

110TH CONGRESS  
1ST SESSION

# H. R. 2768

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

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2007

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

---

## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Supplemental Mine Improvement and New Emergency  
6 Response Act of 2007” or the “S-MINER Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Sense of Congress.

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.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) while the Mine Improvement and New  
4 Emergency Response Act of 2006 (Public Law 109–  
5 236) was an essential first step in addressing the  
6 many health and safety hazards that miners still  
7 face, supplemental action is necessary and feasible to  
8 better protect miners in coal and other mines; and

9 (2) whereas the Secretary of Labor has failed  
10 in recent years to adequately fulfill the Secretary’s  
11 obligations under the Federal Mine Safety and  
12 Health Act of 1977 (30 U.S.C. 801 et seq.), addi-  
13 tional Congressional intervention is needed.

14 **SEC. 3. DEFINITIONS; REFERENCES.**

15 (a) DEFINITIONS.—As used in this Act—

16 (1) the term “Secretary” refers to the Sec-  
17 retary of Labor; and

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

22 (b) REFERENCES.—Except as otherwise expressly  
23 provided, whenever in this Act an amendment or repeal

1 is expressed in terms of an amendment to, or repeal of,  
2 a section or other provision, the reference shall be consid-  
3 ered to be made to a section or other provision of the Fed-  
4 eral Mine Safety and Health Act of 1977 (30 U.S.C. 801  
5 et seq.).

6 **SEC. 4. SUPPLEMENTING EMERGENCY RESPONSE PLANS.**

7 (a) POST ACCIDENT COMMUNICATIONS.—Section  
8 316(b)(2)(F)(ii) (30 U.S.C. 876(b)(2)(F)(ii)) is amend-  
9 ed—

10 (1) by striking “Not later than” and inserting  
11 “(II) Not later than”; and

12 (2) by inserting after the clause designation the  
13 following “(I) Not later than 120 days after the en-  
14 actment of the S-MINER Act, a plan shall, to be  
15 in approved status, provide for a post accident com-  
16 munication system between underground and surface  
17 personnel, and for an electronic tracking system per-  
18 mitting surface personnel to determine the location  
19 of any persons trapped underground, that utilizes a  
20 system at least as effective as a ‘leaky feeder’ type  
21 communication and tracking system currently in use  
22 in the industry. These systems shall be ‘hardened’ to  
23 the extent possible to ensure, to the greatest extent  
24 possible, their survivability in the event of a mine  
25 disaster. In addition, to be in approved status, an

1 emergency response a plan must be revised promptly  
2 to incorporate new technology which the National  
3 Institute for Occupational Safety and Health cer-  
4 tifies can be added to the existing system to improve  
5 its ability to facilitate post-accident communication  
6 with or tracking of miners. No miner shall be dis-  
7 ciplined based solely on information obtained from  
8 an electronic communications and tracking system.”

9 (b) UNDERGROUND REFUGES.—Section  
10 316(b)(2)(E) (30 U.S.C. 876(b)(2)(E)) is amended by  
11 adding at the end the following:

12 “(vi) Not later than June 15, 2008, the  
13 Secretary shall issue final regulations, con-  
14 sistent with the design criteria recommended by  
15 NIOSH and section 13 of the MINER Act, re-  
16 quiring the installation of rescue chambers in  
17 the working areas of underground coal mines.  
18 Not later than December 15, 2007, a plan  
19 shall, to be considered approved, provide for the  
20 maintenance of refuges within 1,000 feet of the  
21 nearest working face in each working section of  
22 an underground coal mine, meeting such cri-  
23 teria as the Secretary certifies are as protective  
24 as the requirements in any State which already  
25 requires refuges at such locations. No mine lo-

1 cated in a State which, as of the date of enact-  
2 ment of the S-MINER Act, requires refuges at  
3 such locations shall be required to take addi-  
4 tional actions under this clause.”.

5 (c) IMPROVEMENTS TO SEALS, VENTILATION CON-  
6 TROLS, AND ROCK DUSTING TO LIMIT THE DAMAGE  
7 FROM EXPLOSIONS.—

8 (1) REPEAL.—The Mine Improvement and New  
9 Emergency Response Act of 2006 (30 U.S.C. 801  
10 note) is amended by striking section 10 and redesignig-  
11 nating sections 11 through 14 as sections 10  
12 through 13, respectively.

13 (2) SEALS.—Section 303(z) of the Mine Safety  
14 and Health Act (30 U.S.C. 863(z)) is amended by  
15 adding at the end the following:

16 “(4) Not later than December 15, 2007, the Sec-  
17 retary shall issue final rules regarding approval, design,  
18 construction, inspection, maintenance and monitoring of  
19 underground coal mine seals. The Secretary shall inspect  
20 all seals under construction after that date, during at least  
21 part of their construction, to ensure the mine operator is  
22 complying with the approved seal plan, and shall develop  
23 an inspection protocol for this purpose. Except as other-  
24 wise provided by this paragraph, these regulations shall  
25 implement the recommendations of the National Institute

1 of Occupational Safety and Health. The regulations shall  
2 require that all areas of the mine sealed after June 15,  
3 2007 shall be monitored. Monitoring of seals shall be done  
4 both by—

5           “(A) sampling through at least 1 seal in each  
6 bank of seals; and

7           “(B) sampling through a sufficient number of  
8 boreholes from the surface to the sealed areas un-  
9 derground to effectively determine the gas con-  
10 centrations within the area.”.

11           (3) VENTILATION CONTROLS.—Section 303(c)  
12 (30 U.S.C. 863) is amended by inserting at the end  
13 the following new paragraph:

14           “(4) Not later than 1 year after the date of enact-  
15 ment of the S-MINER Act, the Secretary shall publish  
16 interim final regulations to enhance the survivability of  
17 underground mine ventilation controls. The Secretary  
18 shall require that brattice walls, overcasts, undercasts,  
19 regulators, and all other ventilation structures be con-  
20 structed using solid concrete blocks laid wet and sealed  
21 with an appropriate bonding agent on at least the side  
22 subjected to the velocity of the intake air coursing through  
23 the entry.”.

24           (4) ROCK DUSTING.—Section 304(d) (30  
25 U.S.C. 864) is amended by adding at the end the

1 following: “Not later than June 15, 2009, the Na-  
2 tional Institute for Occupational Safety and Health  
3 shall issue recommendations as to whether changes  
4 to these requirements are necessary to ensure an  
5 equivalent level of protection in light of any changes  
6 to the to the size and composition of coal dust since  
7 these requirements were established, and the Sec-  
8 retary of Labor shall take appropriate action, includ-  
9 ing the issuance of an emergency temporary stand-  
10 ard if warranted, to respond to these recommenda-  
11 tions.”.

12 (d) LIMITING CONVEYOR BELT RISKS.—

13 (1) FLAME RESISTANT CONVEYOR BELTS.—  
14 Section 311(h) is amended by adding at the end the  
15 following: “Not later than December 31, 2007, the  
16 Secretary shall publish interim final regulations to  
17 ensure that all conveyor belts in use in underground  
18 coal mines are replaced, as soon as practicable, with  
19 belts that can meet the flame resistance require-  
20 ments recommended by the National Institute for  
21 Occupational Safety and Health. Any conveyor belt  
22 installed in a coal mine after December 31, 2008  
23 shall meet the flame resistance requirements rec-  
24 ommended by the National Institute for Occupa-  
25 tional Safety and Health. Such action by the Sec-

1       retary shall not diminish in any way the obligation  
2       of the Secretary to take appropriate additional ac-  
3       tion under this Act following completion of the re-  
4       ports by the Technical Study Panel pursuant to sec-  
5       tion 514.”.

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

8       “(3) Not later than June 20, 2008, the Secretary  
9       shall revise the regulations prescribed pursuant to this sec-  
10      tion to require, in any coal mine, regardless of the date  
11      on which it was opened, that belt haulage entries not be  
12      used to ventilate active working places.

13      “(4) No proposed plan, or proposed modification,  
14      that utilizes belt haulage entries to ventilate active work-  
15      ing places shall be approved after the date of enactment  
16      of the S-MINER Act. Plans that have been approved by  
17      the Secretary prior to the date of enactment of the S-  
18      MINER Act that permit the use of belt-air to ventilate  
19      active working places in a mine are permitted to remain  
20      in use to complete current mining up until the date of  
21      issuance of the regulation required pursuant to subsection  
22      (3).

23      “(5) Nothing in this subsection shall limit the obliga-  
24      tion of the Secretary to take appropriate additional action



1 under this Act following completion of the reports by the  
2 Technical Study Panel, pursuant to section 514.”.

3 (e) PRE-SHIFT REVIEW OF MINE CONDITIONS.—

4 Section 303(d) (30 U.S.C. 863(d)) is amended by adding  
5 at the end the following new paragraph:

6 “(3) Not later than 90 days after the date of enact-  
7 ment of the S-MINER Act, all mine operators shall be  
8 required to implement a communication program at each  
9 of its facilities to insure management and miners entering  
10 the operation at the start of their shift are aware of the  
11 current conditions of the mine in general and their specific  
12 workplace in particular. In an effort to facilitate these  
13 communications, all agents of the operator who are re-  
14 sponsible for ensuring the safe and healthful working con-  
15 ditions at the mine, including mine foremen, assistant  
16 mine foremen, and mine examiners, shall, upon exiting the  
17 mine or workplace, meet with their counterparts on the  
18 oncoming shift to verbally update them on the conditions  
19 they observed during their shift, including any conditions  
20 that are abnormal or hazardous. Prior to entering the  
21 mine or other workplace the on-coming agent of the oper-  
22 ator shall meet with all members of the crew they are re-  
23 sponsible for and inform them of the general conditions  
24 at the operation and in their specific work area. This proc-  
25 ess shall be completed prior to the start of each shift at

1 the operation and recorded in a book designated for that  
2 purpose and available for inspection by all interested par-  
3 ties. In the event the operation is idle prior to the start  
4 of any shift the agent of the operator shall meet with the  
5 individual or individuals who were responsible for exam-  
6 ining the mine to obtain the necessary information.”.

7 (f) ATMOSPHERIC MONITORING SYSTEMS.—Section  
8 317 (30 U.S.C. 877) is amended by adding at the end  
9 the following:

10 “(u) Not later than May 1, 2008, an operator of an  
11 underground mine shall install atmospheric monitoring  
12 systems in all underground areas where miners normally  
13 work and travel that provide real-time information regard-  
14 ing methane levels, carbon monoxide levels, oxygen levels,  
15 air flow, smoke, and temperature, and that can, to the  
16 maximum extent possible, withstand explosions and  
17 fires.”.

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

22 “(2) Each miner who may be working alone for part  
23 of a shift shall be equipped with a multi-gas detector that  
24 measures current levels of methane, oxygen, and carbon  
25 monoxide.”.

1 (h) LIGHTNING.—

2 (1) ADMINISTRATIVE ACTION.—Section 307 (30  
3 U.S.C. 867) is amended by adding at the end the  
4 following:

5 “(f) In the event lightning is present in or around  
6 a mining operation, mine operators who cannot fully pro-  
7 tect their miners from the effects of lightning through  
8 grounding and other engineering controls shall use appro-  
9 priate administrative controls to do so, including with-  
10 drawal of miners from all underground areas of the mine.  
11 Failure to take appropriate administration action shall be  
12 treated as a significant and substantial violation of the  
13 this Act. Miners withdrawn as a result of this action shall  
14 suffer no loss in pay or other compensation.”.

15 (2) STUDY BY NATIONAL ACADEMY OF  
16 SCIENCES.—Not later than 1 year after the date of  
17 enactment of this Act, the National Academy of  
18 Sciences shall submit to the Secretary and to Con-  
19 gress recommendations on—

20 (A) actions that need to be taken to  
21 strengthen existing requirements in law or reg-  
22 ulations to ensure that miners are protected, to  
23 the fullest extent permitted, from potential  
24 damage that could be generated because of  
25 lightning strikes near a mine;

1           (B) recommendations for adopting any ex-  
2           isting technology to the mining environment;  
3           and

4           (C) research needed for improved tech-  
5           nology.

6           (i) SCSR INSPECTION PROGRAM.—The Secretary  
7 shall—

8           (1) establish a program to randomly remove  
9           and have tested at least 5 percent of the field sam-  
10          ples of each model of self-rescue device used in an  
11          underground coal mine no less frequently than every  
12          6 months, in order to ensure that the self-rescue de-  
13          vices in coal mine inventories are working in accord-  
14          ance with the approval criteria for such devices, and  
15          mine operators shall be responsible for the costs to  
16          replace required self-rescue devices taken from their  
17          operation by the Secretary for random testing;

18          (2) require a manufacturer of a self-rescue de-  
19          vice and the mine operator who owns a device to  
20          contact the Secretary immediately upon notification  
21          of any potential problem with any such device, and  
22          provide a copy of such notice to the representative  
23          of miners at the affected operation; and

1           (3) notify immediately all operators of under-  
2           ground coal mines if the Secretary detects or is ad-  
3           vised of any problems with the self-rescue devices.

4           (j) APPLICATION TO UNDERGROUND METAL AND  
5 NONMETAL MINES.—The Secretary shall promptly estab-  
6           lish an advisory committee to provide recommendations as  
7           to the need to revise the regulations applicable to under-  
8           ground metal and nonmetal mines to ensure that miners  
9           in such mines are as protected in emergency situations  
10          as will be underground coal miners following the full im-  
11          plementation of the Mine Improvement and New Emer-  
12          gency Response Act of 2006, the provisions of this Act,  
13          and related actions by the Secretary. The advisory com-  
14          mittee shall be established pursuant to the Advisory Com-  
15          mittee Act, and shall provide recommendations to the Sec-  
16          retary and to Congress not later than 21 months after  
17          the date of enactment of this Act, including recommenda-  
18          tions as to any action by Congress that could facilitate  
19          the goal of providing equivalent protections to miners in  
20          underground metal and nonmetal mines.

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

23                 (1) self-rescue device that permits the replen-  
24                 ishment of oxygen without requiring the device user  
25                 to remove the device; and

1           (2) underground communication device that  
2 provides for communication between underground  
3 and surface personnel via a wireless two-way me-  
4 dium.

5           (1) TECHNOLOGY AND MINE EMERGENCY HEALTH  
6 AND SAFETY RESEARCH PRIORITIES.—In implementing  
7 its research activities in the 5-year period beginning on  
8 the date of enactment of this Act, the National Institute  
9 for Occupational Safety and Health shall give due consid-  
10 eration to new technologies, and existing technologies that  
11 could be adapted for use in underground coal or other  
12 mines, that could facilitate the survival of miners in a min-  
13 ing emergency. Such technologies include—

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

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

21           (3) improved technology for assisting mine res-  
22 cue teams, including devices to enhance vision dur-  
23 ing rescue or recovery operations;

24           (4) improved technology, and improved proto-  
25 cols for the use of existing technologies, to enable

1 conditions underground to be assessed promptly and  
2 continuously in emergencies, so as to facilitate the  
3 determination by appropriate officials of the instruc-  
4 tions to provide both to miners trapped underground  
5 and to mine rescue teams and others engaged in res-  
6 cue efforts;

7 (5) improvements to underground mine ventila-  
8 tion controls separating mine entries to be more re-  
9 sistant to mine fires and explosions, particularly in  
10 those entries used for miners escapeways;

11 (6) mine-wide monitoring systems and strate-  
12 gies that can monitor mine gases, oxygen, air flows,  
13 and air quantities at strategic locations throughout  
14 the mine that would be functional during normal  
15 mining operations and following mine fires, explo-  
16 sions, and roof falls, including systems utilizing  
17 monitoring sensors that transfer data to the mine  
18 surface and the installation of tubing to draw mine  
19 gas samples that are distributed throughout the  
20 mine and can quickly deliver samples to the mine  
21 surface; and

22 (7) protective strategies for the placement of  
23 equipment, cables, and devices that are to be utilized  
24 during mine emergencies such as communication  
25 systems, oxygen supplies, and mine atmosphere

1 monitoring systems, to protect them from mine fires,  
2 roof falls, explosions, and other damage.

3 **SEC. 5. SUPPLEMENTING ENFORCEMENT AUTHORITY.**

4 (a) **AUTHORITY OF INSPECTORS.**—Section 103 (30  
5 U.S.C. 813) is amended—

6 (1) in subsection (a), by adding at the end the  
7 following: “No person shall limit or otherwise pre-  
8 vent the Secretary from entry on a coal or other  
9 mine, or interfere with the Secretary’s inspection ac-  
10 tivities, investigative activities, or rescue or recovery  
11 activities.”; and

12 (2) in subsection (k)—

13 (A) by striking “, when present,”; and

14 (B) by adding at the end the following: “In  
15 the event of any accident occurring in a coal or  
16 other mine, where rescue and recovery work is  
17 necessary, the Secretary or an authorized rep-  
18 resentative of the Secretary shall take whatever  
19 action the Secretary deems appropriate to pro-  
20 tect the life of any person, and may supervise  
21 and direct the rescue and recovery activities in  
22 such mine.”.

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



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

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

4           “(b) Within 270 days of the enactment of the S–  
5 MINER Act, the Secretary shall establish a Master In-  
6 spector program to ensure that the most experienced and  
7 skilled employees in the Nation have the incentive, in  
8 terms of responsibilities and pay, to serve as mine safety  
9 and health inspectors in this Nation’s mines.

10          “(c) In order to ensure that the Secretary has ade-  
11 quate time to provide that a sufficient number of qualified  
12 and properly trained inspectors of the Mine Safety and  
13 Health Administration are in place before any inspectors  
14 employed as of the date of enactment of the S–MINER  
15 Act retire, any ceilings on the number of personnel that  
16 may be employed by the Administration with respect to  
17 mine inspectors are abolished for the 5-year period begin-  
18 ning on the date of enactment of such Act.

19          “(d) In the event that, notwithstanding the actions  
20 taken by the Secretary to hire and train qualified inspec-  
21 tors, the Secretary is temporarily unable, at any time dur-  
22 ing the 5-year period beginning on the date of enactment  
23 of the S–MINER Act, to employ the number of inspectors  
24 required to staff all district offices devoted to coal mines  
25 at the offices’ highest historical levels without transferring

1 personnel from supervisory or plan review activities or di-  
2 minishing current inspection resources devoted to other  
3 types of mines, the Administration is authorized to hire  
4 retired inspectors on a contractual basis to conduct mine  
5 inspections, and the retirement benefits of such retired in-  
6 spectors shall not be reduced as a result of such temporary  
7 contractual employment.

8       “(e) During the 5-year period beginning on the date  
9 of enactment of the S-MINER Act, the Secretary shall  
10 issue a special report to the appropriate committees of  
11 Congress each year, or at such more frequent intervals  
12 as the Secretary or any such committee may consider ap-  
13 propriate, providing information about the actions being  
14 taken under this section, the size and training of the in-  
15 spector workforce at the Mine Safety and Health Adminis-  
16 tration, the level of enforcement activities, and the number  
17 of requests by individual operators of mines for compliance  
18 assistance.”.

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

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

22       “(a) ESTABLISHMENT OF MINER OMBUDSMAN.—  
23 There shall be established, within the Office of the Inspec-  
24 tor General of the Department of Labor, the position of  
25 Miner Ombudsman. The President, by and with the advice

1 and consent of the Senate, shall appoint an individual with  
2 expertise in mine safety and health to serve as the Miner  
3 Ombudsman.

4 “(b) DUTIES.—The Miner Ombudsman shall—

5 “(1) be primarily responsible for ensuring that  
6 the rights of miners are upheld to the full extent in-  
7 tended in the Federal Mine Safety and Health Act  
8 of 1977 and regulations issued under such Act;

9 “(2) be responsible for establishing practices to  
10 ensure the confidentiality of the identity of miners,  
11 and the families or personal representatives of the  
12 miners, who contact mine operators, authorized rep-  
13 resentatives of the miners, the Mine Safety and  
14 Health Administration, the Department of Labor, or  
15 others with information about mining conditions  
16 that may threaten, or have recently threatened, as of  
17 the time of the contact, miner safety or health, while  
18 ensuring that the Mine Safety and Health Adminis-  
19 tration has the information needed to promptly in-  
20 vestigate such complaints;

21 “(3) establish a toll-free telephone number and  
22 appropriate Internet website to permit individuals to  
23 confidentially report possible mine mandatory health  
24 or safety standard violations or concerns;

1           “(4) collect and forward information concerning  
2 possible mine safety or health violations or concerns  
3 to the appropriate officials of the Mine Safety and  
4 Health Administration for investigation;

5           “(5) monitor the Secretary of Labor’s efforts to  
6 protect miners who report that their rights under  
7 section 105(c) have been violated, and report to  
8 Congress any recommendations that would enhance  
9 such rights or protections; and

10           “(6) carry out public outreach and other activi-  
11 ties to facilitate the transmission, to the Secretary of  
12 Labor, of information that could help avoid mine ac-  
13 cidents.

14           “(c) **AUTHORITY.**—The Ombudsman shall be for-  
15 warded all complaints of operator violations of any section  
16 of this Act or regulations prescribed under this Act that  
17 are reported to the Secretary. This shall include com-  
18 plaints submitted in writing, via the code-a-phone, or oral-  
19 ly, along with all relevant information available regarding  
20 the complainant. All such information shall be retained in  
21 a confidential manner pursuant to the Privacy Act of  
22 1974. The Ombudsman shall use such information to en-  
23 sure that miners’ complaints are addressed in a timely  
24 manner and in compliance with the appropriate statutes  
25 and regulations. The Ombudsman shall have authority to

1 ensure that all complaints were handled in such fashion,  
2 and to determine what remedy, if any, was prescribed, and  
3 all personnel of the Department shall cooperate with re-  
4 quests by the Ombudsman for information in this regard.

5       “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are hereby authorized to be appropriated to the Ombuds-  
7 man such sums as may be required for the implementation  
8 of his duties out of the sums otherwise made available to  
9 the Mine Safety and Health Administration for its activi-  
10 ties. The Ombudsman shall have the authority to hire per-  
11 sonnel and otherwise provide for the administration of his  
12 office in accordance with applicable law.”.

13       (d) PATTERN OF VIOLATIONS.—

14             (1) PROMPT IDENTIFICATION OF PATTERN.—  
15       Not later than 3 months after the date of enactment  
16       of the S-MINER Act, the Secretary shall revise the  
17       regulations issued by the Secretary under section  
18       104(e) of the Federal Mine Safety and Health Act  
19       of 1977 (30 U.S.C. 814(e)) as in effect on the day  
20       before such date of enactment, so that the regula-  
21       tions provide that—

22                     (A) when a potential pattern of violations  
23                     is identified by any inspector or district man-  
24                     ager of the Mine Safety and Health Adminis-  
25                     tration, the operator of the coal or other mine

1 and the authorized representative of miners for  
2 the mine shall be notified by the inspector or  
3 district manager not later than 10 days after  
4 such identification; and

5 (B) after receiving the notification de-  
6 scribed in subparagraph (A), the appropriate  
7 official of the Mine Safety and Health Adminis-  
8 tration shall promptly review any such potential  
9 pattern of violations and, not later than 45  
10 days after receiving such notification, make a  
11 final decision as to whether a citation for a vio-  
12 lation of section 104(e) of such Act should be  
13 issued in light of the gravity of the violations  
14 and the operator's conduct in connection there-  
15 with.

16 (2) IDENTIFICATION OF PATTERN.—Section  
17 104(e)(1) (30 U.S.C. 814(e)(1)) is amended by in-  
18 serting after the first sentence the following: “In de-  
19 termining whether a pattern of violations exists, the  
20 Secretary shall give due consideration to all relevant  
21 information, such as the gravity of the violations,  
22 operator negligence, history of violations, the num-  
23 ber of inspection shifts the Secretary or her agents  
24 have spent at the operation, and the frequency of

1 violations per number of inspection days spent at the  
2 operation.”.

3 (3) TERMINATION OF PATTERN.—Section  
4 104(e)(3) (30 U.S.C. 814(e)(3)) is amended by add-  
5 ing at the end the following: “In addition, if an op-  
6 erator subject to paragraphs (1) and (2) dem-  
7 onstrates objective evidence that they are correcting  
8 the problems that gave rise to the pattern of viola-  
9 tions, and the violation frequency rate for such oper-  
10 ator declines significantly for a period of 180 days,  
11 the withdrawal order provisions of paragraphs (1)  
12 and (2) shall no longer apply.”.

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

15 (A) by redesignating subsections (i)  
16 through (l) as subsections (j) through (m), re-  
17 spectively; and

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

20 “(i)(1) If the Secretary determines that a pattern of  
21 violations under section 104(e) exists, the Secretary shall  
22 assess a penalty, in addition to any other penalty author-  
23 ized in this Act for a violation of such section, of not less  
24 than \$50,000 nor more than \$250,000. All operators of  
25 the mine, including any corporate owners, shall be jointly

1 and severally liable for such penalty. The amount of the  
2 assessment under this paragraph shall be designed to en-  
3 sure a change in the future conduct of the operators and  
4 corporate owners of such mine with respect to mine safety  
5 and health, given the overall resources of such operators.  
6 Notwithstanding subsection (k) or section 113, a penalty  
7 assessed by the Secretary under this paragraph may not  
8 be reduced by the Commission.

9       “(2) In addition to the authority to withdraw miners  
10 from an area of a coal or other mine pursuant to section  
11 104(e), the Secretary shall withdraw all miners from the  
12 entire mine when any pattern of violations has been deter-  
13 mined to exist until such time as the Secretary certifies  
14 that all identified violations have been corrected and the  
15 operator has agreed to abide by a written plan approved  
16 by the Mine Safety and Health Administration to ensure  
17 that such a pattern of conduct will not recur.”.

18       (e) NOTIFICATION OF ABATEMENT.—Section 104(b)  
19 (30 U.S.C. 814(b)) is amended—

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

22           (2) by striking “If,” and inserting “(2) If,”;  
23 and

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



1           “(1) An operator issued a citation pursuant to sub-  
2 section (a) shall notify the Secretary that the operator has  
3 abated the violation involved. If such operator fails to pro-  
4 vide such a notice to the Secretary within the abatement  
5 time as provided for in the citation, the Secretary shall  
6 issue an order that requires the operator (or the agent  
7 of the operator) to immediately cause all persons, except  
8 those persons referred to in subsection (c), to be with-  
9 drawn from, and to be prohibited from entering, such area  
10 as the Secretary determines until an authorized represent-  
11 ative of the Secretary determines that such violation has  
12 been abated.”.

13           (f) FAILURE TO TIMELY PAY PENALTY ASSESS-  
14 MENTS.—Section 105(a) (30 U.S.C. 815(a)) is amended  
15 by striking the third sentence and inserting the following:  
16 “The operator shall, not later than 30 days from the re-  
17 ceipt of the notification of a citation issued by the Sec-  
18 retary, notify the Secretary that the operator intends to  
19 contest the citation or proposed assessment of a penalty  
20 and to place in escrow the amount of the proposed assess-  
21 ment. If notification and proof of escrow is not provided  
22 to the Secretary, the citation and the proposed assessment  
23 of penalty shall be deemed a final order of the Commission  
24 and not subject to review by any court or agency. In the  
25 event that a mine operator refuses to comply with a final

1 order of the Commission to pay civil monetary penalties  
2 and statutory interest, the Secretary shall have the au-  
3 thority to issue an order requiring the mine operator to  
4 cease production under such final orders of the Commis-  
5 sion have been paid in full.”

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

16 (h) FACTORS IN ASSESSING PENALTIES.—The Fed-  
17 eral Mine Safety and Health Act of 1977 is amended—

18 (1) in section 105(b)(1)(b)—

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

23 (B) by striking “the effect on the opera-  
24 tor’s ability to continue in business,”; and

1 (C) by adding at the end the following: “In  
2 settling cases, the Secretary shall utilize the  
3 same point system as that utilized to propose  
4 penalties, so as to ensure consistency in oper-  
5 ator penalty assessments.”; and

6 (2) in section 110(k) (as redesignated by sub-  
7 section (a)(4))—

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

12 (B) by striking “the effect on the opera-  
13 tor’s ability to continue in business,”; and

14 (C) by adding at the end the following: “In  
15 any review requested by a mine operator, or in  
16 settling cases, the Commission shall utilize the  
17 same point system as that developed by the  
18 Secretary for proposed assessments so as to en-  
19 sure consistency in operator penalty assess-  
20 ments.”.

21 (i) CIVIL PENALTY FOR INTERFERENCE OR DIS-  
22 CRIMINATION.—Section 110 of the Federal Mine Safety  
23 and Health Act of 1977 (30 U.S.C. 820) is further amend-  
24 ed by adding at the end the following:

1       “(n) CIVIL PENALTY FOR INTERFERENCE OR DIS-  
2 CRIMINATION.—Any operator who is found to be in viola-  
3 tion of section 105(c), or in violation of section 103(a)  
4 (as amended by this Act) shall be subject to a civil penalty  
5 of not less than \$10,000 nor more than \$100,000 for each  
6 occurrence of such violation.”.

7       (j) IMMINENT DANGER.—Section 107(a) of the Fed-  
8 eral Mine Safety and Health Act of 1977 (30 U.S.C.  
9 817(a) is amended by inserting after the first sentence the  
10 following: “For purposes of the preceding sentence, any  
11 violation of section 315 or section 316, or regulations  
12 issued pursuant to such sections, shall be considered an  
13 imminent danger.”.

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

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

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

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

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

22                     (D) by inserting before the semicolon the  
23 following: “, and no operator may by contract  
24 or other agreement may limit any liability

1 under this Act through transfer of any respon-  
2 sibilities to another person”;

3 (2) in section 103 (30 U.S.C. 813)—

4 (A) in subsection (b), as amended by sec-  
5 tion 105 of this Act—

6 (i) by striking the first sentence of  
7 paragraph (2) (as designated by section  
8 105 of this Act) and inserting the fol-  
9 lowing: “For the purpose of enabling the  
10 Secretary to perform the functions under  
11 this Act, the Secretary may—

12 “(A) after notice, hold public hearings; and

13 “(B) sign and issue subpoenas for the attendance and  
14 testimony of witnesses and the production of relevant  
15 data, papers, books, documents and items of physical evi-  
16 dence, and administer oaths, whether or not in connection  
17 with a public hearing.”; and

18 (ii) in the last sentence of paragraph  
19 (2) (as designated by section 105 of this  
20 Act), by striking “documents” and insert-  
21 ing “data, papers, books, documents, and  
22 items of physical evidence”; and

23 (B) in subsection (h), in the first sentence,  
24 by striking “information” and inserting “data,

1 papers, books, documents, and items of physical  
2 evidence”;

3 (3) in section 104 (30 U.S.C. 814)—

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

9 (B) in subsection (d)(1), as amended by  
10 this Act, by striking “while the conditions cre-  
11 ated by such violation do not cause imminent  
12 danger”;

13 (4) in section 105 (30 U.S.C. 815)—

14 (A) in subsection (a), in the first sentence,  
15 by striking “, within a reasonable time after the  
16 termination of such inspection or investiga-  
17 tion,”; and

18 (B) by adding at the end the following:

19 “(e) Attorneys representing the Secretary are author-  
20 ized to contact any miner or non-managerial employee of  
21 a mine operator for the purposes of carrying out the Sec-  
22 retary’s functions under this Act and no attorney rep-  
23 resenting the Secretary shall be disbarred or disciplined  
24 by any State bar or State court for making such contacts.  
25 No attorney representing a mine operator in a matter

1 under this Act may concurrently represent individual min-  
2 ers in the same matter.”; and

3 (5) in section 110 (30 U.S.C. 820)—

4 (A) in subsection (b)(2), by striking  
5 “under” and inserting “of subsections (a)  
6 through (h) of”; and

7 (B) in subsection (c)—

8 (i) by striking “Whenever a corporate  
9 operator” and inserting “Whenever a mine  
10 operator”;

11 (ii) by striking “safety standard” and  
12 inserting “safety standard or requirement  
13 of this Act”;

14 (iii) by inserting “partner, owner,”  
15 after “director,”; and

16 (iv) by striking “such corporation”  
17 and inserting “such mine operator”.

18 (l) FEDERAL LICENSING.—The Secretary shall  
19 promptly establish an advisory committee to provide rec-  
20 ommendations as to whether the Federal Mine Safety and  
21 Health Act of 1977 should provide for Federal licensing  
22 of mines, mine operators, mine controllers, or various mine  
23 personnel in order to ensure that those engaged in mining  
24 activities are not frequent violators of safety and health  
25 requirements. The advisory committee shall be established

1 pursuant to the Advisory Committee Act, and shall con-  
2 duct a review of existing State licensing requirements, as-  
3 sess their effectiveness, and shall provide its recommenda-  
4 tions to Congress not later than 2 years after the date  
5 of enactment of this Act.

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

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

22 (b) **CONTACT INFORMATION.**—The Secretary shall  
23 provide the emergency call center with a contact list, up-  
24 dated not less often than quarterly, that contains—



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

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

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

9           (4) the contact phone numbers, including the  
10          home phone numbers, for the national and district  
11          officials of the Mine Safety and Health Administra-  
12          tion;

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

17          (6) the contact phone numbers, including the  
18          home phone number, for the authorized representa-  
19          tive of the miners at each mine.

20 Each mine operator shall ensure that the Secretary is pro-  
21 vided with completely current information required to be  
22 maintained by the Secretary pursuant to paragraphs (1),  
23 (3), and (6).

24          (c) MINE LOCATION MAPS.—The Secretary shall es-  
25 tablish, maintain, and keep current, on the Department

1 of Labor’s website, a detailed map or set of maps showing  
2 the exact geographic location of each operating or aban-  
3 doned mine in the United States. Such map or maps  
4 shall—

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

9 (2) be available to members of the public;

10 (3) allow a user to find the geographic location  
11 of a particular mine, or the geographic locations of  
12 all mines of a particular type in a county, congres-  
13 sional district, State, or other commonly used geo-  
14 graphic region; and

15 (4) provide the geographic location of any min-  
16 ing waste impoundments with links to associated  
17 emergency contact information and available emer-  
18 gency response plans.

19 (d) REQUIRED NOTIFICATION OF EMERGENCIES AND  
20 SERIOUS INCIDENTS.—Section 103(j) (30 U.S.C. 813) is  
21 amended to read as follows:

22 “(j) In the event of any accident occurring in any  
23 coal or other mine, the operator shall notify the Secretary  
24 and shall take appropriate measures to prevent the de-  
25 struction of any evidence which would assist in inves-

1 tigating the cause or causes of the accident. For purposes  
2 of the preceding sentence, the notification required shall  
3 be provided by the operator within 15 minutes of the time  
4 at which the operator realizes that the death of an indi-  
5 vidual at the mine, or an injury or entrapment of an indi-  
6 vidual at the mine which has a reasonable potential to  
7 cause death, has occurred, or within 1 hour of the time  
8 at which the operator realizes that any of the following  
9 have occurred in the mine:

10           “(1) a fire;

11           “(2) a roof fall, unplanned inundation, collapse,  
12           or unplanned explosion;

13           “(3) a sudden change in mine atmospheric con-  
14           ditions in a sealed area;

15           “(4) a rib fall that impairs ventilation or im-  
16           pedes escape;

17           “(5) a coal or rock outburst that causes the  
18           withdrawal of miners;

19           “(6) the failure of an impoundment;

20           “(7) damage to hoisting equipment in a shaft  
21           or slope that endangers an individual;

22           “(8) any incident that leads to the death, seri-  
23           ous injury with a reasonable potential to cause  
24           death, or entrapment, of a miner; and

1           “(9) any other emergency or incident, as deter-  
2           mined in regulations promulgated by the Secretary,  
3           that needs to be examined in order to determine if  
4           the working conditions in the mine are safe.”.

5           (e) ENHANCING THE CAPABILITIES OF MINE RES-  
6           CUE TEAMS.—Section 115(e)(2)(B) (30 U.S.C.  
7           825(e)(2)(B)) is amended by adding at the end the fol-  
8           lowing:

9           “(v) The provision of uniform credentials to  
10           mine rescue team members, support personnel, or  
11           vehicles for immediate access to any mine site;

12           “(vi) The plans required at each mine to ensure  
13           coordination with local emergency response per-  
14           sonnel and to ensure that such personnel receive  
15           adequate training to offer necessary assistance to  
16           mine rescue teams in the event such assistance is re-  
17           quested. Such local emergency response personnel  
18           shall not perform the duties of any mine rescue  
19           team; and

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

23           “(I) storing necessary equipment in loca-  
24           tions readily accessible to mine rescue teams;

1           “(II) providing mine rescue teams with a  
2           parking and staging area adequate for their  
3           needs;

4           “(III) identifying a space appropriate for  
5           coordinating emergency communications with  
6           the mine rescue team; and

7           “(IV) identifying and maintaining separate  
8           spaces for family members, community mem-  
9           bers, and press to assemble during an emer-  
10          gency so as to facilitate communications with  
11          these groups while ensuring the efforts of the  
12          mine rescue teams are not hindered.”.

13          (f) EMERGENCY MEDICAL RESPONSE.—

14               (1) AMBULANCE.—Not later than 3 months  
15               after the date of enactment of this Act, the Sec-  
16               retary shall promulgate regulations to require mine  
17               operators to have, within 20 minutes from the site  
18               of every coal or other mine, an ambulance or other  
19               means of providing emergency medical response in  
20               the event of an accident.

21               (2) MEDICAL EMERGENCY TECHNICIAN TRAIN-  
22               ING.—The Secretary shall review the training and  
23               availability requirements for medical emergency  
24               technicians in effect as of the date of enactment of  
25               this Act and shall promptly revise such requirements

1 in any regulations necessary to improve such train-  
2 ing and increase the availability of medical emer-  
3 gency technicians.

4 (g) ACCIDENT AND INCIDENT INVESTIGATIONS.—  
5 Section 103(b) (30 U.S.C. 813(b) is amended—

6 (1) by striking “For the purpose” and inserting  
7 “(2) For the purpose”;

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

10 “(1) Not later than 30 days after the date of enact-  
11 ment of the S-MINER act, the Secretary shall initiate  
12 rulemaking activity to establish rules on the procedures  
13 that will be used to investigate mining accidents and inci-  
14 dents, and shall directly contact and solicit the participa-  
15 tion of—

16 “(A) individuals identified by the Secretary as  
17 family members of miners who perished in mining  
18 accidents of any type during the preceding 10-year  
19 period;

20 “(B) organizations representing miners;

21 “(C) mine rescue teams;

22 “(D) Federal, State, and local investigation and  
23 prosecutorial authorities; and

24 “(E) others whom the Secretary determines  
25 may have information relevant to this rulemaking.

1 Such rules shall be issued not later than October 1, 2008,  
2 and shall include the investigation of any activities of Fed-  
3 eral employees that may be relevant to such accidents or  
4 incidents, and may establish alternative procedures for  
5 such investigations depending upon such factors as the  
6 Secretary determines are appropriate. Such rules shall in-  
7 clude procedures to ensure that witnesses are not coerced,  
8 to avoid conflicts of interest in witness representation, and  
9 to ensure confidentiality if requested by any witness. Such  
10 rules shall also require upon completion of an accident or  
11 incident investigation, the Secretary shall issue findings  
12 as to the actions or inactions which resulted in the acci-  
13 dent or incident, and shall make recommendations as to  
14 policy, regulatory, enforcement or other changes, including  
15 statutory changes, which in the judgment of the Sec-  
16 retary's mine safety and health experts would best prevent  
17 a recurrence of such actions or inactions at other mines,  
18 and shall promptly make all such findings and rec-  
19 ommendations public (except findings and recommenda-  
20 tions that must be temporarily withheld in connection with  
21 a criminal referral). Such rules shall further provide that  
22 the Secretary shall hold appropriate public hearings at the  
23 conclusion of the investigation of incidents to inform the  
24 mining community of the findings and recommendations,  
25 and shall also provide that the Secretary track the imple-

1 mentation of accident and incident investigation rec-  
 2 ommendations and provide such information annually to  
 3 the Congress.”; and

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

5 “(3) After an accident or incident and upon the time-  
 6 ly request of the authorized representative of the miners  
 7 or the families at a mine, the Secretary shall contract with  
 8 the Chemical Safety and Hazard Investigation Board to  
 9 conduct an independent investigation of the accident or  
 10 incident and provide recommendations to the Secretary.  
 11 Such investigation shall be in addition to any investigation  
 12 conducted by the Secretary, and shall be conducted pursu-  
 13 ant to whatever procedures such authority determines are  
 14 appropriate for the investigation. The Secretary shall pro-  
 15 vide such authority with all information and expertise re-  
 16 quested, and shall pay for such authority to conduct the  
 17 authority’s investigation, including the costs of obtaining  
 18 the services of independent experts required for any such  
 19 investigation.”.

20 **SEC. 7. RESPIRABLE DUST STANDARDS.**

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

24 “DUST STANDARD AND RESPIRATORY EQUIPMENT

25 “SEC. 202. (a)(1) Effective on the date of enactment  
 26 of the S-MINER Act, each mine operator shall continu-



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

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

1 the sampling of areas, occupations or persons. For the  
2 purposes of determining compliance with the exposure  
3 limit for respirable dust, only a single sample shall be re-  
4 quired to determine non-compliance, and there shall be no  
5 adjustment for measurement error in the measured level  
6 of respirable dust.

7       “(3) Each operator of a coal mine shall take accurate  
8 samples of the amount of respirable dust in the mine at-  
9 mosphere to which each miner in the active workings of  
10 such mine is exposed to identify sources of exposure so  
11 that the operator can take corrective action and assure  
12 that the exposure of each mine is below the exposure limit.  
13 Under the provisions of this Act, all such samples shall  
14 be taken by a personal dust monitor that measures,  
15 records and displays the concentration of respirable dust  
16 to which the miner wearing the device is exposed. The re-  
17 sults of such sampling shall be transmitted to the Sec-  
18 retary in a manner established by him, and recorded by  
19 him in a manner that will assure application of the provi-  
20 sions of this section of the Act.

21       “(4) Each miner shall be equipped with a personal  
22 dust monitor that measures, records and displays the con-  
23 centration of respirable dust to which the miner wearing  
24 the device is exposed. Each miner shall be permitted to  
25 adjust his work activities whenever necessary to keep his

1 exposure to respirable coal dust, as measured, recorded  
2 and displayed by such device, at all times at or below the  
3 permitted concentration.

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

22       “(c) Respiratory equipment approved by the Sec-  
23 retary and the Secretary of Health and Human Services  
24 shall be made available to all persons whenever exposed  
25 to concentrations of respirable dust or silica in excess of

1 the levels required to be maintained under this section.  
2 Use of respirators shall not be substituted for environ-  
3 mental control measures in the active workings. Each op-  
4 erator shall maintain a supply of respiratory equipment  
5 adequate to deal with occurrences of concentrations of res-  
6 pirable dust and silica in the mine atmosphere in excess  
7 of the levels required to be maintained under this section.

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

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

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

1 guidance and to enforcement. The study shall include an  
2 assessment of the Equal Access to Justice Act, the Regu-  
3 latory Flexibility Act, the Small Business Regulatory En-  
4 forcement Fairness Act, the Data Quality Act, the Paper-  
5 work Reduction Act, the Unfunded Mandates Reform Act,  
6 the Federal Advisory Committee Act, the Congressional  
7 Review Act, Executive Order 12866, Executive Order  
8 13422, and memoranda from the Office of Management  
9 and Budget on guidance, risk assessment and cost anal-  
10 ysis. The Secretary shall request that the National Acad-  
11 emy of Sciences consult widely with experts in administra-  
12 tive law and other disciplines knowledgeable about such  
13 requirements, and to quantify to the extent possible the  
14 costs to miners of the aforementioned requirements. The  
15 Secretary shall further request that recommendations be  
16 included in the report, and request that such report and  
17 recommendations be completed, and copies forwarded to  
18 the Congress, no later than 21 months after the effective  
19 date of this Act.

○