 *representatives of the miners, the Mine Safety and*
21 *Health Administration, the Department of Labor, or*
22 *others with information about mine accidents, inci-*
23 *dents, injuries, illnesses, possible violations of manda-*
24 *tory health or safety standard violations or plans or*
25 *other mine safety and health concerns;*

1 “(2) establish a toll-free telephone number and
2 appropriate Internet website to permit individuals to
3 confidentially report mine accidents, incidents, inju-
4 ries, illnesses, possible violations of mandatory health
5 or safety standard violations or plans or other mine
6 safety and health concerns, and provide plastic wallet
7 cards, refrigerator magnets, or similar devices to all
8 mine operators, which mine operators shall distribute
9 to all current and new miners, with contact informa-
10 tion for such confidential reports, and also provide
11 supplies of these devices to miner communities;

12 “(3) collect and forward information concerning
13 accidents, incidents, injuries, illnesses, possible viola-
14 tions of mandatory health or safety standard viola-
15 tions or plans or other mine safety and health con-
16 cerns to the appropriate officials of the Mine Safety
17 and Health Administration for investigation, or to
18 appropriate officials within the Office of Inspector
19 General for investigation or audit, or both, while es-
20 tablishing practices to protect the confidentiality of
21 the identify of those who provide such information to
22 the Ombudsman; and

23 “(4) monitor the Secretary of Labor’s efforts to
24 promptly act upon complaints filed by miners under
25 section 105(c) of the Act or pursuant to other pro-

1 *grams administered by the Department to protect*
2 *whistleblowers, and report to Congress any rec-*
3 *ommendations that would enhance such rights or pro-*
4 *tections.*

5 *“(c) AUTHORITY.—All complaints of operator viola-*
6 *tions of any section of this Act or regulations prescribed*
7 *under this Act that are reported to the Secretary shall be*
8 *forwarded to the Ombudsman for logging and appropriate*
9 *action, except that this requirement shall be implemented*
10 *in such a way as to avoid interference in any way with*
11 *the ability of the Assistant Secretary for Mine Safety and*
12 *Health to take prompt actions that may be required in such*
13 *situations. This shall include complaints submitted in writ-*
14 *ing, via any phone system, or orally, along with all relevant*
15 *information available regarding the complainant. All such*
16 *information shall be retained in a confidential manner pur-*
17 *suant to the Privacy Act of 1974. The Ombudsman shall*
18 *use such information to monitor the actions taken to ensure*
19 *that miners’ complaints are addressed in a timely manner*
20 *and in compliance with the appropriate statutes and regu-*
21 *lations. The Ombudsman shall refer to appropriate per-*
22 *sonnel within the Office of the Inspector General for further*
23 *review any case which he determines was not handled in*
24 *such fashion.*

1 “(d) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
2 *are hereby authorized to be appropriated to the Ombuds-*
3 *man such sums as may be required for the implementation*
4 *of his duties out of the sums otherwise made available to*
5 *the Mine Safety and Health Administration for its activi-*
6 *ties.*”.

7 (d) *PATTERN OF VIOLATIONS.*—

8 (1) *PROMPT IDENTIFICATION OF PATTERN.*—*Not*
9 *later than 3 months after the date of enactment of this*
10 *Act, the Secretary shall revise the regulations issued*
11 *by the Secretary under section 104(e) of the Federal*
12 *Mine Safety and Health Act of 1977 (30 U.S.C.*
13 *814(e)) as in effect on the day before such date of en-*
14 *actment, so that the regulations provide that—*

15 (A) *when a potential pattern of violations*
16 *is identified by any inspector or district man-*
17 *ager of the Mine Safety and Health Administra-*
18 *tion, the operator of the coal or other mine and*
19 *the authorized representative of miners for the*
20 *mine shall be notified by the inspector or district*
21 *manager not later than 10 days after such iden-*
22 *tification; and*

23 (B) *after receiving the notification described*
24 *in subparagraph (A), the appropriate official of*
25 *the Mine Safety and Health Administration*

1 *shall promptly review any such potential pattern*
2 *of violations and, not later than 45 days after*
3 *receiving such notification, make a final decision*
4 *as to whether a citation for a violation of section*
5 *104(e) of such Act should be issued in light of the*
6 *gravity of the violations and the operator’s con-*
7 *duct in connection therewith.*

8 (2) *IDENTIFICATION OF PATTERN.*—Section
9 104(e)(1) (30 U.S.C. 814(e)(1)) is amended by insert-
10 ing after the first sentence the following: “In deter-
11 mining whether a pattern of violations exists, the Sec-
12 retary shall give due consideration to all relevant in-
13 formation, such as the gravity of the violations, oper-
14 ator negligence, history of violations, the number of
15 inspection shifts the Secretary or her agents have
16 spent at the operation, and the frequency of violations
17 per number of inspection days spent at the oper-
18 ation.”.

19 (3) *TERMINATION OF PATTERN.*—Section
20 104(e)(3) (30 U.S.C. 814(e)(3)) is amended by adding
21 at the end the following: “In addition, if an operator
22 subject to paragraphs (1) and (2) demonstrates objec-
23 tive evidence that they are correcting the problems
24 that gave rise to the pattern of violations, and the
25 violation frequency rate for such operator declines sig-

1 *nificantly for a period of 180 days, the withdrawal*
2 *order provisions of paragraphs (1) and (2) shall no*
3 *longer apply.”.*

4 (4) *FINE FOR A PATTERN OF VIOLATIONS.—Sec-*
5 *tion 110 (30 U.S.C. 820) is amended—*

6 (A) *by redesignating subsections (i) through*
7 (l) *as subsections (j) through (m), respectively;*
8 *and*

9 (B) *by inserting after subsection (h) the fol-*
10 *lowing:*

11 *“(i)(1) If the Secretary determines that a pattern of*
12 *violations under section 104(e) exists, the Secretary shall*
13 *assess a penalty, in addition to any other penalty author-*
14 *ized in this Act for a violation of such section, of not less*
15 *than \$50,000 nor more than \$250,000. All operators of the*
16 *mine, including any corporate owners, shall be jointly and*
17 *severally liable for such penalty. The amount of the assess-*
18 *ment under this paragraph shall be designed to ensure a*
19 *change in the future conduct of the operators and corporate*
20 *owners of such mine with respect to mine safety and health,*
21 *given the overall resources of such operators. Notwith-*
22 *standing subsection (k) or section 113, a penalty assessed*
23 *by the Secretary under this paragraph may not be reduced*
24 *by the Commission.*

1 “(2) *In addition to the authority to withdraw miners*
2 *from an area of a coal or other mine pursuant to section*
3 *104(e), the Secretary shall withdraw all miners from the*
4 *entire mine when any pattern of violations has been deter-*
5 *mined to exist until such time as the Secretary certifies that*
6 *all identified violations have been corrected and the oper-*
7 *ator has agreed to abide by a written plan approved by*
8 *the Mine Safety and Health Administration to ensure that*
9 *such a pattern of conduct will not recur.”.*

10 (e) *NOTIFICATION OF ABATEMENT.—Section 104(b)*
11 *(30 U.S.C. 814(b)) is amended—*

12 (1) *by redesignating paragraphs (1) and (2) as*
13 *subparagraphs (A) and (B), respectively;*

14 (2) *by striking “If,” and inserting:*

15 “(2) *If;*”; *and*

16 (3) *by inserting after the subsection designation*
17 *the following:*

18 “(1) *An operator issued a citation pursuant to sub-*
19 *section (a) shall notify the Secretary that the operator has*
20 *abated the violation involved. If such operator fails to pro-*
21 *vide such a notice to the Secretary within the abatement*
22 *time as provided for in the citation, the Secretary shall*
23 *issue an order that requires the operator (or the agent of*
24 *the operator) to immediately cause all persons, except those*
25 *persons referred to in subsection (c), to be withdrawn from,*

1 *and to be prohibited from entering, such area as the Sec-*
2 *retary determines until an authorized representative of the*
3 *Secretary determines that such violation has been abated.*
4 *Notwithstanding any operator notice, no violation shall be*
5 *determined to be abated until an authorized representative*
6 *of the Secretary visits the site and determines such violation*
7 *has been fully abated.”.*

8 (f) *FAILURE TO TIMELY PAY PENALTY ASSESS-*
9 *MENTS.—Section 105(a) (30 U.S.C. 815(a)) is amended by*
10 *striking the third sentence and inserting the following: “The*
11 *operator shall, not later than 30 days from the receipt of*
12 *the notification of a citation issued by the Secretary, notify*
13 *the Secretary that the operator intends to contest the cita-*
14 *tion or proposed assessment of a penalty, and the operator*
15 *shall place in escrow with the Secretary the amount of the*
16 *proposed assessment. The Secretary shall place any escrow*
17 *submitted by a mine operator for this purpose into an in-*
18 *terest bearing account and shall release the funds to the op-*
19 *erator, including interest accrued, upon the payment of any*
20 *final assessment determination. If notification and proof of*
21 *escrow is not provided to the Secretary, the citation and*
22 *the proposed assessment of penalty shall be deemed a final*
23 *order of the Commission and not subject to review by any*
24 *court or agency. In the event that a mine operator refuses*
25 *to comply with a final order of the Commission to pay civil*

1 *monetary penalties and statutory interest, the Secretary*
2 *shall have the authority to issue an order requiring the*
3 *mine operator to cease production under such final orders*
4 *of the Commission have been paid in full.”*

5 *(g) MAXIMUM AND MINIMUM PENALTIES.—Section*
6 *110(a)(1) (30 U.S.C. 820(a)(1)) is amended by striking*
7 *“more than \$50,000 for each such violation.” and inserting*
8 *“less than \$500 or more than \$100,000 for each such viola-*
9 *tion, except that, in the case of a violation of a mandatory*
10 *health or safety standard that could significantly and sub-*
11 *stantially contribute to the cause and effect of a coal or*
12 *other mine health or safety hazard, the penalty shall not*
13 *be less than \$1,000 or more than \$150,000, for each such*
14 *violation.”.*

15 *(h) FACTORS IN ASSESSING PENALTIES.—The Federal*
16 *Mine Safety and Health Act of 1977 is amended—*

17 *(1) in section 105(b)(1)(B)—*

18 *(A) by striking: “the size of the business of*
19 *the operator charged” and inserting “the com-*
20 *bined size of the business of the operator and any*
21 *controlling entity”;*

22 *(B) by striking “the effect on the operator’s*
23 *ability to continue in business,”; and*

24 *(C) by adding at the end the following: “In*
25 *settling cases, the Secretary shall utilize the same*

1 *point system as that utilized to propose pen-*
2 *alties, so as to ensure consistency in operator*
3 *penalty assessments.”; and*

4 (2) *in section 110(j) (as redesignated by sub-*
5 *section (a)(4))—*

6 (A) *by striking: “the size of the business of*
7 *the operator charged” and inserting “the com-*
8 *bined size of the business of the operator and any*
9 *controlling entity”;*

10 (B) *by striking “the effect on the operator’s*
11 *ability to continue in business,”; and*

12 (C) *by adding at the end the following: “In*
13 *any review requested by a mine operator, or in*
14 *settling cases, the Commission shall utilize the*
15 *same point system as that developed by the Sec-*
16 *retary for proposed assessments so as to ensure*
17 *consistency in operator penalty assessments.”.*

18 (i) *CIVIL PENALTY FOR INTERFERENCE OR DISCRIMI-*
19 *NATION.—Section 110 (30 U.S.C. 820) is further amended*
20 *by adding at the end the following:*

21 “(n) *CIVIL PENALTY FOR INTERFERENCE OR DIS-*
22 *CRIMINATION.—Any operator who is found to be in viola-*
23 *tion of section 105(c), or in violation of section 103(a) (as*
24 *amended by this Act) shall be subject to a civil penalty of*

1 *not less than \$10,000 nor more than \$100,000 for each oc-*
2 *currence of such violation.”.*

3 (j) *WITHDRAWAL ORDER.—Section 107(a) (30 U.S.C.*
4 *817(a)) is amended by inserting after the first sentence the*
5 *following: “In addition, in the event of any violation of sec-*
6 *tion 315 or section 316, or regulations issued pursuant to*
7 *such sections, such representative shall determine the extent*
8 *of the area of such mine throughout which the danger exists*
9 *and issue an order requiring the operator of such mine to*
10 *cause all persons, except those referred to in section 104(c),*
11 *to be withdrawn from, and to be prohibited from entering,*
12 *such area until an authorized representative of the Sec-*
13 *retary determines that the violations have been abated.”.*

14 (k) *CLARIFICATIONS OF INTENT IN THE 1977 ACT.—*
15 *The Federal Mine Safety and Health Act of 1977 is amend-*
16 *ed—*

17 (1) *in section 3(d) (30 U.S.C. 802)—*

18 (A) *by inserting “mineral” before “owner”;*

19 (B) *by inserting “mineral” before “lessee”;*

20 (C) *by striking “or any independent” and*
21 *inserting “and any independent”; and*

22 (D) *by inserting before the semicolon the fol-*
23 *lowing: “, and no operator may, by contract or*
24 *other agreement, limit any liability under this*

1 *Act through transfer of any responsibilities to*
2 *another person”;*

3 (2) *in section 103 (30 U.S.C. 813)—*

4 (A) *in subsection (b)—*

5 (i) *by striking the first sentence and*
6 *inserting the following: “For the purpose of*
7 *enabling the Secretary to perform the func-*
8 *tions under this Act, the Secretary may,*
9 *after notice, hold public hearings and sign*
10 *and issue subpoenas for the attendance and*
11 *testimony of witnesses and the production of*
12 *information, including but not limited to*
13 *relevant data, papers, books, documents and*
14 *items of physical evidence, and administer*
15 *oaths, whether or not in connection with a*
16 *public hearing.”; and*

17 (ii) *in the last sentence by striking*
18 *“documents” and inserting “information,*
19 *including data, papers, books, documents,*
20 *and items of physical evidence”;* and

21 (B) *in subsection (h), in the first sentence,*
22 *by striking “information” and inserting “data,*
23 *papers, books, documents, and items of physical*
24 *evidence”;*

25 (3) *in section 104 (30 U.S.C. 814)—*

1 (A) in subsections (d)(1), (e)(1), (e)(2),
2 (e)(3), and (e)(4), as amended by this Act, by in-
3 serting “or any provision of this Act” after
4 “standard” or “standards” each place either such
5 term appears; and

6 (B) in subsection (d)(1), as amended by this
7 Act, by striking “while the conditions created by
8 such violation do not cause imminent danger,”;
9 (4) in section 105 (30 U.S.C. 815)—

10 (A) in subsection (a), in the first sentence,
11 by striking “, within a reasonable time after the
12 termination of such inspection or investigation,”;

13 (B) in subsection (c)—

14 (i) in paragraph (1)—

15 (I) by inserting “or an injury or
16 illness in a coal or other mine or that
17 may be associated with mine employ-
18 ment,” after “of an alleged danger or
19 safety or health violation in a coal or
20 other mine,”; and

21 (II) by inserting at the end the
22 following: “No miner shall be required
23 to work under conditions he has rea-
24 sonable grounds to believe to be abnor-
25 mally and immediately dangerous to

1 *himself beyond the normal hazards in-*
2 *herent in the operation which could*
3 *reasonably be expected to cause death*
4 *of serious physical harm before such*
5 *condition or practice can be abated.”;*
6 *and*

7 *(ii) in paragraph (2), by inserting*
8 *after the fifth sentence the following: “No*
9 *investigation or hearing authorized by this*
10 *paragraph may be stayed to await resolu-*
11 *tion of a related grievance proceeding”;* and
12 *(C) by adding at the end the following:*

13 *“(e) Attorneys representing the Secretary are author-*
14 *ized to contact any miner or non-managerial employee of*
15 *a mine operator for the purposes of carrying out the Sec-*
16 *retary’s functions under this Act and no attorney rep-*
17 *resenting the Secretary shall be disbarred or disciplined by*
18 *any State bar or State court for making such contacts. No*
19 *attorney representing a mine operator in a matter under*
20 *this Act may concurrently represent individual miners in*
21 *the same matter.”;* and

22 *(5) in section 110 (30 U.S.C. 820)—*

23 *(A) in subsection (b)(2), by striking*
24 *“under” and inserting “of subsections (a)*
25 *through (h) of”;* and

1 (B) in subsection (c)—

2 (i) by striking “Whenever a corporate
3 operator” and inserting “Whenever a mine
4 operator”;

5 (ii) by striking “safety standard” and
6 inserting “safety standard or requirement of
7 this Act”;

8 (iii) by inserting “partner, owner,”
9 after “director,”; and

10 (iv) by striking “such corporation”
11 and inserting “such mine operator”.

12 (l) *FEDERAL LICENSING.*—The Secretary shall
13 promptly establish an advisory committee to provide rec-
14 ommendations as to whether the Federal Mine Safety and
15 Health Act of 1977 should provide for Federal licensing of
16 mines, mine operators, mine controllers, or various mine
17 personnel in order to ensure that those engaged in mining
18 activities are not frequent violators of safety and health re-
19 quirements, and establish a national registry in connection
20 therewith. The advisory committee shall be established pur-
21 suant to the Advisory Committee Act, and shall conduct a
22 review of existing State licensing requirements and reg-
23 istries, assess their effectiveness, and shall provide its rec-
24 ommendations to Congress not later than 2 years after the
25 date of enactment of this Act.

1 **SEC. 6. SUPPLEMENTING RESCUE, RECOVERY, AND INCI-**
2 **DENT INVESTIGATION AUTHORITY.**

3 (a) *EMERGENCY CALL CENTER.*—Not later than 30
4 days after the date of enactment of this Act, the Secretary
5 shall establish, within the Mine Safety and Health Admin-
6 istration, a central communications emergency call center
7 for all coal or other mine operations that shall be staffed
8 and operated 24 hours per day, 7 days per week, by 1 or
9 more employees of the Mine Safety and Health Administra-
10 tion. All calls placed to the emergency call center shall be
11 answered by an individual with adequate experience and
12 training to handle emergency mine situations. A single na-
13 tional phone number shall be provided for this purpose and
14 the Secretary shall ensure that all miners and mine opera-
15 tors are issued laminated cards with emergency call center
16 information.

17 (b) *CONTACT INFORMATION.*—The Secretary shall pro-
18 vide the emergency call center with a contact list, updated
19 not less often than quarterly, that contains—

20 (1) the contact phone numbers, including the
21 home phone numbers, for the members of each mine
22 rescue team responsible for each coal or other mine;

23 (2) the phone numbers for the local emergency
24 and rescue services unit that is located nearest to each
25 mine;

1 (3) *the contact phone numbers, including the*
2 *home phone number, for the operator of each mine;*

3 (4) *the contact phone numbers, including the*
4 *home phone numbers, for the national and district of-*
5 *officials of the Mine Safety and Health Administration;*

6 (5) *the contact phone numbers, including the*
7 *home phone numbers, for the State officials in each*
8 *State who should be contacted in the event of a mine*
9 *emergency in such State; and*

10 (6) *the contact phone numbers, including the*
11 *home phone number, for the authorized representative*
12 *of the miners at each mine.*

13 *Each mine operator shall ensure that the Secretary is pro-*
14 *vided with completely current information required to be*
15 *maintained by the Secretary pursuant to paragraphs (1),*
16 *(3), and (6). The Secretary shall give due consideration to*
17 *the information collected by the joint government-industry*
18 *Mine Emergency Operations database.*

19 (c) *MINE LOCATIONS; REPOSITORY OF MINING*
20 *MAPS.—*

21 (1) *MINE LOCATIONS.—The Secretary shall es-*
22 *tablish, maintain, and keep current, on the Depart-*
23 *ment of Labor’s website, a detailed map or set of*
24 *maps showing the exact geographic location of each*
25 *operating or abandoned mine in the United States, as*

1 *determined by a global positioning system. Such map*
2 *or maps shall—*

3 *(A) be presented, through links within the*
4 *website, in such a way as to make the location*
5 *of a mine instantly available to the emergency*
6 *personnel responding to the mine;*

7 *(B) be available to members of the public;*

8 *(C) allow a user to find the geographic loca-*
9 *tion of a particular mine, or the geographic loca-*
10 *tions of all mines of a particular type in a coun-*
11 *ty, congressional district, State, or other com-*
12 *monly used geographic region; and*

13 *(D) provide the geographic location of any*
14 *mining waste impoundments with links to asso-*
15 *ciated emergency contact information and avail-*
16 *able emergency response plans.*

17 *(2) REPOSITORY OF MINING MAPS.—The Sec-*
18 *retary shall establish a national repository for pre-*
19 *servicing a digital archive of mining maps to be acces-*
20 *sible directly and without delay from the Depart-*
21 *ment’s web site. The mining maps shall include copies*
22 *of all historic maps that can be obtained, as well as*
23 *copies of currently approved mining maps, which the*
24 *Secretary shall arrange to copy and preserve in dig-*
25 *ital form. The Secretary may coordinate the oper-*

1 *ation of such repository with the Secretary of the In-*
2 *terior provided the other requirements of this para-*
3 *graph are observed. In addition, the Secretary shall*
4 *include in this repository copies of the most currently*
5 *available mine emergency response plan, roof plans,*
6 *ventilation plans, and such other plans required for*
7 *any type of mine, following any required approval, so*
8 *that they may be immediately accessed in an emer-*
9 *gency, in a manner consistent with the requirements*
10 *of section 312(b) of the Act.*

11 *(d) REQUIRED NOTIFICATION OF EMERGENCIES AND*
12 *SERIOUS INCIDENTS.—Section 103(j) (30 U.S.C. 813(j)) is*
13 *amended—*

14 *(1) in the first sentence, by inserting “or report-*
15 *able event” after “accident”;*

16 *(2) in the second sentence—*

17 *(A) by inserting “of accidents” after “the*
18 *notification”;* and

19 *(B) by inserting “, or in the case of a re-*
20 *portable event that is not required to be reported*
21 *as an accident, within 1 hour of the time at*
22 *which the operator realizes that the event has oc-*
23 *curred” before the period; and*

1 (3) *by inserting at the end the following: “For*
2 *the purposes of this subsection, a reportable event*
3 *shall include—*

4 “*(1) a fire not required to be reported more*
5 *promptly;*

6 “*(2) a sudden change in mine atmospheric con-*
7 *ditions in a sealed area;*

8 “*(3) a coal or rock outburst that causes the with-*
9 *drawal of miners; or*

10 “*(4) any other event, as determined in regula-*
11 *tions promulgated by the Secretary, that needs to be*
12 *reported within 1 hour in order for the Secretary to*
13 *determine if the working conditions in the mine are*
14 *safe.”.*

15 (e) *ENHANCING THE CAPABILITIES OF MINE RESCUE*
16 *TEAMS.—*

17 (1) *AMENDMENT TO FMSHA.—Section*
18 *115(e)(2)(B) (30 U.S.C. 825(e)(2)(B)) is amended by*
19 *adding at the end the following:*

20 “*(v) The provision of uniform credentials to mine res-*
21 *cue team members, support personnel, or vehicles for imme-*
22 *diante access to any mine site.*

23 “*(vi) The plans required at each mine to ensure coordi-*
24 *nation with local emergency response personnel and to en-*
25 *sure that such personnel receive adequate training to offer*

1 *necessary assistance to mine rescue teams in the event such*
2 *assistance is requested. Such local emergency response per-*
3 *sonnel shall not perform the duties of any mine rescue team.*

4 “(vii) *Requirements to ensure that operators are pre-*
5 *pared to facilitate the work of mine rescue teams during*
6 *an emergency by—*

7 “(I) *storing necessary equipment not brought on*
8 *site by mine rescue teams in locations readily acces-*
9 *sible to mine rescue teams;*

10 “(II) *providing mine rescue teams with a park-*
11 *ing and staging area adequate for their needs;*

12 “(III) *identifying a space appropriate for co-*
13 *ordinating emergency communications with the mine*
14 *rescue team; and*

15 “(IV) *identifying and maintaining separate*
16 *spaces for family members, community members, and*
17 *press to assemble during an emergency so as to facili-*
18 *tate communications with these groups while ensuring*
19 *the efforts of the mine rescue teams are not hin-*
20 *dered.”.*

21 (2) *RESEARCH.—Section 22(h)(5)(A) of the Oc-*
22 *cupational Safety and Health Act of 1970 (29 U.S.C.*
23 *671(h)(5)(A)) is amended by adding before the period*
24 *at the end thereof: “including advanced drilling tech-*
25 *nologies, and any special technologies required for*

1 *safety or rescue in mining more than 1,500 feet in*
2 *depth”.*

3 *(f) Title I of the Act is amended by adding at the end*
4 *thereof a new section:*

5 **“SEC. 117. EMERGENCY PREPAREDNESS PLAN.**

6 *“Not later than 6 months of the enactment of the S-*
7 *MINER Act, the Secretary shall establish and disseminate*
8 *guidelines for rescue operations that will: (1) establish clear*
9 *lines of authority within the agency for such operations;*
10 *(2) establish clear lines of demarcation so private sector and*
11 *State responders can properly implement their responsibil-*
12 *ities; (3) be appropriate for rescue in various types of condi-*
13 *tions reasonably likely to be encountered in the United*
14 *States, including such factors as the depth of the mining,*
15 *ground stability, ground slope, remoteness from major*
16 *roads, surface ownership and access problems, and the*
17 *availability of necessary communications linkages. The Sec-*
18 *retary shall consult with States, rescue teams and other re-*
19 *sponders in developing such guidelines, and shall update*
20 *them from time to time based upon experience.”.*

21 *(g) AUTHORITY OF SECRETARY DURING RESCUE OP-*
22 *ERATIONS.—Section 103 (30 U.S.C. 813) is further amend-*
23 *ed—*

24 *(1) in subsection (j), by adding at the end there-*
25 *of:*

1 *“If the representative of the Secretary supervises and directs*
2 *the rescue and recovery activities in such mine, the operator*
3 *shall comply with the requests of the authorized representa-*
4 *tive of the Secretary to facilitate rescue and recovery activi-*
5 *ties including the provision of all equipment, personnel,*
6 *and other resources required to perform such activities in*
7 *accordance with the schedule and requirements established*
8 *by the representative of the Secretary for this purpose, and*
9 *failure of the operator to comply in this regard shall be*
10 *considered an egregious violation of this Act.”; and*

11 *(2) in subsection (k), by striking “, when*
12 *present,”.*

13 *(h) RESCUE COMMUNICATIONS.—*

14 *(1) REPEAL.—The MINER Act (30 U.S.C. 801*
15 *note) is amended by striking section 7, redesignating*
16 *sections 8 and 9 as sections 7 and 8, and sections 11*
17 *through 14 as sections 9 through 12, respectively.*

18 *(2) AMENDMENT TO FMSHA.—Title I of the Act*
19 *is further amended by adding at the end the fol-*
20 *lowing:*

21 **“SEC. 118. FAMILY LIAISONS REQUIREMENT.**

22 *“The Secretary shall—*

23 *“(1) designate a full-time permanent employee of*
24 *the Mine Safety and Health Administration to serve*
25 *as a Family Liaison, who shall, at least in instances*

1 *where multiple miners are trapped, severely injured*
2 *or killed, act as the primary communication with the*
3 *families of the miners concerning all aspects of the*
4 *rescue operations, including the location or condition*
5 *of miners, and assist the families in getting answers*
6 *to their questions, and otherwise serve as a liaison to*
7 *the families, and provide for the temporary reassign-*
8 *ment of other personnel who may be required to assist*
9 *the Family Liaison in connection with a particular*
10 *incident;*

11 *“(2) require the Mine Safety and Health Admin-*
12 *istration to be as responsive as possible to requests*
13 *from the families of such miners for information re-*
14 *lating to the mine accident, and waive any fees re-*
15 *quired for the production of documents pursuant to 5*
16 *U.S.C. 552(a)(3) in connection with a request from a*
17 *family member, or authorized representative of min-*
18 *ers, for documents relating to a mine fatality, not-*
19 *withstanding any conditions for fee waivers law that*
20 *may otherwise be imposed by law; and*

21 *“(3) designate a highly qualified representative*
22 *of the Secretary with experience in public commu-*
23 *nications to be present at mine accident sites where*
24 *rescues are in progress during the entire duration of*
25 *such rescues, to serve as the primary communicator*

1 *with the press and the public concerning all aspects*
2 *of the rescue operations, including the location or con-*
3 *dition of miners.”.*

4 (3) *CONFORMING AMENDMENTS.—The Act is*
5 *amended—*

6 (A) *in section 103(f), by inserting before the*
7 *period at the end of the first sentence the fol-*
8 *lowing: “, and to participate in any accident in-*
9 *vestigation pursuant to the requirements of this*
10 *Act. Any family member of a miner trapped or*
11 *otherwise unable to execute a designation of a*
12 *miner representative on his or her own behalf*
13 *may do so on behalf of the miner for any and*
14 *all purposes”;* and

15 (B) *in section 316(b)(2)(E)(vi) (as added by*
16 *this Act), by adding at the end the following*
17 *“The plan shall also set forth the operator’s*
18 *plans for assisting the Secretary in the imple-*
19 *mentation of section 118.”.*

20 (i) *RECOVERY.—Section 103 is amended by adding at*
21 *the end thereof—*

22 “(l) *Rescue efforts for trapped miners shall not cease*
23 *as long as there is any possibility that miners are alive,*
24 *unless such efforts pose a serious danger to rescue or other*
25 *workers, and the decision to cease a rescue shall be made*

1 *by the Secretary’s representative. Thereafter, efforts to re-*
2 *cover the remains of miners shall continue unless such ef-*
3 *forts pose a serious danger to recovery workers, and the de-*
4 *cision to cease such recovery efforts shall be made by the*
5 *Secretary’s representative.”.*

6 (j) *ACCIDENT AND INCIDENT INVESTIGATIONS.—Sec-*
7 *tion 103(b) (30 U.S.C. 813(b), as amended by section*
8 *5(k)(2) of this Act, is further amended—*

9 (1) *by striking “For the purpose” and inserting*
10 *the following:*

11 “(3) *For the purpose”;*

12 (2) *by inserting after the subsection designation*
13 *the following:*

14 “(1) *For all accident and incident investigations*
15 *under this Act, the Secretary shall determine why the acci-*
16 *dent or incident occurred; determine whether civil or crimi-*
17 *nal requirements were violated and, if so, issue citations*
18 *and penalties, and make recommendations to avoid any re-*
19 *currence. The Secretary shall also determine whether the*
20 *conduct or lack thereof by Agency personnel contributed to*
21 *the accident or incident.*

22 “(2)(A) *For any accidents or incidents involving mul-*
23 *tiple serious injuries or deaths, or multiple entrapments,*
24 *there shall also be an independent investigation to consider*
25 *why the accident or incident occurred, make recommenda-*

1 *tions to avoid a recurrence, and determine whether the con-*
2 *duct or lack thereof by agency personnel contributed to the*
3 *accident or incident.*

4 “(B) Not later than 30 days after the date of enactment
5 of the S-MINER Act, the Secretary shall initiate rule-
6 making activity to establish rules on the procedures that
7 will be used to investigate accidents and incidents involving
8 multiple serious injuries or deaths, or multiple entrap-
9 ments, and shall directly contact and solicit the participa-
10 tion of

11 “(i) individuals identified by the Secretary as
12 family members of miners who perished in mining
13 accidents of any type during the preceding 10-year
14 period;

15 “(ii) organizations representing miners;

16 “(iii) mine rescue teams;

17 “(iv) Federal, State, and local investigation and
18 prosecutorial authorities; and

19 “(v) others whom the Secretary determines may
20 have information relevant to this rulemaking.

21 *Such rulemaking shall be completed by October 1, 2008.*

22 “(C) The rules for the investigation of accidents or in-
23 cidents involving multiple serious injuries or deaths, or
24 multiple entrapments, shall provide for the appointment
25 and operations of any such independent investigation team

1 *in accordance with the requirements of this paragraph. An*
2 *independent investigation team shall be appointed by the*
3 *Director of the National Institute for Occupational Safety*
4 *and Health as soon as possible after a qualifying accident*
5 *or incident. The members shall consist of:*

6 “(i) *a representative from the National Institute*
7 *for Occupational Safety and Health who shall serve*
8 *as the Chairman;*

9 “(ii) *a representative of mine operators with fa-*
10 *miliarity with the type of mining involved;*

11 “(iii) *a representative of mine workers with fa-*
12 *miliarity with the type of mining involved, who shall*
13 *be the workers’ certified bargaining representative at*
14 *the mine or, if there is no certified representative at*
15 *the mine, then a workers’ representative jointly se-*
16 *lected by organized labor organizations:*

17 “(iv) *an academic with expertise in mining; and*

18 “(v) *a representative of the State in which the*
19 *accident or incident occurred to be selected by the*
20 *Governor.*

21 “(D) *Such rules shall include procedures to ensure that*
22 *the Secretary will be able to cooperate fully with the inde-*
23 *pendent investigation team and will use the powers of the*
24 *Secretary under this section to help obtain information and*
25 *witnesses required by the independent investigation team,*

1 *procedures to ensure witnesses are not coerced and to avoid*
2 *conflicts of interest in witness representation, procedures to*
3 *ensure confidentiality if requested by any witness, and pro-*
4 *cedures to enable the independent investigation team to con-*
5 *duct such public hearings as it deems appropriate. Such*
6 *rules shall also require that upon completion of any acci-*
7 *dent or incident investigation of accidents or incidents in-*
8 *volving multiple serious injuries or deaths, or multiple en-*
9 *trapments, the independent investigation team shall—*

10 “(i) *issue findings as to the actions or inactions*
11 *which resulted in the accident or incident;*

12 “(ii) *make recommendations as to policy, regu-*
13 *latory, enforcement or other changes, including statu-*
14 *tory changes, which in the judgment of the inde-*
15 *pendent investigation team would best prevent a re-*
16 *currence of such actions or inactions at other mines;*
17 *and*

18 “(iii) *promptly make all such findings and rec-*
19 *ommendations public (except findings and rec-*
20 *ommendations that must be temporarily withheld in*
21 *connection with a criminal referral), including ap-*
22 *propriate public hearings to inform the mining com-*
23 *munity of their respective findings and recommenda-*
24 *tions.*

1 “(E) As part of the Secretary’s annual report to Con-
 2 gress pursuant to section 511(a), the Secretary shall report
 3 on implementation of recommendations issued by any inde-
 4 pendent investigation teams in the preceding 5 years.”; and

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

6 “(4) Nothing in this Act shall be construed to limit
 7 the authority of the Chemical Safety and Hazard Investiga-
 8 tion Board to conduct an independent investigation of the
 9 accident or incident or the events or factors resulting there-
 10 in, nor with the authority of the Office of the Inspector Gen-
 11 eral to conduct an investigation of the conduct of DOL per-
 12 sonnel in connection with an accident or incident or the
 13 events or factors resulting therein, and the Secretary shall
 14 cooperate in full with any such investigation. Such inves-
 15 tigation shall be in addition to any investigation author-
 16 ized by section 103(b).”.

17 **SEC. 7. RESPIRABLE DUST STANDARDS.**

18 (a) *RESPIRABLE DUST; RESPIRABLE SILICA DUST.*—
 19 Section 202 (30 U.S.C. 842) is amended to read as follows:

20 **“SEC. 202. DUST STANDARD AND RESPIRATORY EQUIP-**
 21 **MENT.**

22 “(a)(1) Effective on the date of enactment of the S-
 23 *MINER Act*, each coal mine operator shall continuously
 24 maintain the concentration of respirable dust in the mine
 25 atmosphere during each shift to which each miner in the

1 *active workings of such mine is exposed at or below a time-*
2 *weighted average of 1.00 milligrams of respirable dust per*
3 *cubic meter of air averaged over 10 hours or its dose-equiva-*
4 *lent for shorter or longer period of time. For purposes of*
5 *this paragraph, ‘a dose-equivalent’ means the amount of*
6 *dust that a miner would inhale during his work shift as*
7 *if he were working for 10 hours, and the term ‘shift’ means*
8 *portal-to-portal for underground coal mines and ‘bank to*
9 *bank’ for other coal mines.*

10 “(2) *At regular intervals to be prescribed by the Sec-*
11 *retary and the Secretary of Health and Human Services,*
12 *the Secretary will take accurate samples of the amount of*
13 *respirable dust in the coal mine atmosphere to which each*
14 *miner in the active workings of such mine is exposed in*
15 *order to determine compliance with the requirements of*
16 *paragraph (a)(1) of this section. In addition, the Secretary*
17 *shall cause to be made such frequent spot inspections as he*
18 *deems appropriate of the active workings of coal mines for*
19 *the purpose of obtaining compliance with the provisions of*
20 *this title. All samples by the Secretary shall be taken by*
21 *a personal dust monitor that measures, records and dis-*
22 *plays in real time the concentration of respirable dust to*
23 *which the miner wearing the device is exposed, and shall*
24 *include the sampling of areas, occupations or persons. For*
25 *the purposes of determining compliance with the exposure*

1 *limit for respirable dust, only a single sample shall be re-*
2 *quired to determine non-compliance, and there shall be no*
3 *adjustment for measurement error in the measured level of*
4 *respirable dust.*

5 “(3) *At intervals established by the Secretary, each op-*
6 *erator of a coal mine shall take accurate samples of the*
7 *amount of respirable dust in the mine atmosphere to which*
8 *each miner in the active workings of such mine is exposed*
9 *to identify sources of exposure so that the operator can take*
10 *corrective action and assure that the exposure of each mine*
11 *is below the exposure limit. Under the provisions of this*
12 *Act, all such samples shall be taken by a personal dust mon-*
13 *itor that measures, records and displays the concentration*
14 *of respirable dust to which the miner wearing the device*
15 *is exposed, and may include samples of less than a full shift.*
16 *The results of such sampling shall be transmitted to the Sec-*
17 *retary in a manner established by him, and recorded by*
18 *him in a manner that will assure application of the provi-*
19 *sions of this section of the Act.*

20 “(4) *Each miner shall be equipped with a personal*
21 *dust monitor that measures, records and displays in real*
22 *time the concentration of respirable dust to which the miner*
23 *wearing the device is exposed. Each miner shall be per-*
24 *mitted to adjust his work activities whenever necessary to*
25 *keep his exposure to respirable coal dust, as measured, re-*

1 corded and displayed by such device, at all times at or
2 below the permitted concentration.

3 “(b) Effective on the date of enactment of the S-
4 MINER Act, each operator of a coal or other mine shall
5 continuously maintain the concentration of respirable silica
6 dust in the mine atmosphere during each shift to which each
7 miner in the active workings of such mine is exposed at
8 or below a time-weighted average of 0.05 milligrams of res-
9 pirable silica dust per cubic meter of air averaged over ten
10 hours or its dose-equivalent for shorter or longer period of
11 time. For the purposes of this paragraph, compliance shall
12 be determined by the sampling of areas, occupations or per-
13 sons, only a single sample shall be required to determine
14 non-compliance, and there shall be no adjustment for meas-
15 urement error in the measured level of respirable silica dust.
16 For the purposes of this paragraph, a ‘dose-equivalent’
17 means the amount of dust that a miner would inhale during
18 his work shift as if he were working for 10 hours, and the
19 term ‘shift’ means portal-to-portal for underground mines
20 and ‘bank to bank’ for other mines.

21 “(c) Respiratory equipment approved by the Secretary
22 and the Secretary of Health and Human Services shall be
23 made available to all persons whenever exposed to con-
24 centrations of respirable dust or silica in excess of the levels
25 required to be maintained under this section. Use of res-

1 *pirators shall not be substituted for environmental control*
2 *measures in the active workings. Each operator shall main-*
3 *tain a supply of respiratory equipment adequate to deal*
4 *with occurrences of concentrations of respirable dust and*
5 *silica in the mine atmosphere in excess of the levels required*
6 *to be maintained under this section.*

7 “(d) *Each operator shall report and certify to the Sec-*
8 *retary at such intervals as the Secretary may require as*
9 *to the conditions in the active workings of a coal mine, in-*
10 *cluding, the average number of working hours worked dur-*
11 *ing each shift, the quantity and velocity of air regularly*
12 *reaching the working faces, the method of mining, the*
13 *amount and pressure of the water, if any, reaching the*
14 *working faces, and the number, location, and type of sprays,*
15 *if any, used.”.*

16 (b) *CONFORMING AMENDMENT.—Section 205 (30*
17 *U.S.C. 845) is repealed.*

18 (c) *ASSESSMENT ON PROGRAM OPERATIONS OF CUMU-*
19 *LATIVE IMPACT OF EXTERNAL REQUIREMENTS ADDED*
20 *SINCE 1977.—The Secretary shall request the National*
21 *Academy of Sciences to conduct a study of the impact on*
22 *the mine safety and health responsibilities of the Depart-*
23 *ment of Labor of various statutes, executive orders, and*
24 *memoranda applicable to the issuance of rulemaking and*
25 *guidance and to enforcement. The study shall include an*

1 *assessment of the Equal Access to Justice Act, the Regu-*
2 *latory Flexibility Act, the Small Business Regulatory En-*
3 *forcement Fairness Act, the Data Quality Act, the Paper-*
4 *work Reduction Act, the Unfunded Mandates Reform Act,*
5 *the Federal Advisory Committee Act, the Congressional Re-*
6 *view Act, Executive Order 12866, Executive Order 13422,*
7 *and memoranda from the Office of Management and Budget*
8 *on guidance, risk assessment and cost analysis. The Sec-*
9 *retary shall request that the National Academy of Sciences*
10 *consult widely with experts in administrative law and other*
11 *disciplines knowledgeable about such requirements, and to*
12 *quantify to the extent possible the costs to miners of the*
13 *mentioned requirements. The Secretary shall further*
14 *request that recommendations be included in the report, and*
15 *that such report and recommendations be completed, and*
16 *forwarded to the Congress, no later than 21 months after*
17 *the date of enactment of this Act.*

18 **SEC. 8. OTHER HEALTH REQUIREMENTS.**

19 (a) *AIR CONTAMINANTS.*—Section 101 of (30 U.S.C.
20 811) is amended by adding at the end the following:

21 “(f) *Notwithstanding the other requirements of this sec-*
22 *tion, not later than 30 days of the enactment of the S-*
23 *MINER Act, the National Institute for Occupational Safety*
24 *and Health shall forward to the Secretary its Recommended*
25 *Exposure Limits (RELs) for chemical and other hazards*

1 to which miners may be exposed, along with the research
2 data and other necessary information. Within 30 days of
3 receipt of this information, the Secretary shall to adopt such
4 recommended exposure limits as the Permissible Exposure
5 Limits (PELs) for application in the mining industry. The
6 National Institute of Occupational Safety and Health shall
7 annually submit to the Secretary any additional or revised
8 recommended exposure limits for all chemicals and other
9 hazards to which miners may be exposed, and the Secretary
10 shall be obligated to adopt such exposure limits as PELs
11 for application in the mining industry within 30 days of
12 receipt of such information. Upon petition from miners or
13 mine operators providing credible evidence that feasibility
14 may be an issue for the industry as a whole, the Secretary
15 may review the feasibility of any PEL established pursuant
16 to this paragraph before placing it into effect and, following
17 public notice and comment, make necessary adjustments
18 thereto, provided that the adjusted standard is as protective
19 as is feasible, and that the PEL shall go into effect as re-
20 quired by the other provisions of this paragraph if such ac-
21 tion is not completed within one year. Moreover, upon peti-
22 tion from miners or mine operators providing credible evi-
23 dence that a REL issued by the National Institute of Occu-
24 pational Safety and Health lacks the specificity required
25 to serve as a PEL pursuant to this Act, the Secretary may

1 *defer implementation of the requirements of this paragraph*
2 *and shall promptly request National Institute of Occupa-*
3 *tional Safety and Health to recommend a sufficiently de-*
4 *tailed REL, at which time the provisions of this paragraph*
5 *shall be implemented. Nothing in this subsection shall limit*
6 *the ability of the National Institute of Occupational Safety*
7 *and Health to make such recommendations more frequently*
8 *than 1 time per year, nor limit the Secretary from estab-*
9 *lishing requirements for chemical and other substances or*
10 *health hazards in the mining industry that are more com-*
11 *prehensive and protective than those established pursuant*
12 *to this subsection and in accordance with the other require-*
13 *ments of this section.”.*

14 (b) *ASBESTOS.—Section 101 (30 U.S.C. 811) is fur-*
15 *ther amended by adding at the end the following:*

16 “(g) *The health standard for asbestos established by the*
17 *Occupational Safety and Health Administration that is set*
18 *forth in section 1910.1001 of title 29, Code of Federal Regu-*
19 *lations, or any subsequent revision of that regulation, shall*
20 *be adopted by the Secretary for application in the mining*
21 *industry not later than 30 days of the enactment of the S-*
22 *MINER Act. Nothing in this paragraph shall preclude the*
23 *Secretary from adopting regulations to address asbestos*
24 *hazards to miners not covered by the regulations of the Oc-*
25 *cupational Safety and Health Administration.”.*

1 (c) *HAZARD COMMUNICATION.*—Section 101 (30
2 *U.S.C. 811)* is further amended by adding at the end the
3 *following:*

4 “(h) *Unless and until there is additional rulemaking*
5 *pursuant to the requirements of this section, the Secretary*
6 *shall apply the provisions of the interim final rule of Octo-*
7 *ber 3, 2000, concerning hazard communication, in lieu of*
8 *the final rule of June 21, 2002, concerning hazard commu-*
9 *nication.*”.

Union Calendar No. 280

110TH CONGRESS
1ST Session

H. R. 2768

[Report No. 110-457]

A BILL

To establish improved mandatory standards to protect miners during emergencies, and for other purposes.

NOVEMBER 15, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed