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110TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 110–457

SUPPLEMENTAL MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT OF 2007

NOVEMBER 15, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2768]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2768) to establish improved mandatory standards to protect miners during emergencies, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Supplemental Mine Improvement and New Emergency Response Act of 2007" or the "S–MINER Act".

(b) TABLE OF CONTENTS.—The table of contents for 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 requirement.

SEC. 2. FINDINGS.

Congress finds that—

(1) while the MINER Act of 2006 (Public Law 109–236) was an essential first step in addressing the many health and safety hazards that miners still face,

supplemental action is necessary and feasible to better protect miners in coal and other mines;

(2) essential standards to protect miner health established by the Federal Mine Safety and Health Act of 1977 are out of date after 40 years, posing a significant threat to miner health; and

(3) the Secretary of Labor has failed in recent years to adequately fulfill the Secretary's obligations under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), additional Congressional intervention is needed.

SEC. 3. DEFINITIONS; REFERENCES.

(a) DEFINITIONS.—As used in this Act—

(1) the term "Secretary" refers to the Secretary of Labor; and

(2) any other term used in this Act that is defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802) shall have the meaning given the term in such section.

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

SEC. 4. SUPPLEMENTING EMERGENCY RESPONSE PLANS.

(a) POST ACCIDENT COMMUNICATIONS.—Section 316(b)(2)(F)(ii) (30 U.S.C. 876(b)(2)(F)(ii)) is amended—

(1) by striking "Not later than" and inserting the following:

"(II) Not later than"; and

(2) by inserting after the clause designation the following:

"(I) Not later than 120 days after the enactment of the S–MINER Act, a plan shall, to be in approved status, provide for a post accident communication system between underground and surface personnel, and for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground, that utilizes a system at least as effective as a 'leaky feeder' or wireless mesh type communication and tracking system currently in use in the industry. These systems shall be enhanced physically, electronically, or redundantly, to improve their survivability in the event of a mine disaster. In addition, to be in approved status, an emergency response plan must be revised promptly to incorporate new technology which the National Institute for Occupational Safety and Health certifies can be added to the existing system to improve its ability to facilitate post-accident communication with or tracking of miners. No miner shall be disciplined based on information obtained from an electronic communications and tracking system.".

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

"(vi) Not later than June 15, 2008, the Secretary shall issue interim final regulations, consistent with the design criteria recommended by National Institute for Occupational Safety and Health in its report pursuant to section 13(b)(1) of the MINER Act, and subject to the requirements of the next sentence, requiring each emergency response plan to provide for the installation of portable rescue chambers meeting National Institute for Occupational Safety and Health design criteria, or refuge shelters carved out of the mine workings and sealed with bulkheads meeting National Institute for Occupational Safety and Health design criteria, or other refuge designs recommended by National Institute for Occupational Safety and Health that provide miners with equivalent or better protection, in the working areas of underground coal mines within 60 days following plan approval. In addition, a plan shall provide for the maintenance of a mobile emergency shelter within 500 feet of the nearest working face in each working section of an underground coal mine.".

(c) IMPROVEMENTS TO SEALS, VENTILATION CONTROLS, AND ROCK DUSTING TO LIMIT THE DAMAGE FROM EXPLOSIONS.—

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

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

"(4)(A) The Secretary shall inspect all seals under construction after the date of enactment of the S–MINER Act, during at least part of their construction, to ensure

the mine operator is complying with the approved seal plan, and shall develop an inspection protocol for this purpose.

"(B) Not later than 3 months of the date of enactment of the S–MINER Act, the Secretary shall issue final rules regarding approval, design, construction, inspection, maintenance and monitoring of underground coal mine seals which shall meet the requirements of this paragraph. Except as otherwise provided by this paragraph, these regulations shall implement the most recent recommendations of the National Institute of Occupational Safety and Health concerning seal design, construction, inspection, maintenance and monitoring. The regulations shall also provide that all seals in a mine shall be monitored if they are not designed or installed to withstand a constant total pressure of 240 pounds per square inch, using a static structural analysis. Monitoring of seals shall be done by continuous monitoring devices within one year of the date of enactment of this Act, and prior thereto by qualified personnel at such intervals as the Secretary determines are adequate to ensure safety. The Secretary shall require mine operators to utilize a tamper-resistant method to retain records of all such monitoring and ensure they are available for examination and verification by the agency. Monitoring of seals shall be done both by—

"(i) sampling through at least 1 seal in each bank of seals; and

"(ii) for new seals, unless infeasible due to property rights, sampling through a sufficient number of boreholes from the surface to the sealed areas underground to effectively determine the gas concentrations within the area.

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

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

"(ii) an action plan for sealing and repair be established that will, among any other requirements, include specific actions the mine operator will take to protect miners during the critical time period immediately after sealing or repair takes place, and which shall be reviewed by personnel from the Mine Safety and Health Administration who have the required expertise prior to approval; and

"(iii) methane pressures behind any seal required to be monitored shall be maintained in such a manner as ensure that normal pressure variations that can be reasonably anticipated in the area of the seal do not bring the methane-air mixture into an appropriate safety range surrounding the known explosive range of such mixtures.".

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

"(4) Not later than 1 year after the date of enactment of the S–MINER Act, the Secretary shall publish interim final regulations to enhance the survivability of underground mine ventilation controls. The Secretary shall require that stoppings be constructed using solid concrete blocks laid wet and sealed with an appropriate bonding agent on at least the side subjected to the velocity of the intake air coursing through the entry, except that in the case of stoppings constructed during barrier reduction and pillar removal operations, such stoppings may be constructed using hollow block and an appropriate bonding agent.".

(4) ROCK DUSTING.—Section 304(d) (30 U.S.C. 864) is amended by adding at the end the following: "Not later than June 15, 2009, the National Institute for Occupational Safety and Health shall issue recommendations as to whether changes to these requirements are necessary to ensure an equivalent level of protection in light of any changes to the size and composition of coal dust since these requirements were established, and the Secretary of Labor shall take appropriate action, including the issuance of an emergency temporary standard if warranted, to respond to these recommendations.".

(d) LIMITING CONVEYOR BELT RISKS.—

(1) FLAME RESISTANT CONVEYOR BELTS.—Section 311(h) is amended by adding at the end the following: "Not later than January 31, 2008, the Secretary shall publish interim final regulations to ensure that all conveyor belts in use in underground coal mines are replaced no later than December 31, 2012, with belts that can meet the flame resistance requirements recommended by the National Institute for Occupational Safety and Health, and which limit smoke and toxic emissions. Any conveyor belt installed in a coal mine after the date of enactment of the S–MINER Act shall meet such requirements.".

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

"(3) Not later than June 20, 2008, the Secretary shall revise the regulations prescribed pursuant to this section to require, in any coal mine, regardless of the date on which it was opened, that belt haulage entries not be used to ventilate active working places. The Secretary may agree to a modification of this requirement, pursuant to the procedures of section 101(c), if and only if—

"(A) the mine operator establishes to the satisfaction of the Secretary that significant safety constraints require such usage; and

"(B) the mine operator agrees to comply with criteria established by the Secretary which shall, at a minimum, include the conditions recommended by the Technical Study Panel established under section 514.

"(4) Plans that have been approved by the Secretary prior to the date of enactment of the S–MINER Act that permit the use of belt-air to ventilate active working places in a mine are permitted to remain in use to complete current mining up until the date of issuance of the regulation required pursuant to paragraph (3).".

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

"(3) Not later than 90 days after the date of enactment of the S–MINER Act, all mine operators shall be required to implement a communication program at each of such operators' facilities to ensure that each person entering the operation is made aware at the start of that person's shift of the current conditions of the mine in general and of that person's specific worksite in particular. In an effort to facilitate these communications, all agents of the operator who are responsible for ensuring the safe and healthful working conditions at the mine, including mine foremen, assistant mine foremen, and mine examiners, shall, upon exiting the mine or workplace, communicate with those replacing them on duty to verbally update them on the conditions they observed during their shift, including any conditions that are abnormal or hazardous. Prior to entering the mine or other workplace the on-coming agent of the operator shall meet with all members of the crew they are responsible for and inform them of the general conditions at the operation and in their specific work area. This process shall be completed prior to the start of each shift at the operation and recorded in a book designated for that purpose and available for inspection by all interested parties. In the event the operation is idle prior to the start of any shift the agent of the operator shall meet with the individual or individuals who were responsible for examining the mine to obtain the necessary information.".

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

"(u) Not later than May 1, 2008, an operator of an underground mine shall install atmospheric monitoring systems in all underground areas where miners normally work and travel that provide real-time information regarding carbon monoxide levels, and that can, to the maximum extent possible, withstand explosions and fires.".

(g) METHANE MONITORS.—Section 303(h) (30 U.S.C. 863(h)) is amended by redesignating paragraph (2) as paragraph (3), and inserting after paragraph (1) the following new paragraph:

"(2) Each miner who is working alone for part of a shift shall be equipped with a multi-gas detector that measures current levels of methane, oxygen, and carbon monoxide.".

(h) LIGHTNING STUDY BY NATIONAL ACADEMY OF SCIENCES.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall submit to the Secretary and to Congress recommendations on—

(1) actions that need to be taken to strengthen existing requirements in law or regulations to ensure that miners are protected, to the fullest extent permitted, from the risks of lightning strikes near a mine;

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

(3) research needed for improved technology.

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

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

(A) by amending the section heading to read "ROOF AND RIB SUPPORT, BARRIER REDUCTION AND PILLAR EXTRACTION, SPECIAL ATTENTION TO DEEP MINING";

(B) in subsection (a), by inserting after the second sentence the following: "The Secretary shall by regulation ensure the appropriate use of roof screen in belt entries, travelroads, and designated intake and return escapeways in accordance with the requirements of subsection (g)."; and

(C) by inserting at the end the following:

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

"(h)(1) An operator shall be required to have a current and approved barrier reduction or pillar extraction plan, or both, before performing such activities. The Secretary shall only approve a barrier reduction or pillar extraction plan if it provides adequate protection and minimizes the risks for miners engaged in the activity, re-

flecting appropriate engineering analysis, computer simulations, and consultations with technical experts in the agency, in the National Institute for Occupational Safety and Health, and in the Bureau of Land Management for any mines leasing Federal coal resources, and only if the plan complies with any specific requirements that may be adopted by the Secretary for barrier reduction or pillar extraction activities including requirements related to the depth of the mine, geology of the mine, mine height and methods, and emergency response capabilities.

"(2) A copy of a proposed barrier reduction or pillar extraction plan, or both, shall be provided to the authorized representative of miners at least 10 days prior to submission to the Secretary for approval. The authorized representative of miners may provide comments to the Secretary who shall respond thereto.

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

"(i) Not later than 1 week before the commencement of any barrier reduction or pillar extraction operations, the mine operator shall notify the appropriate representative of the Secretary of his intention to begin or resume barrier reduction or pillar extraction. The Secretary shall document such notification in writing, and shall, before barrier reduction or pillar extraction operations begin, take action to ensure that every person who will be participating in such operations is trained in the operator's barrier reduction and/or and pillar extraction plan. The Secretary shall observe the barrier reduction or pillar extraction operations for a sufficient period of time to ensure that the mine operator is fully complying with the barrier reduction or pillar extraction plan. The Secretary may preclude the commencement of such operations or halt such operations at any time the safety of miners comes into question.".

(2) STUDY.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall, in consultation with the National Institute for Occupational Safety and Health, submit to the Secretary and to Congress recommendations for—

(A) actions that need to be taken to strengthen existing requirements in law or regulations to ensure that miners are protected, to the fullest extent permitted, from ground control hazards, including the special hazards associated with barrier reduction and pillar extraction;

(B) adopting any existing technology to the mining environment to improve miner protections during barrier reduction and pillar extraction, and on research needed for improved technology to improve miner protections during such operations;

(C) adopting any existing technology to the mining environment to improve miner protections during mining at depths below 1000 feet, and on research needed for improved technology to improve miner protections during such operations; and

(D) adopting any existing technology to the mining environment to improve miner protections during secondary mining of coal resources, and on research needed for improved technology to improve miner protections during such operations.

(j) SCSR INSPECTION PROGRAM.—

(1) IN GENERAL.—The Secretary shall—

(A) establish a program to randomly remove and have tested by the National Institute for Occupational Safety and Health field samples of each model of self-rescue device used in an underground coal mine in order to ensure that the self-rescue devices in coal mine inventories are working in accordance with the approval criteria for such devices;

(B) require a manufacturer of a self-rescue device and the mine operator who owns a device to contact the Secretary immediately upon notification of any potential problem with any such device, and provide a copy of such notice to the representative of miners at the affected operation; and

(C) notify immediately all operators of underground coal mines if the Secretary detects or is advised of any problems with the self-rescue devices.

(2) DETERMINATION.—For the purposes of paragraph (1)(A), the National Institute for Occupational Safety and Health shall determine the number of field samples of each device to be removed for testing, and the mines from which the samples are to be drawn to ensure a random sample is obtained, and shall provide mine operators with self-rescue devices to replace any removed for random testing. Should this testing reveal a potential problem with a device that requires additional testing, the Secretary shall remove such additional samples from such mines as may be requested by the National Institute for Occupational Safety and Health, and it shall be the obligation of mine operators to provide

self-rescue devices to promptly replace any removed as a result of such additional testing.

(k) APPLICATION TO UNDERGROUND METAL AND NONMETAL MINES.—Title II is amended by adding at the end the following new section:

"SEC. 207. APPLICATION TO UNDERGROUND METAL AND NONMETAL MINES.

"(a) CONVEYOR BELTS.—The regulations to be issued pursuant to section 311(h) concerning conveyor belts shall also provide that all conveyor belts in use in underground metal and nonmetal mines are to be replaced, on the same schedule, with belts that can meet the flame resistance requirements recommended by the National Institute for Occupational Safety and Health, and which limit smoke and toxic emissions. Any conveyor belt installed in an underground metal or nonmetal mine after the date of enactment of the S–MINER Act shall meet such requirements.

"(b) SEALS.—The regulations to be issued pursuant to section 303(z)(2) concerning the approval, design, construction, inspection, maintenance and monitoring of underground coal mine seals shall make the same rules applicable to seals in underground metal and nonmetal mines which have been classified by the Secretary as a category I, III, or V mine pursuant to section 57.22003 of title 30, Code of Federal Regulations, because they naturally emit defined quantities of methane.

"(c) ADVISORY COMMITTEE.—Promptly after the date of enactment of the S–MINER Act The Secretary shall establish an advisory committee to provide recommendations as to the need to revise the regulations applicable to underground metal and nonmetal mines to ensure that miners in such mines are as protected in emergency situations as will be underground coal miners following the full implementation of the MINER Act, the provisions of the S–MINER Act, and related actions by the Secretary. The advisory committee shall be established pursuant to the Advisory Committee Act, and shall provide recommendations to the Secretary and to Congress not later than 21 months after the date of enactment of this Act, including recommendations as to any action by Congress that could facilitate the goal of providing equivalent protections to miners in underground metal and nonmetal mines.".

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

(1) self-rescue device that permits the replenishment of oxygen without requiring the device user to remove the device; and

(2) underground communication device that provides for communication between underground and surface personnel via a wireless two-way medium.

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

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

(2) improved battery capacity and common connection specifications to enable emergency communication devices for miners to be run from the same portable power source as a headlamp, continuous dust monitor, or other device carried by a miner;

(3) improved technology for assisting mine rescue teams, including devices to enhance vision during rescue or recovery operations;

(4) improved technology, and improved protocols for the use of existing technologies, to enable conditions underground to be assessed promptly and continuously in emergencies, so as to facilitate the determination by appropriate officials of the instructions to provide both to miners trapped underground and to mine rescue teams and others engaged in rescue efforts;

(5) improvements to underground mine ventilation controls separating mine entries to be more resistant to mine fires and explosions, particularly in those entries used for miner escapeways;

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

(7) protective strategies for the placement of equipment, cables, and devices that are to be utilized during mine emergencies such as communication sys-

tems, oxygen supplies, and mine atmosphere monitoring systems, to protect them from mine fires, roof falls, explosions, and other damage.

SEC. 5. SUPPLEMENTING ENFORCEMENT AUTHORITY.

(a) AUTHORITY OF INSPECTORS.—Section 103(a) (30 U.S.C. 813(a)) is amended by adding at the end the following: "No person shall limit or otherwise prevent the Secretary from entry on a coal or other mine, or interfere with the Secretary's inspection activities, investigative activities, or rescue or recovery activities.".

(b) TRANSITION TO A NEW GENERATION OF INSPECTORS.—Section 505 (30 U.S.C. 954) is amended—

(1) by striking "The Secretary" the first place it appears and inserting "(a) The Secretary"; and

(2) by adding at the end the following:

"(b) Within 270 days of the enactment of the S–MINER Act, the Secretary shall establish a Master Inspector program to ensure that the most experienced and skilled employees in the Nation have the incentive, in terms of responsibilities and pay, to serve as mine safety and health inspectors in this Nation's mines.

"(c) In order to ensure that the Secretary has adequate time to provide that a sufficient number of qualified and properly trained inspectors of the Mine Safety and Health Administration are in place before any inspectors employed as of the date of enactment of the S–MINER Act retire, any ceilings on the number of personnel that may be employed by the Administration with respect to mine inspectors are abolished for the 5-year period beginning on the date of enactment of such Act.

"(d) In the event that, notwithstanding the actions taken by the Secretary to hire and train qualified inspectors, the Secretary is temporarily unable, at any time during the 5-year period beginning on the date of enactment of the S–MINER Act, to employ the number of inspectors required to staff all district offices devoted to coal mines at the offices' highest historical levels without transferring personnel from supervisory or plan review activities or diminishing current inspection resources devoted to other types of mines, the Administration is authorized to hire retired inspectors on a contractual basis to conduct mine inspections, and the retirement benefits of such retired inspectors shall not be reduced as a result of such temporary contractual employment.

"(e) During the 5-year period beginning on the date of enactment of the S–MINER Act, the Secretary shall issue a special report to the appropriate committees of Congress each year, or at such more frequent intervals as the Secretary or any such committee may consider appropriate, providing information about the actions being taken under this section, the size and training of the inspector workforce at the Mine Safety and Health Administration, the level of enforcement activities, and the number of requests by individual operators of mines for compliance assistance.".

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

"SEC. 516. OFFICE OF MINER OMBUDSMAN.

"(a) ESTABLISHMENT OF MINER OMBUDSMAN.—There shall be established, within the Office of the Inspector General of the Department of Labor, the position of Miner Ombudsman. The President, by and with the advice and consent of the Senate, shall appoint an individual with expertise in mine safety and health to serve as the Miner Ombudsman. The Ombudsman shall have authority to hire such personnel as are required to administer his duties in accordance with applicable law, provided they meet any general requirements for employment within the Office of the Inspector General.

"(b) DUTIES.—The Miner Ombudsman shall—

"(1) recommend to the Secretary appropriate practices to ensure the confidentiality of the identity of miners, and the families or personal representatives of the miners, who contact mine operators, authorized representatives of the miners, the Mine Safety and Health Administration, the Department of Labor, or others with information about mine accidents, incidents, injuries, illnesses, possible violations of mandatory health or safety standard violations or plans or other mine safety and health concerns;

"(2) establish a toll-free telephone number and appropriate Internet website to permit individuals to confidentially report mine accidents, incidents, injuries, illnesses, possible violations of mandatory health or safety standard violations or plans or other mine safety and health concerns, and provide plastic wallet cards, refrigerator magnets, or similar devices to all mine operators, which mine operators shall distribute to all current and new miners, with contact information for such confidential reports, and also provide supplies of these devices to miner communities;

"(3) collect and forward information concerning accidents, incidents, injuries, illnesses, possible violations of mandatory health or safety standard violations

or plans or other mine safety and health concerns to the appropriate officials of the Mine Safety and Health Administration for investigation, or to appropriate officials within the Office of Inspector General for investigation or audit, or both, while establishing practices to protect the confidentiality of the identify of those who provide such information to the Ombudsman; and

"(4) monitor the Secretary of Labor's efforts to promptly act upon complaints filed by miners under section 105(c) of the Act or pursuant to other programs administered by the Department to protect whistleblowers, and report to Congress any recommendations that would enhance such rights or protections.

"(c) AUTHORITY.—All complaints of operator violations of any section of this Act or regulations prescribed under this Act that are reported to the Secretary shall be forwarded to the Ombudsman for logging and appropriate action, except that this requirement shall be implemented in such a way as to avoid interference in any way with the ability of the Assistant Secretary for Mine Safety and Health to take prompt actions that may be required in such situations. This shall include complaints submitted in writing, via any phone system, or orally, along with all relevant information available regarding the complainant. All such information shall be retained in a confidential manner pursuant to the Privacy Act of 1974. The Ombudsman shall use such information to monitor the actions taken to ensure that miners' complaints are addressed in a timely manner and in compliance with the appropriate statutes and regulations. The Ombudsman shall refer to appropriate personnel within the Office of the Inspector General for further review any case which he determines was not handled in such fashion.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Ombudsman such sums as may be required for the implementation of his duties out of the sums otherwise made available to the Mine Safety and Health Administration for its activities.".

(d) PATTERN OF VIOLATIONS.—

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

(A) when a potential pattern of violations is identified by any inspector or district manager of the Mine Safety and Health Administration, the operator of the coal or other mine and the authorized representative of miners for the mine shall be notified by the inspector or district manager not later than 10 days after such identification; and

(B) after receiving the notification described in subparagraph (A), the appropriate official of the Mine Safety and Health Administration shall promptly review any such potential pattern of violations and, not later than 45 days after receiving such notification, make a final decision as to whether a citation for a violation of section 104(e) of such Act should be issued in light of the gravity of the violations and the operator's conduct in connection therewith.

(2) IDENTIFICATION OF PATTERN.—Section 104(e)(1) (30 U.S.C. 814(e)(1)) is amended by inserting after the first sentence the following: "In determining whether a pattern of violations exists, the Secretary shall give due consideration to all relevant information, such as the gravity of the violations, operator negligence, history of violations, the number of inspection shifts the Secretary or her agents have spent at the operation, and the frequency of violations per number of inspection days spent at the operation.".

(3) TERMINATION OF PATTERN.—Section 104(e)(3) (30 U.S.C. 814(e)(3)) is amended by adding at the end the following: "In addition, if an operator subject to paragraphs (1) and (2) demonstrates objective evidence that they are correcting the problems that gave rise to the pattern of violations, and the violation frequency rate for such operator declines significantly for a period of 180 days, the withdrawal order provisions of paragraphs (1) and (2) shall no longer apply.".

(4) FINE FOR A PATTERN OF VIOLATIONS.—Section 110 (30 U.S.C. 820) is amended—

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

(B) by inserting after subsection (h) the following:

"(i)(1) If the Secretary determines that a pattern of violations under section 104(e) exists, the Secretary shall assess a penalty, in addition to any other penalty authorized in this Act for a violation of such section, of not less than $50,000 nor more than $250,000. All operators of the mine, including any corporate owners, shall be jointly and severally liable for such penalty. The amount of the assessment under

this paragraph shall be designed to ensure a change in the future conduct of the operators and corporate owners of such mine with respect to mine safety and health, given the overall resources of such operators. Notwithstanding subsection (k) or section 113, a penalty assessed by the Secretary under this paragraph may not be reduced by the Commission.

"(2) In addition to the authority to withdraw miners from an area of a coal or other mine pursuant to section 104(e), the Secretary shall withdraw all miners from the entire mine when any pattern of violations has been determined to exist until such time as the Secretary certifies that all identified violations have been corrected and the operator has agreed to abide by a written plan approved by the Mine Safety and Health Administration to ensure that such a pattern of conduct will not recur.".

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

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

(2) by striking "If," and inserting:

"(2) If,"; and

(3) by inserting after the subsection designation the following:

"(1) An operator issued a citation pursuant to subsection (a) shall notify the Secretary that the operator has abated the violation involved. If such operator fails to provide such a notice to the Secretary within the abatement time as provided for in the citation, the Secretary shall issue an order that requires the operator (or the agent of the operator) to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area as the Secretary determines until an authorized representative of the Secretary determines that such violation has been abated. Notwithstanding any operator notice, no violation shall be determined to be abated until an authorized representative of the Secretary visits the site and determines such violation has been fully abated.".

(f) FAILURE TO TIMELY PAY PENALTY ASSESSMENTS.—Section 105(a) (30 U.S.C. 815(a)) is amended by striking the third sentence and inserting the following: "The operator shall, not later than 30 days from the receipt of the notification of a citation issued by the Secretary, notify the Secretary that the operator intends to contest the citation or proposed assessment of a penalty, and the operator shall place in escrow with the Secretary the amount of the proposed assessment. The Secretary shall place any escrow submitted by a mine operator for this purpose into an interest bearing account and shall release the funds to the operator, including interest accrued, upon the payment of any final assessment determination. If notification and proof of escrow is not provided to the Secretary, the citation and the proposed assessment of penalty shall be deemed a final order of the Commission and not subject to review by any court or agency. In the event that a mine operator refuses to comply with a final order of the Commission to pay civil monetary penalties and statutory interest, the Secretary shall have the authority to issue an order requiring the mine operator to cease production under such final orders of the Commission have been paid in full."

(g) MAXIMUM AND MINIMUM PENALTIES.—Section 110(a)(1) (30 U.S.C. 820(a)(1)) is amended by striking "more than $50,000 for each such violation." and inserting "less than $500 or more than $100,000 for each such violation, except that, in the case of a violation of a mandatory health or safety standard that could significantly and substantially contribute to the cause and effect of a coal or other mine health or safety hazard, the penalty shall not be less than $1,000 or more than $150,000, for each such violation.".

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

(1) in section 105(b)(1)(B)—

(A) by striking: "the size of the business of the operator charged" and inserting "the combined size of the business of the operator and any controlling entity";

(B) by striking "the effect on the operator's ability to continue in business,"; and

(C) by adding at the end the following: "In settling cases, the Secretary shall utilize the same point system as that utilized to propose penalties, so as to ensure consistency in operator penalty assessments."; and

(2) in section 110(j) (as redesignated by subsection (a)(4))—

(A) by striking: "the size of the business of the operator charged" and inserting "the combined size of the business of the operator and any controlling entity";

(B) by striking "the effect on the operator's ability to continue in business,"; and

(C) by adding at the end the following: "In any review requested by a mine operator, or in settling cases, the Commission shall utilize the same point system as that developed by the Secretary for proposed assessments so as to ensure consistency in operator penalty assessments.".

(i) CIVIL PENALTY FOR INTERFERENCE OR DISCRIMINATION.—Section 110 (30 U.S.C. 820) is further amended by adding at the end the following:

"(n) CIVIL PENALTY FOR INTERFERENCE OR DISCRIMINATION.—Any operator who is found to be in violation of section 105(c), or in violation of section 103(a) (as amended by this Act) shall be subject to a civil penalty of not less than $10,000 nor more than $100,000 for each occurrence of such violation.".

(j) WITHDRAWAL ORDER.—Section 107(a) (30 U.S.C. 817(a)) is amended by inserting after the first sentence the following: "In addition, in the event of any violation of section 315 or section 316, or regulations issued pursuant to such sections, such representative shall determine the extent of the area of such mine throughout which the danger exists and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that the violations have been abated.".

(k) CLARIFICATIONS OF INTENT IN THE 1977 ACT.—The Federal Mine Safety and Health Act of 1977 is amended—

(1) in section 3(d) (30 U.S.C. 802)—

(A) by inserting "mineral" before "owner";

(B) by inserting "mineral" before "lessee";

(C) by striking "or any independent" and inserting "and any independent"; and

(D) by inserting before the semicolon the following: ", and no operator may, by contract or other agreement, limit any liability under this Act through transfer of any responsibilities to another person";

(2) in section 103 (30 U.S.C. 813)—

(A) in subsection (b)—

(i) by striking the first sentence and inserting the following: "For the purpose of enabling the Secretary to perform the functions under this Act, the Secretary may, after notice, hold public hearings and sign and issue subpoenas for the attendance and testimony of witnesses and the production of information, including but not limited to relevant data, papers, books, documents and items of physical evidence, and administer oaths, whether or not in connection with a public hearing."; and

(ii) in the last sentence by striking "documents" and inserting "information, including data, papers, books, documents, and items of physical evidence"; and

(B) in subsection (h), in the first sentence, by striking "information" and inserting "data, papers, books, documents, and items of physical evidence";

(3) in section 104 (30 U.S.C. 814)—

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

(B) in subsection (d)(1), as amended by this Act, by striking "while the conditions created by such violation do not cause imminent danger,";

(4) in section 105 (30 U.S.C. 815)—

(A) in subsection (a), in the first sentence, by striking ", within a reasonable time after the termination of such inspection or investigation,";

(B) in subsection (c)—

(i) in paragraph (1)—

(I) by inserting "or an injury or illness in a coal or other mine or that may be associated with mine employment," after "of an alleged danger or safety or health violation in a coal or other mine,"; and

(II) by inserting at the end the following: "No miner shall be required to work under conditions he has reasonable grounds to believe to be abnormally and immediately dangerous to himself beyond the normal hazards inherent in the operation which could reasonably be expected to cause death of serious physical harm before such condition or practice can be abated."; and

(ii) in paragraph (2), by inserting after the fifth sentence the following: "No investigation or hearing authorized by this paragraph may be stayed to await resolution of a related grievance proceeding"; and

(C) by adding at the end the following:

"(e) Attorneys representing the Secretary are authorized to contact any miner or non-managerial employee of a mine operator for the purposes of carrying out the

Secretary's functions under this Act and no attorney representing the Secretary shall be disbarred or disciplined by any State bar or State court for making such contacts. No attorney representing a mine operator in a matter under this Act may concurrently represent individual miners in the same matter."; and

(5) in section 110 (30 U.S.C. 820)—

(A) in subsection (b)(2), by striking "under" and inserting "of subsections (a) through (h) of"; and

(B) in subsection (c)—

(i) by striking "Whenever a corporate operator" and inserting "Whenever a mine operator";

(ii) by striking "safety standard" and inserting "safety standard or requirement of this Act";

(iii) by inserting "partner, owner," after "director,"; and

(iv) by striking "such corporation" and inserting "such mine operator".

(l) FEDERAL LICENSING.—The Secretary shall promptly establish an advisory committee to provide recommendations as to whether the Federal Mine Safety and Health Act of 1977 should provide for Federal licensing of mines, mine operators, mine controllers, or various mine personnel in order to ensure that those engaged in mining activities are not frequent violators of safety and health requirements, and establish a national registry in connection therewith. The advisory committee shall be established pursuant to the Advisory Committee Act, and shall conduct a review of existing State licensing requirements and registries, assess their effectiveness, and shall provide its recommendations to Congress not later than 2 years after the date of enactment of this Act.

SEC. 6. SUPPLEMENTING RESCUE, RECOVERY, AND INCIDENT INVESTIGATION AUTHORITY.

(a) EMERGENCY CALL CENTER.—Not later than 30 days after the date of enactment of this Act, the Secretary shall establish, within the Mine Safety and Health Administration, a central communications emergency call center for all coal or other mine operations that shall be staffed and operated 24 hours per day, 7 days per week, by 1 or more employees of the Mine Safety and Health Administration. All calls placed to the emergency call center shall be answered by an individual with adequate experience and training to handle emergency mine situations. A single national phone number shall be provided for this purpose and the Secretary shall ensure that all miners and mine operators are issued laminated cards with emergency call center information.

(b) CONTACT INFORMATION.—The Secretary shall provide the emergency call center with a contact list, updated not less often than quarterly, that contains—

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

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

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

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

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

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

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

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

(1) MINE LOCATIONS.—The Secretary shall establish, maintain, and keep current, on the Department of Labor's website, a detailed map or set of maps showing the exact geographic location of each operating or abandoned mine in the United States, as determined by a global positioning system. Such map or maps shall—

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

(B) be available to members of the public;

(C) allow a user to find the geographic location of a particular mine, or the geographic locations of all mines of a particular type in a county, congressional district, State, or other commonly used geographic region; and

(D) provide the geographic location of any mining waste impoundments with links to associated emergency contact information and available emergency response plans.

(2) REPOSITORY OF MINING MAPS.—The Secretary shall establish a national repository for preserving a digital archive of mining maps to be accessible directly and without delay from the Department's web site. The mining maps shall include copies of all historic maps that can be obtained, as well as copies of currently approved mining maps, which the Secretary shall arrange to copy and preserve in digital form. The Secretary may coordinate the operation of such repository with the Secretary of the Interior provided the other requirements of this paragraph are observed. In addition, the Secretary shall include in this repository copies of the most currently available mine emergency response plan, roof plans, ventilation plans, and such other plans required for any type of mine, following any required approval, so that they may be immediately accessed in an emergency, in a manner consistent with the requirements of section 312(b) of the Act.

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

(1) in the first sentence, by inserting "or reportable event" after "accident";

(2) in the second sentence—

(A) by inserting "of accidents" after "the notification"; and

(B) by inserting ", or in the case of a reportable event that is not required to be reported as an accident, within 1 hour of the time at which the operator realizes that the event has occurred" before the period; and

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

"(1) a fire not required to be reported more promptly;

"(2) a sudden change in mine atmospheric conditions in a sealed area;

"(3) a coal or rock outburst that causes the withdrawal of miners; or

"(4) any other event, as determined in regulations promulgated by the Secretary, that needs to be reported within 1 hour in order for the Secretary to determine if the working conditions in the mine are safe.".

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

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

"(v) The provision of uniform credentials to mine rescue team members, support personnel, or vehicles for immediate access to any mine site.

"(vi) The plans required at each mine to ensure coordination with local emergency response personnel and to ensure that such personnel receive adequate training to offer necessary assistance to mine rescue teams in the event such assistance is requested. Such local emergency response personnel shall not perform the duties of any mine rescue team.

"(vii) Requirements to ensure that operators are prepared to facilitate the work of mine rescue teams during an emergency by—

"(I) storing necessary equipment not brought on site by mine rescue teams in locations readily accessible to mine rescue teams;

"(II) providing mine rescue teams with a parking and staging area adequate for their needs;

"(III) identifying a space appropriate for coordinating emergency communications with the mine rescue team; and

"(IV) identifying and maintaining separate spaces for family members, community members, and press to assemble during an emergency so as to facilitate communications with these groups while ensuring the efforts of the mine rescue teams are not hindered.".

(2) RESEARCH.—Section 22(h)(5)(A) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671(h)(5)(A)) is amended by adding before the period at the end thereof: "including advanced drilling technologies, and any special technologies required for safety or rescue in mining more than 1,500 feet in depth".

(f) Title I of the Act is amended by adding at the end thereof a new section:".

"SEC. 117. EMERGENCY PREPAREDNESS PLAN.

"Not later than 6 months of the enactment of the S–MINER Act, the Secretary shall establish and disseminate guidelines for rescue operations that will: (1) establish clear lines of authority within the agency for such operations; (2) establish clear lines of demarcation so private sector and State responders can properly implement their responsibilities; (3) be appropriate for rescue in various types of conditions reasonably likely to be encountered in the United States, including such factors as the depth of the mining, ground stability, ground slope, remoteness from major roads, surface ownership and access problems, and the availability of necessary commu-

nications linkages. The Secretary shall consult with States, rescue teams and other responders in developing such guidelines, and shall update them from time to time based upon experience.".

(g) AUTHORITY OF SECRETARY DURING RESCUE OPERATIONS.—Section 103 (30 U.S.C. 813) is further amended—

(1) in subsection (j), by adding at the end thereof:

"If the representative of the Secretary supervises and directs the rescue and recovery activities in such mine, the operator shall comply with the requests of the authorized representative of the Secretary to facilitate rescue and recovery activities including the provision of all equipment, personnel, and other resources required to perform such activities in accordance with the schedule and requirements established by the representative of the Secretary for this purpose, and failure of the operator to comply in this regard shall be considered an egregious violation of this Act."; and

(2) in subsection (k), by striking ", when present,".

(h) RESCUE COMMUNICATIONS.—

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

(2) AMENDMENT TO FMSHA.—Title I of the Act is further amended by adding at the end the following:

"SEC. 118. FAMILY LIAISONS REQUIREMENT.

"The Secretary shall—

"(1) designate a full-time permanent employee of the Mine Safety and Health Administration to serve as a Family Liaison, who shall, at least in instances where multiple miners are trapped, severely injured or killed, act as the primary communication with the families of the miners concerning all aspects of the rescue operations, including the location or condition of miners, and assist the families in getting answers to their questions, and otherwise serve as a liaison to the families, and provide for the temporary reassignment of other personnel who may be required to assist the Family Liaison in connection with a particular incident;

"(2) require the Mine Safety and Health Administration to be as responsive as possible to requests from the families of such miners for information relating to the mine accident, and waive any fees required for the production of documents pursuant to 5 U.S.C. 552(a)(3) in connection with a request from a family member, or authorized representative of miners, for documents relating to a mine fatality, notwithstanding any conditions for fee waivers law that may otherwise be imposed by law; and

"(3) designate a highly qualified representative of the Secretary with experience in public communications to be present at mine accident sites where rescues are in progress during the entire duration of such rescues, to serve as the primary communicator with the press and the public concerning all aspects of the rescue operations, including the location or condition of miners.".

(3) CONFORMING AMENDMENTS.—The Act is amended—

(A) in section 103(f), by inserting before the period at the end of the first sentence the following: ", and to participate in any accident investigation pursuant to the requirements of this Act. Any family member of a miner trapped or otherwise unable to execute a designation of a miner representative on his or her own behalf may do so on behalf of the miner for any and all purposes"; and

(B) in section 316(b)(2)(E)(vi) (as added by this Act), by adding at the end the following "The plan shall also set forth the operator's plans for assisting the Secretary in the implementation of section 118.".

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

"(l) Rescue efforts for trapped miners shall not cease as long as there is any possibility that miners are alive, unless such efforts pose a serious danger to rescue or other workers, and the decision to cease a rescue shall be made by the Secretary's representative. Thereafter, efforts to recover the remains of miners shall continue unless such efforts pose a serious danger to recovery workers, and the decision to cease such recovery efforts shall be made by the Secretary's representative.".

(j) ACCIDENT AND INCIDENT INVESTIGATIONS.—Section 103(b) (30 U.S.C. 813(b), as amended by section 5(k)(2) of this Act, is further amended—

(1) by striking "For the purpose" and inserting the following:

"(3) For the purpose";

(2) by inserting after the subsection designation the following:

"(1) For all accident and incident investigations under this Act, the Secretary shall determine why the accident or incident occurred; determine whether civil or

criminal requirements were violated and, if so, issue citations and penalties, and make recommendations to avoid any recurrence. The Secretary shall also determine whether the conduct or lack thereof by Agency personnel contributed to the accident or incident.

"(2)(A) For any accidents or incidents involving multiple serious injuries or deaths, or multiple entrapments, there shall also be an independent investigation to consider why the accident or incident occurred, make recommendations to avoid a recurrence, and determine whether the conduct or lack thereof by agency personnel contributed to the accident or incident.

"(B) Not later than 30 days after the date of enactment of the S–MINER Act, the Secretary shall initiate rulemaking activity to establish rules on the procedures that will be used to investigate accidents and incidents involving multiple serious injuries or deaths, or multiple entrapments, and shall directly contact and solicit the participation of

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

"(ii) organizations representing miners;

"(iii) mine rescue teams;

"(iv) Federal, State, and local investigation and prosecutorial authorities; and

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

Such rulemaking shall be completed by October 1, 2008.

"(C) The rules for the investigation of accidents or incidents involving multiple serious injuries or deaths, or multiple entrapments, shall provide for the appointment and operations of any such independent investigation team in accordance with the requirements of this paragraph. An independent investigation team shall be appointed by the Director of the National Institute for Occupational Safety and Health as soon as possible after a qualifying accident or incident. The members shall consist of:

"(i) a representative from the National Institute for Occupational Safety and Health who shall serve as the Chairman;

"(ii) a representative of mine operators with familiarity with the type of mining involved;

"(iii) a representative of mine workers with familiarity with the type of mining involved, who shall be the workers' certified bargaining representative at the mine or, if there is no certified representative at the mine, then a workers' representative jointly selected by organized labor organizations:

"(iv) an academic with expertise in mining; and

"(v) a representative of the State in which the accident or incident occurred to be selected by the Governor.

"(D) Such rules shall include procedures to ensure that the Secretary will be able to cooperate fully with the independent investigation team and will use the powers of the Secretary under this section to help obtain information and witnesses required by the independent investigation team, procedures to ensure witnesses are not coerced and to avoid conflicts of interest in witness representation, procedures to ensure confidentiality if requested by any witness, and procedures to enable the independent investigation team to conduct such public hearings as it deems appropriate. Such rules shall also require that upon completion of any accident or incident investigation of accidents or incidents involving multiple serious injuries or deaths, or multiple entrapments, the independent investigation team shall—

"(i) issue findings as to the actions or inactions which resulted in the accident or incident;

"(ii) make recommendations as to policy, regulatory, enforcement or other changes, including statutory changes, which in the judgment of the independent investigation team would best prevent a recurrence of such actions or inactions at other mines; and

"(iii) promptly make all such findings and recommendations public (except findings and recommendations that must be temporarily withheld in connection with a criminal referral), including appropriate public hearings to inform the mining community of their respective findings and recommendations.

"(E) As part of the Secretary's annual report to Congress pursuant to section 511(a), the Secretary shall report on implementation of recommendations issued by any independent investigation teams in the preceding 5 years."; and

(3) by adding at the end the following:

"(4) Nothing in this Act shall be construed to limit the authority of the Chemical Safety and Hazard Investigation Board to conduct an independent investigation of the accident or incident or the events or factors resulting therein, nor with the authority of the Office of the Inspector General to conduct an investigation of the conduct of DOL personnel in connection with an accident or incident or the events or

factors resulting therein, and the Secretary shall cooperate in full with any such investigation. Such investigation shall be in addition to any investigation authorized by section 103(b).".

SEC. 7. RESPIRABLE DUST STANDARDS.

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

"SEC. 202. DUST STANDARD AND RESPIRATORY EQUIPMENT.

"(a)(1) Effective on the date of enactment of the S–MINER Act, each coal mine operator shall continuously maintain the concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below a time-weighted average of 1.00 milligrams of respirable dust per cubic meter of air averaged over 10 hours or its dose-equivalent for shorter or longer period of time. For purposes of this paragraph, 'a dose-equivalent' means the amount of dust that a miner would inhale during his work shift as if he were working for 10 hours, and the term 'shift' means portal-to-portal for underground coal mines and 'bank to bank' for other coal mines.

"(2) At regular intervals to be prescribed by the Secretary and the Secretary of Health and Human Services, the Secretary will take accurate samples of the amount of respirable dust in the coal mine atmosphere to which each miner in the active workings of such mine is exposed in order to determine compliance with the requirements of paragraph (a)(1) of this section. In addition, the Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this title. All samples by the Secretary shall be taken by a personal dust monitor that measures, records and displays in real time the concentration of respirable dust to which the miner wearing the device is exposed, and shall include the sampling of areas, occupations or persons. For the purposes of determining compliance with the exposure limit for respirable dust, only a single sample shall be required to determine non-compliance, and there shall be no adjustment for measurement error in the measured level of respirable dust.

"(3) At intervals established by the Secretary, each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed to identify sources of exposure so that the operator can take corrective action and assure that the exposure of each mine is below the exposure limit. Under the provisions of this Act, all such samples shall be taken by a personal dust monitor that measures, records and displays the concentration of respirable dust to which the miner wearing the device is exposed, and may include samples of less than a full shift. The results of such sampling shall be transmitted to the Secretary in a manner established by him, and recorded by him in a manner that will assure application of the provisions of this section of the Act.

"(4) Each miner shall be equipped with a personal dust monitor that measures, records and displays in real time the concentration of respirable dust to which the miner wearing the device is exposed. Each miner shall be permitted to adjust his work activities whenever necessary to keep his exposure to respirable coal dust, as measured, recorded and displayed by such device, at all times at or below the permitted concentration.

"(b) Effective on the date of enactment of the S–MINER Act, each operator of a coal or other mine shall continuously maintain the concentration of respirable silica dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below a time-weighted average of 0.05 milligrams of respirable silica dust per cubic meter of air averaged over ten hours or its dose-equivalent for shorter or longer period of time. For the purposes of this paragraph, compliance shall be determined by the sampling of areas, occupations or persons, only a single sample shall be required to determine non-compliance, and there shall be no adjustment for measurement error in the measured level of respirable silica dust. For the purposes of this paragraph, a 'dose-equivalent' means the amount of dust that a miner would inhale during his work shift as if he were working for 10 hours, and the term 'shift' means portal-to-portal for underground mines and 'bank to bank' for other mines.

"(c) Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be made available to all persons whenever exposed to concentrations of respirable dust or silica in excess of the levels required to be maintained under this section. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust and silica in the mine atmosphere in excess of the levels required to be maintained under this section.

"(d) Each operator shall report and certify to the Secretary at such intervals as the Secretary may require as to the conditions in the active workings of a coal mine, including, the average number of working hours worked during each shift, the quantity and velocity of air regularly reaching the working faces, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.".

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

(c) ASSESSMENT ON PROGRAM OPERATIONS OF CUMULATIVE IMPACT OF EXTERNAL REQUIREMENTS ADDED SINCE 1977.—The Secretary shall request the National Academy of Sciences to conduct a study of the impact on the mine safety and health responsibilities of the Department of Labor of various statutes, executive orders, and memoranda applicable to the issuance of rulemaking and guidance and to enforcement. The study shall include an assessment of the Equal Access to Justice Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Data Quality Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, the Federal Advisory Committee Act, the Congressional Review Act, Executive Order 12866, Executive Order 13422, and memoranda from the Office of Management and Budget on guidance, risk assessment and cost analysis. The Secretary shall request that the National Academy of Sciences consult widely with experts in administrative law and other disciplines knowledgeable about such requirements, and to quantify to the extent possible the costs to miners of the aforementioned requirements. The Secretary shall further request that recommendations be included in the report, and that such report and recommendations be completed, and forwarded to the Congress, no later than 21 months after the date of enactment of this Act.

SEC. 8. OTHER HEALTH REQUIREMENT.

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

"(f) Notwithstanding the other requirements of this section, not later than 30 days of the enactment of the S–MINER Act, the National Institute for Occupational Safety and Health shall forward to the Secretary its Recommended Exposure Limits (RELs) for chemical and other hazards to which miners may be exposed, along with the research data and other necessary information. Within 30 days of receipt of this information, the Secretary shall to adopt such recommended exposure limits as the Permissible Exposure Limits (PELs) for application in the mining industry. The National Institute of Occupational Safety and Health shall annually submit to the Secretary any additional or revised recommended exposure limits for all chemicals and other hazards to which miners may be exposed, and the Secretary shall be obligated to adopt such exposure limits as PELs for application in the mining industry within 30 days of receipt of such information. Upon petition from miners or mine operators providing credible evidence that feasibility may be an issue for the industry as a whole, the Secretary may review the feasibility of any PEL established pursuant to this paragraph before placing it into effect and, following public notice and comment, make necessary adjustments thereto, provided that the adjusted standard is as protective as is feasible, and that the PEL shall go into effect as required by the other provisions of this paragraph if such action is not completed within one year. Moreover, upon petition from miners or mine operators providing credible evidence that a REL issued by the National Institute of Occupational Safety and Health lacks the specificity required to serve as a PEL pursuant to this Act, the Secretary may defer implementation of the requirements of this paragraph and shall promptly request National Institute of Occupational Safety and Health to recommend a sufficiently detailed REL, at which time the provisions of this paragraph shall be implemented. Nothing in this subsection shall limit the ability of the National Institute of Occupational Safety and Health to make such recommendations more frequently than 1 time per year, nor limit the Secretary from establishing requirements for chemical and other substances or health hazards in the mining industry that are more comprehensive and protective than those established pursuant to this subsection and in accordance with the other requirements of this section.".

(b) ASBESTOS.—Section 101 (30 U.S.C. 811) is further amended by adding at the end the following:

"(g) The health standard for asbestos established by the Occupational Safety and Health Administration that is set forth in section 1910.1001 of title 29, Code of Federal Regulations, or any subsequent revision of that regulation, shall be adopted by the Secretary for application in the mining industry not later than 30 days of the enactment of the S–MINER Act. Nothing in this paragraph shall preclude the Secretary from adopting regulations to address asbestos hazards to miners not covered by the regulations of the Occupational Safety and Health Administration.".

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

"(h) Unless and until there is additional rulemaking pursuant to the requirements of this section, the Secretary shall apply the provisions of the interim final rule of October 3, 2000, concerning hazard communication, in lieu of the final rule of June 21, 2002, concerning hazard communication.".

I. PURPOSE

The purpose of H.R. 2768 is to enhance occupational safety and health protection for this Nation's miners.

II. COMMITTEE ACTION INCLUDING LEGISLATIVE HISTORY AND VOTES

Early Federal Action on Mine Safety and Health

The Federal Government recognized the safety and health dangers in mining as early as 1865, when a bill to create a Federal Mining Bureau was introduced in the Congress.[1] In 1891, Congress passed the first statute governing mine safety. This legislation was modest and applied only to mines in U.S. territories, establishing minimum ventilation requirements and prohibiting the employment of children under age 12.[2]

Between 1880 and 1910, there were well over 2,400 fatalities a year.[3] As a result, on July 1, 1910, Congress passed Public Law 179, creating the Bureau of Mines within the Department of the Interior.[4] It was charged with:

> diligent investigation of the methods of mining, especially in relation to the safety of miners, and the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the treatment of ores and other mineral substances, the use of explosives and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to said industries.[5]

This legislation was very limited and specifically denied "any right or authority in connection with, the inspection or supervision of mines in any state" on the part of any Bureau employee."[6] It was, however, a Federal recognition of the need to address hazards in the mineral industries.[7]

In 1941, the House and Senate passed the bill which became Public Law 49 and was called Title I of the Federal Coal Mine Safety Act.[8] Title I specifically authorized Federal authorities to inspect coal mines for health and safety hazards. Over the next 25 years, several other mine safety and health laws were enacted, ex-

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[1] U.S. Senate, The Federal Coal Mine Health and Safety Act of 1969, 91st Congress, 1st Session, Report No. 91–411 (September 17, 1969); U.S. House of Representatives, The Federal Coal Health and Safety Act, 91st Congress, 1st Session, Report No. 91–563 (October 13, 1969), p. 1. House Report can be found at *http://www.msha.gov/SOLICITOR/COALACT/69hous.htm*.

[2] U.S. Department of Labor, History of Mine Safety and Health Legislation (October 5, 2007), *http://www.msha.gov/MSHAINFO/MSHAINF2.HTM*.

[3] Department of Labor, Coal Fatalities for 1900 through 2006 (October 5, 2007), *http://www.msha.gov/stats/centurystats/coalstats.asp*.

[4] George Siehl, "The Federal Role in Mine Safety," The Library of Congress Legislative Reference Service (February 3, 1969), p. 1.

[5] Report No. 91–563 at pp. 1–2; Siehl, *supra,* p. 1. *See also*: Report No. 91–411, pp. 3–4.

[6] *Id*.

[7] Report No. 91–411, p. 4.

[8] Siehl, *supra,* p. 3.

panding the authority of inspectors and providing for mandatory safety codes.

Modern Mine Safety and Health Legislation

91ST CONGRESS

In 1967, there were 222 mine fatalities, followed by 311 in 1968.[9] The most infamous of these mine disasters was a mine explosion that occurred at an underground coal mine near Farmington, Marion County, West Virginia on November 20, 1968. Of the 99 miners in the mine at the time of the explosion, only 21 were able to escape. After several days of rescue efforts, the mine was sealed and 78 miners were lost forever.[10]

After many days of hearings, mine tours, and consultations with experts, Public Law 91–173, the Federal Coal Mine Health and Safety Act of 1969, or the Coal Act, was enacted. The Coal Act was more comprehensive and more stringent than any previous Federal legislation.[11] It covered both surface mining and underground mining and required, on a yearly basis, 2 inspections for surface mines and 4 inspections for underground mines. Safety standards were strengthened and interim health standards were adopted. In addition, it included specific instructions to the Agency on how to develop these improved standards. The law increased Federal enforcement powers and mandated monetary penalties for all violations and adopted criminal penalties for "knowing and willful" violations. Finally, the Coal Act provided compensation for those miners disabled by "black lung" disease.[12]

Over the next several Congresses, additional mine safety and health legislation was introduced, hearings were held, but nothing was enacted. In 1970, the Senate Committee on Human Resources held 3 hearings on health and mine safety, but no further legislative action was taken.[13]

95TH CONGRESS

In 1977, Congress and the President moved forward with additional mine safety legislation. On November 9, 1977, the President signed the Federal Mine Safety and Health Act of 1977 (Public Law 95–164) into law on November 9, 1977. It placed coal mines and metal and nonmetal mines under a single law, with enforcement provisions similar to the 1969 Act, although it maintained separate safety and health standards. The new law moved enforcement from the Department of Interior to the Department of Labor and renamed the agency the Mine Safety and Health Administration (MSHA).

The law also improved the assessment and collection of civil penalties and provided for 4 inspections a year at all underground mines and 2 at all surface mines. The advisory standards for metal and nonmetal mines and state enforcement plans were eliminated.

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[9] Report No. 91–563, p. 2.
[10] Chris Stirewalt, *supra*; Report, No. 91–563, p. 2.
[11] U.S. Department of Labor, History of Mine Safety and Health Legislation, *supra*.
[12] *Id.*
[13] U.S. Senate, The Federal Mine Safety and Health Act of 1977, 95th Congress, 1st Session, Report No. 95–181 (May 16, 1977), p. 5, *http://www.msha.gov/SOLICITOR/COALACT/leghist2.htm*.

In addition, the law enhanced the protection of miners from retaliation for exercising their rights under the new law. It also provided for mandatory miner training and required mine rescue teams for all underground mines. Finally, the law increased the involvement of miners and their representatives in health and safety activities and established the Federal Mine Safety and Health Review Commission to provide for independent review of a majority of MSHA's enforcement actions.[14]

In 1978, the Congress also passed and the President signed the Black Lung Benefits Reform Act, which amended the Mine Act of 1969 to strengthen somewhat the provisions regarding black lung benefits for miners.[15]

Recent Legislative Action on Mine Safety and Health

104TH CONGRESS

On June 14, 1995, Representative Cass Ballenger introduced H.R. 1834, the Safety and Health Improvement and Regulatory Reform Act of 1995. It would have repealed the Mine Act of 1977 and eliminated MSHA. Instead it would have regulated mining under a scaled-back version of the Occupational Safety and Health Act (OSHA). While the House Subcommittee on Workforce Protections of the Committee on Economic and Educational Opportunities, held hearings on the bill on June 20, 1995, June 28, 1995 and July 27, 1995, no legislation was enacted.[16]

107TH CONGRESS

On October 21, 2002, the labor subcommittee[17] of the Senate Committee on Appropriations held a field hearing in Johnstown, Pennsylvania, to investigate the Quecreek mine disaster of July 24, 2002. Nine miners were trapped 300 feet below in the surface when an estimated 77 million gallons of water had poured into the mine. All of the miners were rescued. The subcommittee examined the adequacy of funding for MSHA, mine inspection regulations, safety reviews and accident investigation procedures.

108TH CONGRESS[18]

On July 10, 2003, Rep. Nick Rahall proposed an amendment to bar the use of any funds appropriated to the Department of Labor to implement regulations proposed on March 6, 2003. The regulations in question, proposed by the Bush Administration, would have permitted an increase in the amount of coal dust to which

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[14] U.S. Department of Labor, Fact Sheet, supra; U.S. Department of Labor, History of Mine Safety and Health Legislation, *supra. See also*: J. Davitt McAteer, The Federal Mine Safety and Health Act of 1977: Preserving a Law that Works,98 W. VaL. Rev. 1105 (Summer, 1996).

[15] When the House considered the legislation on September 20, 1977, it inserted provisions of an amended S. 1538, which had been introduced by Senator Randolph on May 16, 1977. Several other bills were introduced regarding black lung, including H.J. Res 151 (Rahall), H.R. 2185 (Duncan) H.R. 1532, H.R. 4388, H.R. 4389, H.R. 5152 (Simon), H.R. 4426 (Findlay) H.R. 4858 (Slack), H.R. 5297 (Beard), H.R. 7598 (Murtha), H.R. 7979 (Sarasin), H.R. 8484 (Erlenborn), as well as S. 1041 (Sparkman), extending black lung benefits to miners from iron mines with silicosis.

[16] McAteer, supra, pp.1–2. In addition in the 104th Congress, Senator Robb introduced S. 1517 to appropriate funds for the Black Lung Disability Trust Fund, and Rep. Kanjorski (D–PA) introduced H.R. 293, a bill regarding black lung. He also introduced similar legislation in the 105th (H.R. 1600) and 106th Congresses (H.R. 722).

[17] Subcommittee on Departments of Labor, Health and Human Services, and Education, and Related Agencies.

[18] Congressional Record, debated p. H6561–6562, voted p. HR6578.

miners could be exposed. The amendment failed by 2 votes, but the Administration halted work on the proposed regulation.[19]

109TH CONGRESS[20]

In 2006, there were 3 serious mine disasters that killed 18 miners. At the Sago mines in West Virginia 12 miners died, followed by 2 fatalities at the Aracoma Alma mine, also in West Virginia and 4 deaths at the Darby mine in Harlan County, Kentucky, bringing the death toll in the first 5 months of 2006 nearly 50% higher than the previous year.[21]

These disasters, along with the rise in coal production in recent years, put mine safety front and center. On February 13, 2006, House Education and Workforce Committee Ranking Member George Miller, joined by Resources Committee Ranking Member Nick Rahall, conducted a congressional forum with families from the Sago, Aracoma Alma, and Jim Walters mine disasters. On February 15, 2006, the Senate Employment and Workforce Safety Subcommittee of the Health, Education, Labor and Pensions (HELP) Committee held a roundtable hearing on "Mine Safety Technology." On March 2, 2006, the full HELP Committee held a hearing on the state of mine safety and health.[22]

As a result of the Committee's inquires, the Mine Improvement and New Emergency Response Act, S. 2803, called the MINER Act, was introduced on May 16 by Senators Enzi, Kennedy, Isakson, Murray, Rockefeller, Byrd, DeWine and Santorum. This compromise bill was referred to the HELP Committee, which held an executive session on May 17, 2006. A manager's amendment was accepted, along with an amendment offered by Senator Sessions to change the name of the Sago Mine Safety Grant program in Section 14 to "Brookwood-Sago." The bill was unanimously voted out of the HELP Committee with approval and passed in the Senate by unanimous consent on May 24, 2006.[23]

The House companion bill, H.R. 5432, was introduced on May 19, 2006 by Representative Capito (R–WV). This bill was referred to the Committee on Education and Labor and then to the Subcommittees on Workforce Protections and on 21st Century Competitiveness.

On June 7, 2006, S. 2083 was passed by the House of Representatives under suspension on a vote of 381–37. The President signed the bill, which became Public Law No. 109–236, on June 15, 2006.[24]

Some technical changes were made to the Act and were included in Section 1301 of H.R. 4, the Pension Protection Act. H.R. 4 was signed into law by the President on August 20, 2006. These changes affected only the numbering of the penalties sections.[25]

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[19] 68 FR 39881.

[20] In the 106th Congress, there were a few bills addressing mine operations, including S. 1114 introduced by Senator Enzi to treat small mines as "small entities for data collection purposes. On November 11, 2000, the HELP Committee reported the bill out of Committee but no further action was taken on the legislation.

[21] U.S. Senate, The Mine Improvement and New Emergency Response Act of 2006 or the "Miner Act", 109th Congress, 2d Session, Report No. 109–365, (December 6, 2006), p. 2.

[22] *Id.*.

[23] *Id.*, p.3.

[24] *Id.*

[25] *Id.*

Legislation that was broader and comprehensive in scope than the MINER Act was also introduced in 2006 in both the House and Senate. H.R. 5389, introduced by Representatives Miller and Rahall on May 16, 2006 and S. 2798 introduced by Senator Kennedy on May 12, 2006 would have provided for additional safety measures, including the continuous monitoring of the mine atmosphere, refuges stocked with 5 days of supplies, as well as a lower limit on dust concentrations. In addition the legislation provided more stringent requirements for rescue teams, required family involvement in accident investigations, provided for stricter penalties and created a safety ombudsman within the Department of Labor Office of Inspector General.[26]

The MINER Act has many provisions to improve miner health and safety. It requires underground coal mine operators to develop an emergency plan for each mine they run. In addition, each mine must have at least 2 rescue teams located no less than an hour away. The Act increases civil and criminal penalties for violations of Federal safety standards and gives MSHA the authority to close a mine on a temporary basis that fails to pay penalties assessed against it. The Act also requires MSHA to issue a new standard regarding the sealing of abandoned mines. In addition, the law mandates studies into ways to enhance safety and establishes a new office in the National Institute for Occupational Health and Safety (NIOSH) to improve mine safety. Finally, the law establishes new scholarships and grant programs for training about mine safety.[27]

110TH CONGRESS

In 2007, the Education and Labor Committee established as one of its priorities, oversight of the activities of MSHA, including its implementation of the 2006 MINER Act.[28]

Three oversight hearings were held during the year. On March 28, 2007, the Committee held a hearing entitled "Protecting the Health and Safety of America's Mine Workers." On May 16, 2007, the Committee held a hearing entitled "Evaluating the Effectiveness of MSHA's Mine Safety and Health Programs. And on October 3, 2007, the Committee held an additional oversight hearing on "The Perspective of the Families at Crandall Canyon."

On June 19, 2007, one year after the passage of the MINER Act, Representatives Miller, Rahall and Woolsey introduced H.R. 2768, the S–MINER Act and H.R. 2769, the Miner Health and Enhancement Act of 2007 to address the problems documented by the Com-

[26] Edward Rappaport, Coal Mine Safety, CRS (June 23, 2006), p. 6.

[27] Report, 109–365; p. 11, Rappaport, supra. Also in the 109th, other bills were introduced on mine safety including, H.R. 4695 (Rahall), S.2231 (Byrd), S.2308 (Specter), S. 2448 (Durbin), and H.R. 5481 (Norwood). Finally, on June 8, 2006, Representative Norwood introduced H.R. 5554, which would have prohibited the Secretary of Labor from promulgating regulations based on guidelines, etc. of any organization, unless the Secretary determined that the organization was a nationally recognized standard setting organization. No action was taken on any of these bills.

[28] Democratic Staff Report, Background on the Activities of the House Education and Labor Committee with Respect to Mine Safety and Health, House Committee on Education and Labor (September 9, 2007), *Http://edlabor.house.gov/publications/20070907MineSafety.pdf*. In addition to the oversight hearings, the staff report notes that a number of letters were sent from the Committee to the Secretary of Labor expressing concern about implementation of the MINER Act or other requirements of law.

mittee's oversight activities.[29] On July 26, 2007, the Subcommittee on Workforce Protections conducted a legislative hearing on these two bills.

In the Senate, parallel legislation was introduced by Senators Kennedy, Byrd and Murray. The Senate bill covered in one bill the provisions in the two House bills, and disagreed with the House bills in only one particular.[30] Also, during 2007, oversight hearings on mine safety and health were held on May 22, 2007 by the Subcommittee on Employment and Workplace Safety of the Senate Health, Education, Labor and Pensions Committee on May 22, and by the full committee on October 2. Hearings were also held on February 28 and September 5 by the Subcommittee on Labor, Health and Human Services, Education and Related Agencies of the Senate Committee on Appropriations.

The Education and Labor Committee marked up the legislation on October 31, 2007. Chairman Miller offered an amendment in the nature of a substitute for H.R. 2768. The substitute combined the provisions of H.R. 2768 and H.R. 2769, and made further changes to those provisions.

Following discussion of the need to discuss one matter with the Energy and Commerce Committee, Chairman Miller moved to strike a provision of the substitute extending to concrete plants (which are mines under the law) the protections of section 311 and 312 of the Emergency Planning Community Right-to-Know Act. This was agreed to by unanimous consent.

Three amendments to the revised substitute were offered.

Mr. Kline offered an amendment to add a new section to the bill concerning safety and health committees. Mr. Wilson offered a substitute amendment in the nature of a substitute, striking all after the enacting clause and substituting requirements for several studies, providing for coordination between MSHA and the Bureau of Land Management, and for the dissemination of accident information. Mr. McKeon offered an amendment to strike provisions of the bill concerning post-accident communication systems, refuges, seals, conveyor belts, belt air, and several others. Rollcall votes were taken on each amendment and each was defeated.

The substitute was then approved by a rollcall vote of 26–18, and the bill ordered reported as amended.

III. Summary of the Bill

This bill would supplement the MINER Act of 2006. The MINER Act established some new requirements for underground coal mines in order to protect underground coal miners in the event of an emergency, and to address certain hazards which became clear after the tragedies early that year. On certain other matters, MINER Act provided for further research and development.

The Supplemental MINER Act, or "S–MINER Act" for short, builds upon the framework established in the MINER Act. Following are:

- an overview of the problems identified by the Committee, and the solutions provided in the S–MINER Act;

[29] Also, on January 19, 2007, Representative Rahall introduced H.R. 576 to prohibit belt haulage entries from being used to ventilate mines.

[30] The one difference between the two House bills and the unified Senate bill involved the date for implementation of new restrictions on the use of belt air.

- a short summary of which provisions of the S–MINER Act are applicable to various sectors of the mining industry; and
- a timeline of implementation dates in the S–MINER Act.

1. OVERVIEW OF PROBLEMS AND SOLUTIONS PROVIDED IN THE S–MINER ACT

Group A: Problems highlighted by Crandall Canyon

Problem 1: Retreat mining is dangerous and poorly regulated. As underground coal mine operators run out of resources they can readily extract from their properties, they have used every available method to extract more. Where it can be used, longwall mining equipment permits coal extraction without the need to leave pillars of coal in place to hold up the roof, and the equipment is designed to protect miners from harm. Retreat mining is another way to get extra coal. It involves the extraction of the coal pillars originally left in place to hold up the roof, and it must be performed under a plan specifically designed for the situation so miners will not be hurt as the roof collapses. Sometimes retreat mining also involves reduction of giant "barriers" of coal left in place to hold up roofs under high mountains. Crandall Canyon threw light on the risky nature of retreat mining, and the poor oversight of retreat mining plans by MSHA.

Solution:

- The bill requires MSHA to more closely review retreat mining plans bringing computer simulations and experts to bear, and also requires MSHA to include an extra layer of review before approving plans for deep mines.
- The bill requires MSHA to observe retreat mining operations when they begin for a long enough period of time to ensure they are being performed in accordance with the approved plans, and to ensure that miners are properly trained.
- The bill requires a thorough study of ground control science and technology.

Problem 2: MSHA's authority to control rescue efforts is unclear. The agency generally makes joint decisions with mine operators because it believes operators will not provide the required drilling equipment, supplies and personnel to assist rescue efforts if it takes over control. While this joint decision-making has proved effective in certain cases, what happened at Crandall Canyon suggests the agency could use the added leverage.

Solution:

- The bill clarifies the statute to ensure that when the Secretary directs a rescue, the operator shall cooperate and comply with requests for resources.

Problem 3: MSHA's family and press liaison activities need strengthening. The MINER Act required MSHA to be in charge of communicating with families and the press during a rescue in order to ensure that incorrect and misleading information does not get disseminated. The first test of this new authority was at Crandall Canyon and it failed miserably.

Solution:

The bill more clearly defines MSHA's responsibilities and requires full-time positions be created to carry them out. It also re-

quires each mine operator's emergency response plan to set forth how it will cooperate with MSHA in such situations.

Problem 4: MSHA does not have its own emergency response plan. At our Crandall Canyon hearing, Governor Huntsman was highly critical of the lack of advance planning for coordination with state and local authorities.

Solution:

The bill requires MSHA to issue such a plan within 6 months.

Problem 5: The law does not provide a mechanism for independent investigations of multiple-fatality mine accidents. Both the House and the Senate have been forced to initiate our own investigations of the Crandall Canyon accident for this reason. MSHA accident investigation teams are focused on determining civil or criminal liability of the mine operator and other personnel. They are composed of staff from around the country, often take a year or more to complete, are generally not open to the families or labor representatives or the public, and employ different procedures each time on how witness interviews are conducted. The Department is so protective of its authority that it has thrown up numerous roadblocks to efforts by outside panels to conduct simultaneous investigations (West Virginia state and special panels after Sago, Utah's commission, and our investigations). A separate investigation of the conduct of MSHA's own staff is also conducted to ascertain if policy changes are required. These are usually performed by MSHA staff from a general staffing office, although in the case of Crandall Canyon the Secretary has asked senior retired personnel to take charge These investigations often take a year or more to complete, and do not involve public hearings nor established procedures for obtaining input on agency conduct.

Solution:

The bill establishes ground rules for independent accident investigations of multiple-fatality mine accidents. The Director of NIOSH would appoint the panels which would include labor, management and academic experts. MSHA would be required to cooperate with the independent investigators.

Group B: The unresolved problems highlighted by Dago, Darby and Aracoma Alma

Problem 6: Enhanced communication and tracking systems are still not in place. Those who put together the MINER Act pinned their hopes on a new generation of truly wireless technology. They envisioned miners with cell phones being able to talk directly to the surface without reliance upon a cable or wire underground that could be disrupted by fire, explosion or roof collapse. To provide time for this technology to be developed, the MINER Act does not require such technology to be installed until June 2009, and provides for further delays if it isn't ready. It now appears that a purely wireless two-way technology may remain elusive. NIOSH has since developed a "road-map" for the gradual enhancement of existing technology that can provide most of the advantages of a pure wireless system.

Solution:

- The bill requires operators to begin installation of such a "fill the gap" system within a few months of enactment, and to supplement it as NIOSH develops enhancements.

Problem 7: Underground refuges are not required. Although committee members saw a perfectly workable portable chamber to protect trapped miners, and West Virginia has already mandated their use,[31] the MINER Act did not require their use nationwide. It simply required NIOSH to study their capabilities and report by the end of this year. The MINER Act, under a liberal interpretation by the Department, did require mine operators to provide 96 hours of "breathable air" for trapped miners through the storage of air cylinders or through bore holes to the surface, but did not provide for a secure environment that would keep the good air in and keep the toxic gases away.

Solution:

• The bill requires underground coal mines to start installing such chambers, or similar refuges dug out of the mine workings and sealed by NIOSH approved doors, by June 2008. At least one chamber has to be within 500 feet of the working face.

Problem 8: Explosion-proof seals are not yet guaranteed. After seals composed of an artificial material known as "Omega block" could not contain methane fueled explosions in abandoned areas of the Sago and Darby mines, MSHA used emergency authority to ban the use of Omega block, and increase from 20psi to 50psi the pressure requirements for any new seal installed underground. NIOSH launched research into the problem and discovered that seals really need to be constructed to meet pressures of 240psi, or the pressures behind seals regularly monitored so that miners can be evacuated.if the pressures reach explosive levels. The MINER Act required MSHA to take rulemaking action, and the agency has established interim rules that meet the NIOSH recommendations. Existing seals would have to be rebuilt or monitored just like new seals. The rules remain under review, however, and in danger of being weakened.

Solution:

• The bill imposes minimum requirements by statute so that the current rule cannot be weakened, and extends these rules to underground metal and nonmetal mines which face similar risks.

Problem 9: Stoppings are not explosion proof. To get air to miners working at the "face", giant fans blow air through a set of passageways designed for that purpose. The walls of these passageways, known as "stoppings," used to be constructed of solid concrete block cemented together, but in recent years walls have been constructed of hollow block, without cement, or using certain substitutes.

Solution:

• The bill requires stoppings be constructed in the traditional fashion, although hollow block would be permitted in areas scheduled for retreat mining.

Problem 10: Mines continue to rely on dangerous conveyor belt technology. There are miles of conveyor belts in underground mines to carry materials to the surface, and some run 24/7. The friction of the mechanisms can create sparks and the belts themselves can then catch on fire, generating smoke and toxic fumes in addition to spreading a fire widely. The existing rules on flame resistance

[31] In early November of 2006, the director of the state Office of Miners' Health, Safety and Training said that shelters were starting to be received by West Virginia mines and expected more than 50 such units to be delivered by the end of 2008. Tim Huber, Associated Press, Nov.6, 2007.

are about 50 years old. Efforts to update them by rulemaking were stopped by the Bush Administration. The MINER Act established a task force to examine the problem and it recently reported that a new generation of less risky belts should be installed. The MINER Act did not, however, require MSHA to adopt these recommendations.

Solution:

• The bill requires all new conveyor belts installed in underground mines after enactment to be the new technology belts, and limits to 5 years the length of time mine operators can continue to use their supply of old technology belts. These requirements would apply to both underground coal and underground metal and nonmetal mines.

Problem 11: "Belt air" is used too frequently and with inadequate safeguards. This is the practice in underground coal mines of using the passageway that brings air to the miners at the face for the conveyor belt system to take coal out of the mine. It saves the substantial cost of digging an additional "entryway" to house the conveyor belt system. The 1977 Act prohibited the practice because of concern that a fire on the belt would carry toxic fumes right toward where the miners are working. Over time, the agency used authority to "modify" safety requirements to permit it to be used in certain cases. Under the Bush Administration, the "paperwork" was eliminated and operators were given to use it provided certain conditions are met. The MINER Act established a Technical Review Panel to study the matter and it recently released a consensus recommendation—belt air can be used if approved on a case by case basis and the mine operator provides certain standards to protect safety. The MINER Act did not, however, require MSHA to adopt these recommendations.

Solution:

• The bill permits belt air only if: (1) it is necessary for safety reasons; (2) it is approved only through the modification process (a case by case review, in which the authorized miner representative may participate) and includes all the protections recommended by the Technical Review Panel.

Problem 12: The law currently provides questionable protection against two serious explosion hazards—lightning storms and coal dust. The MSHA report on the Sago accident, backed by research from Sandia National Laboratories,[32] believes the explosion was ignited by lightning traveling straight through the earth without any metal conductor and into an abandoned piece of wire cable. While MSHA has ordered all such metal items to be removed from newly sealed areas, technology to deal with this newly revealed power of lightning has not been developed. Coal dust poses a major explosive hazard, which is controlled in part by diluting it with stone or "rock" dust. New types of mining equipment (e.g., longwalls) are believed to be creating finer coal dust particles than older technologies, and it is not known if current rock dusting rules are sufficient to dilute this finer coal particulate.

Solution:

• The bill requires studies of both risks (lightning and coal dust).

[32] Sandia is a government-owned/contractor operated facility. Sandia Corporation, a Lockheed Martin company, manages Sandia for the U.S. Department of Energy's National Nuclear Security Administration. See *http://www.sandia.gov/*.

Problem 13: The reliability of miners' Self-Contained Self-Rescuers (SCSRs) remains a concern. SCSRs provide breathing air for escape through toxic fumes. Mine operators were required to make many more available under the MINER Act. These devices fail if not properly maintained, and there is a history of bad manufacturing runs.

Solution:

• The bill provides that NIOSH and MSHA will work together to identify and obtain random samples of SCSRs in mines and test those samples. Additionally, SCSR manufacturers and mine operators will be required to notify the Secretary whenever a problem with an SCSR is identified.

Group C: Problems identified through oversight

Problem 14: Too many mine operators ignore the law. Some large mining companies operate mines through corporate shells that give them the advantage of penalty breaks designed for really small companies, and MSHA is one of the few agencies that lack subpoena authority to get at the truth. Other mine operators refuse to pay penalties that are overdue because MSHA lacks effective tools to collect. Many mine operators just treat penalties as a cost of doing business, because the penalties for common violations are not substantial or immediate enough to compel compliance. MSHA lacks the authority to shut down mines that fail to timely abate violations. And the agency has never once used its authority to impose heavy fines for a continuing "pattern of violations" by a mine operator.

Solution:

• The bill provides MSHA subpoena authority. It requires mine operators who want to contest citations to put their penalties in escrow to ensure they can be collected, and permits MSHA to stop production in mines that do not pay off delinquent accounts. It increases penalties that were not adjusted by the MINER Act, allows MSHA to shut down mines that do not timely abate violations, and modifies the "pattern of violations" authority to make it easier to use.

Problem 15: Miner rights have been undermined. Safety and health hazards reported to MSHA by phone have often been ignored in recent years, in part because the function of taking the incoming complaints over the phone has been contracted out to individuals not familiar with mining terminology or miners. Whistleblowers are often blacklisted in the industry, and miners and families don't trust MSHA to protect their identities. Those who complain about blacklisting may have to go through the grievance process before their cases can be adjudicated. The families at Crandall Canyon were unable to designate miner representatives, because the law only permits miners to do this—even when they are trapped below ground.

Solution:

• The bill requires the President to appoint, and the Senate to confirm, a Miner Ombudsman, to be located in the Inspector General's office in DOL, to process incoming complaints and assist whistleblowers with their cases. The existing whistleblower protections under the law would be enhanced in a few respects, and the families of trapped miners could designate miner representatives.

Problem 16: Black lung is back. Generations of coal miners suffered and died from pneumoconiosis, or "black lung," a severe and latent lung disease triggered by exposure to coal dust. The scope and severity of the problem was a key reason why the Congress enacted the Coal Act of 1969, including compensation provisions that have cost the Federal government and the mining industry significant amounts. The protections adopted in 1969—an exposure limit and requirements for MSHA compliance checks—were supposed to ensure that the next generation of miners would not develop the disease, Unfortunately in the last few months, NIOSH has confirmed that more miners are coming down with the disease, and some of them still relatively young. Worries about current protections are of long standing—some miner operators were convicted of tampering with the measuring instruments used to determine compliance, NIOSH recommended an exposure limit half of that in the statute, and the UMWA pointed out that miners were now working longer shifts than in 1969 and hence needed a lower limit just to stay even with the exposure limit set in 1969. Meanwhile, under the direction of NIOSH, new technology to more accurately and securely measure coal dust exposure has been developed, but it cannot be utilized for compliance purposes unless the law is changed.

Solution:

• The bill updates the law to permit the new measuring device (known as a personal dust monitor, or "pdm") to be used to determine compliance, and cut the exposure limit in half.

Problem 17: Other health protections have been allowed to slowly erode. Most of the rules protecting miner safety and health consist simply of a "permissible exposure limit" or PEL, that cap the amount of a substance to which a miner may be exposed during a shift. Most of these limits were established decades ago, many picked up in the early days of the agency from limits established by trade groups. Over the years, NIOSH has recommended that many of the PELs be reduced to reflect its findings that the current limits do not provide adequate protection against serious diseases, including various cancers. In the late 1980s MSHA undertook an effort to update these limits en masse, but court decisions and industry opposition brought the effort to a halt. The agency lacks the capability to update each of the PELs through a separate rulemaking.

Solution:

• The bill requires MSHA to upgrade the PELs to reflect NIOSH recommendations. However, the original bill has been amended to provide that should labor or industry have legitimate concerns about the technological or economic feasibility of implementing a new PEL, MSHA would have to conduct rulemaking on those concerns before setting the revised exposure limit. Moreover while MSHA must act quickly to update the PELs, it would retain authority to set appropriate effective dates to further accommodate feasibility concerns. The bill would also set a specific new statutory limit on silica exposure.

Problem 18: This Administration has delayed action or rolled back specific health protections. At industry's behest, the Bush Administration tried to weaken and delay for years the implementation of a new rule to protect metal and nonmetal miners from the risks of exposure to diesel particulate matter, and our strong inter-

vention and a favorable court ruling were needed to halt that rollback. But there are others we need to address in the legislation. (1) The Administration has refused to move forward with a rule to put asbestos exposure standards in this industry on a par with other industries, and (2) it has weakened what was previously uniform set of rules to let workers know of the hazards in the products they are using on the job (hazard communication rule).

Solution:

• The bill corrects these two problems by codifying these necessary health protections in statute.

2. MINING SECTORS COVERED BY VARIOUS PROVISIONS OF HR2768, AS REPORTED

This summary table is a quick guide to the coverage of the bill. It should be used in close conjunction with the section-by-section discussion of the bill.

Underground Coal Mines only

- post-accident communications
- underground refuges
- ventilation controls (stoppings)
- studies of rock dusting and lightning risks
- belt air
- pre-shift review of mine conditions
- atmospheric monitoring systems (carbon monoxide)
- methane monitors (multi-gas detectors)
- roof screening, barrier reduction and pillar extraction (retreat mining)
- SCSR inspection program
- MSHA approval center priorities
- coal dust standard and measurement rules

Underground Non-Coal (metal and nonmetal) mines only

- study of other emergency requirements that may be suitable for this sector

Underground Mines, both Coal and Non-Coal (metal and nonmetal)

- conveyor belt composition
- seals—all underground coal mines and designated "gassy" non-coal mines

All sectors (coal and non-coal, surface and underground)—all of the other provisions in the bill, including—

- new authority for MSHA to retain retiring inspectors
- miner ombudsman created
- new authority for MSHA concerning inspections and rescues
- enhanced sanctions in certain cases
- establishment of emergency call center
- independent accident investigations
- revision of asbestos and hazard communication standards
- limit on silica exposure
- process to facilitate revision of personal exposure limits

3. GENERAL TIMETABLE OF IMPLEMENTATION DATES, HR2768 AS REPORTED

This table is general in character, and is subject to misinterpretation if not used in close conjunction with the detailed information about implementation dates in the section-by-section analysis

of the bill. For example, the reported bill does not generally specify when various rules that must be issued are to become effective; information in that regard is not included in the table, but is discussed in the section-by-section. The bill has no general effective date, so unless otherwise specified the provisions go into effect upon enactment.

S–MINER ACT OF 2007—TIMEFRAME SUMMARY

Requirements	To be implemented
Provide for new Post Accident Communications system	Emergency response plans must be amended to require such systems within 120 days of enactment.
Refuge Chambers	Interim final rules issued by June 15, 2008; installation within 60 days of next plan approval.
Seals	Final rules to be issued within 3 months of enactment.
Stoppings	Interim final rule within 1 year of enactment.
NIOSH Recommendations on Rock Dusting Standards	By June 15, 2009.
Flame-resistant Conveyor Belts	Interim final regulations to be issued by January 31, 2008.
Belt Air	Regulations to be revised by June 20, 2008.
Pre-shift communication plan	Required within 90 days of enactment.
Atmospheric Monitoring Systems (CO)	Installation required by May 1, 2008.
NAS lighting study	Report within 1 year of enactment.
NAS ground control study	Report within 1 year of enactment.
Advisory committee on metal/nonmetal emergency response issues.	Report within 21 months of enactment.
Master inspector program	Within 270 days of enactment.
Pattern of violations	Regulations to revised within 3 months of enactment.
Advisory committee on licensing/registry	Report within 2 years of enactment.
Call Center	Established within 30 days of enactment.
MSHA Emergency Preparedness Plan	Within 6 months of enactment.
Independent Accident Investigations	Rulemaking to commence within 30 days of enactment and be completed by October 1, 2008.
Personal Exposure Limits	NIOSH to forward existing recommended limits within 30 days of enactment, and DOL to adopt with 30 days thereafter except as provided.

IV. Statement and Committee Views

The Nation's mine safety and health laws are in dire need of updating. In recent years we have witnessed several major accidents, a mine death toll that has not declined, and the renewed appearance of mine-related illnesses that we thought were a thing of the past. The total number of deaths from black lung disease has increased sharply. The agency in charge of mine safety and health has been underfunded and understaffed. Its work as a regulator has been stymied. In some cases, health and safety standards are decades out of date. In other cases, protections have been whittled away through years of exceptions, or have failed to keep up with modern mining techniques or operations.

The Congress has begun to respond. The 109th Congress enacted limited legislation in 2006 known as the MINER Act. This law has made some improvements, but more needs to be done. And the ongoing death toll—and recent tragic events at Crandall Canyon—underscore the need to move swiftly.

The Committee believes the case for additional legislation is overwhelming. The reported bill is not a complete reform of the Federal Mine Safety and Health Act, but neither is it directed too narrowly. The full Committee held 3 oversight hearings on the agency and the law this year, and our colleagues in the Senate have held hearings of their own. These hearings revealed a number

of problems that require legislative attention. In addition to dealing with lessons learned from recent tragedies, the Committee believes it is appropriate to address the hazards likely to cause death and disability tomorrow, not just those that led to death and disability yesterday.

In working on this problem, the Committee has sought out the views of all stakeholders. In crafting legislation, the Committee sought bipartisan discussions and engaged in dialogue with the mining industry, miners' representatives, mining experts, and MSHA. Notwithstanding differences on substance, the Committee very much appreciates the technical comments received from all quarters of the mining community, and the reported bill benefits significantly from this input.

(1) Background. In 1969, Congress enacted landmark legislation to protect the health and safety of coal miners. Legislation passed in 1977 added significant new protections, placed coal and non-coal miners under a single regulatory framework, and established the Mine Safety and Health Administration (MSHA) in the Department of Labor to administer and implement the law.[33] Unfortunately, it appears that the intent of the Congress in setting up these laws decades ago—that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner"—has never been fulfilled.[34]

Although there has been a decrease in miner deaths over the past century,[35] mining is still one of the most dangerous occupations in the United States. Mining fatalities occur at a rate more than seven times the average for all private industries, exceeding other dangerous occupations such as construction and trucking.[36] According to the latest information provided by MSHA, 56 miners have died from January 1, 2007 through the end of October 2007. While news reports this year and last have focused on multiple-fatality accidents involving coal miners, 26 of the 56 deaths so far this year have been in coal mines and 30 have been in non-coal (metal and nonmetal mines), most of which have been at surface mines.

It was the Sago disaster in early 2006 that refocused the nation's attention on the need for mine safety and health reform. On January 2, 2006, an explosion ripped through the Sago mine in Upshur Country, West Virginia, trapping 13 miners underground. Fifty-two hours later, 12 of the 13 miners were brought out dead. Just over two weeks later, a fire at the Aracoma Alma Mine No. 1 killed two miners, and on May 20, 2006, an explosion rocked the Kentucky Darby Mine No. 1, killing five miners. In all, 47 coal miners would

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[33] Edward Rappaport, Coal Mine Safety, CRS, (June 23, 2006), p. 2. NOTE: The 1977 legislation moved the responsibility for administering the law from the Department of Interior to the Department of Labor to avoid obvious conflicts of interests between the Agency and industry.

[34] Testimony of Representative Rahall before the House Education and Labor Committee, U.S. House of Representatives (May 16, 2007). *See also:* Testimony of Dan Berconi before the House Education and Labor Committee, U.S. House of Representatives (May 16, 2007); Testimony of Larry Grayson before the Education and Labor Committee, U.S. House of Representatives (May 16, 2007); Testimony of Davit McAteer before the Education and Labor Committee, U.S. House of Representatives (May 16, 2006); and Testimony of Cecil Roberts, *supra.*

[35] In 1925, over 2,500 miners were killed as compared to 22 in 2005 and 47 in 2006. Of course employment in this industry has also declined from 749,000 in 1925 to 110,000 currently. *Id.* at p. 2.

[36] *Id.* at p. 3. *See also:* Testimony of Cecil Roberts before the House Education and Labor Committee, U.S. House of Representatives (March 28, 2007).

die on the job in 2006—a ten-year high and more than twice as many as in 2005.

In the absence of an official Congressional committee hearing on the Sago tragedy, the Democratic Members of the House Education and the Workforce Committee held a Forum on Mine Safety on February 13, 2006. The witnesses, including family members of miners killed on the job, shared accounts and perspectives on how to improve mine safety conditions in order to prevent further mining tragedies.

Also in early in 2006, the Democrats on the House Committee on Education and Labor issued a report documenting a very troubling track record by the Bush Administration and the Department of Labor in protecting the health and safety of tens of thousands of hard-working American miners. Among other things, according to the report, the Administration sought budget and staffing cuts at MSHA, embarked on policies favoring compliance assistance over enforcement, and withdrew more than a dozen proposed safety and health rules.

Following the forum, and the disasters at the Aracoma and Darby mines, then Committee Senior Democratic Member George Miller and others introduced the "Protecting America's Miners Act" (H.R. 5389) in May 2006, to revise safety, inspection, rescue, and emergency standards contained within the Federal Mine Safety and Health Act of 1977. Following the Darby incident, a more limited mine safety bill, the MINER Act, was overwhelmingly passed by the Congress and was signed into law on June 15, 2006.

At the time, Congressman Miller and others pointed out that the MINER Act was only a first step, and that much unfinished business remained.

In 2007 in the new 110th Congress, the Education and Labor Committee initiated the first detailed oversight of MSHA activities in many years. Its first step was to take a careful look at the actions of the Administration in implementing the MINER Act.

On February 27, 2007, more than eight months after the signing of the MINER Act, the House Education and Labor Committee released a staff report[37] which documented that MSHA was moving far too slowly in implementing the new law. The Government Accountability Office, at the request of the Committee, is also conducting an analysis of MSHA's implementation of the MINER Act.

In September 2007, the Committee requested and received detailed spreadsheets maintained by MSHA that show the status of implementation of MINER Act requirements at each mine, including any delays in the actual implementation date at each mine that were approved by MSHA. This information reveals that some of the MINER Act's requirements remain unimplemented 16 months after the legislation was passed.[38]

In addition, a number of letters were sent to the Department requesting information on specific oversight concerns and seeking specific action where appropriate. For example, on March 16, 2007, Chairman Miller wrote to Secretary Chao requesting that the Department issue an emergency temporary standard to immediately

[37] February 27, 2007, *http://edworkforce.house.gov/publications/MinerActStatus022707.pdf.*

[38] Data current through September 20, 2007, according to information provided to the Committee in response to our request to Department of Labor of August 23, 2007. *http://www.house.gov/apps/list/speech/edlabor__—dem/RelAug24.html.*

require the use of underground refuge chambers in underground coal mines throughout the nation (the Secretary declined).

The full Committee also held three oversight hearings on mine safety and health in 2007.

On March 28, 2007, the Committee on Education and Labor conducted an oversight hearing on the need for further reform of the current law on mine safety regulation. This hearing, "Protecting the Health & Safety of America's Mine Workers," revealed that, despite enactment of the MINER Act, many of the hazards that led to disaster at Sago, Aracoma Alma, and Darby remain just as real today as they were 18 months ago.

On May 16, 2007, the Committee on Education and Labor conducted a second oversight hearing to determine the effectiveness and progress of MSHA and its safety programs and initiatives since the enactment of the MINER Act of 2006. At this hearing, the Assistant Secretary for Mine Safety made very clear to the Committee that the Administration did not intend to go further than it was required to do under the MINER Act. Nor did it intend to move more swiftly than the deadlines established in that Act, notwithstanding new evidence that quicker action is feasible and necessary to ensure the safety of miners.[39]

And on October 3, 2007, the Committee held an oversight hearing on the Crandall Canyon mine tragedy that took place in Utah in August 2007, entitled "The Perspective of the Families at Crandall Canyon." Most of the families who lost loved ones, including the families of rescue personnel, participated in the hearing to offer insights into what had happened. In addition, the Governor of Utah, Jon Huntsman, Jr. (R), joined the families to urge the Committee to act.

The Committee also initiated its own investigation into the Crandall Canyon mine tragedy. As part of this investigation, the Committee will, among other things, specifically consider whether the mine operator and MSHA complied with the requirements of the MINER Act, as well as other requirements of existing law. The Committee is committed to a full and through investigation.

(2) A review of recent serious mine accidents. Recent tragedies have highlighted weaknesses in the program established some years ago by the Congress to protect miners from on-the-job deaths, injuries and diseases.

In 2006, three serious mine accidents occurred in quick succession—at Sago and Aracoma Alma in West Virginia and at Darby in Kentucky. Nineteen workers were killed as a result of these incidents, making a total of 47 deaths in 2006. In the Spring of 2007, MSHA finally completed its investigation on what happened in each mine. It also completed investigations on whether its own performance prior to each accident contributed to a climate which may have contributed to the accident. West Virginia also prepared reports of its own.

• Sago Mine, West Virginia. On January 2, 2006, an explosion took place in an abandoned area at the Sago mine, allegedly because of a lightning storm in the area that ignited methane. The explosion completely destroyed seals that should have contained the damage in the abandoned area, releasing clouds of dust and

[39] See, e.g., dialogue between Mr. Stickler and Chairman Miller, hearing of May 16, 2007.

poisonous gasses into the mine. Some miners escaped but fourteen others were trapped. One died before he could even put on a self-rescue device. The rest, unable to communicate with the surface and with a limited supply of air to escape, retreated to an area to await rescue, barricading themselves behind curtains and boards, as they had been trained to do to keep out poisonous gasses. Management was slow in contacting MSHA and rescue teams, and when they arrived rescuers lacked the critical information they needed to start their efforts—the conditions below ground, and the location where the miners were trapped. Confusion in the command center contributed to delays. Once the rescue began, it had to proceed slowly to permit the restoration of ventilation controls that had been destroyed by the explosion. By the time the rescuers got to the trapped miners, all but one had expired.

• Aracoma Alma Mine, West Virginia. On January 19, 2006, a fire started on a conveyor belt at the Aracoma Alma mine. It was triggered when excessive coal dust in the air was ignited by sparks due to the misalignment of a belt. Initial attempts to extinguish the fire were delayed because an untrained employee in the mine office thought the alarm was malfunctioning. In addition, efforts to put out the fire and evacuate miners were hampered because waterlines to the area were out of service and the mine was not well-ventilated. Rescue efforts were further delayed by the lack of accurate maps. Two miners died. Criminal charges are still being contemplated in this case. Also, MSHA subsequently determined that the local office assigned responsibility for this mine had particularly serious management problems.

• Darby #1 Mine, Kentucky. On May 19, 2006, there was an explosion at the Darby Mine. One of the seals to an abandoned area of the mine was known to be improperly constructed, and a miner instructed to make repairs with a torch ignited methane gas leaking out of the sealed area. Five workers died.

In 2007, tragedy struck again. This time lives were lost at the Crandall Canyon Mine near Price, Utah. Investigations are still underway by MSHA and by this Committee, which has had to already issue one subpoena to get necessary information.[40] While the investigation is not complete, following are some highlights that have been discussed by the press or in the Congressional hearings since the accident.

• The coal seam is actually under a mountain, and the location of the accident was covered by about 1,800 feet of mountaintop.

• By the time the current owners bought the mine in 2006, most of the available coal had already been removed. The coal that remained was contained within the barriers and pillars holding up the mountaintop.[41] At some point, an outside firm was hired to

[40] September 24, 2007; copy currently available at *http://edlabor.house.gov/correspondence/20070924DOLSubpoena.pdf.*

[41] The traditional method of mining underground coal is the "room and pillar system". This is done today by machines known as "continuous miners". These machines advance into a solid block of coal and grind out portions of the block. After advancing a few feet, they pull back and allow "roof bolting" machines to secure the exposed "roof" of the passage being cut so that it will not fall upon the miners as they advance. The miners also leave large pillars of coal in place to support the rock above the mine. Hence the mined area gradually comes to resemble a large checkerboard of white squares (coal removed) and black squares (pillars of coal left in place). In deeper mines, even larger areas of coal may be left undisturbed to keep the ground above from collapsing into the mine—from the top, or by pressure so high that the coal "bursts" from the pillars or floor. Such supports are known as "barriers."

conduct an engineering study to determine if more coal could safely be removed—in particular from two long barriers running more or less down the center of the mine on each side of the main passages used for ventilation, equipment, and escape. The study concluded that this could be done under specified conditions. Plans were then prepared for this work, and approved by MSHA.

• The operation ultimately proceeded in four stages. Stage 1 involved mining out the barrier of coal on the north side by continuous miner to leave rooms and pillars in place of the solid barrier. Stage 2 involved the extraction of the pillars created during stage 1, starting from the far end of the advance. This work began in early 2007. However it was stopped before the plan was completed following series of "bumps" in the area. Mining then began to remove coal from the south barrier. Stage 3 used a continuous miner to leave rooms and pillars in place of the solid barrier, and Stage 4 involved the extraction of pillars. It was during this last stage, on Monday, August 6, 2007, that a significant section of area being mined apparently "burst" as the walls imploded from the weight of the mountaintop, trapping six workers.

• Rescue teams were dispatched to assess the damage to the mine and begin clearing rubble to reach the cavity, about 3.5 miles from the mine entrance. As with the miners trapped during the incidents in 2006, there was no way to determine the exact location of the miners following the accident, to ascertain whether they were in an area that could support life, or had enough water or food to survive. Under the MINER Act of 2006, the mine was not required to have an advanced communication or tracking system in place, nor shelters in known locations that could sustain life for at least several days. The mine was required under the MINER Act to have 96 hours of breathable air for trapped miners in containers near the work site; but pursuant to the emergency response plan for the mine approved by MSHA, this supply was not required to be installed in the Crandall Canyon mine until the week after the collapse. Accordingly, while clearing of the passageways continued, crews also began a series of efforts to drill a borehole to the miners to provide communication, air, food and water until they could be rescued. These efforts were beset by initial delays due to lack of advance planning.

• The rubble clearing efforts were also beset by delays because the mountain continued to "bump". After several weeks, the mine walls burst again, killing three rescue workers and injuring six others. All remaining rescue workers were pulled from the mine. The bodies of the six trapped miners have not been recovered.

When the mining has advanced as far as it can go, the operator may begin to remove the pillars one at a time, moving from the far end back toward the entrance, allowing the roof of the mine to collapse in a controlled manner. This is known as pillar extraction or "retreat" mining. The mine operator may also cut back on the barrier walls, mining them out into room and pillars and then collapsing the pillars in retreat mining.

A more recent approach is known as "longwall" mining, which combines the advance and retreat phases into a single operation. Rather than leaving pillars in place as the mining advances, the longwall system cuts out everything in a very wide block of coal. It contains a large roof shield that moves along with the cutting head, protecting the miners during the operation from the collapse of the new ceiling, and the roof collapses in a controlled manner after the entire system moves forward. Room and pillar passageways on the side of the longwalled areas are kept in place for ventilation, equipment movement and escape. Both roof and pillar and longwall mining were used in the Crandall Canyon mine.

Each stage of the mining process requires a plan to be submitted to MSHA and approved. These plans are often called "roof control" plans, but in fact look broadly at ground control issues to ensure the plan protects miners from unanticipated collapses or bursts.

• As a result of a miscommunication during the Sago rescue in early 2006,[42] the MINER Act required that MSHA be responsible for handling all communications with the public and the families during rescue efforts. At Crandall Canyon, the owner nevertheless played a prominent role in press and family briefings.[43] Moreover in testimony before this Committee, the Governor of the State of Utah expressed serious concern about the confusion at the site resulting from the lack of an emergency response plan;[44] and at Senate hearings, MSHA expressed concern that it doubted its own authority to tell operators to cooperate had MSHA actually taken over the rescue.[45]

During the course of its oversight hearings, the Committee also heard information about past tragedies that continue to resonate in this country's mining communities. Foremost among these are:

• Jim Walters No. 5 mine—2001, Alabama—A roof fall onto a battery charger set off a methane explosion. One miner was unable to walk to safety. Twelve more miners came back to help evacuate that miner when a second explosion killed them all. This incident created a great deal of caution in the mining community about sending in rescue teams, a fact that may well have influenced what happened at Sago. JWR #5 is a deep mine using belt air, and the explosions revealed deficiencies that were not addressed and revealed again in the Sago tragedy. The United Mine Workers and family members of the miners who perished were deeply distressed by what they regard as inadequate MSHA investigations of the accident, and the role they were permitted to play therein. Civil penalties assessed in connection with the accident were eventually reduced dramatically due to procedural problems.[46]

• Willow Creek Mine—2000, Price, Utah—This underground coal mine was was located very close to the Crandall Canyon mine, and the mining community in the area has yet to recover from the earlier accident. On July 31, 2000, a series of four explosions ripped through this mine. According to MSHA's accident report, the most likely cause was a roof fall in the worked-out area behind a longwall mining system. The roof fall ignited methane and other gaseous hydrocarbons. This resulted in the first explosion and fire. Believing that a roof fall had occurred, personnel remained on the longwall section to extinguish a fire near the base of the shields that protect the miners during this operation. Eventually, however, liquid hydrocarbons—unique to this particular mine—became involved in the fire and there were three more explosions. Two fatalities occurred as a result of the second and third explosions.

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[42] Rescue workers who finally found the trapped miners had to shout to each other to relay information to the surface, and the command center on the surface understood that the men were found alive. This information was leaked to the families. It turned out there was only one survivor.

[43] In a related matter, a camera crew of reporters was also permitted underground during the rescue with MSHA permission, an unprecedented action. The Committee leadership expressed public concern about these aspects of the rescue at the time they occurred. *http://www.house.gov/apps/list/speech/edlabor_dem/rel081707crandall.html.*

[44] Comments of Jon Huntsman, Jr., Governor of Utah, hearing of the full committee October 3, 2007, "The Perspective of the Families at Crandall Canyon" (transcript not yet available).

[45] Comments of Richard E. Stickler, Assistant Secretary of Labor. Mine Safety and Health Administration, Subcommittee on Labor, Health and Human services, Education, and Related Agencies, Committee on Appropriations, United States Senate, September 5, 2007 (transcript not yet available).

[46] The $435,000 in fines that MSHA assessed after the accident were reduced by an administrative law judge to $3,000. "Judge Vacates Citations, Reduces Fines for Jim Walters Resources" Fatal Explosion," *Daily Labor Report,* Nov. 9, 2005, pp. A4, A5.

Although the mine was sealed and not reopened for the investigation, MSHA later determined that the ventilation system was faulty. It was supposed to dilute and render harmless concentrations of methane and other gaseous hydrocarbons in the worked-out area where potential ignition sources existed, but did not do so. It appears that liquid hydrocarbons are still not directly addressed in MSHA regulations. This has been brought to the attention of the State of Utah which is considering whether to adopt a regulatory program of its own.

• Wilberg Mine—1984, Utah.—The Wilberg mine fire, which claimed the lives of twenty-seven miners on December 19, 1984, was the most deadly coal-mine fire in Utah history and the worst U.S. mine disaster in a dozen years. Investigation of the fire revealed serious failures by the agencies charged with assuring coal mine safety.[47]

Fire broke out in a main passageway which ran several miles into the mountain. Within minutes, smoke and lethal gases traveled 2,400 feet a side passageway to the working face of the mine. One miner escaped, but eighteen miners and nine company officials were trapped and killed. Among the victims was Nannett Wheeler, the first woman to die in a Utah mine since women officially entered mining in 1973.

Rescuers, believing that the trapped miners might still be alive, worked frantically to reach them. Following three days of heroic effort, rescue crews entered Fifth Right and located 25 bodies. Before the bodies could be removed, however, the fire rekindled, forcing rescuers to evacuate and seal the mine. Recovery of the bodies was finally completed in December 1985, nearly a full year after the disaster. The sealed area where the fire began was not opened until July 1986. Only then could the Federal Mine Safety and Health Administration (MSHA) begin its investigation into the cause of the fire.

In the Spring of 1987, MSHA ruled that the Wilberg fire was caused by a faulty air compressor, allowed to run unattended in a non-fireproofed area. MSHA issued thirty-four citations against Utah Power and Light and Emery Mining Company (the mine's operator). Nine of the citations were for violations that directly contributed to the disaster. However, MSHA itself received strong criticism from the United Mine Workers of America, in part for failing to issue these same citations when it inspected the mine only days before the fire. The union also questioned MSHA's focus on the cause of the fire rather than the cause of the deaths, insisting that miners died, not because there was a fire, but because they had no escape route.

Following a Senate Labor and Human Resources Committee hearing into the Wilberg disaster, Utah Senator Orrin G. Hatch requested an investigation by the General Accounting Office (GAO)—the investigative arm of Congress—into MSHA's conduct regarding the Wilberg Mine. The GAO review, released in November 1987, cited MSHA for allowing the Wilberg Mine to operate with an outdated firefighting and evacuation plan, to operate with no fire suppression devices, and to run a compressor known to be faulty. The

[47] This summary of the Wilberg mine fire is based on one prepared by the United States Mine Rescue Association, *http://www.usmra.com/saxsewell/wilberg.htm.*

GAO report also criticized MSHA for permitting the section where the miners were working to operate while a tunnel running off the area was blocked to human travel by a cave-in.

(3) A review of recent serious health threats. Miners are exposed to a variety of substances that significantly increase their risk of substantial impairment or death. Some of these substances are natural, and miners are exposed to their hazards in the process of removing them from the ground or processing them in related facilities (e.g., mills or preparation plants). Many other toxic substances are brought into mines to help in mining operations. In addition, mines contain poisonous gases, such as methane, carbon monoxide, and many others that are either produced by the mine itself or by the heavy equipment operating in closed environments or in close quarters with the miners.

Following is some background information on examples of specific health threats to miners that have come to the attention of the Committee.

(a) Coal dust standard and compliance measurement: the return of Black Lung disease.

Coal Workers' Pneumoconiosis (CWP) is a chronic disease that develops slowly and is caused by inhaling respirable coal mine dust. It is an irreversible condition that can be disabling. There is no cure; it must be prevented. Respirable dust includes coal, quartz, and other dusts that occur in mines. On a gram for gram basis, quartz dust is more pathogenic than other dusts and is especially important for miners who cut into rock in the roof or bottom of a mine—such as roof bolters, some continuous miner operators, or construction workers. The occurrence of CWP depends on the level and the duration of exposure to respirable dust. CWP has a higher prevalence with increasing level of exposure and with longer duration of work as a miner.

According to data recently released by the National Institute for Occupational Safety and Health (NIOSH), black lung disease rates among U.S. Coal Miners have doubled in the last decade. Ten years ago, about 4 percent of coal miners with 25 years or more years working underground showed evidence of the disease, and rates had consistently declined since 1970. The most recent data, however, found a 9 percent rate of disease in this group. Moreover, the rates increased for miners with even fewer years of exposure.[48]

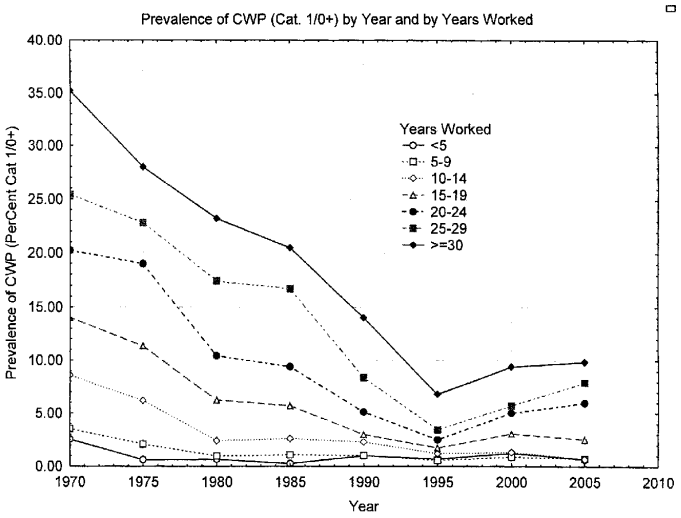
The graph reproduced here is a display of the NIOSH data.[49] It shows the prevalence of CWP by calendar year and by years worked as a miner. "Calendar Year" in this graph is the first year of a five year interval during which chest x-ray films were made. CWP is identified with the use of a chest x-ray in a surveillance program conducted by NIOSH.[50] On this graph, prevalence is

[48] Ken Ward, Charleston Gazette, Sept.14, 2007.

[49] Graph and explanatory statement provided to the Committee by James L. Weeks, ScD, CIH, November 6, 2007, based on data supplied by NIOSH. See also MD Attfield and EL Petsonk, CDC MMWR Weekly, July 6, 2007, 56(26); 652–655.

[50] Each film is graded by an international convention (developed by the International Labor Organization) for scoring chest x-ray films. According to this convention, films are scored by the size, shape, and profusion of opacities in the film. Films can be graded as normal (profusion 0), simple (small opacities with profusion 1, 2, or 3), or complicated (large opacities with profusion A, B, or C) indicating increasing levels of profusion and of severity. Due to the uncertainty inherent in this scheme, a typical profusion score is given as X/Y with X representing the most likely score but it could also be Y which is the next higher or lower score. In these data, the prevalence of CWP is, more precisely, the prevalence of films graded 1/0 or higher. These represent early stages of CWP. The significance of this score is that miners with any score 1/0 or

measured on the vertical axis and years on the horizontal axis. Each line represents the prevalence by year for miners with different years of experience, as indicated in the legend. It shows that from 1970 to about 1995, the overall trend in the prevalence of CWP has decreased. It shows that miners with more years work as a miner are more likely to develop CWP than those with fewer years. This is expected and adds to the reliability of these data. Over the past ten years, however, the prevalence of CWP has increased two-fold for miners with longer employment histories.



Source: NIOSH, Division of Respiratory Disease Studies

One thing that can be done to reduce the problem is to reduce the level of coal dust to which miners can be exposed. NIOSH recommended that MSHA do just that in 1995:

> In November 1995, the National Institute for Occupational Safety and Health (NIOSH) issued a comprehensive review of the literature concerning occupational exposure to respirable coal mine dust in its Criteria Document (NIOSH Criteria Document, 1995). NIOSH concluded, among other things, that coal miners in our country continue to be at increased risk for developing respiratory disease as a result of their exposure to respirable coal mine dust. Although it is beyond the scope of this rulemaking, in its 1995 Criteria Document, NIOSH recommended a time weighted average exposure limit to respirable coal mine dust of 1.0 mg/m^3, up to ten hours per day for a 40–hour work week. 65 FR 42069

A dozen years later, however, the NIOSH recommendation has not been adopted. Instead, the exposure level remains at the minimum level set by the Congress in legislation established almost 40 years ago.

A second approach to lowering coal dust levels is to revise the manner in which compliance with the standard is determined, so

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higher are at much higher risk of becoming permanently disabled than are miners with normal scores.

as to ensure that miners are not being overexposed even to the existing standard. This includes ensuring that miners working longer than normal shifts have their exposure limit adjusted to reflect that fact, and changing the sampling method and protocols to eliminate fraud resulting in overexposures.

The exposure level is based on a weekly "dose" of coal dust that a miner inhales. However, the current exposure limit assumes that miners work a traditional 40 hour week work schedule. In fact, miners now generally work non-traditional work schedules that often last longer than 40 hours. Unfortunately, however, the exposure limit has not changed. This means that miners are actually being exposed to more coal dust than intended by the Congress when the standard was set in the 1969 Coal Act.

The existing system of measuring coal dust, which relies heavily upon operator sampling in addition to whatever sampling MSHA inspectors can take during their visits, has suffered from considerable fraud. In 1975, for example the government's General Accounting Office reported that 18 percent of the air samples submitted by operators from the dirtiest areas of mines had 0.1 mg. of dust per cubic meter of air. These readings were found even in mines where, just days later, federal inspectors were finding the legal limit of 2.0 mg. To test whether these very low readings could possibly be accurate, the auditors took their own dust tests inside and outside of coal mines. Only those taken entirely outdoors had 0.1 mg. of dust. Even tests taken in mine offices had more than 0.2 mg. of dust. Cheating went on everywhere they looked, the auditors wrote. A series of tests in 1978, 1984 and 1988 produced similar results. While this clearly meant that miners were being exposed to dust levels far in excess of what the law permitted, MSHA did little to address the problem.[51]

In mid-1989, an MSHA lab technician noted a white spot on a filter which was used to collect dust samples. Hundreds more were found. Determining that the spots were due to blowing air into the sampling cassettes to rid them of dust collected, the Department of Labor in 1991 charged about half the underground coal mines in the country with tampering. The charges were dismissed, but subsequent prosecutions for tampering were successful.

In 1995, an advisory committee was created to address the situation. The committee recommended that MSHA take over compliance dust sampling. It took MSHA a few more years to figure out how to deal with this in practice.

In 2000, MSHA proposed several changes to the current sampling system.[52] As explained by the agency:

> The Secretary of Labor and the Secretary of Health and Human Services believe that miners' health can be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust exceeding the applicable standards. MSHA's improved program to eliminate overexposures on each and every shift includes multiple rulemakings. Through this proposal, MSHA would be able to use single,

[51] This discussion draws heavily on a summary of the problem by Gardiner Harris, Courier Journal, April 20, 1998, originally run as a series called Dust, Deception and Death.

[52] 65 FR 42068, July 7, 2000.

> fullshift respirable coal mine dust samples to more effectively identify overexposures and address them. Other overexposures to respirable coal mine dust would be prevented through finalizing a proposed rule that would require each underground coal mine operator to have a verified mine ventilation plan. MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit (MMU) to controlling respirable dust under typical mining conditions. Furthermore, that proposal would revoke underground operator compliance and abatement sampling. Consequently in underground coal mines, MSHA intends to increase the number of compliance inspections per year, and MSHA would conduct abatement sampling for non-compliance determinations. The notice of proposed rulemaking to promulgate new regulations to require operators to have a verified ventilation plan in underground coal mines is published elsewhere in today's Federal Register." 65 FR 42069

Thus, the agency embarked on a plan to revise the existing sampling system to take over the responsibility for compliance sampling, to ensure that one compliance sample would be adequate to issue a citation,[53] and to tighten control of operator dust control plans. The agency did not, however, proposed to change the exposure limit to that recommended by NIOSH. The proposal was never finalized.

In 2003, a new Administration proposed a different approach to revise the long standing program coal dust sampling.[54] As noted previously in this Committee report, the regulations in question would have permitted an increase in the amount of coal dust to which miners could be exposed. On July 10, 2003, Rep. Nick Rahall proposed an amendment to bar the use of any funds appropriated to the Department of Labor to implement regulations proposed on March 6, 2003; and although the amendment failed by 2 votes, the Administration halted work on the proposed regulation.[55]

In the meantime, NIOSH had been working on a new device to measure coal dust known as the Personal Dust Monitor (PDM). Work began in 1992. Following a long period of laboratory and field tests to verify the accuracy of the unit in practice, NIOSH announced success in 2004.[56] These devices continuously display a miner's current coal dust exposure, and records the exposures in a format that can be electronically downloaded each shift to the operator and MSHA. Instead of waiting weeks for a sample to come

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[53] This is the case in the violation of any other exposure level; coal dust was treated uniquely in this regard based on a 1972 interpretation, which MSHA was unable to change without rulemaking. As explained in the rulemaking: "The Secretaries are proposing to rescind a previous 1972 finding, by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the validity of such single shift sampling. Today's proposal addresses the final decision and order in *NMA* v. *Secretary of Labor,* issued by the United States Court of Appeals for the 11th Circuit on September 4, 1998 (153 F. 3d 1264). That case vacated a 1997 Joint Finding and MSHA's proposed policy concerning the use of single, full-shift respirable dust measurements to determine noncompliance when the applicable respirable dust standard was exceeded. 65 FR 42068.

[54] 68 FR 10874, March 6, 2003.

[55] 68 FR 39881.

[56] Volkwein-JC, Vinson-RP, McWilliams-LJ, Tuchman-DP, Mischler-SE, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 2004–151, Report of Investigations 9663, 2004 Jun :1–25.

back from a laboratory, the PDM provides immediate feedback to both miners and operators on coal dust levels. Moreover, it records the data in tamper-proof form, enabling it to be used for compliance purposes. There is general agreement among miners and the mining industry that the PDM offers a real possibility to resolve some of the problems that have plagued the industry since the FMSCA was adopted, and help it to reduce current coal dust exposures.

(b) Asbestos standard.

In March 2001 the Office of the Inspector General (OIG) of the Department of Labor issued a report evaluating MSHA's enforcement actions at an open pit vermiculite mine owned by W.R. Grace & company in Libby, Montana.[57] The widespread asbestos contamination at this mine and the surrounding community attracted considerable public attention.[58] Miners were exposed to asbestos through the processing of the ore, and carried the dust home on clothing and personal vehicles, thereby allegedly exposing family members. Among other matters examined by the OIG was whether MSHA had properly inspected the mine, and appropriate exposure sampling of the miners. The OIG found that MSHA had conducted regular inspections from 1978 through 1990, and that with a few exceptions the laboratory analysis of the asbestos samples showed them to be under MSHA's permissible exposure limit (PEL) for asbestos. Yet miners and their families were clearly becoming ill. Accordingly, the OIG recommended to MSHA that it lower it's PEL for asbestos.[59]

The OIG noted that MSHA's PEL of 2 fibers per cubic centimeter was established in 1978, two years after OSHA adopted the same PEL. In August 1989, the Agency proposed lowering the standard by a factor of 10 as part of an effort to revised roughly 620 airborne contaminants and impose limits on 145 new substances. A 1992 decision by the 11th Circuit on a similar rulemaking initiative by OSHA discouraged MSHA from moving forward with this effort, and the PEL for asbestos remained at 2 fibers per cubic centimeter. However, unlike MSHA, OSHA reacted to the court decision by moving ahead with a new standard just on asbestos, and lowered its PEL by a factor of 20 (to 0.1 fiber) in 1994. Accordingly, the OIG recommended MSHA now move forward and initiate similar rulemaking.

Unfortunately, efforts to undertake this action have stalled. An effort to begin the rulemaking process at the end of the Clinton Administration failed due to the press of other rulemaking business.[60] Despite assurances by the incoming Assistant Secretary for Mine Safety and Health that the new Administration would give serious consideration to the OIG recommendations,[61] the agency did not ask for any public input until the next year. Thereafter, several stakeholder meetings were held, but a notice of proposed rule-

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[57] Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana, Report No. 2E–06–620–0002 (March 22, 2001), *http://www.oig.dol.gov/public/reports/oa/2001/2E/06/620/0002.pdf.*

[58] The Seattle Post-Intelligencer published a series of articles on the asbestos-related illnesses and fatalities among people living in Libby, Montana, in November 1999. The Senate Committee on Health, Education, Labor and Pensions held a hearing on the matter on July 31, 2001, at which the new assistant Secretary for Mine Safety and Health, David Lauriski, testified.

[59] OIG report, Finding B, p.8, op cit.

[60] Id.

[61] Lauriski statement at Senate hearing, note 79.

making to lower the PEL on asbestos was not published until July 2005—a full four years after the commitment of the Assistant Secretary to review the matter. Since then, the agency has extended the date for final action on changing this single PEL several times.[62]

(c) Hazard communication standard.

The Occupational Safety and Health Administration issued a standard almost 25 years ago, in 1983,[63] to require:

> "chemical manufacturers and importer to evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. . . . Chemical manufacturers and importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards . . . and shall treat the following sources as establishing . . . them [as] hazardous": . . . "threshold limit values for chemical substances and physical agents in the work environment, ACGIH (latest edition)." 29 CFR 1910.100(d)

The threshold limit values (TLVs) are updated from time to time by the ACGIH (American Conference of Governmental Industrial Hygienists), and as required by the OSHA standard, the latest set are among the triggers that require manufacturers, importers and employers to treat an item as hazardous. If a substance is hazardous, the Material Safety Data Sheet provided to the end user of the substance with the product must indicate that fact and providing various additional information.

A similar standard was not in effect for mine workers until October 3, 2000, when an interim final rule providing essentially the same requirements was issued.

Since that time, a concerted attack has been made on the use of TLVs as the basis for any regulatory action or to trigger the determination of a hazard under the hazard communication rules.[64] In the case of OSHA, a lawsuit was filed by the National Association of Manufacturers in 2006. The industry asserted that in requiring chemical manufacturers to use the latest edition of the TLVs, OSHA had in essence "amended" its rule and needed to engage in notice and comment rulemaking. This assertion was rejected and the court dismissed the lawsuit in May of this year.[65] In the case of MSHA, however, recent regulatory action undermined the use of up-to-date TLVs. In 2002, the MSHA hazard communication standard was revised to refer exclusively to the ACGIH TLVs 2001 edition—hence freezing the science to that point in time, and once again leaving miners less protected than all other workers in the U.S.[66] The final rule went beyond this to also freeze in time the versions of certain other scientific publications that can define a

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[62] Unified Agenda, RIN (Regulatory Information Number) 1219–AB24. In addition to lowering the PEL, the rulemaking also involves a determination as to whether to incorporate OSHA procedures for the analysis of asbestos samples.

[63] 48 FR 53280.

[64] See, e.g., June 18, 2001, article on Occupational Hazards magazine, *http://www.occupationalhazards.com/News/Article/34493/OSHA_ACGIH_and_Norwood_Draw_Fire_at_House_Hearing.aspx.*

[65] Monforton, "Appeals Court Upholds HazCom from Industry Challenge, The Pump Handle, May 14, 1007; see also The Project on Scientific Knowledge and Public Policy, case study, *http://www.defendingscience.org/case_studies/ACGIH-TLVs.cfm.*

[66] 67 FR 42314, June 21, 2002.

hazard: the National Toxicology Program's Report on Carcinogens, and the International Agency for Research on Cancer's Monograph Series.[67]

(d) Diesel particulate standard.

Workers in underground metal and nonmetal mines—such as salt, limestone, gold, and silver mines—often use diesel-powered machines which emit fumes containing fine particles known as "diesel particulate matter" or DPM. Researchers have concluded that exposure to these particles in the average metal or nonmetal mine over an eight-hour period can be anywhere from 27 to 162 times the level of exposure on the streets of Los Angeles over a one-year period. Research has also shown—overwhelmingly—that such exposure to diesel particulate matter can greatly increase the risk of a range of illnesses, from headaches to cancer and heart disease.

In early 2001, MSHA published regulations to help reduce mine workers' exposure to diesel particulate matter inside metal and nonmetal mines.[68] This was the first comprehensive health rule issued by MSHA during its existence. It followed 5 years of rulemaking, including a lengthy and peer-reviewed risk assessment of the risks, a detailed analysis of the economic and technological feasibility of the rule, and procedural challenges to related scientific studies.[69] The regulations provided for a phased implementation, beginning with a lengthy period of compliance assistance prior to any enforcement, and concluding in 2006.

The Bush Administration delayed implementation several times, and revised the rule to delay enforcement and eliminate some protective requirements. In January 2006, Democratic members of the Committee, responding to a proposal by the Administration to delay implementation of this rule for yet another five years, sent a letter to the Secretary of Labor opposing this action.[70] The Administration ultimately backed away, although it did delay the rule's final implementation date for another 18 months until June 2008. This year, the District of Columbia Court of Appeals recently rejected continuing industry challenges to the rule.[71]

The Committee remains concerned that irresponsible mine operators might try and take advantage of loopholes the Bush Administration created for them to avoid compliance. Chairman Miller has made it clear that he wants to be informed anytime the Secretary grants an extension of time to a mine operator for compliance with the requirements of a critical health rule.[72] Nevertheless, in light of its understanding that all challenges to final implementation of the rule have been withdrawn, and that the Department will implement the final limit in June 2008 using the required measurement method (total carbon, not elemental carbon),[73] barring fur-

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[67] For a more detailed discussion, see Monforton, "Appeals Court Upholds HazCom from Industry Challenge", supra note 64.

[68] 66 FR 5706, January 19, 2001.

[69] For a history of those procedural challenges, see Monforton, "Weight of the Evidence or Wait for the Evidence? Protecting Underground Miners From Diesel Particulate Matter, American Journal of Public Health, Vol. 96, No. 2, February 2006.

[70] Letter of January 18, 2006, *http://edlabor.house.gov/correspondence/011806ChaoLetter.pdf.*

[71] *Kennecott Greens Creek Mining Company* v. *MSHA,* No. 01–1046, U.S. Court of Appeals (DC Cir), decided February 9, 2007.

[72] Letter of March 7, 2007, *http://edlabor.house.gov/correspondence/030707GMChaoLetterDiesel.pdf.*

[73] The Court of Appeals determined that MSHA's decision to use total carbon (which consists of elemental carbon plus organic carbon) as a surrogate for diesel particulate, both at the in-

ther events that warrant otherwise, the Committee has decided that legislation to finally put this rule fully into place is not required.

(e) Permissible exposure limits.

As discussed in connection with asbestos, MSHA has not been able to update hundreds of permissible exposure limits (PELs) because of concern about an 11th Circuit court decision in 1992 prohibiting its sister agency, OSHA, from taking a similar approach under similar language.[74] An effort to update the PELs, initiated by MSHA in 1983[75] was put on hold as a result of the Court's decision.

MSHA would need considerable additional resources to address these items one at a time, and the experiences with asbestos and diesel particulate matter provide examples of how complex individual rulemakings can become—and how long it takes to get them in place—if there is significant pushback from determined opponents. Accordingly, attention turned to the possibility of a legislative solution. Legislation that would have addressed OSHA's problem was reported out of the Committee 15 years ago, on July 9, 1992.[76] The bill was not enacted. A decade later, on July 16, 2002, a hearing was held by the Subcommittee on Workforce Protections to explore whether a consensus could be reached on how to resolve the problem in the OSHA context.[77] Despite the efforts undertaken by the then Chairman of the Subcommittee, Charlie Norwood, and by others, no consensus was achieved.

It is now more than 15 years since the 11th Circuit issued its opinion, and the Committee believes it is high time to act on this matter with respect to the health of miners. The approach taken to updating MSHA's PELs does not necessarily have to be the one taken to updating OSHA's PELs, and the Committee believes there is no need to await development of an approach for the latter to move ahead on the former.

(4) Limited scope of the MINER Act.

The mining industry has repeatedly challenged the need for legislation to enhance the 2006 MINER Act, which was enacted in

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terim and final exposure levels established by the rule, was not arbitrary and capricious, although it has interferences that must be taken into account in sampling and compliance determinations. The Court also determined that MSHA could also use elemental carbon alone as a surrogate for diesel particulate matter at the original interim compliance limit based upon data establishing that at this level, a conversion factor could be established enabling MSHA to reliably convert an amount of elemental carbon to an amount of total carbon. The court noted that MSHA did not yet have a reliable basis for using elemental carbon as a surrogate for dpm at other exposure limits required by the rule. See Section III of the decision, pp. 11–16. The Committee understands NIOSH is not able to provide MSHA with a reliable elemental carbon to total carbon conversation factor for this purpose because at such low levels, the ratio varies significantly depending upon such factors as equipment operation. The Committee emphasizes that the Court found the use of total carbon, with appropriate sampling rules to deal with the possible interferences, to be a perfectly acceptable approach, and it expects the agency to proceed to implement its own determination in that regard.

[74] Similar, but not identical. Moreover, the standard of review for MSHA standards, "arbitrary and capricious", is much more flexible than the standard for review under OSHA and applied by the 11th Circuit. Nevertheless, given all of MSHA's other regulatory obligations, a decision to spend a substantial amount of time on a rulemaking that will certainly be subject to challenge would be a difficult one.

[75] MHSA issued a proposed rule on August 29, 1989, 54 FR 35760; the history of the rulemaking is discussed in the proposed rulemaking document.

[76] H.R. 3160, the "Comprehensive Occupational Safety and Health Reform Act", Rept. 103–663. See p. 67, discussion of section 405 of the bill.

[77] Reaching a Consensus to Update OSHA's Permissible Exposure Levels, Hearing before the Subcommittee on Workforce Protections, July 16, 2002, Serial No. 107–72.

June 2006 after a month after the tragedy at Darby and 6 months after those at Sago and Aracoma Alma.

The MINER Act was never intended by the Congress to be the last word on mine safety and health. Both members of the Senate and the House made this clear in their statements. There are five reasons why additional action is required.

In the first place, the MINER Act addressed some issues of concern to the Congress on only an interim or incomplete basis. For example:

- *Enhanced communication and tracking systems.* To provide time for fully wireless two-way technology to be developed, the MINER Act did not require it to be installed until June 2009, and provided for further delays if it is not ready. The Congress recognized that developments in this area might require adjustment.
- *Underground refuges.* The MINER Act required NIOSH to study the capabilities of these chambers and report its results to the Congress.
- *Explosion-proof seals.* The MINER Act required MSHA to take rulemaking action, and the agency has established interim rules that meet the NIOSH recommendations.
- *Conveyor belt technology.* There are miles of conveyor belts in underground mines to carry materials to the surface, and the existing rules on the resistance of these belts to flame are about 50 years old. The MINER Act established a task force to examine the problem and it recently reported its recommendations. The MINER Act did not, however, require MSHA to adopt these recommendations or take any other appropriate action.
- *"Belt air".* This is the practice in underground coal mines of using the passageway that brings air to the miners at the face for the conveyor belt system to take coal out of the mine. The MINER Act established a Technical Review Panel to study the matter and it recently released its recommendations. The MINER Act did not, however, require MSHA to adopt these recommendations or to take any other appropriate action.
- *Compliance.* The MINER Act required the adjustment of some penalties and the addition of others to encourage compliance, but did not upgrade other key components of MSHA's toolkit, including its ability to collect outstanding violations, the definition of a pattern of violations, and MSHA's need for subpoena authority.

Second, the Sago, Aracoma Alma, and Darby reports issued after passage of the MINER Act have raised additional issues:

- *Stoppings.* To get air to miners working at the "face", giant fans blow air through a set of passageways designed for that purpose. The walls of these passageways are known as "stoppings". The rescue teams at Sago were required to take the time to replace stoppings blown out by the explosion, cutting off air to where the miners were trapped and extending the time needed to get to the miners who were running out of air.
- *Lightning.* The MSHA report on the Sago accident, backed by research from Sandia national laboratories, determined that the explosion in that mine was ignited by lightning traveling

straight through the earth without any metal conductor and into an abandoned piece of wire cable. Technology to deal with this newly revealed power of lightning has not been developed.

• *SCSR reliability.* The self-contained self-rescuers provide breathing air for escape through toxic fumes. Mine operators were required to make many more available under the MINER Act. No actions were required, however, to strengthen the government's program to randomly survey these SCSRs to check for deficiencies. The miner who survived the Sago tragedy revealed that some of the SCSR units may have been faulty.

Third, the Congress did not have the benefit of oversight activity at the time it acted. Had there been a more active oversight program in the 109th or other recent Congresses, the Congress might well have proceeded to address some further issues like:

• *Miner rights have been undermined.* Safety and health hazards reported to MSHA by phone have often been ignored in recent years. Whistleblowers are often blacklisted in the industry, and miners and families don't trust MSHA to protect their identities. Those who complain about blacklisting may have to go through the grievance process before their cases can be adjudicated. And the law is not clear that trapped miners or their families can designate miner representatives.

• *Black lung is back.* NIOSH has confirmed that more miners are coming down with the disease, some of them still relatively young. Worries about current protections are of long standing—some miner operators were convicted of tampering with the measuring instruments used to determine compliance, NIOSH recommended an exposure limit half of that in the statute, and the UMWA pointed out that miners were now working longer shifts than in 1969 and hence needed a lower limit just to stay even with the exposure limit set in 1969. Meanwhile, under the direction of NIOSH, new technology to more accurately and securely measure coal dust exposure has been developed, but it cannot be utilized for compliance purposes unless the law is changed.

• *Other health protections have been allowed to slowly erode.* Most of the rules protecting miner safety and health consist simply of a "permissible exposure limit" or PEL, that cap the amount of a substance to which a miner may be exposed during a shift. Most of these limits were established decades ago. Over the years, NIOSH has recommended that many of the PELs be reduced to reflect its findings that the current limits do not provide adequate protection against serious diseases, including various cancers. In the late 1980s MSHA undertook an effort to update these limits en masse, but court decisions and industry opposition brought the effort to a halt. The agency lacks the capability to update each of the PELs through a separate rulemaking.

• *This Administration has delayed action or rolled back specific health protections.* Among other actions, this Administration has refused to move forward with a rule to put asbestos exposure standards in this industry on a par with other industries, and it has weakened what was previously uniform set of rules to let workers know of the hazards in the products they are using on the job (hazard communication rule).

Fourth, the Congress learned this year of some critical problems of which it was unaware, as a result of the Crandall Canyon tragedy. These included:

- *Retreat mining is dangerous and poorly regulated.* Crandall Canyon threw light on the risky nature of retreat mining, and the insufficient oversight of retreat mining plans by MSHA.
- *MSHA's authority to control rescue efforts is unclear.* Agency officials have expressed doubt about their authority to compel operators to provide needed personnel and equipment if they take over a rescue site.
- *MSHA does not have its own emergency response plan.* The Governor of Utah was highly critical of the lack of advance planning for coordination with state and local authorities at Crandall Canyon.
- *The law does not provide a mechanism for independent investigations of multiple-fatality mine accidents.* Both the House and the Senate have been forced to initiate our own investigations of the Crandall Canyon accident for this reason.

And finally, the Crandall Canyon tragedy pointed out that a key provision in the MINER Act needs to be strengthened.

- *Family and press liaison.* The MINER Act specifically required MSHA to be in charge of communicating with families and the press during a rescue in order to ensure that incorrect and misleading information does not get disseminated. The first test of this new authority was at Crandall Canyon, and it failed miserably.

(5) New resources and research are vital to help solve the problems identified by the Committee, but alone they are not enough.

As previously noted, the current Administration's track record in carryout out federal mine safety and health law has been troubling, and included budget and staffing cuts at MSHA. Efforts to reverse this decline began in 2006 after the accidents that year revealed one of the consequences of making such cuts. The Emergency Supplemental Appropriations Act of 2006 (PL 109–234) provided an additional $26 million for MSHA to strengthen its coal enforcement program by hiring and training 170 additional coal mine personnel.[78] NIOSH received a special allocation of $10 million, available for 18 months, to focus on the development of new technologies to provide miners with better emergency escape devices, refuge chambers, and advanced communication and tracking systems.[79] This year, yet more funds are being sought by the Congress in the regular appropriations bill—to continue to employ the extra MSHA personnel, to provide MSHA with an additional $10 million following news reports that MSHA lacked enough personnel to carry out its regular quarterly inspections of underground coal mines,[80] and to increase NIOSH funding by $13 million to continue its efforts.[81]

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[78] U.S. Senate Appropriations Labor, HHS, Education Subcommittee, Testimony of Richard Sticker of the U.S. Mine Safety and Health Administration, Wednesday, February 28, 2007, *http://www.nma.org/pdf/cong_test/022807_stickler.pdf.*

[79] *http://www.cdc.gov/niosh/mining/mineract/emergencysupplementalappropriation.htm.*

[80] See, e.g., Ken Ward Jr., "Bush Administration 'weak link' Byrd says, Charleston Gazette, October 9, 2007. Subsequently, the Committee received data that MSHA has a similar problem in the metal and nonmetal sector.

[81] As of mid-November 2007, these increases are proposed only, since the appropriations bill containing them has not yet been agreed to by the White House.

While the extra funding for inspectors will help reverse the decline in the capability of the agency in recent years, it alone is not enough to address all of the agency's problems. Here are a few examples of why this is the case—

• Outdated personnel and retirement rules limit agency use of resources. The loss of experienced personnel through retirement makes it hard for the agency to retain its expertise, let alone add additional inspectors. The Committee understands there is not intense competition for good candidates due to an expanding mine industry, and it takes time needed to get trained personnel in place. The current personnel and retirement rules make it difficult for MSHA to make use of senior personnel as they transition.

• Locating mine hazards requires more than MSHA inspectors. Miners and their families know where the hazards are, but they are reticent to step forward—in part because they do not believe MSHA will follow up, and in part because they are worried about retaliation.[82]

• Inspectors must be free to enforce the law. Some of the reports of the accidents that occurred in 2006 indicate that agency inspectors in some offices had come to believe their job was to provide compliance assistance, rather than to require compliance.

• Some mine operators need more of an incentive to comply when the inspector is not present. While the vast majority of mine operators comply with the law, a significant minority continue to ignore its requirements. While the provisions of the MINER Act and MSHA's revision of its assessment rules this year should help, the agency still lacks effective tools to collect outstanding penalties, to subpoena information about mine ownership, to close down mines that fail to abate, and other authority needed by inspectors to compel responsible action.

• Inspectors can only enforce the rules that are in place, and the agency's rulemaking process is slow and broken. The discussion of health rules, supra, provides a few examples.

• Inspectors can only enforce the "law of the mine". Existing safety and health rules have been weakened through variances for individual mine owners and the specifics of mine plans that determine what actually is required in a particular mine. The example of belt air is instructive. The Congress actually established a safety rule in the law that prohibited its use. Yet over time, exemptions were granted under authority given the agency to provide flexibility, and eventually these exemptions became the rule.

The provisions of the S-MINER Act will help address these and other problems that make it very difficult to protect miners from known safety and health hazards.

(6) Summary.

The Chairman of the Committee has succinctly summed up the reason why this legislation is necessary:

> "The legislation we are considering today, the S-MINER Act, builds on the work that Congress started last year when it passed the MINER Act of 2006. The S-MINER Act represents a comprehensive approach to minimize the

[82] See, for example, the discussion with Melissa Lee, Chuck Knisell, and Tony Oppegard during the Committee's hearing on March 28, 2007, "Protecting the Health and Safety of America's Mine Workers".

> health and safety risks facing miners. Our aim is a simple one: We want to do everything we can to ensure that miners are able to return home safely at the end of their shifts."[83]

The provisions of the S-MINER Act address three broad issues: disaster prevention; improved emergency response; and long-term health risks.

The requirements to boost disaster prevention include:

- Closer scrutiny of retreat mining plans and implementation.
- Adopting NIOSH recommendations and MSHA's temporary emergency standard for improved seals.
- Ensuring explosion-proof stoppings.
- Adopting technical panel recommendations on conveyor belt composition.
- Adopting technical panel recommendations on belt air and imposing related restrictions on the use of this ventilation practice.
- Providing for research on the risks of lighting storms and coal dust.
- Encouraging compliance with the law.
- Strengthening the enforcement of miner rights.

The requirements to improve emergency response include:

- Clarifying MSHA's authority to control rescue efforts.
- Strengthening MSHA's family and press liaisons.
- Requiring MSHA to develop its own emergency response plan.
- Establishing a procedure for independent investigations of major mine accidents to supplement the investigations performed by MSHA.
- Enhancing the capabilities of underground communication and tracking systems.
- Providing for the installation of underground refuges to protect trapped miners awaiting rescue.
- Ensure the reliability of self-contained self-rescuers required for escape.

The requirements to reduce long-term health risks include:

- Revising the decades old rules on exposure to coal dust and the methods for determining compliance with the exposure limit.
- Requiring MSHA to adopt an updated standard on asbestos, and to roll back a recent change in its hazard protection standard, to make both consistent with the rules applicable in all other industries.
- Establish a procedure to enable MSHA to update permissible exposure limits, including a careful examination of feasibility where there is credible evidence of a problem.

In conclusion, the Committee agrees with the following statement by the current International President of the United Mine Workers of America, Cecil Roberts:

> "When it wrote the Mine Act, Congress, in its infinite wisdom stated that this Nation's most precious resource is the "miner." This held true then and must hold true today and into the future."[84]

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[83] Introductory statement of Chairman Miller at markup of the bill, October 31, 2007.

[84] Testimony before the full committee, March 28, 2007, *http://edlabor.house.gov/testimony/032807CecilRobertstestimony.pdf.*

V. SECTION-BY-SECTION ANALYSIS

Section 1—Short Title.—This Act may be officially referred to by either its full title or its acronym. A table of contents is provided.

Section 2—Sense of Congress.—This section briefly explains why Congress has elected to address mining health and safety again only one year after it legislated on this topic.

Section 3—Definitions; References.—This section generally provides that key terms and references in this statute refer to provisions of the Mine Safety and Health Act of 1977.

Section 4—Supplementing Emergency Response Plans.—This section enhances various requirements of the 2006 MINER Act.

(a) Post Accident Communications.—Prior to 2006, communications between the surface and underground coal mines often consisted of only a single unprotected phone line that could be severed easily during a fire or explosion. Communications were disrupted often during emergencies—just when they were needed the most—when fire, explosion or rock falls interrupted the phone line. Similarly, in the event of an emergency, mines do not have systems that can reliably locate where the miners are underground to facilitate rescue. Among the most important goals of the MINER Act was to bring modern technology into underground mines to address these problems.

As a short-term fix, the MINER Act requires operators of underground coal mines to install a second telephone line in a different passageway to provide some redundancy should the primary system be interrupted. This requirement is now being implemented on a mine by mine basis.

For a more permanent fix, the MINER Act requires mine operators to install more advanced communication systems by June 15, 2009—systems that can survive accidents like those in 2006 and function in a post-accident environment. The MINER Act specifically refers to "wireless two-way" communication systems as a goal, referring to a technology that would not require any reliance upon a wire (although it provides for a backup should such technology not be available). The National Institute for Occupational Safety and Health (NIOSH) has been given additional funding to begin tests of systems that could meet this requirement and to work with other federal agencies that might be able to provide useful assistance. The MINER Act does not require mine operators to take any action prior to June 15, 2009, other than secondary phone lines, to enhance underground communications.

After the MINER Act was passed, the State of West Virginia required mine operators to install systems that would provide enhanced communications and tracking capabilities underground much more rapidly, but which would not have to be fully "wireless two-way systems". Mine operators in that state expressed concern because they recognized these systems would probably need to be replaced should fully "wireless two-way" communication systems be developed and the Federal requirement to install them go into effect in June 2009. In addition, the tragedy at Crandall Canyon again brought to everybody's attention the problem with waiting until mid-2009 to require mine operators to promptly adopt more enhanced systems. Moreover, based upon its research to date, NIOSH has expressed concern that a truly "wireless two-way" sys-

tem might not be technologically feasible by June 2009, if ever. The result has been to focus considerable attention on whether appropriate "gap filler" systems based on existing technologies can and should be installed now in underground coal mines in all States.

NIOSH is continuing to test a variety of systems based upon existing technologies and has had encouraging results with many of them. As a result, it has developed a roadmap that would provide for the installation and gradual upgrade of such "gap filler" technologies. In fact, the roadmap contemplates that, by 2009, mine communication systems based on existing technologies will be able to survive the kind of accidents that occurred in 2006 and 2007. These systems are based on "backbones" available today. A "leaky feeder" backbone, for example, consists of a co-axial cable, similar to one delivering a TV signal to a home, but from which some of the signal can "leak" to nearby reception devices. While some of the components of this system are still being adjusted to provide more cost-effective and efficient performance, installing just the leaky feeder backbone now will immediately provide miners much better protection than the redundant phone line which the MINER Act currently requires; it is not expensive to install. Based on information received since the S–MINER Act was introduced, including comments from NIOSH, the bill has been amended by the committee to permit systems based on "wireless mesh" backbones to be used for this purpose.

As introduced, the bill provided that such gap-filler systems are to be "hardened" to the extent possible (i.e., buried in a mine floor) to help ensure their survivability. The term "hardened" has caused some confusion. Based on technical comments from the mine industry and NIOSH, the Committee-reported version has revised this requirement to make its intent more clear. Specifically, the reported bill requires these systems to be "enhanced physically, electronically, or redundantly" to improve their survivability in the event of a mine accident.

Because getting improved communications systems in place is so critical to miner safety, the bill would require mine operators to amend their emergency response plans to provide for the installation of such gap-filler technologies within 120 days of enactment of the S–MINER Act. As NIOSH certifies new components to enhance system performance, mine operators are to revise their emergency response plans promptly to incorporate the upgrades.

The approach used in both the MINER Act and S–MINER Act to implement emergency response requirements in underground coal mines is one that provides appropriate flexibility, but also comes with significant risk of delay. The Committee has repeatedly expressed its concerns to the Secretary of Labor about the slow manner in which mine operators have been coming into compliance with the MINER Act; indeed, the most recent information received by the Committee shows many mines still not in compliance with a number of that law's requirements almost 18 months after enactment. In implementing the requirements of the S–MINER Act, the Committee expects the Department of Labor to closely guard against delays in the installation of the required systems.

While the S-MINER Act would not ban the use of electronic communication and tracking systems for non-emergency purposes, it

would prohibit miner discipline based upon data collected by such systems.

(b) Underground Refuges.—The accident reports on the Sago mine disaster in 2006 issued by the Department of Labor and others since the enactment of the MINER Act have clarified how sealed and equipped underground refuges could have saved the lives of miners who had nothing more than wood boards and cloth with which to try and protect themselves from toxic fumes while they awaited rescue. Moreover, the research required by the MINER Act has been completed substantially and confirms the life-saving value of such refuges. Unfortunately, the MINER Act did not take the next step and require the Department of Labor to take action to ensure refuge chambers are installed in underground mines, and the testimony of the Assistant Secretary for Mine Safety and Health before this Committee suggests there is little likelihood that the agency will move forward without explicit Congressional instruction.

As introduced, the bill provided for the installation of some underground refuges by December 15, 2007. The bill provided that a mine's emergency response plan was to provide for underground refuges within one thousand (1,000) feet of the nearest working face in each working section, meeting such criteria as the Secretary of Labor certifies are as protective as the requirements in any state which already requires such refuges. The bill ensured that any state which already has such requirements in place would not have to take further action at this time. The intent of the bill was to bring underground coal mines in all states up to par with requirements the Committee understood were to go into effect in mid–2007 in the State of West Virginia. This requirement has been eliminated from the Committee-reported bill.

The reported bill retains the provision in the introduced legislation that requires the Secretary, by June 15, 2008, to issue final interim regulations for the installation of refuges in the working areas of underground mines that are consistent with design criteria recommended by NIOSH. However, the reported bill contains a number of modifications recommended by NIOSH, the mining industry and miner representatives.

First, the reported bill ensures that the refuge requirement can be met through multiple alternatives—portable rescue chambers, refuge shelters carved out of the mine workings and sealed with appropriate bulkheads, or by other refuge designs that will provide miners with equivalent or better protection.

Second, the reported bill provides for the maintenance of a mobile shelter within 500 feet of the nearest working face in each working section of an underground coal mine. The Committee wants to ensure that miners can reach a shelter quickly after an accident, and believes the 1,000 foot distance initially contemplated is too far for a miner to travel using a single self-contained self-rescuer (SCSR) to reach a safe haven should there be toxic fumes, dust, fire or other impediments to escape. The Committee recognizes that some in the industry are concerned that miners working out by the face would actually have to travel back toward it to reach such a shelter; however, the Committee does not intend this particular shelter to be a substitute for others placed at appropriate intervals consistent with NIOSH recommendations.

The reported bill retains the requirement in the introduced bill that underground coal mine emergency response plans are to be amended to provide for the installation of underground refuges within 60 days following plan approval. The Committee's intent is that, following the issuance of the interim regulations, each emergency response plan will have to include such a requirement the next time it is submitted for MSHA approval, a process required every six months on a schedule initiated by the MINER Act; and that once in the plan, implementation will be prompt. Because of the rulemaking process, mine operators will have plenty of notice about this requirement; indeed, a review of existing emergency response plans reveals that many mine operators have already placed orders for refuge chambers in order to implement the existing MINER Act requirement for "breathable air" supplies for trapped miners. While the Committee recognizes that supply shortages may develop, it does not expect that the Department of Labor will exacerbate the problem by permitting a mine operator to elect to wait for a very popular brand or chamber design rather than requiring the operator to choose another perfectly suitable design that can be timely installed and can provide similar protection—which is actually what the Department did do with the SCSRs required under the MINER Act.

(c) Improvements to Seals, Ventilation Controls, and Rock Dusting to Limit the Damage From Explosions.—This subsection increases the strength of various wall-like structures in underground coal mines to enable them to resist explosions and also requires the explosive risks of coal dust to be studied and appropriate action taken in light of the results.

Paragraph (c)(1) would repeal Section 10 of the MINER Act, which is a free-standing requirement for rules to improve minimum standards for mine seals. This repeal is coupled with the next paragraph of the bill, which establishes new requirements on seals as a permanent part of the Federal Mine Safety and Health Act of 1977 (the "FMSHA."). The purpose of the amendment is to give MSHA a few more months to finalize rules for mine seals. Under the 2006 MINER Act, the rules were to be finalized by December 31, 2007; under the reported bill, MSHA will have until three months after enactment of the S–MINER Act. The Committee decided to provide this extra time to avoid the need for MSHA to act twice to replace the emergency temporary rules now in effect. The Committee notes that MSHA's existing emergency temporary standard, issued May 22, 2007, will remain in effect until February 21, 2008 (nine months after issuance, pursuant to section 101(b) of the FMSHA). Given the familiarity of the underground coal sector of the mining industry with the basic requirements and the seriousness of permitting a gap in protection, the Committee presumes that MSHA will complete action in time to avoid such a gap and will likewise make the rules effective promptly in this sector. In the event that the Congress does not move quickly to enact the S–MINER Act, MSHA will have to proceed to issue a final rule by the end of 2007 under the existing law, in which case the repeal will have no practical effect; it is certainly not intended by the Committee to invalidate any MSHA rulemaking action issued pursuant to the current law.

Paragraph (c)(2) would add additional requirements to those already in the FMSHA concerning the installation of mine seals. "Seals" are structures used to segregate abandoned areas of the mine from working areas and need to be able to contain an explosion should one occur in the abandoned area. The tragedies in 2006 clearly revealed that the "seals" used to separate abandoned areas of the mine from working areas did not meet the "explosion proof" standard in the Coal Act of 1969.

First, the bill requires that MSHA inspect all seals under construction after the date of enactment of the S–MINER Act during at least part of their construction to ensure that the mine operator is performing the work properly. While MSHA must approve the plans for such construction, inspection during construction is necessary to ensure that each is being constructed in accordance with their approved design plans. The bill does not preclude supplemental examinations by qualified personnel on behalf of the mine operator.

Second, the bill requires MSHA to issue final rules within three months of enactment regarding the approval, design, construction, inspection, maintenance and monitoring of underground coal mine seals that meet the most recent recommendations of NIOSH unless otherwise provided in the S–MINER Act. The original bill would have gone beyond the NIOSH recommendations (and MSHA's emergency temporary standard) by requiring that all seals be monitored. Based upon information from the mining industry, miner representatives and the Administration, the reported bill no longer includes such a requirement.

Generally, the reported bill will require the final rules to be consistent with the emergency temporary rules issued by MSHA in May 2007. The key requirement is that current and future seals must be designed and installed to withstand a constant total pressure of 240 pounds per square inch, using a static structural analysis, or be monitored. The MSHA emergency temporary requirement includes a similar requirement, using a dynamic pressure analysis; this bill would require that seals meet the static pressure test. The Committee understands that, notwithstanding the fact that the emergency temporary standard has been in effect since May 2007, applies to existing seals and is presumably already being enforced by MSHA, some operators may be seeking to change the final rule to permit the exemption of older seals from these requirements. The Committee wishes to emphasize that the age of the seal is irrelevant to its safety and the reported bill would make no such exemption.

The bill would establish some requirements for monitoring those seals not meeting the 240 psi standard which are not in the MSHA emergency temporary standard, because the Committee was dissatisfied with those requirements. These new requirements ensure the quick transition to continuous monitoring devices used in other countries, which is important because the pressure on both sides of seals changes constantly due to passing storms and even daily atmospheric pressure changes. The distinction made in the emergency temporary standard between ingassing and outgassing for purposes of monitoring was without foundation. The changes in the S–MINER Act ensure adequate sampling behind seals, and for the use of boreholes for sampling, while ensuring that sampling and

borehole pipes are designed to minimize safety hazards associated with their use. The changes also establish a safety margin for the pressures behind the seals. Again, the final requirements in this regard are informed by information supplied by the mining industry, the Administration, and miner representatives.

Finally, the bill would also require that action plans for sealing and repairing seals spell out specific actions the mine operator must take to protect miners during the critical time period immediately after sealing or repair takes place. This is necessary because it is during this time that methane gas behind the seal is building up and going through an explosive range before it becomes inert. Once the gas reaches the inert level and the seal is fully cured, the new requirements on seal integrity or monitoring should keep the risks in check.

Underground metal and nonmetal mines which naturally emit methane also use seals. See section 4(k) for the requirements which the reported bill would establish for seals in that sector.

Paragraph (c)(3) would amend the existing requirements of the FMSHA to establish new requirements to ensure the integrity of ventilation controls. "Ventilation controls" refer to structures that segregate ventilation channels to preserve the flow of air. The term "stoppings" is often used to describe structures that separate passageways in the working areas of the mine and channel ventilation to and from the areas where miners are working. Stoppings must be able to resist overpressures caused by explosions. If stoppings fail, miners and rescue workers do not have the air they need and smoke can spread into rescue passageways (as at Aracoma). Tests by NIOSH in 2006 revealed that the stoppings now in use in many mines, particularly metal stoppings, are much less able to resist explosive forces than the traditional concrete block stoppings. These results were akin to the findings that seals constructed with nontraditional materials like Omega block were not as strong as their more traditional counterparts.

The introduced version of the bill would have required various ventilation controls in addition to stoppings to be constructed only of concrete blocks laid wet and sealed on one side. Based on information from industry, miner representatives and the Department of Labor, the provision has been revised to focus exclusively on the stoppings, and to permit the use of hollow concrete block in certain situations. Specifically, the reported bill would require that, no later than one year after enactment, the Secretary issue interim final regulations requiring that stoppings be constructed of solid concrete blocks laid wet and sealed on one side, except that stoppings constructed during retreat operations would be permitted to be constructed of hollow block. Metal stoppings would not be permitted.

Paragraph (c)(4) would create a study to determine whether today's rock dusting practices, which have been in place for more than 30 years, adequately address the explosion risks presented by coal dust in the mine atmosphere. "Rock dusting" is an essential tool in limiting in-mine explosions. Coal dust can propagate an explosion generated by an ignition and, not infrequently, generates secondary explosions if it has not been properly limited. Coal dust is made less explosive by removing it from areas near ignition sources (e.g., conveyor belts) and by treating it with rock dust. Sec-

tion 304(d) of the FMSHA sets forth the current statutory formula for how much rock dust must be added to coal dust. The coal dust generated by the longwall equipment used in many coal mines today is believed to be finer than what was generated in the past, and hence likely to be more explosive. If so, this means that miners today may be at increased risk if the rock dusting is limited to the traditional amounts.

The bill would require NIOSH to conduct a study of the matter and issue recommendations by June 15, 2009 that would require the Secretary of Labor to take appropriate action in light thereof, including the issuance of an emergency temporary standard should the study indicate that the risks to miners are significant enough to justify such action.

(d) Limiting Conveyor Belt Risks.—While the conveyor belt fire at the Aracoma Alma mine would not have spread had normal safety precautions been taken, the fire nevertheless pointed to the fact that conveyor belts do catch fire and such fires are dangerous. The belt systems create friction through their constant movement, which can ignite the belts themselves. There are miles of such belt in underground mines, both coal mines and other mines. The current standards for belt flame resistance are 52 years old, and were to be updated to meet NIOSH recommendations when the rulemaking was halted by the current Administration. A practice known as "belt air" can make matters worse in underground coal mines because it uses the passageway normally reserved for the conveyor belt as an intake air channel; should a fire begin, the fire is carried toward where miners are working. Banned by the 1969 Coal Act, belt air was authorized from time to time by MSHA pursuant to its authority under section 101(c) of the FMSHA to modify existing safety standards where mine operators agreed to provide equivalent or better protection and came into more widespread use when the current Administration established a rule permitting its use.

The 2006 MINER Act established a Technical Study Panel to study and develop recommendations on these two matters. While the Panel's final report is not due to be issued until the end of 2007, it has already issued its recommendations. The MINER Act did not require the Department of Labor to take any action based on those recommendations, and the testimony of the Assistant Secretary for Mine Safety and Health before this Committee suggests there is little likelihood that the agency will move forward on its own without explicit Congressional instruction.

Paragraph (d)(1) would require MSHA to issue interim final regulations by January 31, 2008 to put new standards for conveyor belts into place. While this is a tight timeframe for regulatory action, the requirements in question are not complex and MSHA had developed an extensive rulemaking record prior to halting the rulemaking.

The bill reported by the Committee ensures that all conveyor belts already in use in underground coal mines are replaced no later than December 31, 2002 with belts that can meet the flame resistance requirements recommended by NIOSH and which limit smoke and toxic emissions. The bill further requires that any conveyor belt installed in a coal mine after the date of enactment is to meet the new requirements.

The mandate and recommendations of the Technical Review Panel were confined to flame resistance. Since it began work, however, both the Panel and the Committee has been advised that belt fabric is currently available which meets not only the NIOSH flame resistance standard but which also can reduce the smoke and toxic emissions that actually lead to death in the closed environment of underground mines. Accordingly, the reported bill requires the use of belt material which can simultaneously reduce all three risks. In this sense, the reported bill is consistent with the recommendations of the Technical Review Panel but expands upon them to provide additional protections.

The timeframe for converting to the new belts has been the subject of concern from both the industry and miner representatives. Conveyor belts are expensive and, depending upon use, can last many years. Moreover, some operators have supplies on hand that have not yet been installed. On the other hand, the risks of conveyor fires are real. Moreover, the new belts cost more than the old belts because of the extra protection, and this may well encourage some mine operators to use older belts longer than they should in order to save replacement costs, leading to a deterioration that could well ignite fires. The bill reported by the Committee seeks to strike an appropriate balance between these interests in order to bring about a timely but not overly costly conversion to the safer belt fabric.

For the requirements the bill would establish for conveyor belts used in underground metal and nonmetal mines, see the discussion of section 4(k).

Paragraph (d)(2) would restrict—but not eliminate—the practice of using "belt air" to ventilate the Nation's underground coal mines. Mines which cannot create separate intake and conveyor belt entryways because of safety considerations (e.g., ground control problems that would risk a cave-in if another entry to be created) would be authorized to apply for permission to use belt air. Operators of these mines would have to seek case-by-case approval of their applications by applying for a modification from existing safety standards, just as they did for many years. Finally, if MSHA permits a mine to use belt air, the mine must follow all the recommendations on belt air use that have been established by the Technical Review Panel.

The original bill would have banned belt air entirely, but the Committee has found that there are some locations in the country where the practice may be needed to mine underground coal safely (e.g., Utah, Alabama and some parts of West Virginia). As a result, the bill would allow the practice to continue in this limited class of situations—provided certain processes and safeguards are observed to minimize the risks.

The modification process under section 101(c) of the Act provides for a public notice of an application for belt air use and an opportunity for a public hearing upon request. This is to ensure that the miners and others who may have information relevant to the application can be heard. Court challenges are permitted, just as with a standard, since a modification creates a new standard for a particular mine.

All mine operators with existing developments utilizing belt air at the time the S–MINER Act is enacted would be able to continue

doing so for a limited period of time to avoid production shutdowns and job losses, but thereafter the practice would only be available under the conditions set forth in the reported bill.

(e) Pre-Shift Review of Mine Conditions.—Pre-shift examinations are a critical element in ensuring the safety of underground coal mines and are required by section 303(d) of the FMSHA. The information collected during these important examinations, however, serves no protective purpose if the information is not conveyed promptly to the workers about to enter the mine. The law currently provides only that: "Upon completing his examination, such mine examiner shall report the results of his examination to a person designated by the operator to receive such reports at a designation station on the surface of each mine before other persons enter the underground areas of such mine to work in such shift." To ensure critical information is actually conveyed to the incoming shift, the bill would add a requirement to the law to require oral communications between those inspecting a mine prior to a work shift and those beginning the next shift.

The introduced bill would have provided for a differently structured mechanism to ensure information was conveyed. The Committee decided to modify the bill following receipt of technical recommendations from the Department of Labor, industry and miner representatives.

(f) Atmospheric Monitoring Systems.—As evidenced by the 2006 tragedies, fire and excess methane pose significant dangers to underground miners. While local codes require most homeowners today to have detectors in their homes to detect smoke and toxic fumes, and while such devices have been well tested in mines, detectors are not required except in those cases when the mine operator is using belt air. This poses an unjustified risk to the miners. It also means that rescuers do not have the information they need to assess underground conditions once an incident occurs, potentially halting rescue until cruder measurements at the mine mouth reveal it is safe to proceed—as was, for example, the case at Sago. Accordingly, the bill requires that, no later than May 1, 2008, an operator of an underground mine must install atmospheric detection and warning systems in all underground areas where miners normally work and travel. These systems must provide real-time information on carbon monoxide levels and that can, to the maximum extent possible, withstand explosions and fires.

The introduced bill would have required that atmospheric detection and warning systems capable of monitoring other gases—in particular, methane levels, oxygen levels, air flow, smoke and temperature—also be installed. The Committee has been advised that the instrumentation for these other systems is not yet reliable and could lead to false alarms, which in turn might lead miners and mine operators to ignore real alarms. The Committee notes that further developments of such monitoring systems will be a priority for NIOSH under subsection (m) of this section and would strongly encourage MSHA to require the implementation of these systems as soon as NIOSH certifies their reliability.

(g) Methane Monitors.—Miners die if they do not know that they are exposed to hazardous gases. It is possible that the explosion at the Darby mine took place because a miner was unaware that the area in which he was using a torch was saturated with methane

gas due to a leak in a nearby seal. Similarly, many miners involved in the 2006 tragedies were uncertain whether they needed to don and keep on their self-rescuers to avoid poisoning by carbon monoxide gas. A similar risk can occur in areas of the mine in which oxygen levels are too low.

MSHA's emergency response rule of December 8, 2006 provides that mine operators "provide an MSHA-approved, handheld, multi-gas detector that can measure methane, oxygen, and carbon monoxide to each group of underground miners, and (also) to each person who works alone, such as pumpers, examiners and outby miners." (30 CFR 75.1714–7) In practice, however, this protection is not complete. For example, if a group of miners gets one meter, and one or more of the miners must split away from the group (as is often the case) to perform work in nearby areas that may have very different atmospheric conditions, a choice has to be made as to which miner(s) has the meter. Accordingly, the bill would expand upon MSHA's regulatory action to ensure that, as a matter of law, such multi-gas detectors are supplied to "each miner who is working alone for part of a shift." The reported bill uses the words "is working alone", instead of the words "may be working alone" that were in the original bill, based on technical advice from MSHA that this clarification would facilitate enforcement.

(h) Lightning.—Various explanations have been advanced as to the ignition source which set off the spark that ultimately led to the horrible tragedy at the Sago mine. MSHA's accident report, based on studies by Sandia laboratories, asserts that a lightning pulse above the location of the underground mine created an electrical charge in a cable in an abandoned area of the mine, and that this charge was enough to set off the explosive concentration of methane present in that area. There have been many documented examples of lightning touching off an underground mine explosion by, for example, striking a metal conduit pipe extended to the surface; for this reason, mines are required to install lightning arrestors. If lightning can set off underground explosions in the manner suggested by MSHA's accident report, however, then the existing protections are inadequate. While removing cabling in sealed areas and more carefully enforcing requirements that metal connections between abandoned and working areas be severed, more may need to be done to ensure that miners who are working underground during lightning storms are either protected or withdrawn.

The introduced bill this year provided that, until further research could ensure miners of protection against such threats, they should be withdrawn from a mine during a lightning storm. However, representatives of both miners and the industry assured the Committee that withdrawal from many mines was impractical (due to the size of the mine and time needed for egress) and posed safety dangers of its own, especially if it meant the miners would be brought outside during the storm. Accordingly, this provision was stricken from the bill reported out by the Committee.

The bill continues to provide that, no later than one year after the date of enactment of this title, the National Academy of Sciences shall issue recommendations to the Secretary of Labor, with a copy to Congress, on actions that need to be taken to strengthen existing requirements in the law or regulations to ensure that miners are protected from potential damage that could be

generated because of lightning strikes near a mine by adopting any existing technology to the mining environment, and on research needed for improved technology.

(i) Roof and Rib Support, Barrier Reduction and Pillar Extraction, Special Attention to Deep Mining.—This subsection was not in the introduced bill, but was added following the accident at the Crandall Canyon mine in Utah in which 6 miners were trapped and killed along with 3 rescuers. The Committee is continuing its own investigation of this accident, but much is already clear.

As underground coal mine operators run out of resources they can readily extract from their properties, they have used every available method to extract more. Where it can be used, longwall mining equipment permits coal extraction without the need to leave pillars of coal in place to hold up the roof, and the equipment is designed to protect miners from harm. Retreat mining is another way to get extra coal. It involves the extraction of the coal pillars originally left in place to hold up the roof, and it must be performed under a plan specifically designed for the situation in a particular mine so miners will not be hurt as the roof collapses. Sometimes retreat mining also involves reduction of giant "barriers" of coal left in place to hold up roofs under high mountains.

The Crandall Canyon accident exposed once again the risky nature of retreat mining and the poor oversight of retreat mining plans by MSHA. The Committee regards the accident as yet another symptom of the inadequacies inherent in the system the Congress put in place several decades ago to protect mine workers from harm while on the job.

This subsection of the bill would:

- Require MSHA to more closely review retreat mining plans by bringing computer simulations and experts to bear; and including an extra layer of review before approving plans for deep mines.
- Require MSHA to observe retreat mining operations when they begin to ensure they are being performed in accordance with the plans and that miners are properly trained.
- Require a through study of ground control science and technology.

Existing section 302 of the FMSHA is entitled "Roof Support" but actually deals with the ribs as well. Moreover the Committee understands it is in the "roof support" plan that the operator sets forth its retreat mining plans (reducing the size of coal barriers and the extraction of coal pillars). Accordingly, Section 4(i)(1) of the reported bill re-titles and expands this section to cover roof and rib support, barrier reduction and pillar extraction, with special attention to deep mining.

Section 302(a) of the FMSHA is amended by requiring the Secretary to establish by regulation the appropriate use of roof screen in certain areas of the mine—belt entries, travelroads, and designated intake and return escapeways. Roof screen is an established practice in many mines to ensure that heavy chunks of rock do not fall on miners while working in the area. According to data supplied to the Committee, between 1995 and 2001 an average of nearly 650 reported injuries per year resulted from roof material falling from between the roof bolts, injuries that could have been avoided had screening been installed to prevent the loose material from falling. At the same time, the Committee recognizes that

there may be some circumstances where the use of roof screen is inappropriate; hence, the bill is clear that the Secretary has appropriate discretion to issue a regulation that will not require the use of roof screen in inappropriate circumstances even in the specific areas identified by the bill. The Secretary has the authority, of course, to require roof screening in areas not specifically referenced in the reported bill.

New subsection 302(g) of the FMSHA specifies some minimum requirements for the roof screening where it is to be used. The Committee understands that NIOSH has determined these are appropriate requirements based on years of examining the topic. These are minimum requirements and do not preclude the Secretary, following rulemaking, from determining that additional requirements need to be imposed in some or all circumstances.

New subsection 302(h) requires an operator to have a current and approved plan for barrier reduction, pillar extraction or both before performing such activities. Paragraph (1) requires that MSHA shall only approve the plan if it minimizes the risks to miners and complies with any requirements that may be specifically adopted by the Secretary.

In determining whether the plan minimizes the risks to miners, the Secretary is to consider appropriate engineering analysis, computer simulations, and consultations with experts in various agencies. While the Committee is still investigating what actually led to the accident at the Crandall Canyon mine, public statements and analyses so far by MSHA, the Bureau of Mines, NIOSH and various academic experts strongly indicate that the potential problem in the retreat mining plan might well have been detected had appropriate analysis been done. The Committee further believes that a key to better analysis is to ensure that available Government expertise in several agencies is consulted on individual plans.

The Committee expects that as analysis of the Crandall Canyon mine tragedy continues, and related studies are completed, the Secretary may want to adopt specific requirements for barrier and pillar extraction plans for certain types of mining situations. The bill indicates that these requirements may relate to the depth of the mine, geology of the mine, mine height and methods, and emergency response capabilities, but this list is only suggestive and will serve as a reminder for the Secretary, the Committee, those performing studies, and the mining community in general as to some of the factors that should be explored.

Paragraph (2) of new subsection 302(h) requires a copy of the plan to be provided to the authorized representative of miners in advance of submittal to the Secretary, provides an opportunity for comment, and requires the Secretary to respond to any such comments. The normal process for plan approvals does not include such a requirement, and it is being added here in order to ensure that those most closely impacted by the decision have some opportunity to bring to the attention of the Secretary information that could significantly impact the analyses performed—e.g., a history of unreported mountain bumps, or instructions from a mine operator to ignore particular safeguards.

Paragraph (3) of new subsection 302(h) requires the Secretary to establish a special internal review process before approving a barrier reduction or pillar extraction plan for depths below 1500 feet

and in mines with a history of mountain bumps. The reported bill provides the Secretary discretion on the details of this process, but the Committee expects that it will involve a higher level of signoff within MSHA, perhaps a signoff from appropriate officials at NIOSH and perhaps some independent peer review of the plan by qualified academic or other independent experts familiar with mining at such depths or under such conditions.

While the provisions discussed so far focus on ensuring that the mine operator's plan for barrier reduction and/or pillar extraction is sound, the provisions of new subsection 302(i) focus on ensuring that the plan is properly implemented. The bill would require that the operator give MSHA a week's notice before actually beginning retreat mining, or resuming it after a hiatus, so that the Secretary can ensure the miners are properly trained and that the operator is complying with the terms of the plan. The Committee does not intend that suspension of activities for a day would normally require a new notification in this regard; rather, the Committee expects the Secretary to determine when notification is required after a suspension of retreat operations so as to fulfill the goals of the subsection.

Miner training for such activities is particularly important because pulling the wrong pillar or not understanding how to extract a pillar safely can result in death or serious injury. The Committee is particularly concerned that language barriers may be a problem in some mines. In requiring the Secretary to confirm the training of the miners in this regard, the Committee is following the lead of the State of Kentucky which earlier this year imposed a similar requirement on retreat mining in that state.

The reported bill requires that the Secretary actually observe the barrier reduction or pillar extraction operations for "a sufficient period of time to ensure that the mine operator is fully complying" with the plan. While this imposes resource requirements on the agency, the Committee believes this focused use of the agency's resources is a sound investment in catching problems before they occur. The nature of these operations is potentially risky, and the agency's presence on site to observe plan implementation will contribute to better plans and fewer implementation problems.

Section 4(i)(2) of the reported bill requires the National Academy of Sciences, in consultation with NIOSH, to submit recommendations to the Congress within a year of enactment of the S-MINER Act on how to better deal with ground control hazards, including barrier reduction and pillar extraction issues. The recommendations are to include particular focus on whether existing technologies can be adopted to provide miners with better protection during these operations, on future research needed, on improving safety in deep mining operations, and on improving safety during secondary mining of coal resources at any depth. As discussed above, the most available coal resources have already been extracted, and the Committee believes that in going after what is left that, the country may need to revise the technologies and approaches it has used with success in extracting the more readily available resources. The Committee hopes that additional research along the same lines at various universities will be funded by Congress, but believes that a National Academy of Sciences study in consultation with NIOSH is also important.

(j) SCSR Inspection Program.—Initial reports on the tragedies in 2006 raised a number of questions about the reliability of the self-contained self-rescuers (SCSRs) maintained by some miner operators. As with other aspects of the law, it is the obligation of mine operators to ensure that their SCSRs are properly maintained—see, generally, 30 CFR 7514–3. MSHA's emergency evacuation rule of December 8, 2006, added additional requirements in this regard; specifically, that mine operators regularly inventory their SCSR supplies, file those lists with MSHA and notify the agency promptly of any defect, malfunction or performance problem with any unit in its inventory. 30 CFR 75.7514–8

However, as important as it is to make mine operators responsible for such actions, the Government also has a responsibility for ensuring these devices are, in fact, operative. At the present time, NIOSH conducts a random survey of all SCSR units in service in mines. While that agency has taken steps this year to address identified deficiencies in its program, NIOSH has no power to actually select and remove specific SCSRs from service for testing. Rather, it depends upon operator voluntary compliance, and it is therefore likely that some operators will decline to submit units for testing that may demonstrate noncompliance with the law's requirements. MSHA has the authority to make such requests and ensure that the units selected for testing are indeed the units it wants; but it has declined to do so. The bill would correct this situation and mandate that MSHA make the requests for the units that require testing. Once the units are obtained, NIOSH will perform the actual testing.

As introduced, the bill would have required MSHA to pull 5% of SCSRs in mine inventories every 6 months and would have required mine operators to replace these units. Based upon information supplied by MSHA, NIOSH, the mining industry and miner representatives, the reported Committee bill takes a more modest approach. The reported bill leaves it up to NIOSH to determine the specific units and number of units it will sample and requires NIOSH to replace the units pulled for sampling. NIOSH has advised the Committee that it has revised its sampling survey to ensure that it will pull a random sample capable of detecting problems, and that it has the resources to replace the units drawn for this purpose. However the bill further authorizes MSHA to pull additional units for testing should NIOSH request them based upon the initial sample, and in this case it shall be the obligation of mine operators to replace the additional units.

(k) Application to Underground Metal and Nonmetal Mines.—The MINER Act was an explicit response to the tragedies of 2006 and select other problems in underground coal mines. Nevertheless, it remains a fact that the worst underground tragedy in a U.S. mine was at a non-coal mine. While regulations governing operations at these mines do have some safeguards to protect miners during an emergency, either by escape or refuge, these provisions have not received attention in many years.

As introduced, the S–MINER Act required the Secretary to establish an advisory committee to look into the problem and set a deadline for the advisory committee to make recommendations to the Secretary and the Congress in this regard. This provision remains in the reported version as paragraph (c) of a new section 206

of the FMSHA. Such recommendations are to include any action by the Congress that could facilitate the goal of providing underground metal and nonmetal miners with the same level of protection as underground coal miners.

However, the Committee decided to move forward and specifically require underground metal and nonmetal mines to take action on two topics where their situation is directly comparable to those of underground coal mines. Those two situations are conveyor belts and seals in "gassy" mines.

As discussed in connection with section 4(d)(1) of the bill, the bill would require underground coal mine operators to switch to a new generation of conveyor belt fabric that is much more flame resistant and can also reduce the generation of smoke and toxic gases should a belt catch fire. Underground metal and nonmetal mines use belts extensively as well. While these belts do carry coal, hence reducing the threat of fire starting or spreading because of coal dust, they too can catch fire from malfunctioning equipment. For example, just last year, agency staff reported the following incident:

> A fire involving a conveyor belt occurred in an underground salt mine. Fortunately, there were no injuries from the fire. The fire occurred as a result of a misaligned conveyor belt rubbing against a steel beam of the conveyor structure. The misaligned conveyor belt caused a jam at the take-up pulley. The fire burned approximately 30.5 meters (100 feet) of conveyor belt, but the fire also spread to a transfer conveyor belt. Eight-five meters (280 feet) of the transfer conveyor belt was consumed by the fire. As part of MSHA's investigation, an examination was made of a segment of the misaligned belt recovered from the fire to determine if the belt was under load and tore apart. By visual examination, the tears in the partially burned edge of the segment indicated the belt was under load and burning occurred near the center and the belt tore apart from the center toward the edges. This explanation was confirmed by microscopic examination of a section of the segment; unburned strands of the ply material broken from tension were observed . . . "[85]

Accordingly, new subsection 206(a) of the FMSHA, established by the reported bill, would require that belts in this sector be replaced with the newer fabric on the same schedule as belts in underground coal mines. The fact that the mandate of the Technical Review Panel established by the MINER Act did not authorize that panel to make recommendations beyond the coal sector, is not a reason to overlook the problem.

As discussed in detail in connection with section 4(c)(1) of the bill, walls used to seal off areas of an underground coal mine that are not regularly ventilated need to be strong enough to withstand explosions. This is because methane is present in underground coal mines, and despite efforts to minimize possible ignition sources, anything missed can set off a major explosion. The Committee has

[85] Harry C. Verakis, CFEI, CMSP, Mine Safety and Health Administration, Technical Support Directorate, reported at the International Symposium on Fire Investigation Science and Technology, June 25–29, 2006, University of Cincinnati, Ohio, and published in the Proceedings of the 2nd International Symposium on Fire Investigations Science and Technology by the National Association of Fire Investigators, 2006, USA.

determined that exactly the same situation is present in some types of underground metal and nonmetal mines—those which naturally emit methane gas. These mines use seals in the same manner as underground coal mines. Accordingly, new subsection 206(b) of the FMSHA, established by the reported bill would apply the same rules to seals in these mines as in underground coal mines.

This includes the approval of plans for the design, construction, inspection, maintenance and monitoring of seals, and the requirement that the Secretary inspect all seals after construction on the date of enactment to ensure compliance with the approved seal plan. While it has not been MSHA's practice to require the underground metal and nonmetal sector to obtain pre-approved plans for a particular operation, as it does in the underground coal sector, this tradition is not a matter of law. Pre-approval of seal plans is vital to ensure that these critical mine structures perform correctly.

The date on which these rules become effective in this sector is not necessarily the same date on which they become effective in the underground coal sector. Underground metal and nonmetal mines are not currently subject to the emergency temporary requirements applicable since May of 2007 to seals in underground coal mines. For that same reason, the existing protections (of the emergency temporary standard) do not become ineffective to the metal and nonmetal sector after February 21, 2008 as they do in the coal sector (after the 9 months for which an emergency temporary standard can be effective). Nothing in the law nor reported bill compel MSHA to make these requirements effective to metal and nonmetal mines by that time. The only time requirement in the bill that will impact this sector is that concerning the type of monitoring that must be used if a mine in this sector elects to monitor a seal rather than build one meeting the 240psi static pressure standard (monitoring must be continuous monitoring if done more than a year after the effective date of the S-MINER Act). While this situation leaves the agency flexibility in establishing an effective date for this sector, the Committee reminds the agency and the industry that MSHA has already determined that the risks of failing seals in very similar underground coal mines constitute a "grave danger" to miners, and the agency should move expeditiously to eliminate an equivalent risk in certain categories of underground metal and nonmetal mines.

(l) Approval Center Priorities.—In order for certain devices to be used underground, they must be approved by MSHA as "intrinsically safe"—i.e., their components are designed so as not to create a risk of igniting explosive gases present in the mine atmosphere. There is a considerable backlog at MSHA's approval center, which needs to be addressed with increased resources. This bill would simply reinforce that, consistent with existing policy, priority is given to the approval of any self-rescue device that permits the replenishment of oxygen without requiring the device user to remove the device and to the approval of any communications device that would permit mine operators to comply with the requirements of the MINER Act for the installation of an underground communication device that provides for communication between underground and surface personnel via a wireless two-way medium. These requirements were in the introduced bill and have not been altered.

(m) Technology and Mine Emergency Health and Safety Research Priorities.—The bill provides that in implementing its research activities in the 5-year period beginning on the date of enactment of this Act, NIOSH give due consideration to new technologies and existing technologies that could be adapted for use in underground coal or other mines and that could facilitate the survival of miners in a mining emergency. The bill specifies some examples of the technologies to be given this priority attention. These requirements were in the introduced bill and have not been altered.

The Committee wants to emphasize that as important as these priorities are, NIOSH has a broad mandate to protect miners from health hazards as well as safety hazards. Because the safety hazards have received the most attention in recent years, the Committee is concerned that NIOSH may not be keeping up its activities in the health area. One example is the failure of NIOSH to move forward in recent years with its project to develop new recommended exposure limits reflecting the most recent scientific findings about the hazards of exposure to toxic substances. The Committee expects NIOSH to reinvigorate its health research efforts and to advise the Congress promptly if it lacks the funds to do so.

Sec. 5. Supplementing Enforcement Authority.

(a) Authority of inspectors.—This subsection would clarify current law to ensure that MSHA inspectors can respond properly in the event of an accident. The Committee reported bill would amend section 103 of the Act to explicitly prevent interference with inspectors during the course of their activities. It would thus ensure that operators cannot stall inspectors by putting limits on their ability to take photographs or samples, refuse to provide transportation into a mine or interfere in the investigation of an accident or other incident or during recovery. This amendment would be consistent with existing interpretations of the law, but making this prohibition explicit would facilitate compliance.

(b) Transition to a new generation of inspectors.—The lack of an adequate number of inspectors to perform the required number of regular inspections of underground coal mines has proved to be a persistent problem. It has required MSHA to divert staff from other critical duties. Moreover, these inspections may not be as thorough as when performed by those who have and keep current the required expertise. While MSHA has considerably expanded its hiring efforts since the MINER Act was passed, it is barely able to keep up with the retirement rate, let alone add new inspectors. In addition, training new inspectors takes 18 months even with compressed classroom time.

Accordingly, subsection (b) takes several steps to slow the loss of senior experienced personnel while the agency is building up its supply of new inspectors. The bill would require MSHA to establish a Master Inspection program, to lift the personnel ceilings for five years so that new and existing personnel could work together for these periods if resources to do so are adequate and permit retired inspectors to perform such services for MSHA under contract for five years without loss of retirement pay. Annual reports to the Congress would be required during the five-years that these special waivers are in effect to ensure that they are being properly managed.

(c) Office Of Miner Ombudsman.—The bill would establish a new position within the Office of the Inspector General at the Department of Labor to protect miner rights, and particularly to ensure the integrity of the complaint process. The Ombudsman would receive all complaints of operator violations that come to the Department and ensure the confidentiality of those making these reports. The Ombudsman would use this information to ensure that complaints are being timely and properly addressed and would be given specific authority to this end. He or she would also enjoy whatever general authorities are already available to the Office of the Inspector General. The Ombudsman would also monitor the agency's compliance with the anti-retaliatory requirements of the Miner Act of 2006.

The Ombudsman position would be filled by a Presidential appointee with expertise in mine safety and health. This appointee would be authorized to hire necessary staff in accordance with money appropriated by Congress.

The Committee-reported bill contains a number of modifications to the bill that was introduced in light of comments from the Office of the Inspector General. In addition, at the suggestion of Committee members, a provision was added to ensure that the Ombudsman make available laminated cards and other similar memory aides that miners and their families could keep at home with appropriate contact information.

(d) Pattern of Violations.—The FMSHA provided MSHA with the authority to cite mine operators for a pattern of violations and impose significant penalties in connection therewith. While MSHA has threatened to use this authority on several occasions, the Committee understands it may never actually issue such a citation, and certainly has not done so in recent years. The Agency has recently indicated its intention to establish objective criteria to identify mines which may have a pattern of violations; such criteria may help it defend decisions to issue citations under this provision should it ever do so.

The bill would make it easier for MSHA to use this authority by consolidating the chain of command required in the existing regulations to take such action. It would also help to ensure that appropriate factors, in particular a violation frequency rate, are used to determine whether to issue a significant citation. This is intended to alleviate concerns that such a tool might inappropriately target frequently inspected mine operations.

A significant new penalty would also be authorized when a pattern of violations is found, and miners would have to be withdrawn from the entire mine. However, the bill specifically provides that the amount actually assessed is based on the overall resources of mine operators in order to ensure a change in the their future conduct with respect to mine safety and health In addition, the bill provides an additional way for mine operators to get out of a pattern of violations charge when they can provide objective evidence of a change in their pattern of conduct.

(e) Notification of Abatement.—Mining tragedies often result from the failure of a mine operator to correct conditions that are known to be MSHA violations. This includes violations that have actually been identified and cited by MSHA, but not corrected as required. Under the present system, MSHA may not be aware that a viola-

tion it cites has not been timely abated, and it is not able to act until it visits the mine again and confirms that there has been a "failure to abate."

The bill would change this situation. It would require mine operators to affirmatively notify MSHA within the time specified in the citation that the violations previously identified and cited by MSHA have been timely abated. It would further require that if this notice is not timely provided, MSHA is to issue a withdrawal order to prohibit miners from entering the affected area until MSHA can visit the mine to determine the situation for itself. If mine operators need more time to abate violations, there are procedures for obtaining that extra time where it is justified; but the bill will help ensure that once these dates are fixed, mine operators will take them seriously.

The reported bill clarifies that, as at present, no violation shall be determined to be abated until an authorized representative of the Secretary visits the mine site and determines that the violation has in fact been fully abated.

(f) Failure to Timely Pay Penalty Assessments.—Last year, the Congress reviewed reports concerning the difficulties MSHA faces when it tries to obtain payment of fines (which are the subject of final orders under the Act) from some scofflaw mine operators. The amounts involved tend to be too small for Treasury Department to expend resources collecting. Moreover, the mine operator cited may not in fact be the responsible financial entity. MSHA indicated its intent to seek relief by trying a new tool—court orders under section 108 of the "Mine Act" to require scofflaw operators to post bonds to cover potential violations as a condition of continued operation. Section 9 of the MINER Act added a change to section 108 of the Act to facilitate such efforts, and we understand MSHA has since had some success. The bill would make it easier to address this problem by authorizing the Secretary to halt production at a mine that does not pay its outstanding obligations.

In addition, the bill would require an operator who wishes to contest a citation or proposed penalty assessment to place in escrow the amount of the proposed assessment. The money would be placed into an interest bearing account with any balance, plus accrued interest, returned to the operator after payment. This escrow requirement serves as a backup to the other approach (halt in production) being taken by the reported bill to deal with the problem of delinquent operators.

(g) Maximum and Minimum Penalties.—While penalty caps established by the "Mine Act" have been increased over the years as a result of the Inflation Adjustment Act, they have not been high enough to provide a serious incentive for compliance when mining profits are high, and many mine operators just regard these penalties as "traffic tickets" to be paid as a routine cost of doing business.

The MINER Act responded to this problem by substantially increasing the maximum penalties for certain types of violations—willful violations of standards and knowingly failing or refusing to comply with an abatement, withdrawal or other such order issued by MSHA. The MINER Act also added a new category of flagrant violations with penalties of up to $220,000, and established minimum penalties for imminent danger violations ($2,000 for the oc-

currence, and $4,000 for a failure to comply with an associated withdrawal order).

The bill would supplement the approach taken by the MINER Act and apply it to other types of violations. The law currently provides a cap of $50,000 on penalties for violations of provisions of the Act or a standard and has no minimum. The bill would raise the cap to $100,000 and establish a minimum penalty of $500. However, should a violation ultimately be determined to be a "significant and substantial" violation (i.e., it could significantly and substantially contribute to the cause and effect of a coal or other mine health or safety hazard), the cap would be $150,000 and the minimum, $100.

(h) Factors in Assessing Penalties.—Over the last year, the National Mining Association has stated on more than one occasion that if a mine operator is not prepared to look after the safety and health of the miners, that operator should not be allowed to continue in business. This widely endorsed view, however, is contradicted by a provision of the existing law that in assessing penalties against a mine operator for violations, the "effect upon the operator's ability to continue in business" needs to be considered. The bill would strike this requirement of the law.

The bill would not alter the requirement of the existing law that operator size be taken into account in assessing penalties. However, the bill would clarify the current law to provide that in such instances, the Secretary look at the combined size of the operator and any controlling entity. The purpose of this change is to ensure that very large and profitable corporations do not have their penalties reduced simply because they conduct their mining operators through limited size production units each of which is registered as a "mine operator" under the Act.

Finally, the bill would take account of an anomaly pointed out by the Government Accountability Office in a report released May 16, 2007. For some years, MSHA has utilized a complex point system to ensure that in recommending penalty assessments, decisions are made in a consistent manner. In fact, the agency updated that system this year to ensure, among other things, that proposed assessments give more weight to the gravity of the violation involved. According to the GAO, however, similar practices are not observed in the process of settling cases. Further, the Mine Safety and Health Review Commission, which is ultimately responsible for final penalty assessments under the Act, does not utilize this practice, and the judges who work for the commission often provide very little information about the basis upon which the final assessments are determined. To ensure consistency in penalty practices and to ensure appropriate weight is being given to the gravity of violations, the bill requires the point system used by the Secretary shall also be used in settlements and in determinations by the Commission.

(i) Civil Penalty for Interference or Discrimination.—The bill would increase the penalties for those who retaliate against miners who report safety and health violations. Such violations are particularly onerous, because they discourage miners from reporting problems, which could result in a tragedy. Testimony by miners, survivors and their representatives pointed out that such discouragement is widespread in mining communities dependent upon the

industry for good jobs. The bill takes a first step toward addressing these problems by establishing a minimum penalty of $10,000 and a maximum of $100,000 for such violations.

The bill would also provide that the same minimum and maximum penalties be applied to violations of the new requirement established by section 5(a) of the bill, which prohibits interference with mine inspectors in the performance of their duties.

(j) Withdrawal order.—The purpose of the emergency response plans established pursuant to the MINER Act was to strengthen the ability of all concerned to limit the causes of mine disasters and to improve the survival chances of miners should they occur. The same is true of the requirements that this bill would add to those plans. Accordingly, the reported bill provides that should an authorized representative of the Secretary determine that a mine operator has failed to fulfill any of the relevant requirements of sections 315 or 316 of the FMSHA the inspector is to determine the area of the mine at risk and issue an order requiring the withdrawal of miners from the area. The reported bill maintains the concept of the original bill, but based on technical comments from the agency, has altered the language to avoid confusion.

(k) Clarifications of Intent in the 1977 Act.—As with any statute that is 30 years old, the FMSHA has a few well-recognized technical deficiencies. This subsection of the bill would correct them.

Paragraph (k)(1) would amend the definition of "operator" in section 3 of the FMSHA. The primary focus of the amendment is to deal with a problem involving independent contractors who actually perform production operations for other entities at a particular mine. Mining companies often contract with separate business entities to conduct mine operations at specific locations, and sometimes these entities are formed just for the exclusive purpose of that contract. The amendment would ensure that should such an independent contractor go out of business without paying assessed penalties, or otherwise fail to comply with the law, the contracting party may be held jointly and severally liable with the independent contractor for the violations of the Act including the responsibility for the payment of fines under the Act. Since this section is being amended, the bill also makes a few small changes to codify longstanding interpretations of the Act.

Paragraph (k)(2) would amend section 103(b) of the FMSHA to provide the Secretary with broad subpoena authority, equivalent to that under the Occupational Safety and Health Act and many other government statutes. Currently, subpoena authority is only available in connection with public hearings held in the course of accident investigations. However, wider subpoena power is necessary for the Secretary to conduct a broad range of activities, for example:

- determine which business entities may be mine operators or controllers of a mine for enforcement purposes (both penalty size and who has to pay); currently this is based largely on self-reporting;
- obtain testimony or records from 3rd parties (e.g., foremen, miners, contractors, other witnesses) against whom no injunction can be obtained under section 108 concerning whistleblowing, accident investigations or other matters; and

• obtain testimony or records from operators without the need to seek injunctive relief under section 108.

Paragraph (k)(2) would also clarify that data and items of physical evidence are among the types of "information" that can be subpoenaed. The bill would make a conforming amendment to section 103(h) of the FMSHA to ensure that operators are required to provide the types of "information" that may be requested by subpoena. Based upon a technical suggestion from the agency, the language in the reported bill has been slightly adjusted from that in the original bill to ensure clarity. The Committee notes that MSHA supports this provision of the legislation.

Paragraph (k)(3) would amend section 104 of the FMSHA to clarify that a violation of a specific provision *of the Act itself* can be deemed a "significant and substantial" violation. This is already the case with violation of *a standard issued pursuant to the Act.* This determination is required before a violation can become the basis for the more serious sanctions available under these sections. There are many critical provisions protecting miner health and safety that are specified directly in the Act—for example, the prohibition against interference with inspections and the requirement of advance notice of an inspection, may represent significant and substantial violations of the Mine Act. These should be among those violations which can form the basis of the enhanced enforcement under section 104(d) and 104(e) of the Mine Act. The current language of the Act language is vague and has led to a narrower interpretation of "significant and substantial violations" than is appropriate for the protection of miners (e.g., *Cypress Emerald Resources v. FMSHRC,* 195 F.3d 42 (1999)). By clarifying the Mine Act in this regard, litigation on this point will be curtailed.

The bill would further amend section 104 to eliminate a drafting error in the 1977 Act. The current language seems to suggest to some that a 104(d)(1) sanction cannot be imposed when there is an imminent danger. This would mean that the most grave hazards constituting imminent dangers could not lead to the commencement of enhanced enforcement under section 104(d) and 104(E). This was never intended to be the case. Eliminating this error would ensure that others do not misread this provision.

Paragraph (k)(4) would eliminate some verbiage from section 105(a) that has recently been the basis of inappropriate challenges by some mine operators to MSHA penalties. It was never the intent of the Mine Act to void citations or penalties if MSHA requires additional time to issue them. Eliminating a reference to "reasonable time" will ensure others do not misread this provision of the Act.

This section would also make three changes in section 105(c), the provisions of the statute which protect whistleblowers in this industry from retaliation. First, to eliminate any doubt, it would ensure that reporting an "injury or illness" is as protected as reporting "an alleged danger or safety or health violation." Second, it would clarify the rule for determining when a miner can refuse to work due to fear of danger to that miner or other miners, by adopting language that has been used for some time in a labor-management contract applicable to much of the industry. And finally, the bill would ensure that resolution of anti-retaliation cases before the Department not be stayed pending resolution of any related grievance proceeding.

The Committee heard miners, survivors and those who represent them express considerable reluctance about bringing safety and health concerns to the attention of mine operators or MSHA because they fear retaliation.[86]

This section of the bill would also address two issues involving attorneys, by adding two sentences to current law. The first sentence would clarify that MSHA counsel would not face disbarment for directly contacting certain individuals in the course of performing their duties. This is the standard rule for Federal counsel under 2002 model rules of the American Bar Association, but not all states have adopted this yet, and the potential for disbarment can significantly interfere with investigation and enforcement activities. The second sentence would establish a firm conflict of interest rule that would bar attorneys who represent mine operators in a matter from simultaneously representing individual miners in the same matter. While the inherent conflict of interest seems clear, this practice is widespread in the industry and greatly complicates accident investigations in particular.

Paragraph (k)(5) would amend section 110 of the Act to address a technical error that was introduced to the text by the 2006 MINER Act and subsequent technical amendments. These enactments inadvertently placed new authority to issue flagrant provisions in the wrong paragraph of the Mine Act. As a result, questions have been raised about whether flagrant violations can be issued in other than failure to abate cases. MSHA has correctly interpreted the intent of the Congress in this regard (see 72 FR 13623). Nevertheless, to avoid protracted litigation on the point, this technical amendment moves the provision to the correct paragraph of the Mine Act.

This section would also clarify that the liability of directors, officers and agents for violations of the Mine Act does not change because of the form of the mine operator's business. In recent years, many mines have become limited liability corporations rather than "corporations", but the language of the Mine Act was drafted in another era and refers only to "corporate" directors, officers and agents. The amendment is consistent with MSHA's interpretation of the Act (71 FR 38902–38905) and would ensure that such officials retain the liability they have always had under the Mine Act even should their enterprise change form. The amendment also clarifies that violations of the requirements of the Act itself can be the basis of such liabilities, not just violations of standards, and further clarifies that partners and owners are also covered.

(l) Federal Licensing.—This section requires the appointment of an advisory committee to study whether the law should be amended to provide for Federal licensing of mines, mine operators, mine controllers or various mine personnel in order to ensure that those engaged in mining activities are not frequent violators of safety and health requirements. Some states have licensing provisions for certain mine specialists, for example, and revoke such licenses should the individuals involved be found responsible for violations.

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[86] See Hearing before the House Education and Labor Committee, "The Perspective of the Families at Crandall Canyon" (October 3, 2007), *http://edworkforce.house.gov/hearing/fc100307.shtml;* Hearing before the House Education and Labor Committee, "Protecting the Health and Safety of America's Mine Workers, (March 28, 2007), *http://edworkforce.house.gov/hearings/fc-3-2807.*

The bill requires that the advisory committee conduct a review of existing state requirements in this regard and their effectiveness, and provide its recommendations to Congress within 2 years. Based on suggestions from the mining industry, the reported bill also charges the advisory committee to conduct a review of state registries and determine whether a national registry can be established in connection with any Federal licensing requirements.

Sec. 6. Supplementing Rescue, Recovery and Incident Investigation Authority.

The provisions of this section expand upon the work initiated by the MINER Act to improve the ability of the Nation to respond to mine emergencies. Under the MINER Act, for example, mine operators must notify MSHA within 15 minutes of the time the operator realizes that the there has been a death, injury or entrapment that has a reasonable potential to cause death. Moreover, the MINER Act establishes new requirements for rescue teams at mines of different sizes.

(a) Emergency Call Center.—The bill would require that MSHA promptly establish a central communications emergency call center for mine operations, staffed and operated 24 hours per day, 7 days per week by MSHA employees with adequate experience and training to handle emergency mine situations. A single national phone number shall be provided for this purpose, and the Secretary shall ensure that all miners and mine operators are issued laminated cards with emergency call center information.

(b) Contact Information.—The bill would require that the Emergency Call Center be provided with current contact information for all those who may need to be reached during an emergency. At the suggestion of the mining industry, the reported bill requires the Secretary to consider including the information currently collected by the joint government-industry Mine Emergency Operations database.

(c) Mine Locations; Repository of Mining Maps.—Paragraph (1) of this subsection would require that MSHA's website contain the geographic coordinates of all U.S. mines and mine impoundments, including abandoned mines, as determined by a global positioning system. The primary purpose of this requirement is so emergency responders can quickly locate all mines, but the reported version of this provision also ensures that the map provides the geographic location of mine waste impoundments, with links to associated emergency contact information and available emergency response plans; currently, this information is maintained only through Federal funding of a project at a university.

Paragraph (2) deals with a separate problem brought to the attention of the Committee by representatives of the mining industry during discussions about the original bill—the need to preserve old mine maps. The term "mine map" does not refer to where the mine entry (or entries) is located; rather, it refers to the map of the workings of an underground mine, showing in great detail the extent of the passageways and their condition at the time the map was created. These maps are constantly changing as the mine advances or retreats, and mine operators are required to have maps regularly approved by MSHA and retained at the mine site. The fact that the most current map was not immediately available to rescuers at the site of the Aracoma Alma mine when they arrived

was the subject of significant attention in MSHA's investigation report.

Mine maps are also important long after mining is completed. At the Quecreek mine inundation in Pennsylvania, one mine flooded because the miners inadvertently dug into a flooded tunnel of a long abandoned mine. Had the map of the old mine been readily available, the problem could have been avoided. The Department of the Interior has been given some authority to collect old mine maps and digitalize them, but the Committee believes that MSHA should also have a role in this activity.

Accordingly, the reported bill authorizes the Secretary of Labor to obtain copies of historic mine maps and create a repository for them. The Secretary has the discretion to coordinate with the Secretary of the Interior in this regard. Further, to facilitate emergency rescue, the bill would provide for the repository to include currently approved mine maps, mine emergency response plans, roof plans, ventilation plans, and other required plans following approval so these plans can be accessed in the case of an emergency by those not directly at the mine site or the local area office. A mine's current mine map is treated as confidential property under section 312(b) of the Act, and this requirement would be retained under the committee bill.

(d) Required Notification of Emergencies and Serious Incidents.—Mine operators have long been required under 30 CFR Part 50 to record various accidents and incidents at the mine site. The MINER Act took this one step further and required that certain critical events be reported to MSHA by phone within 15 minutes. Pursuant to MSHA rulemaking, this 15 minute notice requirement was expanded to include every "accident," a term defined by the rules to include 12 specific events—e.g., an unplanned fire in an underground mine not extinguished within 10 minutes of discovery or a coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour. 30 CFR 50.2(h). The Committee bill requires MSHA to be timely notified in a few additional instances—what generally could be referred to as "close calls".

Specifically, the bill would require mine operators to notify MSHA within an hour of the time at which the operator realizes that any of the following has occurred:

- a fire not required to be reported more promptly (i.e., within 15 minutes);
- a sudden change in the mine atmospheric conditions in a sealed area;
- a coal or rock outburst that causes the withdrawal of miners (i.e., regardless of how long the miners were withdrawn); or
- any other event that needs to be examined to determine if the working conditions in the mine are safe, as set forth by regulations promulgated by the Secretary.

The original bill has been significantly modified in this regard, and the Committee has crafted this provision narrowly to avoid unnecessary calls. At the same time, the events at Crandall Canyon have pointed out to the Committee that mine operators are currently not required to timely report events which, if examined,

could have avoided a tragedy. The reported bill strikes what the Committee believes is an appropriate balance in this regard.

(e) Enhancing the Capabilities of Mine Rescue Teams.—

Paragraph (1) of this subsection would amend the FMSHA to require MSHA and mine operators to take certain steps to make it easier for rescue teams to operate on mine property. These actions would implement suggestions from mine rescue team members.

First, in order to avoid delays and confusion at the entrance to mine properties, mine rescue team members, support personnel and vehicles would receive uniform credentials ensuring immediate access to mine property.

Second, mine operators would be required to have plans in place to ensure coordination with local emergency response personnel and also to ensure that such personnel receive adequate training in how to provide assistance to mine rescue teams.

Third, mine operators would be required to facilitate the work of mine rescue teams during an emergency by storing necessary equipment (not brought on site by the teams) in locations readily accessible to mine rescue teams, by providing mine rescue teams with a parking and staging area adequate for their needs, and by identifying a space appropriate for coordinating emergency communications with the mine rescue team. This provision was modified from the original bill to recognize that most mine rescue teams carry their equipment with them.

Finally, mine operators would be responsible for identifying and maintaining separate spaces for family members, community members and press to assemble during an emergency so as to facilitate communications with these groups while ensuring the efforts of the mine rescue teams are not hindered.

Paragraph (2) of this subsection would require NIOSH to conduct research on advanced drilling and special technologies required for safety or rescue in mining more than 1,500 feet in depth. The need for such equipment was made abundantly clear to the public during the efforts to rescue miners at Crandall Canyon. Since this accident, a number of suggestions have been put forth concerning technologies that could be adapted toward this end. The Committee has been impressed with the results of the working group of Federal agencies established under the MINER Act to assist NIOSH on some of the problems recognized after the Sago disaster, in particular the need for improved electronic communications and tracking systems. Accordingly, the Committee bill would expand the mandate of this working group to address the additional rescue problems revealed by the Crandall tragedy.

(f) Emergency Preparedness Plan.

Subsection (f) of section 6 was added by the Committee following testimony on the tragedy at the Crandall Canyon mine. The Governor of Utah and others expressed concern that MSHA was not executing a pre-defined emergency response plan during the rescue effort, leading to a lack of coordination with state and local responders. In addition, the accident occurred at a time when many staff were scattered around the country. Others present at the rescue scene also expressed concern about the challenges posed by the location, including difficulties posed by reliance upon cell phones in an area with limited coverage.

The reported bill requires MSHA to establish and disseminate guidelines for rescue operations to address such issues in various types of rescue situations. While the Committee recognizes that not every problem can be recognized and addressed in advance, emergency preparedness plans are widely relied upon in this country as a critical part of emergency planning, and the Committee expects mine rescue efforts to proceed much more smoothly once MSHA develops such a plan. The bill requires the Secretary to consult with States, rescue teams and other responders in developing guidelines, and to update them from time to time based upon experience. Although not explicitly required, the Committee expects the Secretary to use this opportunity to set forth specific guidelines that will elucidate how rescues will operate under "J" or "K" orders. The "J" and "K" refer, respectively, to section 103(j) and 103(k) of the FMSHA. The former provides MSHA with the authority to take over a mine site during a rescue or recovery operation. The latter provides MSHA with the authority to approve the actions taken by mine operators who are conducting rescue or recovery operations. (See the discussion of section 6(g) of the bill, infra, for related discussion.)

As introduced, the bill would have required mine operators to make explicit arrangements for ambulances or other emergency response vehicles and to address the need for medical technicians on mine sites. The committee dropped these provisions from the reported bill due to concerns about the details, but encourages the Secretary to pay attention to the availability of such personnel in developing an emergency preparedness plan for MSHA.

(g) Authority of Secretary During Rescue Operations.

Subsection 6(g) of the bill strengthens what are referred to as "J" and "K" orders. As noted supra, these refer to the provisions of section 103(j) and 103(k) of the FMSHA. The former provides MSHA with the authority to take over a mine site during a rescue or recovery operation. The latter provides MSHA with the authority to approve the actions taken by mine operators who are conducting rescue or recovery operations. MSHA has not used the J order in many years. As the Assistant Secretary of MSHA recently testified before the committee, the agency is concerned that if it takes over a mine site, the mine operator might not provide critically needed resources or equipment—e.g., miners to dig out rubble from collapsed tunnels, or drill rigs to dig boreholes that can supply air and communications to trapped miners. These are activities not performed by mine rescue teams who are specialized experts and volunteer to rescue trapped miners once there is some apparent access to their location.

The bill would amend the provisions of section 103(j) of the FMSHA to explicitly require an operator to comply with requests of the authorized representative of the Secretary in connection with rescue or recovery, and also provides that the failure to do so shall constitute an egregious violation of the Act. Under the MINER Act, the penalty for an egregious violation is set at $250,000. In addition, the Committee notes that the courts of the United States already have the authority to grant injunctive relief to the Secretary should an operator fail to comply with an order of the Secretary, pursuant to section 108(a)(1)(A) of the FMSHA, and the Committee expects the additional language being added to section 103(j) will

enable MSHA to promptly seek and obtain injunctive relief in such cases.

There are many situations in which the K order will continue to be the vehicle of choice for managing rescue or recovery operations. The normal practice in such cases is for the mine operator, MSHA, and in the case of an organized mine, the miner representative, to jointly develop and amend a rescue plan, or amendments thereto, and obtain MSHA formal approval.

In order to eliminate the confusion reported during recent rescues, including the kind of confusion reported by McAteer and Associates in the Sago mine rescue, the Committee expects that as part of the emergency preparedness plan MSHA is required to prepare under section 6(f) of the S–MINER Act, it will elaborate upon how a rescue is to operate under a "K" order approach.

The bill makes one amendment to the provisions of section 103(k) of the FMSHA to strike the requirement that a representative of the Secretary actually be present at the mine site in order to issue a "K" order. Such orders must often be issued by phone in an emergency, and while this practice is widely accepted, clarifying the Act ensures that MSHA's authority in emergencies will not be challenged by uncooperative mine operators, delaying rescue.

(h) Rescue Communications—The Committee was extremely concerned that during the Crandall Canyon rescue—slightly more than a year after the Congress explicitly required MSHA to take charge of communications with families and the press at mine accidents—MSHA completely failed to do just that in the first test of its new authority. MSHA simply did not assert its control. The result: considerable misinformation was disseminated to families and the public. Moreover, in a move that punctuated the lack of order and control, MSHA even approved an unprecedented trip for some reporters and family members into the mine with the mine operator while rescue operations were underway and conditions remained extremely dangerous.

It is the Committee's view that MSHA must establish its authority in these cases, and section 7 of the MINER Act needs to be strengthened so that the right expertise is brought to bear in these situations. MSHA officials normally dispatched to a mine site to participate in rescue operations are experts in mine safety, and do not necessarily have the skills required to deal with distraught miner families or the press; moreover, they have critical responsibilities at the site that require their primary attention. These officials do have the best and most accurate information on the situation, but they need others to facilitate accurate communication, and to ensure that the questions of family members are answered in a timely fashion.

Accordingly, the reported bill would strengthen the provisions of Section 7 of the MINER Act and make it a permanent part of the FMSHA. The changes to the MINER Act would include:

- a requirement that MSHA designate a full-time permanent employee of that agency to serve as a family liaison, and at least in accidents involving multiple fatalities, that this liaison act as the primary communicator with the families of trapped miners throughout the rescue operation;
- a requirement that MSHA be responsive to requests from families of miners for information relating to the accident, in-

cluding the waiver of fees that must otherwise be assessed under the Freedom of Information Act; and

• a requirement that the Secretary designate of a "highly qualified representative" with experience in communication be present at mine accident sites, throughout the duration of the rescue efforts, to serve as primary communicator with the press.

Section 6(h)(3)(B) of the reported bill would also require each mine operator to include in his emergency response plan the operator's specific plans for assisting the Secretary in the implementation of these communication responsibilities. The purpose of this requirement is to focus mine operators' attention on the role of the Secretary in this regard, and on the personnel with whom the operator will come in contact during any rescue. The change will ensure that each operator is prepared to coordinate with these personnel, and if concerns are identified during the emergency response plan review process, they can be addressed before a real emergency occurs.

Finally, section 6(h)(3)(A) of the reported bill would address an apparent anomaly in the law that denied miners trapped in the Crandall Canyon mine an opportunity to appoint a designated representative to represent their interests under the FMSHA. The bill provides that when a miner is trapped, a family member may execute a designation on his or her behalf. At Crandall Canyon, MSHA denied the requests of family members to make such designations. While the exact sequence of events remains in dispute, the situation revealed a deficiency in the law which the reported bill will correct.

(i) Recovery.—

This subsection is designed to address definitively two additional questions that arose in connection with the situation at Crandall Canyon—who decides when rescue efforts cease and the effort to recover remains begins and under what criteria, and who decides when efforts to recover remains should cease and under what criteria.

The reported bill would in both cases vest this authority in the Secretary's representative, clarifying that these are not decisions for the mine operator or miner families, although the Committee expects the Secretary's representative to consult both before making any such decision. In both cases, the reported bill would utilize the same criterion for ceasing operations: whether continuing would pose a serious danger to rescue, recovery or other workers.

(j) Accident and Incident Investigations.—

The mining community, state authorities, and the Congress are completely dissatisfied with the current framework for investigating accidents where there are multiple fatalities. The reported bill would provide for independent investigations in such cases to supplement and complement the investigations being conducted by the Department of Labor.

Under the present system, two investigations are conducted of such accidents and both of them are conducted by MSHA, the agency also responsible for protecting miner safety and health. The first investigation, known as an "accident" investigation, is conducted to determine if there is civil and criminal liability for the event and often take a year. MSHA utilizes staff from around the country to

conduct these investigations. The procedure varies each time. Witnesses are interviewed, sometimes with others present and sometimes without, but seldom with the families represented, and never in public. The families are not allowed to pose questions to the witnesses. And when reports are issued, they do not include recommendations for new standards or practices.

The second investigation, known as an "internal" investigation, is normally conducted by the office within MSHA that establishes requirements for employees to follow in implementing the law and regulations (although in the most recently initiated internal investigation concerning Crandall Canyon, the Department has asked two former employees to take charge of the review). The purpose of the internal investigation is to determine if employees followed policy in the run-up to the accident and during rescue and recovery efforts.

In addition, the Office of the Inspector General in the Department of Labor may conduct its own investigation of employee conduct to determine if laws and regulations relating to employee conduct have been violated (e.g., allegations of bribery). The Committee has also been advised that the Chemical Safety Board (CSB) may have some jurisdiction to conduct investigations of mining accidents and could elect to do so where it has some expertise (explosions) and resources. However, the CSB has not done so to date. With these limited exceptions, there is no statutory mechanism for any body other than MSHA to investigate multiple fatality mine accidents or to investigate the agency's role in connection therewith.

The Committee believes a consensus exists in the mining community that independent investigations of such accidents are necessary and feasible. Miners working in the same mine or for the same mine operator or under similar conditions want to know whether they are safe, as do their families. Mine operators need to know whether to change practices before the same problem recurs. The families of those who died want more active roles in determining what happened; they simply do not trust MSHA to get at the truth in closed mining communities. At the same time the mining community respects the expertise vested in MSHA and wants to continue to put that expertise to good use in investigating mine accidents.

The Department of Labor has not been helpful in bridging the gap between expectations and reality. In recent years, the procedures used by MSHA to investigate each accident have been different each time, fueling procedural debate at a time when the focus should be on getting information. MSHA had begun rulemaking to standardize these procedures, but that effort was discontinued by the current Administration and we understand it is opposed on the grounds that flexibility is preferred. The Office of the Solicitor has made it very difficult for this Committee to gather the information needed in our own investigation of the tragedy at Crandall Canyon. This is true for the State of Utah as well, which is conducting its own investigation. While the Committee fully respects the authority of the Department, these accidents are, unfortunately, happening with enough frequency that some standardization of procedures for cooperation is clearly required.

Accordingly, the bill expands existing section 103(b) of the FMSHA to spell out MSHA's accident investigation responsibilities, to establish a mechanism for the rapid appointment of an independent investigation panel in multiple fatality cases and to ensure that this legislation does not in any way alter whatever authority the CSB might have (and that the Inspector General clearly does have) under law to investigate mine accidents or the conduct of DOL personnel in connection therewith.

New section 103(b)(1) explicitly sets forth the varied purposes of accident investigations by the Secretary—something not included in the statute at present. These include:

- an explanation of why an accident or incident occurred;
- a determination of whether civil or criminal requirements were violated;
- a determination of the appropriate citations and penalties to be assessed; and
- any recommendations to avoid any recurrence.

In addition, the Secretary is to determine whether the action or lack thereof by Agency personnel contributed to the accident or incident. In other words, this paragraph retains and expands upon MSHA's existing investigative responsibilities.

New section 103(b)(2)(A) provides that there shall also be an independent investigation of any accident or incident involving multiple serious injuries or deaths, to consider why it occurred, make recommendations to avoid a recurrence and determine whether the action or lack thereof by agency personnel contributed to the accident or incident.

New section 103(b)(2)(B) requires the Secretary to initiate rulemaking promptly in order to establish rules and procedures for the independent investigations. No such rules and procedures needs to be established for MSHA's own investigations; however, see the discussion infra of new paragraph 103(b)(2)(D). The reported bill requires the Secretary in the course of the process to reach out to certain interested groups which can shed light on how to approach this matter—including family members of miners who perished in the last decade, organizations representing miners, mine rescue workers, and Federal, state and local prosecutorial authorities—and to complete the rulemaking by October 1, 2008.

New section 103(b)(2)(C) provides that each independent investigation team is to be quickly appointed after a qualifying accident by the Director of NIOSH. One member is to be appointed from NIOSH and is to chair the team. The other members include a representative of mine operators with familiarity with the type of mining involved, a representative of mine workers with similar familiarity, an academic with expertise in mining and a representative of the state where the incident occurred. The miner representative is to be the workers' certified bargaining representative at the mine if there is one, and if not, someone appointed by labor organizations. The state representative is to be appointed by the Governor. The Committee's purpose in specifying the composition of these teams is to ensure that their report has widespread credibility in the mining community.

New section 103(b)(2)(D) provides that the rules for the operation of the independent teams—the rules to be established pursuant to section 103(b)(2)(B) by October 1, 2008—"ensure that the Secretary

will be able to cooperate fully with the independent investigation team and will use the powers of the Secretary under this section to help obtain information and witnesses required by the independent investigation team." In essence, this means that by October 1, 2008, after consulting with all the interested parties, the Secretary needs to set forth a process which enables both the MSHA investigations and the independent investigation to move forward simultaneously. The rules must also provide for MSHA to use the new subpoena authority it is receiving under this bill to facilitate the work of the independent investigation team as well as its own investigation. The Committee hopes that the extensive discussions of such matters which have taken place in the context of the investigations of recent mine tragedies, as well as the requirement that the Secretary consult widely in developing the procedural rules, will facilitate an agreement on the details. The Committee expects the Department to keep it closely informed on these matters.

The procedures to be established for the independent panel must also meet certain other requirements set forth in new section 103(b)(2)(D). The procedures must ensure that witnesses are not coerced and conflicts of interest in witness representation avoided, and ensure confidentiality if requested by any witness. These have proven to be complex sticking points in practice, and establishing standardized procedures should facilitate further investigations. In this regard, note that section 5 (k)(4)(C) of the bill provides that no attorney representing a mine operator in a matter under this Act may concurrently represent individual miners in the same matter, a requirement that includes, but is not limited to, accident investigations. The rules are also to permit the independent investigation team to conduct public hearings as part of its process if it deems them appropriate.

The rules must also contain provisions that require the independent investigation team to issue findings concerning the cause of the incident and to make recommendations as to policy, regulatory, enforcement or other changes, including statutory changes, which in its judgment would best prevent a recurrence of such actions or inactions at other mines. The rules shall also require the team to make all such findings public (including public hearings to inform the mining community of these findings) in a timely fashion. A limited exemption is provided for findings and recommendations that must be temporarily withheld in connection with a criminal referral.

New section 103(b)(2)(E) requires the Secretary to track the implementation of accident and incident recommendations by independent investigation teams and provide such information annually to Congress. MSHA does not currently do this, and it has been suggested that the failure to follow up on past accident reports is one of the reasons why the tragedies of 2006 took place.

New section 103(b)(3) provides that nothing in this bill in any way limits the authority of the CSB to conduct an independent investigation of a mining accident or incident, or of the Inspector General to conduct an investigation of the conduct of DOL personnel in connection with an accident or incident. It also requires the Secretary to cooperate with any such investigation(s). Although not mentioned explicitly in this new section, the Committee wishes

to make it clear that the bill is not intended to interfere with any other authority of the Inspector General.

Sec. 7. Respirable Dust Standards.

(a) Respirable Dust; Respirable Silica Dust.—The 1977 Federal Mine Safety and Health Act established the standards to be applicable to respirable coal dust by law. The law specified who was responsible for measuring compliance, the instruments to be used, and other exposure limit. The law further specified that exposure of miners to respirable coal dust was to be reduced when respirable silica dust was also present.

These requirements were a critical part of the 1977 law, and were designed to eliminate black lung disease and silicosis among the mining population.[87] Unfortunately, these requirements did not eliminate new occurrences, and it has become clear that after years of efforts to amend the existing rules and to develop new instrumentation permitting real-time accurate exposure information for coal dust, MSHA has simply failed to protect the safety and health of miners.

Accordingly, 40 years after the Federal Mine Safety and Health Act, the bill would have the Congress once again set the appropriate standards. The permitted limit for coal dust would be cut in half, consistent with the recommendations of the National Institute for Occupational Safety and Health (NIOSH), and the permitted dose would be adjusted to reflect hours actually worked. A separate limit would be established for silica, again consistent with the recommendations of NIOSH. The bill would require that compliance sampling be done by the Federal government, not mine operators as at present, based on a long history of fraud and abuse.

The bill would require the use of the NIOSH developed and certified Personal Dust Monitor (PDM) for all coal dust sampling (traditional methods will be used for silica dust sampling). These devices continuously display current exposures, and record them in a form that can be electronically downloaded each shift to the operator and MSHA. The bill would further require that all underground miners be equipped with PDMs, so that they will be able to adjust their work to keep their exposure below the applicable limits. While the requirement for PDMs will result in an initial expense for coal mine operators, the savings due to improved miner health will be substantial.

It should be noted that the bill's specification of a silica dust standard is not limited to coal mines; rather, it applies to non-coal mines as well, since there is also silica exposure in these mines.

(b) Conforming amendment.—Because the bill would provide for an independent silica standard, this amendment strikes section 205 of the FMSHA which provided for adjusting the amount of respirable coal dust by the amount of respirable silica dust.

(c) Assessment on Program Operations of Cumulative Impact of External Requirements Added Since 1977.—The need to make so many amendments to MSHA standards by legislation evidences the fact that the agency has been very unsuccessful in using its rulemaking authority. The bill would require the National Academy of Sciences to conduct a study of the various statutes, executive or-

[87] Indeed, the compensation program for miners who incur black lung disease, including the portion paid by the Federal government, was a critical part of that law. See Title IV of the FMSHA.

ders, and memoranda that have been issued since the Mine Act was passed in 1977 to examine the impact they have had on the rulemaking authority provided under the law, and to quantify to the extent possible the costs these requirements have imposed upon miners.

Sec. 8. Other Health Requirements.

(a) Air Contaminants.—The 1977 Federal Mine Safety and Health Act required MSHA to immediately adopt hundreds of existing "permissible exposure limits" (PELs) developed by various professional organizations so that it would have standards to apply to the mines. As with coal dust and silica, however, MSHA has been unable to update these PELs per customer due to complexities of the regulatory process in the law as interpreted by the courts. A comprehensive effort started in 1983 to update the PELs was halted. As a result, most of the PELs are now 40 years out of date. While many mine operators do comply with much more recent recommendations of the professional organizations, or international standards, MSHA is unable to require all mine operators to do so.

The Committee has not been unaware of this problem. As explained in the general discussion of this problem in this report, supra, legislation that would have addressed a similar problem faced by OSHA was reported out of the Committee 15 years ago, on July 9, 1992.[88] The bill was not enacted and OSHA reform efforts stalled. A decade later, on July 16, 2002, a hearing was held by the Subcommittee on Workforce Protections to explore whether a consensus could be reached on how to resolve the problem in the OSHA context.[89] Despite the efforts undertaken by Representative Charlie Norwood who was Chair of the Subcommittee, and by others, no consensus was achieved at that time.

The Committee believes the time for action is long overdue. The bill reported by the Committee provides that notwithstanding the other requirements of section 101 of the Federal Mine Safety and Health Act, MSHA is to adopt existing "recommended exposure limits" developed by NIOSH as "permissible exposure limits" that are enforceable under the FMSHA. In practice, this in most cases means updating limits already adopted by MSHA. MSHA must take this action within 60 days of enactment of the S-MINER Act, subject to the important exception noted in the following paragraph. To avoid allowing this problem of dated exposure limits to continuously recur, the bill would also require MSHA to continue to update the PELs as new NIOSH recommended exposure limits are issued.

The reported bill further provides that upon petition for miners or mine operators "providing credible evidence that feasibility may be an issue for the industry as a whole", the Secretary is to review the feasibility of any PEL before placing it into effect and, following notice and comment, make necessary adjustments thereto. The bill imposes a one-year deadline on this process to ensure such actions do not get stalled.

The Committee understands that applying most of the RELs as PELs for the mining industry will not create feasibility problems,

[88] H.R. 3160, the "Comprehensive Occupational Safety and Health Reform Act", Rept. 103–663. See p. 67, discussion of section 405 of the bill.

[89] Reaching a Consensus to Update OSHA's Permissible Exposure Levels, Hearing before the Subcommittee on Workforce Protections, July 16, 2002, Serial No. 107–72.

but the reported bill ensures that MSHA examines the issue when there is a question in this regard. The Committee intends that this be done through the normal rulemaking process. The Committee intends that the feasibility test for this purpose be interpreted just like the same language applicable under the FMSHA to all other MSHA standards, including health standards—the rule must be both economically and technologically feasible for the industry as a whole.

Because the bill seeks to expedite the updating of many exposure limits in short order, it provides that MSHA would only be required to conduct rulemaking on the question of feasibility when presented with credible evidence that feasibility (as so defined) is a problem. Just as with any other standard, MSHA's decision not to examine feasibility would be subject to judicial review, under an "arbitrary and capricious" standard.

What MSHA would not have to do in such cases is to make its own determination about the science supporting the proposed new PEL; the REL developed by NIOSH, established by law as the scientific support agency for MSHA, would be adequate where just an exposure limit is at issue. Should MSHA wish to develop a more specific health protection standard, as it did in the case of diesel particulate matter, it would have to meet the requirements of section 101(a)(6)(A) of the FMSHA for health standards.

The reported bill also provides that where a REL is not sufficiently detailed to serve as a PEL, the Secretary may defer implementation of the bill's requirement that it be adopted as a PEL, and instead request NIOSH to recommend a sufficiently detailed REL to adopt as a PEL.

The Committee reported bill does not change the authority of NIOSH or MSHA in other ways concerning the recommendation or adoption of standards. Nor does the bill alter MSHA's obligations under other laws, such as the Regulatory Flexibility Act, when the agency goes through rulemaking on the issue of feasibility. If industry has no credible feasibility concerns about adopting a particular REL as a PEL, there would be no rulemaking and hence no need for a regulatory flexibility analysis. But if the industry has credible feasibility concerns, MSHA would have to conduct rulemaking on that question, and an RFA analysis would be part of what the agency takes into consideration in making its decision under the Federal Mine Safety and Health Act.

(b) Asbestos.—Miners in certain types of mining operations are exposed to hazardous asbestos. The current MSHA standard is years out of date and not as protective as the current OSHA standard applicable to all other workers. A rulemaking action to update MSHA's standard has been pending for years without final action.

The bill would require MSHA to promptly adopt the OSHA standard. The bill provides, however, that the Secretary is not precluded from adopting regulations to address asbestos hazards to miners not covered by the OSHA regulations.

(c) Hazard communication.—A hazard communication rule requires those who produce or provide potentially hazardous substances to provide certain information to users in the form of Material Safety Data Sheets (MSDSs). The practice is now universal and considered the first line of defense for worker health. However, in June 2002, MSHA amended the MSHA rule to significantly

weaken it—essentially by allowing the use of MSDSs with dated scientific information.

Section 101(a)(9) of the Federal Mine Safety and Health Act provides that: "No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard." That is just what MSHA did in 2002. To remedy this problem, the bill would specifically require MSHA to enforce the rule that was in place prior to these changes.

VI. Explanation of Amendments

The Committee adopted a substitute amendment to the bill. The substitute amendment is described in total in the summary of the bill above. The Committee adopted no other amendments.

VII. Application of Law to the Legislative Branch

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. H.R. 2768 would have no direct impact on the legislative branch.

VIII. Regulatory Impact Statement

The Committee has determined that H.R. 2768 will have a minimal impact on the regulatory burden. In fact, H.R. 2768 will reduce the Department of Labor's regulatory burden significantly by enacting into law a number of matters that have been pending on its regulatory agenda for some time.

IX. Unfunded Mandate Statement

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This issue is addressed in the CBO letter.

X. Earmark Statement

H.R. 2768 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

XI. ROLL CALL
COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 **BILL: H.R. 2768** **DATE: 10/31/2007**
AMENDMENT NUMBER: 2 **DEFEATED: 15 AYES / 25 NOES**
SPONSOR/AMENDMENT: KLINE / TO PROVIDE FOR MINE WORKER SAFETY COMMITTEES

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA				X
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH				X
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA				X
Mr. CASTLE				X
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT				X
Mr. PRICE				X
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG				X
Mr. HELLER				X
TOTALS	**15**	**25**		**9**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 2 **BILL: H.R. 2768** **DATE: 10/31/2007**
AMENDMENT NUMBER: 3 **DEFEATED: 17 AYES / 26 NOES**
SPONSOR/AMENDMENT: WILSON / SUBSTITUTE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA				X
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT				X
Mr. PRICE				X
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG				X
Mr. HELLER				X
TOTALS	**17**	**26**		**6**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 3 **BILL: H.R. 2768** **DATE: 10/31/2007**
AMENDMENT NUMBER: 4 **DEFEATED: 17 AYES / 26 NOES**
SPONSOR/AMENDMENT: McKEON / TO ELIMINATE PROVISIONS THAT WOULD ADVERSELY AFFECT MINE WORKER SAFETY

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA				X
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT				X
Mr. PRICE				X
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG				X
Mr. HELLER				X
TOTALS	**17**	**26**		**6**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 4 **BILL: H.R. 2768** **DATE: 10/31/2007**
AMENDMENT NUMBER **PASSED: 26 AYES / 18 NOES**
SPONSOR/AMENDMENT: WOOLSEY / FAVORABLY REPORT THE BILL AS AMENDED

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA				X
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. SUSAN DAVIS	X			
Mr. DANNY DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Ms. SANCHEZ	X			
Mr. SARBANES	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. YARMUTH	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Mr. McKEON		X		
Mr. PETRI		X		
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT				X
Mr. PLATTS		X		
Mr. KELLER		X		
Mr. WILSON		X		
Mr. KLINE		X		
Mrs. McMORRIS RODGERS		X		
Mr. MARCHANT				X
Mr. PRICE				X
Mr. FORTUÑO		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mr. KUHL		X		
Mr. ROB BISHOP		X		
Mr. DAVID DAVIS		X		
Mr. WALBERG		X		
Mr. HELLER				X
TOTALS	**26**	**18**		**5**

XII. Statement of Oversight Findings and Recommendations of the Committee

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

XIII. New Budget Authority and CBO Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 2768 from the Director of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 15, 2007.

Hon. George Miller,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2768, the Supplemental Mine Improvement and New Emergency Response Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Geoffrey Gerhardt.

Sincerely,

Robert A. Sunshine
(For Peter R. Orszag, Director).

Enclosure.

H.R. 2768—Supplemental Mine Improvement and New Emergency Response Act of 2007

Summary: The Supplemental Mine Improvement and New Emergency Response Act of 2007, H.R. 2768 would require operators of mineral and non-mineral mines to increase worker safety measures and improve emergency preparedness. It would require the Mine Safety and Health Administration (MSHA) to issue new regulations on a variety of mine safety issues, including underground refuges, mine ventilation, and communication systems. H.R. 2768 also would temporarily suspend limits on the number of mine inspectors employed by MSHA, and would call for an increase in mine inspection activities. In addition, the bill would require the agency to maintain and publish detailed maps of active and abandoned mines in the United States. The bill would also adjust the minimum and maximum civil penalties that MSHA may levy on mine operators.

Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost $14 million in 2008 and $117 million over the 2008–2012 period. By increasing civil penalties, H.R. 2768 would increase federal revenues by $14 million in 2009, $68 million over the 2008–2012 period, and $157 million over the 2008–2017 period, CBO estimates. Enacting H.R. 2768 would not affect direct spending.

H.R. 2768 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would limit the authority of states to disbar or discipline attorneys in some circumstances. CBO estimates, however, that the mandate would impose no costs on state, local, or tribal governments.

H.R. 2768 would impose several mandates, as defined in UMRA, on operators of underground mines. Those mandates would require operators to install certain systems and devices, provide equipment to miners, and comply with other safety requirements. Based on information from MSHA and industry experts, CBO expects the aggregate cost of the mandates would exceed the annual threshold established in UMRA ($131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2768 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By fiscal year, in millions of dollars—						
	2008	2009	2010	2011	2012	2008-2012	2008-2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level [1]	19	21	27	27	27	121	n.a.
Estimated Outlays	14	23	26	27	27	117	n.a.
CHANGES IN REVENUES							
Estimated Revenues	*	14	18	18	18	68	157

Notes: n.a. = Not applicable; * = Less than $500,000.

[1] Although fiscal year 2008 is already underway, this estimate assumes final appropriation legislation for 2008 action would include funding for activities required by H.R. 2768.

Basis of estimate:

Changes in spending subject to appropriation

Assuming appropriation of the necessary amounts, CBO estimates the total cost to the federal government of implementing H.R. 2768 would be $14 million in 2008 and $117 million over the 2008–2012 period. This estimate assumes that the necessary funds would be appropriated early in fiscal year 2008 and for subsequent years and that outlays would follow historical patterns for similar activities.

Among the provisions contained in the bill, H.R. 2768 would:

- Require MSHA to establish a mining map repository and post copies of all maps on the internet,
- Require MSHA to inspect all mine seals under construction and a sample of existing seals,
- Mandate the inspection of self-rescue vehicles by the National Institute for Occupational Safety and Health,
- Institute a new mine safety inspector initiative and provide MSHA with conditional authority to hire contractors to perform mine inspections,
- Require MSHA to establish and maintain a 24-hour emergency call center,
- Require MSHA to designate at least one employee to serve as a family liaison during events when miners are trapped or injured,
- Require numerous reports on various subjects from MSHA and the National Academy of Sciences, and

- Require the Department of Labor to establish a mine safety advisory committee as well as an office of miner ombudsman to monitor mine safety.

The largest portion of the bill's cost is attributable to the requirement that MSHA maintain a repository for maps of all active and abandoned mines in the United States and post digitized versions of those maps on the internet. There are more than 10,000 active mines in the United States and the number of abandoned mines has been estimated at more than half a million. Several states and the federal government have programs underway to digitize certain mine maps, but the vast majority of mining maps have not been digitized. The cost of collecting, scanning, electronically posting and storing those maps could be substantial. Based on information from MSHA and other sources, CBO estimates the cost to MSHA of implementing this requirement alone would be more than $50 million over the 2008–2012 period. Most of the other major provisions would cost between $1 million and $3 million per year.

Revenues

Under current law, civil penalties for mine safety violations are capped at $60,000 per violation. MSHA also assesses a minimum penalty of $100. Under H.R. 2768, both the cap and floor would be adjusted for both "significant and substantial" violations and all other violations. For "significant and substantial" violations, the bill would set the minimum penalty at $1,000 and the maximum at $150,000 for each violation. For other violations, H.R. 2768 would create a minimum of $500 and a maximum of $100,000 for each violation. Further, the law would create a new fine for patterns of mine health and safety violations with a minimum of $50,000 and a maximum of $250,000. Additionally, the bill would adjust the minimum and maximum fines for discrimination against an individual who files a complaint and for interference with a mine inspection to $10,000 and $100,000. Civil penalties are recorded in the federal budget as revenues net of offsetting effects on income and payroll tax receipts.

Based on information provided by MSHA on past violations, CBO estimates those changes would increase federal revenues by $14 million in 2009, by $68 million over the 2008–2012 period, and by $157 million over the 2008–2017 period.

Estimated impact on state, local, and tribal governments: States currently have the authority to establish and enforce standards of conduct for attorneys practicing in their states. H.R. 2768 would prohibit any state bar or state court from disbarring or disciplining an attorney under some circumstances. The bill would protect attorneys for the Department of Labor who contact miners or nonmanagerial mining employees during the course of a safety investigation from disciplinary action or disbarment under state law. That preemption of state law and disciplinary standards would be an intergovernmental mandate as defined in UMRA. However, because the preemption would simply limit the application of state laws, CBO estimates that the mandate would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 2768 would impose several mandates, as defined in UMRA, on operators of under-

ground mines. Those mandates include, but are not limited to, requirements to:

- Install conveyor belts that meet certain flame resistance requirements by 2012;
- Monitor behind certain mine seals using a continuous motoring device;
- Equip each miner with a personal dust monitor;
- Install an atmospheric monitoring system; and
- Provide a certain post-accident communication and tracking system.

CBO expects the aggregate cost of the mandates in the bill would exceed the annual threshold established in UMRA ($131 million in 2007, adjusted annually for inflation).

Conveyer belts

Section 4(d) would require operators of underground coal, metal, and nonmetal mines to install conveyor belts by December 31, 2012 that meet certain flame resistance requirements recommended by the National Institute for Occupational Safety and Health. Based on information from industry experts, CBO expects most belts, if not all, would have to be replaced. According to those experts and MSHA, the total length of conveyor belts in 4 underground mines (coal, metal, and nonmetal mines) is greater than 25 million linear feet and the price of the compliant belt would be about 40 percent greater than the current price per linear foot (about $46/ft) for conveyor belts. Based on those data, and assuming that fewer than 20 percent of the belts are replaced on average each year, the incremental cost of purchasing belts that comply with the new standard would be more than $600 million over the 2008–2012 period. The cost would also include installation costs for belts that would not otherwise be replaced during the five-year period.

Continuous monitoring devices

Section 4(c) would require operators of underground coal mines to monitor seals that cannot withstand a constant total pressure of 240 pounds per square inch. The monitoring of seals would have to be done with continuous monitoring devices. According to industry sources, continuous monitoring devices are not currently used in underground mines in the United States. Those sources also estimate that the devices could cost up to $400,000 per system to install based on the cost of such systems in Australia. Based on an MSHA estimate that approximately 300 underground mines would monitor seals, the cost of the mandate could amount to about $120 million.

Personal dust monitors

Section 7 would require each coal miner in an underground mine to be equipped with a personal dust monitor that measures, records, and displays in real time the concentration of respirable dust. According to industry experts, personal dust monitors that meet those specifications cost between $8,000 and $12,000. According to data from MSHA, approximately 42,000 miners are employed in underground coal mines. If one-fourth to one-third of the workforce is working underground during a shift, the initial cost to

supply each worker on a shift with personal dust monitors would amount to at least $100 million.

Atmospheric monitoring systems

Section 4(f) would require operators of an underground mine to install atmospheric monitoring systems in all underground areas where miners normally work and travel. Currently, MSHA only requires an atmospheric monitoring system to be installed when belt air is used for ventilation. Based on information from MSHA, CBO expects that more than 400 mines would be required to install an atmospheric monitoring system at a cost of $150,000 per mine. Therefore, the initial cost to the industry to comply with the mandate would be greater than $60 million.

Post-Accident communication systems

Section 4(a) would require operators of underground coal mines to provide for a post-accident communication system that is at least as effective as a wireless mesh type or a 'leaky feeder' communication and tracking system within 120 days of the date of enactment. According to industry sources, only leaky feeder systems have been approved by MSHA. Based on information from MSHA, CBO expects that approximately 500 mines would be required to install a system at an average cost of $400,000 per mine.

Other mandates

The bill would impose several other mandates on operators of underground mines. It would prohibit the use of certain ventilation systems except in the case of safety constraints. Based on information from industry experts, CBO expects that few mines would have to provide another entry for ventilation and, therefore, that the cost would not be significant.

In addition, the bill would require operators to comply with regulations issued by MSHA for seals in underground coal mines and expand existing seal requirements to certain seals in underground metal and nonmetal mines. Operators also would be required to comply with new requirements for refuge chambers, ventilation controls, and roof screens. Additional mandates would establish standards for respirable dust and other chemicals, and require operators to comply with reporting and notification requirements. CBO has no basis to determine the costs to comply with those mandates.

Estimate prepared by: Federal spending: Geoffrey Gerhardt; Federal revenues: Zachary Epstein; Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Amy Petz.

Estimate approved by: Keith J. Fontenot, Deputy Assistant Director for Health and Human Resources, Budget Analysis Division.

XIV. Statement of General Performance Goals and Objectives

In accordance with Clause 3(c) of House rule XIII, the goal of H.R. 2768 is to improve the protection of the Nation's miners from occupational safety and health hazards.

XV. Constitutional Authority Statement

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 2768. The Committee believes that the amendments made by this bill, which amends the Federal Mine Safety and Health Act to provide increased protection to miners from occupational safety and health hazards, are within Congress' authority under Article I, section 8, clause 3 of the Constitution of the United States.

XVI. Committee Estimate

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2768. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

* * * * * * *

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

(a) * * *

* * * * * * *

(d) "operator" means any *mineral* owner, *mineral* lessee, or other person who operates, controls, or supervises a coal or other mine [or] *and* any independent contractor performing services or construction at such mine*, and no operator may, by contract or other agreement, limit any liability under this Act through transfer of any responsibilities to another person*;

** * * * * * *

TITLE I—GENERAL

MANDATORY SAFETY AND HEALTH STANDARDS

SEC. 101. (a) * * *

* * * * * * *

(f) Notwithstanding the other requirements of this section, not later than 30 days of the enactment of the S–MINER Act, the National Institute for Occupational Safety and Health shall forward to

the Secretary its Recommended Exposure Limits (RELs) for chemical and other hazards to which miners may be exposed, along with the research data and other necessary information. Within 30 days of receipt of this information, the Secretary shall to adopt such recommended exposure limits as the Permissible Exposure Limits (PELs) for application in the mining industry. The National Institute of Occupational Safety and Health shall annually submit to the Secretary any additional or revised recommended exposure limits for all chemicals and other hazards to which miners may be exposed, and the Secretary shall be obligated to adopt such exposure limits as PELs for application in the mining industry within 30 days of receipt of such information. Upon petition from miners or mine operators providing credible evidence that feasibility may be an issue for the industry as a whole, the Secretary may review the feasibility of any PEL established pursuant to this paragraph before placing it into effect and, following public notice and comment, make necessary adjustments thereto, provided that the adjusted standard is as protective as is feasible, and that the PEL shall go into effect as required by the other provisions of this paragraph if such action is not completed within one year. Moreover, upon petition from miners or mine operators providing credible evidence that a REL issued by the National Institute of Occupational Safety and Health lacks the specificity required to serve as a PEL pursuant to this Act, the Secretary may defer implementation of the requirements of this paragraph and shall promptly request National Institute of Occupational Safety and Health to recommend a sufficiently detailed REL, at which time the provisions of this paragraph shall be implemented. Nothing in this subsection shall limit the ability of the National Institute of Occupational Safety and Health to make such recommendations more frequently than 1 time per year, nor limit the Secretary from establishing requirements for chemical and other substances or health hazards in the mining industry that are more comprehensive and protective than those established pursuant to this subsection and in accordance with the other requirements of this section.

(g) The health standard for asbestos established by the Occupational Safety and Health Administration that is set forth in section 1910.1001 of title 29, Code of Federal Regulations, or any subsequent revision of that regulation, shall be adopted by the Secretary for application in the mining industry not later than 30 days of the enactment of the S–MINER Act. Nothing in this paragraph shall preclude the Secretary from adopting regulations to address asbestos hazards to miners not covered by the regulations of the Occupational Safety and Health Administration.

(h) Unless and until there is additional rulemaking pursuant to the requirements of this section, the Secretary shall apply the provisions of the interim final rule of October 3, 2000, concerning hazard communication, in lieu of the final rule of June 21, 2002, concerning hazard communication.

* * * * * * *

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 103. (a) Authorized representatives of the Secretary or the Secretary of Health, Education, and Welfare shall make frequent

inspections and investigations in coal or other mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether there is compliance with the mandatory health or safety standards or with any citation, order, or decision issued under this title or other requirements of this Act. In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person, except that in carrying out the requirements of clauses (1) and (2) of this subsection, the Secretary of Health, Education, and Welfare may give advance notice of inspections. In carrying out the requirements of clauses (3) and (4) of this subsection, the Secretary shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year. The Secretary shall develop guidelines for additional inspections of mines based on criteria including, but not limited to, the hazards found in mines subject to this Act, and his experience under this Act and other health and safety laws. For the purpose of making any inspection or investigation under this Act, the Secretary, or the Secretary of Health, Education, and Welfare, with respect to fulfilling his responsibilities under this Act, or any authorized representative of the Secretary or the Secretary of Health, Education, and Welfare, shall have a right of entry to, upon, or through any coal or other mine. *No person shall limit or otherwise prevent the Secretary from entry on a coal or other mine, or interfere with the Secretary's inspection activities, investigative activities, or rescue or recovery activities.*

(b)*(1) For all accident and incident investigations under this Act, the Secretary shall determine why the accident or incident occurred; determine whether civil or criminal requirements were violated and, if so, issue citations and penalties, and make recommendations to avoid any recurrence. The Secretary shall also determine whether the conduct or lack thereof by Agency personnel contributed to the accident or incident.*

(2)(A) For any accidents or incidents involving multiple serious injuries or deaths, or multiple entrapments, there shall also be an independent investigation to consider why the accident or incident occurred, make recommendations to avoid a recurrence, and determine whether the conduct or lack thereof by agency personnel contributed to the accident or incident.

(B) Not later than 30 days after the date of enactment of the S–MINER Act, the Secretary shall initiate rulemaking activity to establish rules on the procedures that will be used to investigate accidents and incidents involving multiple serious injuries or deaths, or multiple entrapments, and shall directly contact and solicit the participation of

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

(ii) organizations representing miners;

(iii) mine rescue teams;

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

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

Such rulemaking shall be completed by October 1, 2008.

(C) The rules for the investigation of accidents or incidents involving multiple serious injuries or deaths, or multiple entrapments, shall provide for the appointment and operations of any such independent investigation team in accordance with the requirements of this paragraph. An independent investigation team shall be appointed by the Director of the National Institute for Occupational Safety and Health as soon as possible after a qualifying accident or incident. The members shall consist of:

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

(ii) a representative of mine operators with familiarity with the type of mining involved;

(iii) a representative of mine workers with familiarity with the type of mining involved, who shall be the workers' certified bargaining representative at the mine or, if there is no certified representative at the mine, then a workers' representative jointly selected by organized labor organizations:

(iv) an academic with expertise in mining; and

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

(D) Such rules shall include procedures to ensure that the Secretary will be able to cooperate fully with the independent investigation team and will use the powers of the Secretary under this section to help obtain information and witnesses required by the independent investigation team, procedures to ensure witnesses are not coerced and to avoid conflicts of interest in witness representation, procedures to ensure confidentiality if requested by any witness, and procedures to enable the independent investigation team to conduct such public hearings as it deems appropriate. Such rules shall also require that upon completion of any accident or incident investigation of accidents or incidents involving multiple serious injuries or deaths, or multiple entrapments, the independent investigation team shall—

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

(ii) make recommendations as to policy, regulatory, enforcement or other changes, including statutory changes, which in the judgment of the independent investigation team would best prevent a recurrence of such actions or inactions at other mines; and

(iii) promptly make all such findings and recommendations public (except findings and recommendations that must be temporarily withheld in connection with a criminal referral), including appropriate public hearings to inform the mining community of their respective findings and recommendations.

(E) As part of the Secretary's annual report to Congress pursuant to section 511(a), the Secretary shall report on implementation of recommendations issued by any independent investigation teams in the preceding 5 years.

[For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal or other mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and administer oaths.]

(3) For the purpose of enabling the Secretary to perform the functions under this Act, the Secretary may, after notice, hold public hearings and sign and issue subpoenas for the attendance and testimony of witnesses and the production of information, including but not limited to relevant data, papers, books, documents and items of physical evidence, and administer oaths, whether or not in connection with a public hearing. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the district court of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce [documents] *information, including data, papers, books, documents, and items of physical evidence* before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Nothing in this Act shall be construed to limit the authority of the Chemical Safety and Hazard Investigation Board to conduct an independent investigation of the accident or incident or the events or factors resulting therein, nor with the authority of the Office of the Inspector General to conduct an investigation of the conduct of DOL personnel in connection with an accident or incident or the events or factors resulting therein, and the Secretary shall cooperate in full with any such investigation. Such investigation shall be in addition to any investigation authorized by section 103(b).

* * * * * * *

(f) Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary of his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a), for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine*, and to participate in any accident investigation pursuant to the requirements of this Act. Any family member of a miner trapped or otherwise unable to execute a designation of a miner representative on his or her own behalf may do so on behalf of the miner for any and all purposes*. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. Such representative of miners who is also an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection. To the extent that the Secretary or authorized representative of the Secretary de-

termines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives. However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act.

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(h) In addition to such records as are specifically required by this Act, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such [information] *data, papers, books, documents, and items of physical evidence*, as the Secretary or the Secretary of Health, Education, and Welfare may reasonably require from time to time to enable him to perform his functions under this Act. The Secretary or the Secretary of Health, Education, and Welfare is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

* * * * * * *

(j) In the event of any accident *or reportable event* occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. For purposes of the preceding sentence, the notification *of accidents* required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred*, or in the case of a reportable event that is not required to be reported as an accident, within 1 hour of the time at which the operator realizes that the event has occurred*. In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine. *For the purposes of this subsection, a reportable event shall include—*

(1) a fire not required to be reported more promptly;

(2) a sudden change in mine atmospheric conditions in a sealed area;

(3) a coal or rock outburst that causes the withdrawal of miners; or

(4) any other event, as determined in regulations promulgated by the Secretary, that needs to be reported within 1 hour in order for the Secretary to determine if the working conditions in the mine are safe.

If the representative of the Secretary supervises and directs the rescue and recovery activities in such mine, the operator shall comply with the requests of the authorized representative of the Secretary to facilitate rescue and recovery activities including the provision of all equipment, personnel, and other resources required to perform such activities in accordance with the schedule and requirements established by the representative of the Secretary for this purpose, and failure of the operator to comply in this regard shall be considered an egregious violation of this Act.

(k) In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary**[**, when present,**]** may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

(l) Rescue efforts for trapped miners shall not cease as long as there is any possibility that miners are alive, unless such efforts pose a serious danger to rescue or other workers, and the decision to cease a rescue shall be made by the Secretary's representative. Thereafter, efforts to recover the remains of miners shall continue unless such efforts pose a serious danger to recovery workers, and the decision to cease such recovery efforts shall be made by the Secretary's representative.

CITATIONS AND ORDERS

SEC. 104. (a) * * *

(b)*(1) An operator issued a citation pursuant to subsection (a) shall notify the Secretary that the operator has abated the violation involved. If such operator fails to provide such a notice to the Secretary within the abatement time as provided for in the citation, the Secretary shall issue an order that requires the operator (or the agent of the operator) to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area as the Secretary determines until an authorized representative of the Secretary determines that such violation has been abated. Notwithstanding any operator notice, no violation shall be determined to be abated until an authorized representative of the Secretary visits the site and determines such violation has been fully abated.* **[**If,**]**

(2) If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds **[**(1)**]** *(A)* that a violation described in a citation issued pursuant to subsection (a) has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and **[**(2)**]** *(B)* that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized rep-

resentative of the Secretary determines that such violation has been abated.

* * * * * * *

(d)(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard *or any provision of this Act*, and if he also finds that, ⟦while the conditions created by such violation do not cause imminent danger,⟧ such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards *or any provision of this Act*, he shall include such finding in any citation given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard *or any provision of this Act* and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

* * * * * * *

(e)(1) If an operator has a pattern of violations of mandatory health or safety standards *or any provision of this Act* in the coal or other mine which are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards, he shall be given written notice that such pattern exists. *In determining whether a pattern of violations exists, the Secretary shall give due consideration to all relevant information, such as the gravity of the violations, operator negligence, history of violations, the number of inspection shifts the Secretary or her agents have spent at the operation, and the frequency of violations per number of inspection days spent at the operation.* If, upon any inspection within 90 days after the issuance of such notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard *or any provision of this Act* which could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of any violation of a mandatory health or safety standard *or any provision of this Act* which could significantly and

substantially contribute to the cause and effect of a coal or other mine health or safety hazard. The withdrawal order shall remain in effect until an authorized representative of the Secretary determines that such violation has been abated.

(3) If, upon an inspection of the entire coal or other mine, an authorized representative of the Secretary finds no violations of mandatory health or safety standards *or any provision of this Act* that could significantly and substantially contribute to the cause and effect of a coal or other mine health and safety hazard, the pattern of violations that resulted in the issuance of a notice under paragraph (1) shall be deemed to be terminated and the provisions of paragraphs (1) and (2) shall no longer apply. However, if as a result of subsequent violations, the operator reestablishes a pattern of violations, paragraphs (1) and (2) shall again be applicable to such operator. *In addition, if an operator subject to paragraphs (1) and (2) demonstrates objective evidence that they are correcting the problems that gave rise to the pattern of violations, and the violation frequency rate for such operator declines significantly for a period of 180 days, the withdrawal order provisions of paragraphs (1) and (2) shall no longer apply.*

(4) The Secretary shall make such rules as he deems necessary to establish criteria for determining when a pattern of violations of mandatory health or safety standards *or any provision of this Act* exists.

* * * * * * *

PROCEDURE FOR ENFORCEMENT

SEC. 105. (a) If, after an inspection or investigation, the Secretary issues a citation or order under section 104, he shall**[**, within a reasonable time after the termination of such inspection or investigation,**]** notify the operator by certified mail of the civil penalty proposed to be assessed under section 110(a) for the violation cited and that the operator has 30 days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. A copy of such notification shall be sent by mail to the representative of miners in such mine. **[**If, within 30 days from the receipt of the notification issued by the Secretary, the operator fails to notify the Secretary that he intends to contest the citation or the proposed assessment of penalty, and no notice is filed by any miner or representative of miners under subsection (d) of this section within such time, the citation and the proposed assessment of penalty shall be deemed a final order of the Commission and not subject to review by any court or agency.**]** *The operator shall, not later than 30 days from the receipt of the notification of a citation issued by the Secretary, notify the Secretary that the operator intends to contest the citation or proposed assessment of a penalty, and the operator shall place in escrow with the Secretary the amount of the proposed assessment. The Secretary shall place any escrow submitted by a mine operator for this purpose into an interest bearing account and shall release the funds to the operator, including interest accrued, upon the payment of any final assessment determination. If notification and proof of escrow is not provided to the Secretary, the citation and the proposed assessment of penalty shall be deemed a final order of the Commission and not*

subject to review by any court or agency. In the event that a mine operator refuses to comply with a final order of the Commission to pay civil monetary penalties and statutory interest, the Secretary shall have the authority to issue an order requiring the mine operator to cease production under such final orders of the Commission have been paid in full. Refusal by the operator or his agent to accept certified mail containing a citation and proposed assessment of penalty under this subsection shall constitute thereof within the meaning of this subsection.

(b)(1)(A) * * *

(B) In determining whether to propose a penalty to be assessed under section 110(b), the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to [the size of the business of the operator charged] *the combined size of the business of the operator and any controlling entity*, whether the operator was negligent, [the effect on the operator's ability to continue in business,] the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. *In settling cases, the Secretary shall utilize the same point system as that utilized to propose penalties, so as to ensure consistency in operator penalty assessments.*

* * * * * * *

(c)(1) No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, *or an injury or illness in a coal or other mine or that may be associated with mine employment,* or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such preoceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act. *No miner shall be required to work under conditions he has reasonable grounds to believe to be abnormally and immediately dangerous to himself beyond the normal hazards inherent in the operation which could reasonably be expected to cause death of serious physical harm before such condition or practice can be abated.*

(2) Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the

complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference and propose an order granting appropriate relief. The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. *No investigation or hearing authorized by this paragraph may be stayed to await resolution of a related grievance proceeding.* Such order shall become final 30 days after its issuance. The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may persent additional evidence on his own behalf during any hearing held pursuant to this paragraph.

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(e) Attorneys representing the Secretary are authorized to contact any miner or non-managerial employee of a mine operator for the purposes of carrying out the Secretary's functions under this Act and no attorney representing the Secretary shall be disbarred or disciplined by any State bar or State court for making such contacts. No attorney representing a mine operator in a matter under this Act may concurrently represent individual miners in the same matter.

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PROCEDURES TO COUNTERACT DANGEROUS CONDITIONS

SEC. 107. (a) If, upon any inspection or investigation of a coal or other mine which is subject to this Act, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such immiment danger no longer exist. *In addition, in the event of any violation of section 315 or section 316, or regulations issued pursuant to such sections, such representative shall determine the extent of the area of such mine throughout which the danger exists and issue an order requiring the*

operator of such mine to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that the violations have been abated. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 104 or the proposing of a penalty under section 110.

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PENALTIES

SEC. 110. (a)(1) The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provisions of this Act, shall be assessed a civil penalty by the Secretary which penalty shall not be [more than $50,000 for each such violation.] *less than $500 or more than $100,000 for each such violation, except that, in the case of a violation of a mandatory health or safety standard that could significantly and substantially contribute to the cause and effect of a coal or other mine health or safety hazard, the penalty shall not be less than $1,000 or more than $150,000, for each such violation.* Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

* * * * * * *

(b)(1) * * *

(2) Violations [under] *of subsections (a) through (h) of* this section that are deemed to be flagrant may be assessed a civil penalty of not more than $220,000. For purposes of the preceding sentence, the term 'flagrant' with respect to a violation means a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.

(c) [Whenever a corporate operator] *Whenever a mine operator* violates a mandatory health or [safety standard] *safety standard or requirement of this Act* or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under subsection (a) section 105(c), any director, *partner, owner,* officer, or agent of [such corporation] *such mine operator* who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d).

* * * * * * *

(i)(1) If the Secretary determines that a pattern of violations under section 104(e) exists, the Secretary shall assess a penalty, in addition to any other penalty authorized in this Act for a violation of such section, of not less than $50,000 nor more than $250,000. All operators of the mine, including any corporate owners, shall be jointly and severally liable for such penalty. The amount of the assessment under this paragraph shall be designed to ensure a change in the future conduct of the operators and corporate owners of such mine with respect to mine safety and health, given the overall re-

sources of such operators. Notwithstanding subsection (k) or section 113, a penalty assessed by the Secretary under this paragraph may not be reduced by the Commission.

(2) In addition to the authority to withdraw miners from an area of a coal or other mine pursuant to section 104(e), the Secretary shall withdraw all miners from the entire mine when any pattern of violations has been determined to exist until such time as the Secretary certifies that all identified violations have been corrected and the operator has agreed to abide by a written plan approved by the Mine Safety and Health Administration to ensure that such a pattern of conduct will not recur.

[(i)**]** *(j)* The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to **[**the size of the business of the operator charged**]** *the combined size of the business of the operator and any controlling entity*, whether the operator was negligent, **[**the effect on the operator's ability to continue in business,**]** the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors. *In any review requested by a mine operator, or in settling cases, the Commission shall utilize the same point system as that developed by the Secretary for proposed assessments so as to ensure consistency in operator penalty assessments.*

[(j)**]** *(k)* Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office. Interest at the rate of 8 percent per annum shall be charged against a person on any final order of the Commission, or the court. Interest shall begin to accrue 30 days after the issuance of such order.

[(k)**]** *(l)* No proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission. No penalty assessment which has become a final order of the Commission shall be compromised, mitigated, or settled except with the approval of the court.

[(l)**]** *(m)* The provisions of this section shall not be applicable with respect to title IV of this Act.

(n) CIVIL PENALTY FOR INTERFERENCE OR DISCRIMINATION.—Any operator who is found to be in violation of section 105(c), or in violation of section 103(a) (as amended by this Act) shall be subject to a civil penalty of not less than $10,000 nor more than $100,000 for each occurrence of such violation.

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MANDATORY HEALTH AND SAFETY TRAINING

SEC. 115. (a) * * *

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(e)(1) * * *

(2)(A) * * *

(B) Such regulations shall provide for the following:

(i) * * *

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(v) The provision of uniform credentials to mine rescue team members, support personnel, or vehicles for immediate access to any mine site.

(vi) The plans required at each mine to ensure coordination with local emergency response personnel and to ensure that such personnel receive adequate training to offer necessary assistance to mine rescue teams in the event such assistance is requested. Such local emergency response personnel shall not perform the duties of any mine rescue team.

(vii) Requirements to ensure that operators are prepared to facilitate the work of mine rescue teams during an emergency by—

(I) storing necessary equipment not brought on site by mine rescue teams in locations readily accessible to mine rescue teams;

(II) providing mine rescue teams with a parking and staging area adequate for their needs;

(III) identifying a space appropriate for coordinating emergency communications with the mine rescue team; and

(IV) identifying and maintaining separate spaces for family members, community members, and press to assemble during an emergency so as to facilitate communications with these groups while ensuring the efforts of the mine rescue teams are not hindered.

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SEC. 117. EMERGENCY PREPAREDNESS PLAN.

Not later than 6 months of the enactment of the S–MINER Act, the Secretary shall establish and disseminate guidelines for rescue operations that will: (1) establish clear lines of authority within the agency for such operations; (2) establish clear lines of demarcation so private sector and State responders can properly implement their responsibilities; (3) be appropriate for rescue in various types of conditions reasonably likely to be encountered in the United States, including such factors as the depth of the mining, ground stability, ground slope, remoteness from major roads, surface ownership and access problems, and the availability of necessary communications linkages. The Secretary shall consult with States, rescue teams and other responders in developing such guidelines, and shall update them from time to time based upon experience.

SEC. 118. FAMILY LIAISONS REQUIREMENT.

The Secretary shall—

(1) designate a full-time permanent employee of the Mine Safety and Health Administration to serve as a Family Liaison, who shall, at least in instances where multiple miners are

trapped, severely injured or killed, act as the primary communication with the families of the miners concerning all aspects of the rescue operations, including the location or condition of miners, and assist the families in getting answers to their questions, and otherwise serve as a liaison to the families, and provide for the temporary reassignment of other personnel who may be required to assist the Family Liaison in connection with a particular incident;

(2) require the Mine Safety and Health Administration to be as responsive as possible to requests from the families of such miners for information relating to the mine accident, and waive any fees required for the production of documents pursuant to 5 U.S.C. 552(a)(3) in connection with a request from a family member, or authorized representative of miners, for documents relating to a mine fatality, notwithstanding any conditions for fee waivers law that may otherwise be imposed by law; and

(3) designate a highly qualified representative of the Secretary with experience in public communications to be present at mine accident sites where rescues are in progress during the entire duration of such rescues, to serve as the primary communicator with the press and the public concerning all aspects of the rescue operations, including the location or condition of miners.

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TITLE II—INTERIM MANDATORY HEALTH STANDARDS

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[DUST STANDARD AND RESPIRATORY EQUIPMENT

[SEC. 202. (a) Each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed. Such samples shall be taken by any device approved by the Secretary and the Secretary of Health, Education, and Welfare and in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretaries shall prescribe in the Federal Register within sixty days from the date of enactment of this Act and from time to time thereafter. Such samples shall be transmitted to the Secretary in a manner established by him, and analyzed and recorded by him in a manner that will assure application of the provisions of section 104(i) of this Act when the applicable limit on the concentration of respirable dust required to be maintained under this section is exceeded. The results of such samples shall also be made available to the operator. Each operator shall report and certify to the Secretary at such intervals as the Secretary may require as to the conditions in the active workings of the coal mine including, but not limited to, the average number of working hours worked during each shift, the quantity and velocity of air regularly reaching the working faces, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

[(b) Except as otherwise provided in this subsection—

[(1) Effective on the operative date of this title, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 3.0 milligrams of respirable dust per cubic meter of air.

[(2) Effective three years after the date of enactment of this Act, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

[(3) Any operator who determines that he will be unable, using available technology, to comply with the provisions of paragraph (1) of this subsection, or the provisions of paragraph (2) of this subsection, as appropriate, may file with the Panel, no later than sixty days prior to the effective date of the applicable respirable dust standard established by such paragraphs, an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the 3.0 milligram standard established by paragraph (1) of this subsection, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue a permit for noncompliance to the operator. If, in the case of an application for a permit for noncompliance with the 2.0 milligram standard established by paragraph (2) of this subsection, the application satisfies the requirements of subsection (c) of this section and the Panel determines that the applicant will be unable to comply with such standard, the Panel shall issue to the operator a permit for noncompliance.

[(4) In any case in which an operator, who has been issued a permit (inluding a renewal permit) for noncompliance under this section, determines, not more than ninety days prior to the expiration date of such permit, that he still is unable to comply with the standard established by paragraph (1) of this subsection or the standard established by paragraph (2) of this subsection, as appropriate, he may file with the Panel an application for renewal of the permit. Upon receipt of such application, the Panel, if it determines, after all interested persons have been notified and given an opportunity for a public hearing under section 5 of this Act, that the application is in compliance with the provisions of subsection (c) of this section, and that the applicant will be unable to comply with such standard, may renew the permit.

[(5) Any such permit or renewal thereof so issued shall be in effect for a period not to exceed one year and shall entitle the permittee during such period to maintain continuously the average concentration of respirable dust in the mine atmosphere during each shift in the working places of such mine to which the permit applies at a level specified by the Panel, which shall be at the lowest level which the application shows the conditions, techology applicable to such mine, and other available and effective control techniques and methods will permit, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0

milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

[(6) No permit or renewal thereof for noncompliance shall entitle any operator to an extension of time beyond eighteen months from the date of enactment of this Act to comply with the 3.0 milligram standard established by paragraph (1) of this subsection, or beyond seventy-two months from the date of enactment of this Act to comply with the 2.0 milligram standard established by paragraph (2) of this subsection.

[(c) Any application for an initial or renewal permit made pursuant ot this section shall contain—

[(1) a representation by the applicant and the engineer conducting the survey referred to in paragrah (2) of this subsection that the applicant is unable to comply with the standard applicable under subsection (b)(1) or (b)(2) of this section at specified working places because the technology for reducing the concentration of respirable dust at such places is not available, or because of the lack of other effective control techniques or methods, or because of any combination of such reasons;

[(2) an identification of the working places in such mine for which the permit is requested; the results of an engineering survey by a certified engineer of the respirable dust conditions of each working place of the mine with respect to which such application is filed and the ability to reduce such dust to the level required to be maintained in such place under this section; a description of the ventilation system of the mine and its capacity; the quantity and velocity of air regularly reaching the working faces; the method of mining; the amount and pressure of the water, if any, reaching the working faces; the number, location, and type of sprays, if any; action taken to reduce such dust; and such other information as the Panel may require; and

[(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

[(d) Beginning six months after the operative date of this title and from time to time thereafter, the Secretary of Health, Education, and Welfare shall establish, in accordance with the provisions of section 101 of this Act, a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed below the levels established in this section to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person. Such schedule shall specify the minimum time necessary to achieve such levels taking into consideration present and future advancements in technology to reach these levels.

[(e) References to concentrations of respirable dust inthis title mean the average concentration of respirable dust measured with a device approved by the Secretary and the Secretary of Health, Education, and Welfare.

[(f) For the purpose of this title, the term "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured, during the 18 month period following the date of enactment of this Act, over a number of continuous production shifts to be determined by the Secretary and the Secretary of Health, Education, and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary and the Secretary of Health, Education, and Welfare find, in accordance with the provisions of section 101 of this Act, that such single shift measurement will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

[(g) The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this title.

[(h) Respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this Act. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this Act.]

SEC. 202. DUST STANDARD AND RESPIRATORY EQUIPMENT.

(a)(1) Effective on the date of enactment of the S–MINER Act, each coal mine operator shall continuously maintain the concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below a time-weighted average of 1.00 milligrams of respirable dust per cubic meter of air averaged over 10 hours or its dose-equivalent for shorter or longer period of time. For purposes of this paragraph, "a dose-equivalent" means the amount of dust that a miner would inhale during his work shift as if he were working for 10 hours, and the term "shift" means portal-to-portal for underground coal mines and "bank to bank" for other coal mines.

(2) At regular intervals to be prescribed by the Secretary and the Secretary of Health and Human Services, the Secretary will take accurate samples of the amount of respirable dust in the coal mine atmosphere to which each miner in the active workings of such mine is exposed in order to determine compliance with the requirements of paragraph (a)(1) of this section. In addition, the Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this title. All samples by the Secretary shall be taken by a personal dust monitor that measures, records and displays in real time the concentration of respirable dust to which the miner wearing the device is exposed, and shall include the sampling of areas, occupations or persons. For the purposes of determining compliance with the exposure limit for respirable dust, only a single sample shall be required to determine

non-compliance, and there shall be no adjustment for measurement error in the measured level of respirable dust.

(3) At intervals established by the Secretary, each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed to identify sources of exposure so that the operator can take corrective action and assure that the exposure of each mine is below the exposure limit. Under the provisions of this Act, all such samples shall be taken by a personal dust monitor that measures, records and displays the concentration of respirable dust to which the miner wearing the device is exposed, and may include samples of less than a full shift. The results of such sampling shall be transmitted to the Secretary in a manner established by him, and recorded by him in a manner that will assure application of the provisions of this section of the Act.

(4) Each miner shall be equipped with a personal dust monitor that measures, records and displays in real time the concentration of respirable dust to which the miner wearing the device is exposed. Each miner shall be permitted to adjust his work activities whenever necessary to keep his exposure to respirable coal dust, as measured, recorded and displayed by such device, at all times at or below the permitted concentration.

(b) Effective on the date of enactment of the S–MINER Act, each operator of a coal or other mine shall continuously maintain the concentration of respirable silica dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below a time-weighted average of 0.05 milligrams of respirable silica dust per cubic meter of air averaged over ten hours or its dose-equivalent for shorter or longer period of time. For the purposes of this paragraph, compliance shall be determined by the sampling of areas, occupations or persons, only a single sample shall be required to determine non-compliance, and there shall be no adjustment for measurement error in the measured level of respirable silica dust. For the purposes of this paragraph, a "dose-equivalent" means the amount of dust that a miner would inhale during his work shift as if he were working for 10 hours, and the term "shift" means portal-to-portal for underground mines and "bank to bank" for other mines.

(c) Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be made available to all persons whenever exposed to concentrations of respirable dust or silica in excess of the levels required to be maintained under this section. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust and silica in the mine atmosphere in excess of the levels required to be maintained under this section.

(d) Each operator shall report and certify to the Secretary at such intervals as the Secretary may require as to the conditions in the active workings of a coal mine, including, the average number of working hours worked during each shift, the quantity and velocity of air regularly reaching the working faces, the method of mining,

the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

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[DUST STANDARD WHEN QUARTZ IS PRESENT

[SEC. 205. In coal mining operations where the concentration of respirable dust in the mine atmosphere of any working place contains more than 5 per centum quartz, the Secretary of Health, Education, and Welfare shall prescribe an appropriate formula for determining the applicable respirable dust standard under this title for such working place and the Secretary shall apply such formula in carrying out his duties under this title.]

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SEC. 207. APPLICATION TO UNDERGROUND METAL AND NONMETAL MINES.

(a) CONVEYOR BELTS.—The regulations to be issued pursuant to section 311(h) concerning conveyor belts shall also provide that all conveyor belts in use in underground metal and nonmetal mines are to be replaced, on the same schedule, with belts that can meet the flame resistance requirements recommended by the National Institute for Occupational Safety and Health, and which limit smoke and toxic emissions. Any conveyor belt installed in an underground metal or nonmetal mine after the date of enactment of the S–MINER Act shall meet such requirements.

(b) SEALS.—The regulations to be issued pursuant to section 303(z)(2) concerning the approval, design, construction, inspection, maintenance and monitoring of underground coal mine seals shall make the same rules applicable to seals in underground metal and nonmetal mines which have been classified by the Secretary as a category I, III, or V mine pursuant to section 57.22003 of title 30, Code of Federal Regulations, because they naturally emit defined quantities of methane.

(c) ADVISORY COMMITTEE.—Promptly after the date of enactment of the S–MINER Act The Secretary shall establish an advisory committee to provide recommendations as to the need to revise the regulations applicable to underground metal and nonmetal mines to ensure that miners in such mines are as protected in emergency situations as will be underground coal miners following the full implementation of the MINER Act, the provisions of the S–MINER Act, and related actions by the Secretary. The advisory committee shall be established pursuant to the Advisory Committee Act, and shall provide recommendations to the Secretary and to Congress not later than 21 months after the date of enactment of this Act, including recommendations as to any action by Congress that could facilitate the goal of providing equivalent protections to miners in underground metal and nonmetal mines.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

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[ROOF SUPPORT] *ROOF AND RIB SUPPORT, BARRIER REDUCTION AND PILLAR EXTRACTION, SPECIAL ATTENTION TO DEEP MINING*

SEC. 302. (a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. *The Secretary shall by regulation ensure the appropriate use of roof screen in belt entries, travelroads, and designated intake and return escapeways in accordance with the requirements of subsection (g).* A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this title. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan and the absence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished the Secretary or his authorized representative and shall be available to the miners and their representatives.

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

(h)(1) An operator shall be required to have a current and approved barrier reduction or pillar extraction plan, or both, before performing such activities. The Secretary shall only approve a barrier reduction or pillar extraction plan if it provides adequate protection and minimizes the risks for miners engaged in the activity, reflecting appropriate engineering analysis, computer simulations, and consultations with technical experts in the agency, in the National Institute for Occupational Safety and Health, and in the Bureau of Land Management for any mines leasing Federal coal resources, and only if the plan complies with any specific requirements that may be adopted by the Secretary for barrier reduction or pillar extraction activities including requirements related to the depth of the mine, geology of the mine, mine height and methods, and emergency response capabilities.

(2) A copy of a proposed barrier reduction or pillar extraction plan, or both, shall be provided to the authorized representative of miners at least 10 days prior to submission to the Secretary for approval. The authorized representative of miners may provide comments to the Secretary who shall respond thereto.

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

(i) Not later than 1 week before the commencement of any barrier reduction or pillar extraction operations, the mine operator shall notify the appropriate representative of the Secretary of his intention to begin or resume barrier reduction or pillar extraction. The Secretary shall document such notification in writing, and shall, before barrier reduction or pillar extraction operations begin, take action to ensure that every person who will be participating in such operations is trained in the operator's barrier reduction and/or and pillar extraction plan. The Secretary shall observe the barrier reduction or pillar extraction operations for a sufficient period of time to ensure that the mine operator is fully complying with the barrier reduction or pillar extraction plan. The Secretary may preclude the commencement of such operations or halt such operations at any time the safety of miners comes into question.

VENTILATION

SEC. 303. (a) * * *

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(c)(1) * * *

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(4) Not later than 1 year after the date of enactment of the S–MINER Act, the Secretary shall publish interim final regulations to enhance the survivability of underground mine ventilation controls. The Secretary shall require that stoppings be constructed using solid concrete blocks laid wet and sealed with an appropriate bonding agent on at least the side subjected to the velocity of the intake air coursing through the entry, except that in the case of stoppings constructed during barrier reduction and pillar removal operations, such stoppings may be constructed using hollow block and an appropriate bonding agent.

(d)(1) * * *

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(3) Not later than 90 days after the date of enactment of the S–MINER Act, all mine operators shall be required to implement a communication program at each of such operators' facilities to ensure that each person entering the operation is made aware at the start of that person's shift of the current conditions of the mine in general and of that person's specific worksite in particular. In an effort to facilitate these communications, all agents of the operator who are responsible for ensuring the safe and healthful working conditions at the mine, including mine foremen, assistant mine foremen, and mine examiners, shall, upon exiting the mine or workplace, communicate with those replacing them on duty to verbally update them on the conditions they observed during their shift, including any conditions that are abnormal or hazardous. Prior to entering the mine or other workplace the on-coming agent of the operator shall meet with all members of the crew they are responsible for and inform them of the general conditions at the operation and in their specific work area. This process shall be completed prior to the start of each shift at the operation and recorded in a book designated for that purpose and available for inspection by all interested parties. In the event the operation is idle prior to the start of any shift the agent of the operator shall meet with the individual

or individuals who were responsible for examining the mine to obtain the necessary information.

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(h)(1) * * *

(2) Each miner who is working alone for part of a shift shall be equipped with a multi-gas detector that measures current levels of methane, oxygen, and carbon monoxide.

[(2)**]** *(3)* If at any time the air at any working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall contain less than 1.0 volume per centum of methane. While such changes or adjustments are underway and until they have been achieved, power to electric face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine. If at any time such air contains 1.5 volume per centum or more of methane, all persons, except those referred to in section 104(d) of this Act, shall be withdrawn from the area of the mine endangered thereby to a safe area, and all electric power shall be cut off from the endangered area of the mine, until the air in such working place shall contain less than 1.0 volume per centum of methane.

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(y)(1) * * *

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(3) Not later than June 20, 2008, the Secretary shall revise the regulations prescribed pursuant to this section to require, in any coal mine, regardless of the date on which it was opened, that belt haulage entries not be used to ventilate active working places. The Secretary may agree to a modification of this requirement, pursuant to the procedures of section 101(c), if and only if—

(A) the mine operator establishes to the satisfaction of the Secretary that significant safety constraints require such usage; and

(B) the mine operator agrees to comply with criteria established by the Secretary which shall, at a minimum, include the conditions recommended by the Technical Study Panel established under section 514.

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

(z)(1) * * *

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

(B) Not later than 3 months of the date of enactment of the S–MINER Act, the Secretary shall issue final rules regarding approval, design, construction, inspection, maintenance and monitoring of underground coal mine seals which shall meet the requirements of this paragraph. Except as otherwise provided by this paragraph, these regulations shall implement the most recent recommendations of the National Institute of Occupational Safety and Health concerning seal design, construction, inspection, maintenance and monitoring. The regulations shall also provide that all seals in a mine shall be monitored if they are not designed or installed to withstand a constant total pressure of 240 pounds per square inch, using a static structural analysis. Monitoring of seals shall be done by continuous monitoring devices within one year of the date of enactment of this Act, and prior thereto by qualified personnel at such intervals as the Secretary determines are adequate to ensure safety. The Secretary shall require mine operators to utilize a tamper-resistant method to retain records of all such monitoring and ensure they are available for examination and verification by the agency. Monitoring of seals shall be done both by—

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

(ii) for new seals, unless infeasible due to property rights, sampling through a sufficient number of boreholes from the surface to the sealed areas underground to effectively determine the gas concentrations within the area.

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

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

(ii) an action plan for sealing and repair be established that will, among any other requirements, include specific actions the mine operator will take to protect miners during the critical time period immediately after sealing or repair takes place, and which shall be reviewed by personnel from the Mine Safety and Health Administration who have the required expertise prior to approval; and

(iii) methane pressures behind any seal required to be monitored shall be maintained in such a manner as ensure that normal pressure variations that can be reasonably anticipated in the area of the seal do not bring the methane-air mixture into an appropriate safety range surrounding the known explosive range of such mixtures.

COMBUSTIBLE MATERIALS AND ROCK DUSTING

SEC. 304. (a) * * *

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(d) Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible content in the return aircourses shall be no less than 80 per centum. Where methane is present in any ventilating current, the per cen-

tum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane where 65 and 80 per centum, respectively, of incombustibles are required. *Not later than June 15, 2009, the National Institute for Occupational Safety and Health shall issue recommendations as to whether changes to these requirements are necessary to ensure an equivalent level of protection in light of any changes to the size and composition of coal dust since these requirements were established, and the Secretary of Labor shall take appropriate action, including the issuance of an emergency temporary standard if warranted, to respond to these recommendations.*

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SEC. 311. (a) * * *

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(h) On and after the operative date of this title, all conveyors belts acquired for use underground shall meet the requirements to be established by the Secretary for flame-resistant conveyor belts. *Not later than January 31, 2008, the Secretary shall publish interim final regulations to ensure that all conveyor belts in use in underground coal mines are replaced no later than December 31, 2012, with belts that can meet the flame resistance requirements recommended by the National Institute for Occupational Safety and Health, and which limit smoke and toxic emissions. Any conveyor belt installed in a coal mine after the date of enactment of the S–MINER Act shall meet such requirements.*

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COMMUNICATIONS AND EMERGENCY RESPONSE PLANS

SEC. 316. (a) * * *

(b) ACCIDENT PREPAREDNESS AND RESPONSE.—

(1) * * *

(2) RESPONSE AND PREPAREDNESS PLAN.—

(A) * * *

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(E) PLAN CONTENT-GENERAL REQUIREMENTS.—To be approved under subparagraph (C), an accident response plan shall include the following:

(i) * * *

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(vi) Not later than June 15, 2008, the Secretary shall issue interim final regulations, consistent with the design criteria recommended by National Institute for Occupational Safety and Health in its report pursuant to section 13(b)(1) of the MINER Act, and subject to the requirements of the next sentence, requiring each emergency response plan to provide for the installation of portable rescue chambers meeting National Institute for Occupational Safety and Health design criteria, or refuge shelters carved out of the mine workings and sealed with bulkheads meeting National Institute for Occupational Safety and Health design criteria, or other refuge designs recommended by National Insti-

tute for Occupational Safety and Health that provide miners with equivalent or better protection, in the working areas of underground coal mines within 60 days following plan approval. In addition, a plan shall provide for the maintenance of a mobile emergency shelter within 500 feet of the nearest working face in each working section of an underground coal mine. The plan shall also set forth the operator's plans for assisting the Secretary in the implementation of section 118.

(F) PLAN CONTENT-SPECIFIC REQUIREMENTS.—

(i) * * *

(ii) POST ACCIDENT COMMUNICATIONS.—[Not later than]

(I) Not later than 120 days after the enactment of the S–MINER Act, a plan shall, to be in approved status, provide for a post accident communication system between underground and surface personnel, and for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground, that utilizes a system at least as effective as a "leaky feeder" or wireless mesh type communication and tracking system currently in use in the industry. These systems shall be enhanced physically, electronically, or redundantly, to improve their survivability in the event of a mine disaster. In addition, to be in approved status, an emergency response plan must be revised promptly to incorporate new technology which the National Institute for Occupational Safety and Health certifies can be added to the existing system to improve its ability to facilitate post-accident communication with or tracking of miners. No miner shall be disciplined based on information obtained from an electronic communications and tracking system.

(II) Not later than 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, a plan shall, to be approved, provide for post accident communication between underground and surface personnel via a wireless two-way medium, and provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground or set forth within the plan the reasons such provisions can not be adopted. Where such plan sets forth the reasons such provisions can not be adopted, the plan shall also set forth the operator's alternative means of compliance. Such alternative shall approximate, as closely as possible, the degree of functional utility and safety protection provided by the wireless two-way medium and tracking system referred to in this subpart.

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MISCELLANEOUS

SEC. 317. (a) * * *

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

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TITLE V—ADMINISTRATION

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INSPECTORS; QUALIFICATIONS: TRAINING

SEC. 505. [The Secretary] *(a) The Secretary* may, subject to the civil service laws, appoint such employees as he deems requisite for the administration of this Act and prescribe their duties. Persons appointed as authorized representatives of the Secretary shall be qualified by practical experience in mining or by experience as a practical mining engineer or by education: *Provided, however*, That, to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to the extent possible to their previous experience in the particular type of mining operation where such inspections are to be made. Persons appointed to assist such representatives in the taking of samples of respirable dust for the purpose of enforcing title II of this Act shall be qualified by training, experience, or education. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives and to carry out the provisions of this Act, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall develop programs with educational institutions and operators designed to enable persons to qualify for positions in the administration of this Act. In selecting persons and training and retraining persons to carry out the provisions of this Act, the Secretary shall work with appropriate educational institutions, operators, and representatives of miners in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and where appropriate, the Secretary shall cooperate with such institutions in carrying out the provisions of this section by providing financial and technical assistance to such institutions.

(b) Within 270 days of the enactment of the S–MINER Act, the Secretary shall establish a Master Inspector program to ensure that the most experienced and skilled employees in the Nation have the

incentive, in terms of responsibilities and pay, to serve as mine safety and health inspectors in this Nation's mines.

(c) In order to ensure that the Secretary has adequate time to provide that a sufficient number of qualified and properly trained inspectors of the Mine Safety and Health Administration are in place before any inspectors employed as of the date of enactment of the S–MINER Act retire, any ceilings on the number of personnel that may be employed by the Administration with respect to mine inspectors are abolished for the 5-year period beginning on the date of enactment of such Act.

(d) In the event that, notwithstanding the actions taken by the Secretary to hire and train qualified inspectors, the Secretary is temporarily unable, at any time during the 5-year period beginning on the date of enactment of the S–MINER Act, to employ the number of inspectors required to staff all district offices devoted to coal mines at the offices' highest historical levels without transferring personnel from supervisory or plan review activities or diminishing current inspection resources devoted to other types of mines, the Administration is authorized to hire retired inspectors on a contractual basis to conduct mine inspections, and the retirement benefits of such retired inspectors shall not be reduced as a result of such temporary contractual employment.

(e) During the 5-year period beginning on the date of enactment of the S–MINER Act, the Secretary shall issue a special report to the appropriate committees of Congress each year, or at such more frequent intervals as the Secretary or any such committee may consider appropriate, providing information about the actions being taken under this section, the size and training of the inspector workforce at the Mine Safety and Health Administration, the level of enforcement activities, and the number of requests by individual operators of mines for compliance assistance.

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SEC. 516. OFFICE OF MINER OMBUDSMAN.

(a) ESTABLISHMENT OF MINER OMBUDSMAN.—There shall be established, within the Office of the Inspector General of the Department of Labor, the position of Miner Ombudsman. The President, by and with the advice and consent of the Senate, shall appoint an individual with expertise in mine safety and health to serve as the Miner Ombudsman. The Ombudsman shall have authority to hire such personnel as are required to administer his duties in accordance with applicable law, provided they meet any general requirements for employment within the Office of the Inspector General.

(b) DUTIES.—The Miner Ombudsman shall—

(1) recommend to the Secretary appropriate practices to ensure the confidentiality of the identity of miners, and the families or personal representatives of the miners, who contact mine operators, authorized representatives of the miners, the Mine Safety and Health Administration, the Department of Labor, or others with information about mine accidents, incidents, injuries, illnesses, possible violations of mandatory health or safety standard violations or plans or other mine safety and health concerns;

(2) establish a toll-free telephone number and appropriate Internet website to permit individuals to confidentially report

mine accidents, incidents, injuries, illnesses, possible violations of mandatory health or safety standard violations or plans or other mine safety and health concerns, and provide plastic wallet cards, refrigerator magnets, or similar devices to all mine operators, which mine operators shall distribute to all current and new miners, with contact information for such confidential reports, and also provide supplies of these devices to miner communities;

(3) collect and forward information concerning accidents, incidents, injuries, illnesses, possible violations of mandatory health or safety standard violations or plans or other mine safety and health concerns to the appropriate officials of the Mine Safety and Health Administration for investigation, or to appropriate officials within the Office of Inspector General for investigation or audit, or both, while establishing practices to protect the confidentiality of the identify of those who provide such information to the Ombudsman; and

(4) monitor the Secretary of Labor's efforts to promptly act upon complaints filed by miners under section 105(c) of the Act or pursuant to other programs administered by the Department to protect whistleblowers, and report to Congress any recommendations that would enhance such rights or protections.

(c) AUTHORITY.—All complaints of operator violations of any section of this Act or regulations prescribed under this Act that are reported to the Secretary shall be forwarded to the Ombudsman for logging and appropriate action, except that this requirement shall be implemented in such a way as to avoid interference in any way with the ability of the Assistant Secretary for Mine Safety and Health to take prompt actions that may be required in such situations. This shall include complaints submitted in writing, via any phone system, or orally, along with all relevant information available regarding the complainant. All such information shall be retained in a confidential manner pursuant to the Privacy Act of 1974. The Ombudsman shall use such information to monitor the actions taken to ensure that miners' complaints are addressed in a timely manner and in compliance with the appropriate statutes and regulations. The Ombudsman shall refer to appropriate personnel within the Office of the Inspector General for further review any case which he determines was not handled in such fashion.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Ombudsman such sums as may be required for the implementation of his duties out of the sums otherwise made available to the Mine Safety and Health Administration for its activities.

SECTION 22 OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

SEC. 22. (a) * * *

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(h) OFFICE OF MINE SAFETY AND HEALTH.—

(1) * * *

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(5) INTERAGENCY WORKING GROUP.—

(A) ESTABLISHMENT.—The Director of the Institute, in carrying out paragraph (3)(D) shall establish an interagency working group to share technology and technological research and developments that could be utilized to enhance mine safety and accident response *including advanced drilling technologies, and any special technologies required for safety or rescue in mining more than 1,500 feet in depth*.

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MINER ACT

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[SEC. 7. REQUIREMENT CONCERNING FAMILY LIAISONS.

[The Secretary of Labor shall establish a policy that—

[(1) requires the temporary assignment of an individual Department of Labor official to be a liaison between the Department and the families of victims of mine tragedies involving multiple deaths;

[(2) requires the Mine Safety and Health Administration to be as responsive as possible to requests from the families of mine accident victims for information relating to mine accidents; and

[(3) requires that in such accidents, that the Mine Safety and Health Administration shall serve as the primary communicator with the operator, miners' families, the press and the public.]

SEC. [8] *7*. PENALTIES.

(a) * * *

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SEC. [9] *8*. FINE COLLECTIONS.

Section 108(a)(1)(A) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 818(a)(1)(A)) is amended by inserting before the comma, the following: ", or fails or refuses to comply with any order or decision, including a civil penalty assessment order, that is issued under this Act".

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[SEC. 10. SEALING OF ABANDONED AREAS.

[Not later than 18 months after the issuance by the Mine Safety and Health Administration of a final report on the Sago Mine accident or the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, whichever occurs earlier, the Secretary of Labor shall finalize mandatory heath and safety standards relating to the sealing of abandoned areas in underground coal mines. Such health and safety standards shall provide for an increase in the 20 psi standard currently set forth in section 75.335(a)(2) of title 30, Code of Federal Regulations.]

SEC. [11] *9*. TECHNICAL STUDY PANEL.

Title V of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951 et seq.) is amended by adding at the end the following:

"SEC. 514. TECHNICAL STUDY PANEL.

"(a) * * *

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SEC. [12] *10*. SCHOLARSHIPS.

Title V of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951 et seq.), as amended by section 11, is further amended by adding at the end the following:

"SEC. 515. SCHOLARSHIPS.

"(a) * * *

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SEC. [13] *11*. RESEARCH CONCERNING REFUGE ALTERNATIVES.

(a) * * *

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SEC. [14] *12*. BROOKWOOD-SAGO MINE SAFETY GRANTS.

(a) * * *

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XIII. Committee Correspondence

None.

MINORITY VIEWS ON H.R. 2768

INTRODUCTION

Committee Republicans strongly believe that all miners should work in a culture of workplace safety which ensures that each miner goes home to his or her family at the end of his or her shift. Sadly, last year, on too many days too many miners at Sago, Aracoma, Darby and other of our nation's mines did not make it home from work. The more recent tragedy of Crandall Canyon, Utah in August 2007, in which six miners were trapped by a collapse and three other individuals lost their lives in rescue efforts, continues to demonstrate the inherent danger of mining.

In the wake of the Sago, Aracoma, and Darby tragedies, Committee Republicans (and the majority of Committee Democrats) demonstrated their commitment to improving mine safety by strongly supporting enactment of the Mine Improvement and New Emergency Response (MINER) Act in the 109th Congress.[1] Committee Republicans in the 110th Congress are equally committed to ensuring that this law is fully and robustly implemented.

The MINER Act mandated wholesale changes to mine safety practices. The results of this technology-forcing act have been swift, despite suggestions from the Majority that the change has not been fast enough. Indeed, injury rate data for 2006 from the Bureau of Labor Statistics demonstrates that great progress in the area of mine safety has been made:

> Mining experienced the lowest incidence rate in 2006 among goods-producing industry sectors—3.5 cases per 100 full-time workers. In comparison, while higher than the rate for mining, rates for agriculture, forestry, fishing and hunting (6.0 cases), construction (5.9 cases), and manufacturing (6.0 cases) were not significantly different from one another.[2]

This injury rate data, though not inclusive of the fatality rate, indicates that miners and mine operators are not complacent about safety. Equally clear is that these improvements in mine safety could not have been made without the cooperation of all interested parties. Since passage of the MINER Act, organized labor, mine management, and the federal agency that regulates mining, the Mine Safety and Health Administration (MSHA), have worked together to significantly improve mine safety.

H.R. 2768 represents a step backwards in mine safety efforts, and actually threatens to undermine the goals embodied in—and achieved by—the MINER Act. For this reason, Committee Republicans were united in their opposition to this legislation, and urge that it be rejected by the House of Representatives.

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[1] S. 2803, the Mine Improvement New Emergency Response Act, enacted as Public Law No. 109–236.

[2] Bureau of Labor Statistics Industry Injury and Illness Data—2006.

BACKGROUND: THE MINER ACT

Last year, in response to fatal mine tragedies in West Virginia and Kentucky, Congress passed and President Bush signed into law the MINER Act. The MINER Act was the first significant mine safety reform legislation to be enacted in over a generation. The law's requirements included changes specifically designed to address deficiencies in mine practices that were highlighted by the Sago, Aracoma, and Darby mine accidents.

The MINER Act was crafted to improve mine safety by increasing the responsibilities of both mine operators and MSHA. Under the MINER Act, mine operators are required to:

- Call MSHA within 15 minutes of a mine accident that could cause death, injury or entrapment in order for a rescue team to be deployed in a timely manner;
- Adopt an emergency response plan that contains post-accident communications and tracking systems, post-accident breathable air, lifelines, training, and local coordination;
- Install post-accident, flame-resistant directional lifelines; and
- Increase the frequency of emergency evacuation drills.

Among its provisions, the MINER Act required MSHA to revise its penalties, increase fines in egregious cases to $220,000, undertake studies regarding mining practices, and to work to improve the technology for communications underground. Congress set a very aggressive time-frame for MSHA to complete these requirements. Congress also increased funding for the two primary federal agencies that oversee the mining industry: MSHA and the National Institute for Occupational Safety and Health (NIOSH).

More specifically, under the MINER Act, MSHA has the responsibility to approve mines' emergency response plans. MSHA indicates that it had completed its review and approval of these plans as of March 2007.

In addition, the law directed MSHA to undertake a wide range of regulatory changes and technical studies. MSHA's responsibilities under the MINER Act include directives to:

- Revise the penalty structure of the Federal Mine Safety and Health Act of 1977;[3]
- Certify post-accident communications and tracking systems;
- Develop regulations addressing post-accident breathable air for individuals trapped underground;
- Certify composition and new training requirements for coal mine rescue teams; Establish a liaison office to be the primary communicators with families of victims, mine operators, the press, and the public;
- Increase the standard governing seals on mines to a more strength resistant level; Establish a belt air technical study panel; and

[3] See Federal Mine Safety and Health Act, P.L. 91–173 (December 30, 1969), codified at 30 U.S.C. § 801 et seq. The legislation was originally known as the Federal Coal Mine Health and Safety Act of 1969, but in 1977 was amended and its name changed to the Federal Mine Safety and Health Act of 1977.

• Present a report to Congress outlining how the agency will update its regulations based on the various studies.

MSHA ACTIVITY RELATING TO IMPLEMENTATION OF THE MINER ACT

Following enactment of the MINER Act, MSHA aggressively began implementation of the new statute. To date, each statutory deadline required by the MINER Act has been met by MSHA.

Throughout the implementation of the MINER Act, MSHA has provided a detailed accounting of its progress. More specifically, on October 24, 2006, MSHA issued a Program Policy Letter entitled "Implementation of Section 2 of the Mine Improvement and New Emergency Response Act of 2006," which outlines the requirements for emergency response plans. On December 8, 2006, MSHA issued its final rule entitled "Emergency Mine Evacuation," which detailed requirements under mines' Emergency Response Plans (ERPs) (the "ERP rule"). On February 8, 2007, MSHA issued a Public Information Bulletin (PIB), "Options for Providing Post-Accident Breathable Air to Underground Coal Miners."

Due in large part to MSHA's efforts, the implementation record of the MINER Act is demonstrated by a host of completed MSHA actions:

• The MINER Act required all coal mines to submit emergency response plans to MSHA; all plans were submitted by the statutory deadline of August 14, 2006.

• The MINER Act required more Self-Contained Self-Rescuer (SCSR) devices for each miner to be contained in every underground coal mine. This requirement was fully implemented by December 8, 2006, according to MSHA's ERP rule.[4]

• The MINER Act required fire-resistant evacuation life lines in all underground coal mines within three years. This requirement was implemented by December 8, 2006, pursuant to the Emergency Mine Evacuation Rule.

• The MINER Act mandated additional safety training and training on the use of SCSRs at underground coal mines. This requirement was implemented by Dec. 8, 2006, pursuant to the Emergency Mine Evacuation Rule. The Committee further understands that MSHA plans to issue additional guidance in this area.

• The MINER Act required all mine operators to contact MSHA within 15 minutes of an accident. This requirement has been in place since March 9, 2006 and was finalized by December 8, 2006, pursuant to the Emergency Mine Evacuation Rule.

• The MINER Act required redundant[5] underground-to-surface communications systems in underground coal mines. MSHA has approved a total of 12 such systems, including three new devices.

• The MINER Act required emergency supplies of breathable air for coal miners trapped underground for up to 96 hours. As noted above, MSHA's February 8, 2007 PIB provided guidance to mine operators concerning acceptable quantities and delivery methods in underground coal mines.

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[4] Currently, a manufacturing backlog of approximately 90,000 SCSRs exists. A mine is deemed to be in compliance with the rule if the mine operator can demonstrate that necessary SCSRs are on order.

[5] Redundant communication entails multiple systems; in the event one fails as the result of an accident, others might still be active.

• MSHA has trained 14 officials to serve as Family Liaisons, as required under the MINER Act. A Program Policy Letter has been issued and the 14 designated family liaison personnel completed their initial training sessions with the National Transportation Safety Board and the Red Cross in December 2006.

• On March 22, 2007, MSHA published in the Federal Register a final rule on civil penalties, revising the agency's civil penalty assessment regulations and implementing procedures regarding the civil penalty provisions of the MINER Act.

In short, MSHA has an exemplary record with respect to its implementation of the MINER Act, having met all of its statutory deadlines to date. It is against this regulatory backdrop and 16 months of accomplishment that the Committee considered H.R. 2768.

REPUBLICAN VIEWS

The record on H.R. 2768 is unbalanced and lacking in evidence to support legislation

Thus far, in the first session of the 110th Congress, the Committee has held four hearings on mining, generally—but only one legislative hearing (in the Workforce Protections Subcommittee) specifically devoted to H.R. 2768.[6] As a result, unfortunately, the hearing and information-gathering process for H.R. 2768 was wholly inadequate, and largely excluded significant stakeholders' perspectives.

Less than 25 percent of the mining industry is currently unionized. Despite this fact, and despite having had ample opportunity to be heard on mining issues before the Committee at previous mine safety hearings, three of the four panel members at the sole legislative hearing on H.R. 2768 represented union interests. At the same time, representatives of the mining industry were wholly excluded from the witness panel. It was for this reason during the legislative hearing on July 26, 2007, Ranking Republican Joe Wilson moved to seat as a witness a representative of the National Mining Association. This motion was rejected on a party-line vote. Moreover, no representative of the metal/non-metal industry was allowed an opportunity to address the Committee regarding provisions of H.R. 2768, despite the fact that the bill would significantly impact that segment of the mining industry.

Indeed, the only witness at the July 26 hearing who was not affiliated with organized labor, a representative of MSHA, testified as to no less than 16 areas of the bill which were less protective than current law. That the Committee would proceed to consider significant new regulation on so flimsy and lopsided a record deeply troubles Committee Republicans.

[6] See Committee on Education and Labor Hearing, "Protecting the Health and Safety of America's Mine Workers," (March 28, 2007); Committee on Education and Labor Hearing, "Evaluating the Effectiveness of MSHA's Mine Safety and Health Programs," (May 16, 2007); Subcommittee on Workforce Protections Hearing, "The S–MINER Act (H.R. 2768) and the Miner Safety Enhancement Act (H.R. 2769)," (July 26, 2007); Committee on Education and Labor Hearing, "Mine Safety: The Perspective of the Families at Crandall Canyon" (October 3, 2007).

MSHA has addressed concerns of the MINER Act's opponents

During last year's debate on the MINER Act, then-Senior Democrat Member of the Committee on Education and the Workforce George Miller outlined his reasons for opposing the legislation:

> Unfortunately, the bill sent from the Senate fails to make the reforms that go to the very heart of what happened in the Sago mine disaster. It fails in three significant ways. It does not guarantee that miners trapped underground will have enough air to survive an accident like Sago. It does not give miners prompt access to wireless communications and electronic tracking devices so they can communicate with their rescuers instead of having to bang on pipes and bang on rocks like miners did hundreds of years ago.
>
> It does not guarantee that the emergency oxygen units like the ones that Randal McCloy, the only Sago survivor, told us in some cases were defective, and would be tested at random by the Federal Government to ensure that they work properly.[7]

In the sixteen months since passage of the MINER Act, each of the concerns raised by Representative George Miller and other opponents of the MINER Act have been addressed by MSHA.

Most notably, MSHA's implementation of breathable air provisions of the MINER Act now require 96 hours of breathable air—twice the supply that Representative Miller had argued was necessary. Indeed, when questioned about the reasoning behind a 96–hour requirement, MSHA's Administrator, Richard Stickler, responded:

> We did research on the disasters that have occurred in the past to determine how long it took rescue teams to locate miners. We also looked at situations such as, when you have a fire or explosion; particularly, how long does it take for the mine atmosphere to stabilize enough that you can get accurate measurements to safely send rescue teams in the mine. And we thought that the 96 hours would provide that.[8]

With respect to wireless communications and tracking devices, the technology which MINER Act opponents would have insisted upon was not available at the time the law was enacted, nor is it even available today. In the months since enactment of the MINER Act, considerable progress has been made by MSHA, NIOSH, and the private sector to achieve wireless technology. Unfortunately, not all commercial technology can simply be taken and placed within the highly specific and unique atmosphere of a mine; indeed, all electronic equipment to be used in mines must meet rigorous standards set by MSHA to ensure it does not ignite naturally-occurring methane within mine environments. As such, while significant progress has been made to address Mr. Miller's concerns re-

[7] See Congressional Record, p. H3453, June 7, 2006.

[8] See Transcript of Committee on Education and Labor Hearing, "Evaluating the Effectiveness of MSHA's Mine Safety and Health Programs" (May 16, 2007) (available in the offices of the Committee).

garding wireless communication, the laws of physics cannot be altered by legislative fiat. Nonetheless, experts are focusing on the communications issues and all parties involved remain committed to implementing wireless communication.

Finally, through implementation of the MINER Act, concerns with the random testing of self-contained self-rescuers (SCSRs) have been addressed. A random testing program existed before the passage of the MINER Act and has been reevaluated because of the issues highlighted in the Sago accident. As NIOSH has noted in adopting an LTFE (Long Term Field Evaluation) sampling plan: "The LTFE sampling plan will utilize an MSHA-generated and maintained inventory of SCSRs used by the mining industry. The MSHA list represents an inventory of SCSRs from each mine collected into a single master listing of all SCSRs. The list will be randomly sorted to select respirators for the LTFE program." [9]

In short, and despite assertions to the contrary, where, as in the MINER Act, MSHA has been given clear guidelines, the agency has sought to find the most protective, thoughtful solution. The evidence suggests that MSHA has been widely successful in doing so.

H.R. 2768 as Reported by the Committee fails as a matter of mine safety policy

The final S-MINER bill reported by the Committee to the House is the product of two separate pieces of legislation.[10] At markup, Chairman Miller offered an amendment in the nature of a substitute, which joined both of these pieces of legislation along with changes to the original text of the introduced bills. It also added entirely new provisions not found in either of the introduced bills.

In far too many instances, the Miller Substitute seeks to undo the progress toward improved safety achieved during the last 16 months by MSHA, NIOSH, or industry by imposing conflicting provisions and new requirements for rulemaking. The result, unfortunately, will be delays in implementing potentially lifesaving improvements to current mining practices. Put more simply, the premise that this bill will speed the implementation of mine safety technology wholly fails to acknowledge the work that has already been done; and in doing so actually impedes that progress. The failure of H.R. 2768 in this regard is highlighted in a number of examples:

Mine Seals. The Miller Substitute modifies MINER Act requirements relating to mine seals,[11] and instead outlines a new seal monitoring protocol. Under H.R. 2768, all seals will need to be monitored, perhaps by boreholes, even those constructed prior to the legislation. Given that these seals were not engineered to be monitored by boreholes, these provisions create the potential for an explosive oxygen-methane mix. Moreover, these provisions threaten to undermine the rulemaking mandated by the MINER Act that

[9] The LTFE effectively doubles the number tested in previous years. See Long-Term Field Evaluation Program Concept, NIOSH Docket Number NIOSH–101.

[10] See H.R. 2768, the "Supplemental Mine Improvement and New Emergency Response Act" & H.R. 2769, the "Mine Health and Safety Enhancement Act."

[11] A seal is a partition built in a mine to prevent accessing areas that have been "mined out" or are no longer working areas of a mine.

preceded the bill; MSHA indicates that the results of this rulemaking will be in place by February 2008.

Belt Air. With respect to belt air,[12] the S–MINER Act purports to lessen the restriction on the use of belt air by allowing mine operators to petition the Secretary for a modification to allow them to use belt air. This restores a flawed "petition for modification" process, which was eliminated because it was rare for modifications not to be granted. Under current law, MSHA allows for the use of belt air with specified safety requirements, such as enhanced atmospheric monitoring. Moreover, H.R. 2768 precludes MSHA from reporting to Congress on the results of the belt air study currently underway and what changes it proposes to make based on the study panel's recommendations, as required by the MINER Act. This provision is fundamentally flawed, and appears to be intended to achieve legislatively what organized labor could not convince a court to do—overturn MSHA's belt-air regulation.[13]

Refuge Chambers. Currently, NIOSH is actively engaged in a study of the appropriate uses of refuge chamber[14] technology in underground mines. The MINER Act required MSHA to report to Congress what regulatory actions would be taken based on NIOSH's study. Instead of waiting to receive that study—and then legislating based on evidence—the Democrat Majority has chosen to legislate based on supposition, in the process curtailing stakeholder input through rulemaking, and mandating prescriptive provisions for the use of rescue chambers. This inflexible approach does not account for varying mine conditions that could prevent a chamber's use or necessitate more sophisticated alternatives.

Communications. MSHA remains committed to the improvement and utilization of wireless communications technology. The S-MINER bill threatens to undermine these efforts. Testimony before the Committee by Mr. Kevin Stricklin, Administrator for Coal Mine Safety and Health at MSHA, and a letter opposing the legislation by MSHA's Assistant Secretary Stickler, enunciated concern regarding the communications provisions of H.R. 2768:

> Given all the work being done by NIOSH, MSHA, and the private sector to develop a wireless system, it is premature to mandate the "leaky feeder" system nation-wide now. Mandating the use of the "leaky feeder" or other hard wire systems may reduce the incentives for industry to develop and deploy wireless systems that will provide greater protection to miners. Furthermore, if and when a truly wireless system is developed, it will make the "leaky feeder" system obsolete. This requirement would result in significant costs for a system which would essentially become obsolete relatively soon because miner operators are re-

[12] The use of belt air is the practice of ventilating a mine down a belt entry. The Mine Act prohibits the use of belt air on mines opened after passage of the Act; mines operating before the passage of the Act can utilize belt air with certain conditions in place. The mining industry believes that the use of belt air lowers the concentration of methane at the mine face, reduces the level of dust miners are exposed to, and can lower the temperature of the working environment. The Clinton Administration allowed the use of belt air by providing individual waivers for mines.

[13] See *International Union, United Mine Workers of America* v. *MSHA*, 407 F.3d 1250 (DC Cir. 2005).

[14] A refuge chamber could be a stand-alone structure or protected area of a mine in which miners could seek shelter in the event of an emergency.

quired to have a truly wireless system in place by June 2009.[15]

H.R. 2768 compounds the concern raised by Mr. Stickler by requiring mine operators to adopt new communications technology once it is certified by NIOSH, irrespective of whether this technology has been approved by MSHA for "intrinsic safety." This creates not only a conflict in the law, but a potentially serious safety concern. Placing technology in a mine which has not been deemed intrinsically safe has the potential to result in the utilization of equipment that might, for example, ignite naturally-occurring methane and cause an explosion—exactly the type of occurrence mine safety regulations are intended to prevent.

Notification. The two-tiered notification system in the event of an accident mandated under H.R. 2768 would result in a conflict between the S–MINER Act and current law. Current MSHA regulations require a mine operator to call MSHA within 15 minutes of a reportable incident or face up to a $60,000 fine. The S–MINER Act alters those provisions such that one set of reportable incidents would now be subject to a 15 minute notification requirement, while another set of reportable incidents would be subject to a new one hour limit contained in the legislation. MSHA's current standard is more protective and clear-cut, suggesting this provision is, at best, unnecessary and at worst lessens protection to miners in some instances.

Ventilation. On the issue of ventilation controls, MSHA could not have been clearer when it noted, "the first problem with this provision [in the S–Miner Act] is the impracticality of a one-size-fits-all rule without input from stakeholders" and that "other geologic conditions necessitate other types of ventilation controls."[16] As a policy matter, Committee Republicans are concerned that micromanaging and legislating the details of highly technical regulations may prevent improved ventilation control technology from being implemented when it becomes available. Moreover, voiding the rulemaking process prevents labor, industry, safety and engineering experts from providing data that can assist MSHA in developing a scientifically sound rule, and eliminates the public scrutiny that is a necessary part of a sound policymaking process.

MSHA Investigatory Processes. While there continues to be no evidence that MSHA is incapable of investigating a mine accident or performing an internal review of its actions surrounding an accident, H.R. 2768 provides for at least two "independent" investigations, including one conducted by NIOSH, whenever a multiple fatality mining accident occurs. H.R. 2768 further allows the Chemical Safety Board to conduct an investigation of events, notwithstanding the agency's lack of jurisdiction or expertise. Current law and practice provide for extensive investigation in the event of a mining accident, including an examination by MSHA of its own internal actions. MSHA, with sound policy reasons, has objected to additional investigations because they could "undercut and jeopardize the MSHA enforcement effort. If two government-sanctioned

[15] See Letter from Assistant Secretary for Mine Safety and Health Richard Stickler dated October 29, 2007.
[16] Id.

reports reached different conclusions, it could result in a situation where the Department of Justice is unable to prosecute the offenders."[17] Finally, nothing in the record suggests that involving the Chemical Safety Board, which has no expertise in mining, is advisable, prudent, or necessary.

Recommended Exposure Limits. As noted above, H.R. 2769, the "Miner Health Enhancement Act," was revised and incorporated into H.R. 2768 by way of the Miller substitute amendment. Fundamentally, these provisions are nothing less than an attempt to eviscerate the regulatory process. H.R. 2768 requires MSHA to adopt recommended exposure limits (RELs) established by NIOSH, regardless of the fact that these RELs are not subject to the same economic and technologic feasibility requirements that a permissible exposure limit (PEL) adopted by MSHA would be. Testimony before the Committee by Michael Wright, Director of Health, Safety and Environment for the United Steelworkers, highlights this fundamental flaw:

> Many of the NIOSH RELs were adopted without a consideration of technological feasibility, particularly in mining. It would be nice to set standards solely on the basis of health effects, but up until now the laws governing OSHA, MSHA and hazardous air pollutants under EPA have always recognized that standards must be not only protective, but must be feasible as well. Therefore, we would suggest a slight modification of H.R. 2769 which would give MSHA the discretion (but not the requirement) to modify the PEL through notice and comment rulemaking if the Agency determines that the NIOSH REL may be infeasible in mining.[18]

Rather than adopting an approach which ensures that MSHA examine RELs for mining feasibility, H.R. 2768 requires miners or mine operators to petition the Secretary to review the feasibility of any REL or established PEL. This provision completely upends and discounts MSHA's statutory role in the rulemaking process.

Crandall Canyon. Committee Republicans recognize that the tragic events of Crandall Canyon present new and different challenges for mine safety. For that reason, Republicans supported an amendment offered by Workforce Protections Subcommittee Ranking Member Joe Wilson which sought to address these issues (described more fully below). The Majority, in contrast, simply added legislative language to its substitute which did not receive scrutiny during the legislative process and which, in too many instances, represents examples of inflexible rulemaking which could lessen safety. H.R. 2768 prescribes extensive regulation for roof screening and support, and requires a mine to adopt an approved barrier reduction or pillar extraction plan before performing either action. By adopting highly prescriptive mandates, and substituting their own judgment for that of true mine safety experts, the Majority threatens to undermine the use of specialized or more protective mine safety technology.

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[17] Id.

[18] Subcommittee on Workforce Protections Hearing, "The S–MINER Act (H.R. 2768) and the Miner Safety Enhancement Act (H.R. 2769)" (July 26, 2007).

H.R. 2768 is unnecessary, undermines the progress of last year's MINER Act, and could diminish miner safety

Despite numerous hearings in this Congress, the evidence before the Committee falls far short of establishing the need to alter fundamental provisions of the MINER Act or otherwise make wholesale changes to the law. Indeed, in light of the conclusions reached by MSHA regarding last year's mining accidents, the MINER Act appears to have struck the appropriate balance for improving mining safety. Finally, it bears note that nothing heard at any hearing suggests that that the S–MINER Act would have done anything to prevent the subsequent and tragic Crandall Canyon disaster. It is for all of these reasons that Committee Republicans reject H.R. 2768 as fundamentally flawed and unnecessary.

H.R. 2768 does little to improve miner safety and health. Indeed, in many instances, provisions of the bill are so prescriptive as to cement into law archaic practices rather than foster innovative solutions. In doing so, the bill could have the perverse effect of actually diminishing miner safety. We find this prospect extremely troubling.

Committee Republicans are not alone in this view, nor do they arrive at it in a vacuum. Mine experts themselves have indicated that the flawed bill lessens mine safety by weakening current regulatory protections. On July 25, 2007, twelve professors of mining engineering urged Congress to allow the complete implementation of the MINER Act before considering new legislation:

> Unfortunately, mine safety and health experts dispersed throughout the mining industry are not being afforded the opportunity to entrench the necessary safety culture in their mines. They must ultimately ensure that many of the MINER Act provisions will be institutionalized in practice at their mines. Thus far, they have been fully occupied with the nuts-and-bolts of complying with the act and have not had adequate time to coordinate and address this next, very important step. It is imperative that every employee at a mine does his/her job thoroughly and then effectively addresses existing or potential risks. Safety professionals at mines as well as federal and state inspectors are the driving forces to inculcate such a culture of prevention, but this inculcation process requires significant time for penetration into the work environment.
>
> While there may be other safety and health issues that should be addressed in the future, in our opinion now is not the right time to pursue as much as is proposed in the pending bill. The intense work load on mine management, including safety professionals, and ultimately the miners who have to do the downstream MINER Act-related work is too great at this time to contemplate further legislation. Another option to consider would be to bring together miners, mine operators and other stakeholders in a partnership mode to assess the effectiveness of the MINER Act once it is fully implemented and all required studies are completed. At that time, all of us who are dedicated to improving mining safety can make an informed judgment on

the need for and content of any additional legislation aimed at addressing any unresolved problems.[19]

AMENDMENTS OFFERED IN COMMITTEE

During consideration of H.R. 2768 in Committee, Republicans offered several amendments to improve the legislation and direct its focus toward necessary reforms.

Kline Amendment. Health, Employment, Labor, and Pensions Subcommittee Ranking Republican Kline offered an amendment to the underlying bill which would have affirmatively provided that a mine operator could lawfully make use of its miners' experience by way of employer/employee safety teams. Unfortunately, too often today, provisions within Depression-era labor laws designed to avoid the early-20th century problem of "company unions" have been used to thwart employers (particularly non-union employers, who constitute 75 percent of the industry) from meaningfully including their workers in cooperative mine safety efforts. The Kline Amendment would have provided that non-union employers could lawfully include their employees in cooperative efforts relating to workplace safety and employment conditions. Its merits notwithstanding, this common-sense, pro-miner amendment was rejected on a party line vote of 15 to 25, with all Democrats voting against.

Wilson Amendment. Workforce Protections Subcommittee Ranking Republican Joe Wilson offered an amendment in the nature of a substitute to the underlying bill. The Wilson Substitute addressed specific policy concerns raised by the recent Crandall Canyon accident, while leaving intact the underlying framework of the MINER Act. The amendment would have responded to testimony heard in the Senate's hearings on the Crandall Canyon incident which made clear that MSHA needs to establish a formal dialogue with the Bureau of Land Management (BLM) about any safety concerns BLM observes during the inspection of a federal coal lease. The amendment also required two studies of issues highlighted by conditions in Crandall Canyon: mining in deep mines and pillar removal or "retreat mining." Finally, the Wilson Substitute, based on a model established by the National Transportation Safety Board, would have ensured that MSHA alone was the official conduit of all information relating to a mine accident. The Wilson Substitute focused mine safety reform efforts where they are most needed, rather than undoing a year and a half of progress. That notwithstanding, the amendment was rejected 17 to 26, with all Democrats voting against.

McKeon Amendment. Committee Senior Republican Member McKeon offered an amendment to remove provisions contained within H.R. 2768 dealing with issues which were already effectively addressed in the MINER Act, and which provisions could have, in fact, undermined ongoing implementation of that law, resulting in diminished mine safety. Specifically, the McKeon Amendment would have stricken S–MINER provisions relating to the required use of refuge chambers; self-contained self-rescuer testing; wireless communications; mine seals; and the use of belt air. In each in-

[19] Letter to Chairman Miller and Senior Republican Member McKeon dated July 25, 2007 from Robert L. Ferriter et al. (attached hereto as Appendix A).

stance, ongoing studies or regulatory activity being undertaken by MSHA as a result of the MINER Act would be undermined by these S–MINER provisions. Nevertheless, the McKeon amendment was rejected 17 to 26, with all Committee Democrats voting against.

CONCLUSION

As set forth above, H.R. 2768 does little more than effectively gut the MINER Act, extend regulatory timeframes for compliance on important issues that have been examined over the last sixteen months, and eviscerate any number of robust rulemaking processes. The legislation has the potential to reduce mine safety by cementing current practices into law and creating a "one-size fits all" model that fails to take into account varying mine conditions. The bill muddles current mining regulations and, ultimately, fails to meet any reasonable test of good public policy. Above all, H.R. 2768 dictates complicated and technical safety regulations by way of Congressional fiat, with untold and unintended consequences for mine operators, miners, and their loved ones.

H.R. 2768 in too many instances exhibits a dangerous hubris, and predicates itself on the notion that Members of Congress are better suited to dictate the metes and bounds of mine safety regulation than those experts tasked and trained under law to do so. Despite the call from the mining community, the federal agency tasked with mine safety and oversight, and in some instances, organized labor itself, the Majority has chosen to ignore these stakeholders and replace themselves as experts. Sadly, it is miners and their families who bear the risk and ultimate consequence of this legislative arrogance.

For all of these reasons, we respectfully oppose H.R. 2768 and urge its rejection by the full House of Representatives.

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