

110TH CONGRESS
2^D SESSION

H. R. 2768

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 3), 2008

Received; read twice and referred to the Committee on Health, Education,
Labor, and Pensions

AN ACT

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,*

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions; references.
- Sec. 4. Supplementing emergency response plans.
- Sec. 5. Supplementing enforcement authority.
- Sec. 6. Supplementing rescue, recovery, and incident investigation authority.
- Sec. 7. Respirable Dust Standards.
- Sec. 8. Other health requirements.
- Sec. 9. Mine safety program fund.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

9 (1) while the MINER Act of 2006 (Public Law
10 109–236) was an essential first step in addressing
11 the many health and safety hazards that miners still
12 face, supplemental action is necessary and feasible to
13 better protect miners in coal and other mines;

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16 Act of 1977 are out of date after 40 years, posing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

18 (3) the Secretary of Labor has failed in recent
19 years to adequately fulfill the Secretary’s obligations
20 under the Federal Mine Safety and Health Act of

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

3 “(I) Not later than 120 days
4 after the enactment of the S-MINER
5 Act, a plan shall, to be in approved
6 status, provide for a post accident
7 communication system between under-
8 ground and surface personnel, and for
9 an electronic tracking system permit-
10 ting surface personnel to determine
11 the location of any persons trapped
12 underground, that utilizes a system at
13 least as effective as a ‘leaky feeder’ or
14 wireless mesh type communication
15 and tracking system currently in use
16 in the industry. These systems shall
17 be enhanced physically, electronically,
18 or redundantly, to improve their sur-
19 vivability in the event of a mine dis-
20 aster. In addition, to be in approved
21 status, an emergency response plan
22 must be revised promptly to incor-
23 porate new technology which the Na-
24 tional Institute for Occupational Safe-
25 ty and Health certifies can be added

1 to the existing system to improve its
2 ability to facilitate post-accident com-
3 munication with or tracking of min-
4 ers. No miner shall be disciplined
5 based on information obtained from
6 an electronic communications and
7 tracking system.”.

8 (b) UNDERGROUND REFUGES.—Section
9 316(b)(2)(E) (30 U.S.C. 876(b)(2)(E)) is amended—

10 (1) in clause (iii)(I), by inserting before the
11 semicolon the following: “and such requirement may
12 not be satisfied by placement of an order with any
13 company for future delivery of a portable refuge
14 chamber or other means of providing such emer-
15 gency supplies of breathable air”; and

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

17 “(vii) Not later than June 15, 2008,
18 the Secretary shall issue interim final reg-
19 ulations, consistent with the design criteria
20 recommended by National Institute for Oc-
21 cupational Safety and Health in its report
22 pursuant to section 13(b)(1) of the
23 MINER Act, and subject to the require-
24 ments of the next sentence, requiring each
25 emergency response plan to provide for the

1 installation of portable rescue chambers
2 meeting National Institute for Occupa-
3 tional Safety and Health design criteria;
4 refuge shelters carved out of the mine
5 workings and sealed with bulkheads meet-
6 ing National Institute for Occupational
7 Safety and Health design criteria; or other
8 refuge designs recommended by National
9 Institute for Occupational Safety and
10 Health that provide miners with equivalent
11 or better protection, in the working areas
12 of underground coal mines within 60 days
13 following plan approval. The regulations
14 shall further provide that in all cases a
15 portable refuge chamber shall be installed
16 and maintained within 500 feet of the
17 nearest working face in each working sec-
18 tion of an underground coal mine.”.

19 (c) IMPROVEMENTS TO SEALS, VENTILATION CON-
20 TROLS, AND ROCK DUSTING TO LIMIT THE DAMAGE
21 FROM EXPLOSIONS.—

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

1 (2) SEALS.—Section 303(z) (30 U.S.C. 863(z))

2 is amended by adding at the end the following:

3 “(4)(A) The Secretary shall inspect all seals under
4 construction after the date of enactment of the S–MINER
5 Act, during at least part of their construction, to ensure
6 the mine operator is complying with the approved seal
7 plan, and shall develop an inspection protocol for this pur-
8 pose.

9 “(B) Not later than 3 months of the date of enact-
10 ment of the S–MINER Act, the Secretary shall issue final
11 rules regarding approval, design, construction, inspection,
12 maintenance and monitoring of underground coal mine
13 seals which shall meet the requirements of this paragraph.
14 Except as otherwise provided by this paragraph, these reg-
15 ulations shall implement the most recent recommendations
16 of the National Institute of Occupational Safety and
17 Health concerning seal design, construction, inspection,
18 maintenance and monitoring. The regulations shall also
19 provide that all seals in a mine shall be monitored if they
20 are not designed or installed to withstand a constant total
21 pressure of 240 pounds per square inch, using a static
22 structural analysis. Monitoring of seals shall be done by
23 continuous monitoring devices within one year of the date
24 of enactment of this Act, and prior thereto by qualified
25 personnel at such intervals as the Secretary determines

1 are adequate to ensure safety. The Secretary shall require
2 mine operators to utilize a tamper-resistant method to re-
3 tain records of all such monitoring and ensure they are
4 available for examination and verification by the agency.
5 Monitoring of seals shall be done both by—

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

8 “(ii) for new seals, unless infeasible due to
9 property rights, sampling through a sufficient num-
10 ber of boreholes from the surface to the sealed areas
11 underground to effectively determine the gas con-
12 centrations within the area.

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

14 “(i) seal sampling pipes shall be composed of
15 materials that minimize the risk of transmitting any
16 electrical charge, and no conductive materials may
17 be used to line boreholes within three feet of the sur-
18 face;

19 “(ii) an action plan for sealing and repair be es-
20 tablished that will, among any other requirements,
21 include specific actions the mine operator will take
22 to protect miners during the critical time period im-
23 mediately after sealing or repair takes place, and
24 which shall be reviewed by personnel from the Mine

1 Safety and Health Administration who have the re-
2 quired expertise prior to approval; and

3 “(iii) methane pressures behind any seal re-
4 quired to be monitored shall be maintained in such
5 a manner as ensure that normal pressure variations
6 that can be reasonably anticipated in the area of the
7 seal do not bring the methane-air mixture into an
8 appropriate safety range surrounding the known ex-
9 plosive range of such mixtures.”.

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

13 “(4) Not later than 1 year after the date of enact-
14 ment of the S-MINER Act, the Secretary shall publish
15 interim final regulations to enhance the survivability of
16 underground mine ventilation controls. The Secretary
17 shall require that stoppings be constructed using solid con-
18 crete blocks laid wet and sealed with an appropriate bond-
19 ing agent on at least the side subjected to the velocity of
20 the intake air coursing through the entry, except that in
21 the case of stoppings constructed during barrier reduction
22 and pillar removal operations, such stoppings may be con-
23 structed using hollow block and an appropriate bonding
24 agent.”.

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

13 (d) LIMITING CONVEYOR BELT RISKS.—

14 (1) FLAME RESISTANT CONVEYOR BELTS.—
15 Section 311(h) is amended by adding at the end the
16 following: “Not later than 90 days after the date of
17 enactment of the S-MINER Act, the Secretary shall
18 publish interim final rules to revise the requirements
19 for flame resistant conveyor belts to ensure that they
20 meet the most recent recommendations from the Na-
21 tional Institute for Occupational Safety and Health,
22 and to ensure such belts are designed to limit smoke
23 and toxic emissions. A conveyor belt need not meet
24 the requirements of the preceding sentence if—

1 “(A) it was ordered, in a mine’s inventory,
2 or installed prior to the date of enactment of
3 the S–MINER Act, or it was ordered after the
4 date of enactment of the S–MINER Act and
5 the Secretary certifies that the mine operator
6 was unable to obtain a belt meeting the require-
7 ments of the preceding sentence; or

8 “(B) in the case of any such belt that has
9 been in use for more than 5 years in any capac-
10 ity in any mine, such belt has received an an-
11 nual inspection by a certified professional to en-
12 sure that the belt is free from visible defects
13 that could cause failure or possible ignition.”.

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

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

23 “(A) the mine operator establishes to the satis-
24 faction of the Secretary that significant safety con-
25 straints require such usage; and

1 “(B) the mine operator agrees to comply with
2 criteria established by the Secretary which shall, at
3 a minimum, include the conditions recommended by
4 the Technical Study Panel established under section
5 514.

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

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

15 “(3) Not later than 90 days after the date of enact-
16 ment of the S-MINER Act, all mine operators shall be
17 required to implement a communication program at each
18 of such operators’ facilities to ensure that each person en-
19 tering the operation is made aware at the start of that
20 person’s shift of the current conditions of the mine in gen-
21 eral and of that person’s specific worksite in particular.
22 In an effort to facilitate these communications, all agents
23 of the operator who are responsible for ensuring the safe
24 and healthful working conditions at the mine, including
25 mine foremen, assistant mine foremen, and mine exam-

1 iners, shall, upon exiting the mine or workplace, commu-
2 nicate with those replacing them on duty to verbally up-
3 date them on the conditions they observed during their
4 shift, including any conditions that are abnormal or haz-
5 ardous. Prior to entering the mine or other workplace the
6 on-coming agent of the operator shall meet with all mem-
7 bers of the crew they are responsible for and inform them
8 of the general conditions at the operation and in their spe-
9 cific work area. This process shall be completed prior to
10 the start of each shift at the operation and recorded in
11 a book designated for that purpose and available for in-
12 spection by all interested parties. In the event the oper-
13 ation is idle prior to the start of any shift the agent of
14 the operator shall meet with the individual or individuals
15 who were responsible for examining the mine to obtain the
16 necessary information.”.

17 (f) ATMOSPHERIC MONITORING SYSTEMS.—Section
18 317 (30 U.S.C. 877) is amended by adding at the end
19 the following:

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

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

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

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

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

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

22 (3) research needed for improved technology.

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

1 (1) AMENDMENTS TO EXISTING LAW.—Section
2 302 is amended—

3 (A) by amending the section heading to
4 read “ROOF AND RIB SUPPORT, BARRIER RE-
5 DUCTION AND PILLAR EXTRACTION, SPECIAL
6 ATTENTION TO DEEP MINING”;

7 (B) in subsection (a), by inserting after
8 the second sentence the following: “The Sec-
9 retary shall by regulation ensure the appro-
10 priate use of roof screen in belt entries,
11 travelroads, and designated intake and return
12 escapeways in accordance with the requirements
13 of subsection (g).”; and

14 (C) by inserting at the end the following:
15 “(g) Where screening is required, at least forty per-
16 cent of the width of the exposed roof shall be screened.
17 Screening to meet the requirements of this section must
18 have a load bearing capacity at least equivalent to a load
19 of 2.5 tones between bolts on a 4 foot pattern.

20 “(h)(1) An operator shall be required to have a cur-
21 rent and approved barrier reduction or pillar extraction
22 plan, or both, before performing such activities. The Sec-
23 retary shall only approve a barrier reduction or pillar ex-
24 traction plan if it provides adequate protection and mini-
25 mizes the risks for miners engaged in the activity, reflect-

1 ing appropriate engineering analysis, computer simula-
2 tions, and consultations with technical experts in the agen-
3 cy, in the National Institute for Occupational Safety and
4 Health, and in the Bureau of Land Management for any
5 mines leasing Federal coal resources, and only if the plan
6 complies with any specific requirements that may be
7 adopted by the Secretary for barrier reduction or pillar
8 extraction activities including requirements related to the
9 depth of the mine, geology of the mine, mine height and
10 methods, and emergency response capabilities.

11 “(2) A copy of a proposed barrier reduction or pillar
12 extraction plan, or both, shall be provided to the author-
13 ized representative of miners at least 10 days prior to sub-
14 mission to the Secretary for approval. The authorized rep-
15 resentative of miners may provide comments to the Sec-
16 retary who shall respond thereto.

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

22 “(i) Not later than 1 week before the commencement
23 of any barrier reduction or pillar extraction operations, the
24 mine operator shall notify the appropriate representative
25 of the Secretary of his intention to begin or resume barrier

1 reduction or pillar extraction. The Secretary shall docu-
2 ment such notification in writing, and shall, before barrier
3 reduction or pillar extraction operations begin, take action
4 to ensure that every person who will be participating in
5 such operations is trained in the operator's barrier reduc-
6 tion and/or and pillar extraction plan. The Secretary shall
7 observe the barrier reduction or pillar extraction oper-
8 ations for a sufficient period of time to ensure that the
9 mine operator is fully complying with the barrier reduction
10 or pillar extraction plan. The Secretary may preclude the
11 commencement of such operations or halt such operations
12 at any time the safety of miners comes into question.”.

13 (2) STUDY.—Not later than 1 year after the
14 date of enactment of this Act, the National Academy
15 of Sciences shall, in consultation with the National
16 Institute for Occupational Safety and Health, sub-
17 mit to the Secretary and to Congress recommenda-
18 tions for—

19 (A) actions that need to be taken to
20 strengthen existing requirements in law or reg-
21 ulations to ensure that miners are protected, to
22 the fullest extent permitted, from ground con-
23 trol hazards, including the special hazards asso-
24 ciated with barrier reduction and pillar extrac-
25 tion;

1 (B) adopting any existing technology to the
2 mining environment to improve miner protec-
3 tions during barrier reduction and pillar extrac-
4 tion, and on research needed for improved tech-
5 nology to improve miner protections during
6 such operations;

7 (C) adopting any existing technology to the
8 mining environment to improve miner protec-
9 tions during mining at depths below 1000 feet,
10 and on research needed for improved technology
11 to improve miner protections during such oper-
12 ations; and

13 (D) adopting any existing technology to
14 the mining environment to improve miner pro-
15 tections during secondary mining of coal re-
16 sources, and on research needed for improved
17 technology to improve miner protections during
18 such operations.

19 (j) SCSR INSPECTION PROGRAM.—

20 (1) IN GENERAL.—The Secretary shall—

21 (A) establish a program to randomly re-
22 move and have tested by the National Institute
23 for Occupational Safety and Health field sam-
24 ples of each model of self-rescue device used in
25 an underground coal mine in order to ensure

1 that the self-rescue devices in coal mine inven-
2 tories are working in accordance with the ap-
3 proval criteria for such devices;

4 (B) require a manufacturer of a self-rescue
5 device and the mine operator who owns a device
6 to contact the Secretary immediately upon noti-
7 fication of any potential problem with any such
8 device, and provide a copy of such notice to the
9 representative of miners at the affected oper-
10 ation; and

11 (C) notify immediately all operators of un-
12 derground coal mines if the Secretary detects or
13 is advised of any problems with the self-rescue
14 devices.

15 (2) DETERMINATION.—For the purposes of
16 paragraph (1)(A), the National Institute for Occupa-
17 tional Safety and Health shall determine the number
18 of field samples of each device to be removed for
19 testing, and the mines from which the samples are
20 to be drawn to ensure a random sample is obtained,
21 and shall provide mine operators with self-rescue de-
22 vices to replace any removed for random testing.
23 Should this testing reveal a potential problem with
24 a device that requires additional testing, the Sec-
25 retary shall remove such additional samples from

1 such mines as may be requested by the National In-
2 stitute for Occupational Safety and Health, and it
3 shall be the obligation of mine operators to provide
4 self-rescue devices to promptly replace any removed
5 as a result of such additional testing.

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

9 **“SEC. 207. APPLICATION TO UNDERGROUND METAL AND**
10 **NONMETAL MINES.**

11 “(a) CONVEYOR BELTS.—The requirements of sec-
12 tion 311(h) concerning conveyor belts in underground coal
13 mines, including the exceptions and limitations in connec-
14 tion therewith, shall also apply to conveyor belts in under-
15 ground metal and nonmetal mines.

16 “(b) SEALS.—The regulations to be issued pursuant
17 to section 303(z)(2) concerning the approval, design, con-
18 struction, inspection, maintenance and monitoring of un-
19 derground coal mine seals shall make the same rules appli-
20 cable to seals in underground metal and nonmetal mines
21 which have been classified by the Secretary as a category
22 I, III, or V mine pursuant to section 57.22003 of title
23 30, Code of Federal Regulations, because they naturally
24 emit defined quantities of methane.

1 “(c) ADVISORY COMMITTEE.—Promptly after the
2 date of enactment of the S–MINER Act The Secretary
3 shall establish an advisory committee to provide rec-
4 ommendations as to the need to revise the regulations ap-
5 plicable to underground metal and nonmetal mines to en-
6 sure that miners in such mines are as protected in emer-
7 gency situations as will be underground coal miners fol-
8 lowing the full implementation of the MINER Act, the
9 provisions of the S–MINER Act, and related actions by
10 the Secretary. The advisory committee shall be established
11 pursuant to the Advisory Committee Act, and shall pro-
12 vide recommendations to the Secretary and to Congress
13 not later than 21 months after the date of enactment of
14 this Act, including recommendations as to any action by
15 Congress that could facilitate the goal of providing equiva-
16 lent protections to miners in underground metal and
17 nonmetal mines.”.

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

20 (1) self-rescue device that permits the replen-
21 ishment of oxygen without requiring the device user
22 to remove the device; and

23 (2) underground communication device that
24 provides for communication between underground

1 and surface personnel via a wireless two-way me-
2 dium.

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

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

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

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

22 (4) improved technology, and improved proto-
23 cols for the use of existing technologies, to enable
24 conditions underground to be assessed promptly and
25 continuously in emergencies, so as to facilitate the

1 determination by appropriate officials of the instruc-
2 tions to provide both to miners trapped underground
3 and to mine rescue teams and others engaged in res-
4 cue efforts;

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

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

20 (7) protective strategies for the placement of
21 equipment, cables, and devices that are to be utilized
22 during mine emergencies such as communication
23 systems, oxygen supplies, and mine atmosphere
24 monitoring systems, to protect them from mine fires,
25 roof falls, explosions, and other damage.

1 **SEC. 5. SUPPLEMENTING ENFORCEMENT AUTHORITY.**

2 (a) AUTHORITY OF INSPECTORS.—Section 103(a)
3 (30 U.S.C. 813(a)) is amended by adding at the end the
4 following: “No person shall limit or otherwise prevent the
5 Secretary from entry on a coal or other mine, or interfere
6 with the Secretary’s inspection activities, investigative ac-
7 tivities, or rescue or recovery activities.”.

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

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

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

13 “(b) Within 270 days of the enactment of the S-
14 MINER Act, the Secretary shall establish a Master In-
15 spector program to ensure that the most experienced and
16 skilled employees in the Nation have the incentive, in
17 terms of responsibilities and pay, to serve as mine safety
18 and health inspectors in this Nation’s mines.

19 “(c) In order to ensure that the Secretary has ade-
20 quate time to provide that a sufficient number of qualified
21 and properly trained inspectors of the Mine Safety and
22 Health Administration are in place before any inspectors
23 employed as of the date of enactment of the S-MINER
24 Act retire, any ceilings on the number of personnel that
25 may be employed by the Administration with respect to

1 mine inspectors are abolished for the 5-year period begin-
2 ning on the date of enactment of such Act.

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

17 “(e) During the 5-year period beginning on the date
18 of enactment of the S-MINER Act, the Secretary shall
19 issue a special report to the appropriate committees of
20 Congress each year, or at such more frequent intervals
21 as the Secretary or any such committee may consider ap-
22 propriate, providing information about the actions being
23 taken under this section, the size and training of the in-
24 spector workforce at the Mine Safety and Health Adminis-
25 tration, the level of enforcement activities, and the number

1 of requests by individual operators of mines for compliance
2 assistance.”.

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

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

6 “(a) ESTABLISHMENT OF MINER OMBUDSMAN.—
7 There shall be established, within the Office of the Inspec-
8 tor General of the Department of Labor, the position of
9 Miner Ombudsman. The President, by and with the advice
10 and consent of the Senate, shall appoint an individual with
11 expertise in mine safety and health to serve as the Miner
12 Ombudsman. The Ombudsman shall have authority to
13 hire such personnel as are required to administer his du-
14 ties in accordance with applicable law, provided they meet
15 any general requirements for employment within the Of-
16 fice of the Inspector General.

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

18 “(1) recommend to the Secretary appropriate
19 practices to ensure the confidentiality of the identity
20 of miners, and the families or personal representa-
21 tives of the miners, who contact mine operators, au-
22 thorized representatives of the miners, the Mine
23 Safety and Health Administration, the Department
24 of Labor, or others with information about mine ac-
25 cidents, incidents, injuries, illnesses, possible viola-

1 tions of mandatory health or safety standard viola-
2 tions or plans or other mine safety and health con-
3 cerns;

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

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

1 the identify of those who provide such information to
2 the Ombudsman; and

3 “(4) monitor the Secretary of Labor’s efforts to
4 promptly act upon complaints filed by miners under
5 section 105(c) of the Act or pursuant to other pro-
6 grams administered by the Department to protect
7 whistleblowers, and report to Congress any rec-
8 ommendations that would enhance such rights or
9 protections.

10 “(c) AUTHORITY.—All complaints of operator viola-
11 tions of any section of this Act or regulations prescribed
12 under this Act that are reported to the Secretary shall
13 be forwarded to the Ombudsman for logging and appro-
14 priate action, except that this requirement shall be imple-
15 mented in such a way as to avoid interference in any way
16 with the ability of the Assistant Secretary for Mine Safety
17 and Health to take prompt actions that may be required
18 in such situations. This shall include complaints submitted
19 in writing, via any phone system, or orally, along with all
20 relevant information available regarding the complainant.
21 All such information shall be retained in a confidential
22 manner pursuant to the Privacy Act of 1974. The Om-
23 budsman shall use such information to monitor the actions
24 taken to ensure that miners’ complaints are addressed in
25 a timely manner and in compliance with the appropriate

1 statutes and regulations. The Ombudsman shall refer to
2 appropriate personnel within the Office of the Inspector
3 General for further review any case which he determines
4 was not handled in such fashion.

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.”.

11 (d) PATTERN OF VIOLATIONS.—

12 (1) PROMPT IDENTIFICATION OF PATTERN.—

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

20 (A) when a potential pattern of violations
21 is identified by any inspector or district man-
22 ager of the Mine Safety and Health Adminis-
23 tration, the operator of the coal or other mine
24 and the authorized representative of miners for
25 the mine shall be notified by the inspector or

1 district manager not later than 10 days after
2 such identification; and

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

14 (2) IDENTIFICATION OF PATTERN.—Section
15 104(e)(1) (30 U.S.C. 814(e)(1)) is amended by in-
16 sserting after the first sentence the following: “In de-
17 termining whether a pattern of violations exists, the
18 Secretary shall give due consideration to all relevant
19 information, such as the gravity of the violations,
20 operator negligence, history of violations, the num-
21 ber of inspection shifts the Secretary or her agents
22 have spent at the operation, and the frequency of
23 violations per number of inspection days spent at the
24 operation.”.

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

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

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

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

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

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

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

16 (e) NOTIFICATION OF ABATEMENT.—Section 104(b)
17 (30 U.S.C. 814(b)) is amended—

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

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

21 “(2) If,”; and

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

24 “(1) An operator issued a citation pursuant to sub-
25 section (a) shall notify the Secretary that the operator has

1 abated the violation involved. If such operator fails to pro-
2 vide such a notice to the Secretary within the abatement
3 time as provided for in the citation, the Secretary shall
4 issue an order that requires the operator (or the agent
5 of the operator) to immediately cause all persons, except
6 those persons referred to in subsection (c), to be with-
7 drawn from, and to be prohibited from entering, such area
8 as the Secretary determines until an authorized represent-
9 ative of the Secretary determines that such violation has
10 been abated. Notwithstanding any operator notice, no vio-
11 lation shall be determined to be abated until an authorized
12 representative of the Secretary visits the site and deter-
13 mines such violation has been fully abated.”.

14 (f) FAILURE TO TIMELY PAY PENALTY ASSESS-
15 MENTS.—Section 105(a) (30 U.S.C. 815(a)) is amend-
16 ed—

17 (1) by inserting “(1)” after the subsection des-
18 ignation; and

19 (2) by inserting at the end the following:

20 “(2)(A) The Secretary shall maintain a list of delin-
21 quent operators who fail to timely pay final assessments.
22 Any operator placed on that list for the first time shall
23 be subject to the requirements of this paragraph only until
24 such time as the Secretary determines that the operator
25 is no longer in arrears. Any operator placed on that list

1 for a subsequent time shall remain on the list until such
2 time as the Secretary determines the operator is com-
3 mitted to timely payment of final assessments. Any oper-
4 ator who believes he or she has been placed or retained
5 on the list in error may file with the Commission a request
6 for consideration of decision.

7 “(B) An operator on the list maintained pursuant to
8 paragraph (A) shall, not later than 30 days from the re-
9 ceipt of the notification of a citation issued by the Sec-
10 retary, notify the Secretary that the operator intends to
11 contest the citation or proposed assessment of a penalty,
12 and the operator shall place in escrow with the Secretary
13 the amount of the proposed assessment. The Secretary
14 shall place any escrow submitted by a mine operator for
15 this purpose into an interest bearing account and shall re-
16 lease the funds to the operator, including interest accrued,
17 upon the payment of any final assessment determination.
18 If notification and proof of escrow is not provided to the
19 Secretary, the citation and the proposed assessment of
20 penalty shall be deemed a final order of the Commission
21 and not subject to review by any court or agency.

22 “(C) In the event that a mine operator refuses to
23 comply with a final order of the Commission to pay civil
24 monetary penalties and statutory interest, the Secretary
25 shall have the authority to issue an order requiring the

1 mine operator to cease production under such final orders
2 of the Commission have been paid in full.”.

3 (g) MAXIMUM AND MINIMUM PENALTIES.—Section
4 110(a)(1) (30 U.S.C. 820(a)(1)) is amended by striking
5 “more than \$50,000 for each such violation.” and insert-
6 ing “less than \$500 or more than \$100,000 for each such
7 violation, except that, in the case of a violation of a man-
8 datory health or safety standard that could significantly
9 and substantially contribute to the cause and effect of a
10 coal or other mine health or safety hazard, the penalty
11 shall not be less than \$1,000 or more than \$150,000, for
12 each such violation.”.

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

15 (1) in section 105(b)(1)(B)—

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

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

22 (C) by adding at the end the following: “In
23 settling cases, the Secretary shall utilize the
24 same point system as that utilized to propose

1 penalties, so as to ensure consistency in oper-
2 ator penalty assessments.”; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) in section 103 (30 U.S.C. 813)—

4 (A) in subsection (b)—

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

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

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

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

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

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

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

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

15 (B) in subsection (c)—

16 (i) in paragraph (1)—

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

23 (II) by inserting at the end the
24 following: “No miner shall be required
25 to work under conditions he has rea-

1 sonable grounds to believe to be ab-
2 normally and immediately dangerous
3 to himself beyond the normal hazards
4 inherent in the operation which could
5 reasonably be expected to cause death
6 of serious physical harm before such
7 condition or practice can be abated.”;
8 and

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

15 (C) by adding at the end the following:

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

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

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

4 (B) in subsection (c)—

5 (i) by striking “Whenever a corporate
6 operator” and inserting “Whenever a mine
7 operator”;

8 (ii) by striking “safety standard” and
9 inserting “safety standard or requirement
10 of this Act”;

11 (iii) by inserting “partner, owner,”
12 after “director,”; and

13 (iv) by striking “such corporation”
14 and inserting “such mine operator”.

15 (l) FEDERAL LICENSING.—The Secretary shall
16 promptly establish an advisory committee to provide rec-
17 ommendations as to whether the Federal Mine Safety and
18 Health Act of 1977 should provide for Federal licensing
19 of mines, mine operators, mine controllers, or various mine
20 personnel in order to ensure that those engaged in mining
21 activities are not frequent violators of safety and health
22 requirements, and establish a national registry in connec-
23 tion therewith. The advisory committee shall be estab-
24 lished pursuant to the Advisory Committee Act, and shall
25 conduct a review of existing State licensing requirements

1 and registries, assess their effectiveness, and shall provide
2 its recommendations to Congress not later than 2 years
3 after the date of enactment of this Act.

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

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

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

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

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

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

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

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

14 (6) the contact phone numbers, including the
15 home phone number, for the authorized representa-
16 tive of the miners at each mine.

17 Each mine operator shall ensure that the Secretary is pro-
18 vided with completely current information required to be
19 maintained by the Secretary pursuant to paragraphs (1),
20 (3), and (6). The Secretary shall give due consideration
21 to the information collected by the joint government-indus-
22 try Mine Emergency Operations database.

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

1 (1) MINE LOCATIONS.—The Secretary shall es-
2 tablish, maintain, and keep current, on the Depart-
3 ment of Labor’s website, a detailed map or set of
4 maps showing the exact geographic location of each
5 operating or abandoned mine in the United States,
6 as determined by a global positioning system. Such
7 map or maps shall—

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

12 (B) be available to members of the public;

13 (C) allow a user to find the geographic lo-
14 cation of a particular mine, or the geographic
15 locations of all mines of a particular type in a
16 county, congressional district, State, or other
17 commonly used geographic region; and

18 (D) provide the geographic location of any
19 mining waste impoundments with links to asso-
20 ciated emergency contact information and avail-
21 able emergency response plans.

22 (2) REPOSITORY OF MINING MAPS.—The Sec-
23 retary shall establish a national repository for pre-
24 serving a digital archive of mining maps to be acces-
25 sible directly and without delay from the Depart-

1 ment’s web site. The mining maps shall include cop-
2 ies of all historic maps that can be obtained, as well
3 as copies of currently approved mining maps, which
4 the Secretary shall arrange to copy and preserve in
5 digital form. The Secretary may coordinate the oper-
6 ation of such repository with the Secretary of the In-
7 terior provided the other requirements of this para-
8 graph are observed. In addition, the Secretary shall
9 include in this repository copies of the most cur-
10 rently available mine emergency response plan, roof
11 plans, ventilation plans, and such other plans re-
12 quired for any type of mine, following any required
13 approval, so that they may be immediately accessed
14 in an emergency, in a manner consistent with the re-
15 quirements of section 312(b) of the Act.

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

19 (1) in the first sentence, by inserting “or re-
20 portable event” after “accident”;

21 (2) in the second sentence—

22 (A) by inserting “of accidents” after “the
23 notification”; and

24 (B) by inserting “, or in the case of a re-
25 portable event that is not required to be re-

1 ported as an accident, within 1 hour of the time
2 at which the operator realizes that the event
3 has occurred” before the period; and

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

7 “(1) a fire not required to be reported more
8 promptly;

9 “(2) a sudden change in mine atmospheric con-
10 ditions in a sealed area;

11 “(3) a coal or rock outburst that causes the
12 withdrawal of miners; or

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

18 (e) ENHANCING THE CAPABILITIES OF MINE RES-
19 CUE TEAMS.—

20 (1) AMENDMENT TO FMSHA.—Section
21 115(e)(2)(B) (30 U.S.C. 825(e)(2)(B)) is amended
22 by adding at the end the following:

23 “(v) The provision of uniform credentials to mine res-
24 cue team members, support personnel, or vehicles for im-
25 mediate access to any mine site.

1 “(vi) The plans required at each mine to ensure co-
2 ordination with local emergency response personnel and
3 to ensure that such personnel receive adequate training
4 to offer necessary assistance to mine rescue teams in the
5 event such assistance is requested. Such local emergency
6 response personnel shall not perform the duties of any
7 mine rescue team.

8 “(vii) Requirements to ensure that operators are pre-
9 pared to facilitate the work of mine rescue teams during
10 an emergency by—

11 “(I) storing necessary equipment not brought
12 on site by mine rescue teams in locations readily ac-
13 cessible to mine rescue teams;

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

16 “(III) identifying a space appropriate for co-
17 ordinating emergency communications with the mine
18 rescue team; and

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

1 (2) RESEARCH.—Section 22(h)(5)(A) of the Oc-
2 cupational Safety and Health Act of 1970 (29
3 U.S.C. 671(h)(5)(A)) is amended by adding before
4 the period at the end thereof: “including advanced
5 drilling technologies, and any special technologies re-
6 quired for safety or rescue in mining more than
7 1,500 feet in depth”.

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

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

11 “Not later than 6 months of the enactment of the
12 S-MINER Act, the Secretary shall establish and dissemi-
13 nate guidelines for rescue operations that will: (1) estab-
14 lish clear lines of authority within the agency for such op-
15 erations; (2) establish clear lines of demarcation so private
16 sector and State responders can properly implement their
17 responsibilities; (3) be appropriate for rescue in various
18 types of conditions reasonably likely to be encountered in
19 the United States, including such factors as the depth of
20 the mining, ground stability, ground slope, remoteness
21 from major roads, surface ownership and access problems,
22 and the availability of necessary communications linkages.
23 The Secretary shall consult with States, rescue teams and
24 other responders in developing such guidelines, and shall
25 update them from time to time based upon experience.”.

1 (g) AUTHORITY OF SECRETARY DURING RESCUE OP-
2 ERATIONS.—Section 103 (30 U.S.C. 813) is further
3 amended—

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

6 “If the representative of the Secretary supervises and di-
7 rects the rescue and recovery activities in such mine, the
8 operator shall comply with the requests of the authorized
9 representative of the Secretary to facilitate rescue and re-
10 covery activities including the provision of all equipment,
11 personnel, and other resources required to perform such
12 activities in accordance with the schedule and require-
13 ments established by the representative of the Secretary
14 for this purpose, and failure of the operator to comply in
15 this regard shall be considered an egregious violation of
16 this Act.”; and

17 (2) in subsection (k), by striking “, when
18 present,”.

19 (h) RESCUE COMMUNICATIONS.—

20 (1) REPEAL.—The MINER Act (30 U.S.C. 801
21 note) is amended by striking section 7, redesignating
22 sections 8 and 9 as sections 7 and 8, and sections
23 11 through 14 as sections 9 through 12, respec-
24 tively.

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

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

5 “The Secretary shall—

6 “(1) designate a full-time permanent employee
7 of the Mine Safety and Health Administration to
8 serve as a Family Liaison, who shall, at least in in-
9 stances where multiple miners are trapped, severely
10 injured or killed, act as the primary communication
11 with the families of the miners concerning all as-
12 pects of the rescue operations, including the location
13 or condition of miners, and assist the families in get-
14 ting answers to their questions, and otherwise serve
15 as a liaison to the families, and provide for the tem-
16 porary reassignment of other personnel who may be
17 required to assist the Family Liaison in connection
18 with a particular incident;

19 “(2) require the Mine Safety and Health Ad-
20 ministration to be as responsive as possible to re-
21 quests from the families of such miners for informa-
22 tion relating to the mine accident, and waive any
23 fees required for the production of documents pursu-
24 ant to 5 U.S.C. 552(a)(3) in connection with a re-
25 quest from a family member, or authorized rep-

1 representative of miners, for documents relating to a
2 mine fatality, notwithstanding any conditions for fee
3 waivers law that may otherwise be imposed by law;
4 and

5 “(3) designate a highly qualified representative
6 of the Secretary with experience in public commu-
7 nications to be present at mine accident sites where
8 rescues are in progress during the entire duration of
9 such rescues, to serve as the primary communicator
10 with the press and the public concerning all aspects
11 of the rescue operations, including the location or
12 condition of miners.”.

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

15 (A) in section 103(f), by inserting before
16 the period at the end of the first sentence the
17 following: “, and to participate in any accident
18 investigation pursuant to the requirements of
19 this Act. Any family member of a miner
20 trapped or otherwise unable to execute a des-
21 ignation of a miner representative on his or her
22 own behalf may do so on behalf of the miner for
23 any and all purposes”; and

24 (B) in section 316(b)(2)(E)(vi) (as added
25 by this Act), by adding at the end the following:

1 “The plan shall also set forth the operator’s
2 plans for assisting the Secretary in the imple-
3 mentation of section 118.”.

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

6 “(l) Rescue efforts for trapped miners shall not cease
7 as long as there is any possibility that miners are alive,
8 unless such efforts pose a serious danger to rescue or
9 other workers, and the decision to cease a rescue shall be
10 made by the Secretary’s representative. Thereafter, efforts
11 to recover the remains of miners shall continue unless such
12 efforts pose a serious danger to recovery workers, and the
13 decision to cease such recovery efforts shall be made by
14 the Secretary’s representative.”.

15 (j) ACCIDENT AND INCIDENT INVESTIGATIONS.—
16 Section 103(b) (30 U.S.C. 813(b), as amended by section
17 5(k)(2) of this Act, is further amended—

18 (1) by striking “For the purpose” and inserting
19 the following:

20 “(3) For the purpose”;

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

23 “(1) For all accident and incident investigations
24 under this Act, the Secretary shall determine why the acci-
25 dent or incident occurred; determine whether civil or

1 criminal requirements were violated and, if so, issue cita-
2 tions and penalties, and make recommendations to avoid
3 any recurrence. The Secretary shall also determine wheth-
4 er the conduct or lack thereof by Agency personnel con-
5 tributed to the accident or incident.

6 “(2)(A) For any accidents or incidents involving mul-
7 tiple serious injuries or deaths, or multiple entrapments,
8 there shall also be an independent investigation to con-
9 sider why the accident or incident occurred, make rec-
10 ommendations to avoid a recurrence, and determine
11 whether the conduct or lack thereof by agency personnel
12 contributed to the accident or incident.

13 “(B) Not later than 30 days after the date of enact-
14 ment of the S-MINER Act, the Secretary shall initiate
15 rulemaking activity to establish rules on the procedures
16 that will be used to investigate accidents and incidents in-
17 volving multiple serious injuries or deaths, or multiple en-
18 trapments, and shall directly contact and solicit the par-
19 ticipation of—

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

24 “(ii) organizations representing miners;

25 “(iii) mine rescue teams;

1 “(iv) Federal, State, and local investigation and
2 prosecutorial authorities; and

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

5 Such rulemaking shall be completed by October 1, 2008.

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

15 “(i) a representative from the National Insti-
16 tute for Occupational Safety and Health who shall
17 serve as the Chairman;

18 “(ii) a representative of mine operators with fa-
19 miliarity with the type of mining involved;

20 “(iii) a representative of mine workers with fa-
21 miliarity with the type of mining involved, who shall
22 be the workers’ certified bargaining representative at
23 the mine or, if there is no certified representative at
24 the mine, then a workers’ representative jointly se-
25 lected by organized labor organizations:

1 “(iv) an academic with expertise in mining; and
2 “(v) a representative of the State in which the
3 accident or incident occurred to be selected by the
4 Governor.

5 “(D) Such rules shall include procedures to ensure
6 that the Secretary will be able to cooperate fully with the
7 independent investigation team and will use the powers of
8 the Secretary under this section to help obtain information
9 and witnesses required by the independent investigation
10 team, procedures to ensure witnesses are not coerced and
11 to avoid conflicts of interest in witness representation, pro-
12 cedures to ensure confidentiality if requested by any wit-
13 ness, and procedures to enable the independent investiga-
14 tion team to conduct such public hearings as it deems ap-
15 propriate. Such rules shall also require that upon comple-
16 tion of any accident or incident investigation of accidents
17 or incidents involving multiple serious injuries or deaths,
18 or multiple entrapments, the independent investigation
19 team shall—

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

22 “(ii) make recommendations as to policy, regu-
23 latory, enforcement or other changes, including stat-
24 utory changes, which in the judgment of the inde-
25 pendent investigation team would best prevent a re-

1 currence of such actions or inactions at other mines;
2 and

3 “(iii) promptly make all such findings and rec-
4 ommendations public (except findings and rec-
5 ommendations that must be temporarily withheld in
6 connection with a criminal referral), including appro-
7 priate public hearings to inform the mining commu-
8 nity of their respective findings and recommenda-
9 tions.

10 “(E) As part of the Secretary’s annual report to Con-
11 gress pursuant to section 511(a), the Secretary shall re-
12 port on implementation of recommendations issued by any
13 independent investigation teams in the preceding 5
14 years.”; and

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

16 “(4) Nothing in this Act shall be construed to limit
17 the authority of the Chemical Safety and Hazard Inves-
18 tigation Board to conduct an independent investigation of
19 the accident or incident or the events or factors resulting
20 therein, nor with the authority of the Office of the Inspec-
21 tor General to conduct an investigation of the conduct of
22 DOL personnel in connection with an accident or incident
23 or the events or factors resulting therein, and the Sec-
24 retary shall cooperate in full with any such investigation.

1 Such investigation shall be in addition to any investigation
2 authorized by section 103(b).”.

3 **SEC. 7. RESPIRABLE DUST STANDARDS.**

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

7 **“SEC. 202. DUST STANDARD AND RESPIRATORY EQUIP-**
8 **MENT.**

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

22 “(2) At regular intervals to be prescribed by the Sec-
23 retary and the Secretary of Health and Human Services,
24 the Secretary will take accurate samples of the amount
25 of respirable dust in the coal mine atmosphere to which

1 each miner in the active workings of such mine is exposed
2 in order to determine compliance with the requirements
3 of paragraph (a)(1) of this section. In addition, the Sec-
4 retary shall cause to be made such frequent spot inspec-
5 tions as he deems appropriate of the active workings of
6 coal mines for the purpose of obtaining compliance with
7 the provisions of this title. All samples by the Secretary
8 shall be taken by a personal dust monitor that measures,
9 records and displays in real time the concentration of res-
10 pirable dust to which the miner wearing the device is ex-
11 posed, and shall include the sampling of areas, occupations
12 or persons. There is authorized to be appropriated to the
13 Secretary \$30,000,000 to purchase personal dust monitors
14 for the purposes of the preceding sentence. For the pur-
15 poses of determining compliance with the exposure limit
16 for respirable dust, only a single sample shall be required
17 to determine non-compliance, and there shall be no adjust-
18 ment for measurement error in the measured level of res-
19 pirable dust.

20 “(3) At intervals established by the Secretary, each
21 operator of a coal mine shall take accurate samples of the
22 amount of respirable dust in the mine atmosphere to
23 which each miner in the active workings of such mine is
24 exposed to identify sources of exposure so that the oper-
25 ator can take corrective action and assure that the expo-

1 sure of each mine is below the exposure limit. Under the
2 provisions of this Act, all such samples shall be taken by
3 a personal dust monitor that measures, records and dis-
4 plays the concentration of respirable dust to which the
5 miner wearing the device is exposed, and may include sam-
6 ples of less than a full shift. The results of such sampling
7 shall be transmitted to the Secretary in a manner estab-
8 lished by him, and recorded by him in a manner that will
9 assure application of the provisions of this section of the
10 Act.

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

19 “(b) Effective on the date of enactment of the S-
20 MINER Act, each operator of a coal or other mine shall
21 continuously maintain the concentration of respirable sili-
22 ca dust in the mine atmosphere during each shift to which
23 each miner in the active workings of such mine is exposed
24 at or below a time-weighted average of 0.05 milligrams
25 of respirable silica dust per cubic meter of air averaged

1 over ten hours or its dose-equivalent for shorter or longer
2 period of time. For the purposes of this paragraph, com-
3 pliance shall be determined by the sampling of areas, occu-
4 pations or persons, only a single sample shall be required
5 to determine non-compliance, and there shall be no adjust-
6 ment for measurement error in the measured level of res-
7 pirable silica dust. For the purposes of this paragraph,
8 a ‘dose-equivalent’ means the amount of dust that a miner
9 would inhale during his work shift as if he were working
10 for 10 hours, and the term ‘shift’ means portal-to-portal
11 for underground mines and ‘bank to bank’ for other
12 mines.

13 “(c) Respiratory equipment approved by the Sec-
14 retary and the Secretary of Health and Human Services
15 shall be made available to all persons whenever exposed
16 to concentrations of respirable dust or silica in excess of
17 the levels required to be maintained under this section.
18 Use of respirators shall not be substituted for environ-
19 mental control measures in the active workings. Each op-
20 erator shall maintain a supply of respiratory equipment
21 adequate to deal with occurrences of concentrations of res-
22 pirable dust and silica in the mine atmosphere in excess
23 of the levels required to be maintained under this section.

24 “(d) Each operator shall report and certify to the
25 Secretary at such intervals as the Secretary may require

1 as to the conditions in the active workings of a coal mine,
2 including, the average number of working hours worked
3 during each shift, the quantity and velocity of air regularly
4 reaching the working faces, the method of mining, the
5 amount and pressure of the water, if any, reaching the
6 working faces, and the number, location, and type of
7 sprays, if any, used.”.

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

10 (c) ASSESSMENT ON PROGRAM OPERATIONS OF CU-
11 MULATIVE IMPACT OF EXTERNAL REQUIREMENTS ADDED
12 SINCE 1977.—The Secretary shall request the National
13 Academy of Sciences to conduct a study of the impact on
14 the mine safety and health responsibilities of the Depart-
15 ment of Labor of various statutes, executive orders, and
16 memoranda applicable to the issuance of rulemaking and
17 guidance and to enforcement. The study shall include an
18 assessment of the Equal Access to Justice Act, the Regu-
19 latory Flexibility Act, the Small Business Regulatory En-
20 forcement Fairness Act, the Data Quality Act, the Paper-
21 work Reduction Act, the Unfunded Mandates Reform Act,
22 the Federal Advisory Committee Act, the Congressional
23 Review Act, Executive Order 12866, Executive Order
24 13422, and memoranda from the Office of Management
25 and Budget on guidance, risk assessment and cost anal-

1 ysis. The Secretary shall request that the National Acad-
2 emy of Sciences consult widely with experts in administra-
3 tive law and other disciplines knowledgeable about such
4 requirements, and to quantify to the extent possible the
5 costs to miners of the aforementioned requirements. The
6 Secretary shall further request that recommendations be
7 included in the report, and that such report and rec-
8 ommendations be completed, and forwarded to the Con-
9 gress, no later than 21 months after the date of enactment
10 of this Act.

11 **SEC. 8. OTHER HEALTH REQUIREMENTS.**

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

14 “(f) Notwithstanding the other requirements of this
15 section, not later than 30 days of the enactment of the
16 S-MINER Act, the National Institute for Occupational
17 Safety and Health shall forward to the Secretary its Rec-
18 ommended Exposure Limits (RELs) for chemical and
19 other hazards to which miners may be exposed, along with
20 the research data and other necessary information. Within
21 30 days of receipt of this information, the Secretary shall
22 to adopt such recommended exposure limits as the Permis-
23 sible Exposure Limits (PELs) for application in the min-
24 ing industry. The National Institute of Occupational Safe-
25 ty and Health shall annually submit to the Secretary any

1 additional or revised recommended exposure limits for all
2 chemicals and other hazards to which miners may be ex-
3 posed, and the Secretary shall be obligated to adopt such
4 exposure limits as PELs for application in the mining in-
5 dustry within 30 days of receipt of such information. Upon
6 petition from miners or mine operators providing credible
7 evidence that feasibility may be an issue for the industry
8 as a whole, the Secretary may review the feasibility of any
9 PEL established pursuant to this paragraph before plac-
10 ing it into effect and, following public notice and comment,
11 make necessary adjustments thereto, provided that the ad-
12 justed standard is as protective as is feasible, and that
13 the PEL shall go into effect as required by the other provi-
14 sions of this paragraph if such action is not completed
15 within one year. Moreover, upon petition from miners or
16 mine operators providing credible evidence that a REL
17 issued by the National Institute of Occupational Safety
18 and Health lacks the specificity required to serve as a
19 PEL pursuant to this Act, the Secretary may defer imple-
20 mentation of the requirements of this paragraph and shall
21 promptly request National Institute of Occupational Safe-
22 ty and Health to recommend a sufficiently detailed REL,
23 at which time the provisions of this paragraph shall be
24 implemented. Nothing in this subsection shall limit the
25 ability of the National Institute of Occupational Safety

1 and Health to make such recommendations more fre-
2 quently than 1 time per year, nor limit the Secretary from
3 establishing requirements for chemical and other sub-
4 stances or health hazards in the mining industry that are
5 more comprehensive and protective than those established
6 pursuant to this subsection and in accordance with the
7 other requirements of this section.”.

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

10 “(g) The health standard for asbestos established by
11 the Occupational Safety and Health Administration that
12 is set forth in section 1910.1001 of title 29, Code of Fed-
13 eral Regulations, or any subsequent revision of that regu-
14 lation, shall be adopted by the Secretary for application
15 in the mining industry not later than 30 days of the enact-
16 ment of the S-MINER Act. Nothing in this paragraph
17 shall preclude the Secretary from adopting regulations to
18 address asbestos hazards to miners not covered by the reg-
19 ulations of the Occupational Safety and Health Adminis-
20 tration.”.

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

24 “(h) Unless and until there is additional rulemaking
25 pursuant to the requirements of this section, the Secretary

1 shall apply the provisions of the interim final rule of Octo-
2 ber 3, 2000, concerning hazard communication, in lieu of
3 the final rule of June 21, 2002, concerning hazard com-
4 munication.”.

5 (d) STUDY ON MINER SUBSTANCE ABUSE ISSUES
6 THAT POSE SAFETY RISKS.—

7 (1) STUDY.—The Secretary of Labor shall con-
8 duct a study providing expert review and rec-
9 ommendations of policies designed to deal with sub-
10 stance abuse by miners, including the causes, na-
11 ture, and extent of such abuse, its impact on mine
12 safety and health, best practices for treatment, reha-
13 bilitation, and substance abuse testing policies, and
14 the adequacy of State laws and approaches. In con-
15 ducting such study, the Secretary shall solicit the
16 views of and consult with all interested parties, in-
17 cluding miners, miners’ representatives, mine opera-
18 tors, appropriate State agencies, and public health
19 and substance abuse experts.

20 (2) REPORT.—Not later than 6 months after
21 the date of enactment of this Act, the Secretary
22 shall report the findings and recommendations of the
23 study to the Committee on Education and Labor of
24 the House of Representatives and the Committee on

1 Health, Education, Labor and Pensions of the Sen-
2 ate.

3 (3) ADDITIONAL AUTHORITY.—If, as a result of
4 the study, the Secretary determines it to be feasible
5 and effective, the Secretary shall be authorized to
6 establish a program, in consultation with the parties
7 described in paragraph (1), within the Mine Safety
8 and Health Administration to provide for substance
9 abuse testing of miners as well as rehabilitation and
10 treatment of miners suffering from substance abuse.

11 (e) GRANTS FOR REHABILITATION.—

12 (1) IN GENERAL.—The Secretary of Labor, in
13 consultation with the Secretary of Health and
14 Human Services, is authorized to award grants to
15 appropriate entities and programs for the purpose of
16 providing rehabilitation services to current and
17 former miners suffering from mental health impair-
18 ments, including drug addiction and substance abuse
19 issues, which may have been caused or exacerbated
20 by their work as miners. The Secretary shall ensure
21 such funds are directed to those regions of the coun-
22 try most in need of such assistance.

23 (2) AUTHORIZATION OF APPROPRIATIONS.—

24 There is authorized to be appropriated to the Sec-

1 retary of Labor \$10,000,000 to carry out the grant
2 program authorized by this subsection.

3 **SEC. 9. MINE SAFETY PROGRAM FUND.**

4 Title I is further amended by adding at the end the
5 following:

6 **“SEC. 117. MINE SAFETY PROGRAM FUND.**

7 “(a) ESTABLISHMENT.—There is established in the
8 Treasury a separate account to be known as the ‘Mine
9 Safety Program Fund’ (in this section referred to as the
10 ‘Fund’).

11 “(b) TRANSFERS TO THE FUND.—There shall be de-
12 posited in the Fund—

13 “(1) all penalties collected under section 110;
14 and

15 “(2) any gifts, bequests, or donations to the
16 Fund from private entities or individuals, which the
17 Secretary of the Treasury is authorized to accept for
18 deposit into the Fund, except that the Secretary is
19 not authorized to accept any such gift, bequest, or
20 donation that—

21 “(A) attaches conditions inconsistent with
22 applicable laws or regulations; or

23 “(B) is conditioned upon or would require
24 the expenditure of appropriated funds that are
25 not available to the Secretary of Labor.

1 “(c) EXPENDITURES.—Amounts in the Fund shall be
2 available, as provided in appropriations Acts, only for in-
3 spections and investigations conducted pursuant to section
4 103.”.

Passed the House of Representatives January 16,
2008.

Attest:

LORRAINE C. MILLER,

Clerk.