

109TH CONGRESS
2D SESSION

S. 2798

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

IN THE SENATE OF THE UNITED STATES

MAY 12, 2006

Mr. KENNEDY (for himself, Mr. ROCKEFELLER, Mrs. MURRAY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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.**

4 This Act may be cited as the “Protecting America’s
5 Miners Act”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that, because the Sec-
8 retary of Labor has failed in recent years to adequately
9 fulfill the Secretary’s obligations under the Federal Mine
10 Safety and Health Act of 1977 (30 U.S.C. 801 et seq.)

1 to help miners survive underground mining emergencies
 2 and has failed to adequately prepare for the significant
 3 losses to a highly-trained Mine Safety and Health Admin-
 4 istration inspector workforce that are pending, Congres-
 5 sional intervention is needed.

6 **SEC. 3. DEFINITIONS.**

7 For purposes of this Act, any term used in this Act
 8 that is defined in section 3 of the Federal Mine Safety
 9 and Health Act of 1977 (30 U.S.C. 802) shall have the
 10 meaning given the term in such section.

11 **SEC. 4. IMPROVED ESCAPE AND REFUGE REQUIREMENTS**
 12 **TO HELP PROTECT MINERS IN THE EVENT OF**
 13 **AN EMERGENCY.**

14 Section 101 of the Federal Mine Safety and Health
 15 Act of 1977 (30 U.S.C. 811) is amended by adding at
 16 the end the following:

17 “(f) IMPROVED MANDATORY SAFETY STANDARDS TO
 18 PROTECT MINERS IN THE EVENT OF AN EMERGENCY.—

19 “(1) IN GENERAL.—Notwithstanding any other
 20 provision of this section regarding the promulgation
 21 of mandatory health or safety standards, and in ad-
 22 dition to the requirements of any mandatory health
 23 or safety standards promulgated under this Act, the
 24 following shall be mandatory safety standards that
 25 apply to all underground areas of coal mines:

1 “(A) EMERGENCY DETECTION, WARNING,
2 AND MESSAGING SYSTEMS.—Not later than 180
3 days after the date of enactment of the Pro-
4 tecting America’s Miners Act, an operator of an
5 underground coal mine shall—

6 “(i) install atmospheric detection and
7 warning systems, in all underground areas
8 where miners normally work and travel,
9 that provide real-time information regard-
10 ing methane levels, carbon monoxide levels,
11 oxygen levels, air flow, and temperature
12 and that can, to the maximum extent pos-
13 sible, withstand explosions and fires;

14 “(ii) provide each miner working in
15 any underground area of the mine with a
16 device that is designed to enable the oper-
17 ator to send a message to the miner pro-
18 viding instructions during an emergency;
19 and

20 “(iii) as soon as the National Institute
21 for Occupational Safety and Health cer-
22 tifies that portable devices providing 2-way
23 communications between the surface and
24 underground are available and are capable
25 of operation during some mining emer-

1 agencies, provide each miner working in any
2 underground area of the mine with such a
3 device, and, in addition, continue to pro-
4 vide the devices required under clause (ii)
5 until such time as the 2-way communica-
6 tions devices required by this paragraph
7 are certified by the National Institute for
8 Occupational Safety and Health to be at
9 least as effective as the other devices in all
10 mining emergency circumstances.

11 The Secretary shall establish procedures for
12 regularly consulting with other Federal, State,
13 and foreign agencies with respect to new com-
14 munications technologies for use in accordance
15 with clauses (ii) and (iii) and for expediting the
16 approval of such new technologies.

17 “(B) FACILITATING EMERGENCY ES-
18 CAPE.—

19 “(i) EMERGENCY CACHES.—Not later
20 than 30 days after the date of enactment
21 of the Protecting America’s Miners Act,
22 each operator of an underground coal mine
23 shall provide emergency underground
24 caches of air and self-contained breathing
25 equipment, in amounts sufficient to enable

1 all miners working anywhere in a par-
2 ticular mine to escape from the mine in an
3 emergency in which any direct inhalation
4 of the mine atmosphere by a miner would
5 likely produce adverse health effects. The
6 caches shall be located throughout the
7 mine, including in escapeways. In order to
8 determine the specific location of each
9 cache in an escapeway, an operator shall
10 develop a risk assessment plan that cal-
11 culates the necessary amount and place-
12 ment of the caches based on the travel
13 time by foot from the deepest work area in
14 the mine to the surface, taking into ac-
15 count the impact of emergency conditions
16 and the demographics of the miners in the
17 particular mine, except that such caches
18 shall not be spaced further apart than the
19 distance an average miner can walk in 30
20 minutes. Each cache located in an
21 escapeway shall be marked with flame re-
22 tardant lifeline cords or similar devices,
23 and reflective material shall be placed at
24 25-foot intervals along the route to the
25 cache to indicate the cache's location.

“(ii) ADDITIONAL EMERGENCY
 CACHES.—Until the date that the require-
 ment to provide refuges under subpara-
 graph (C) is effective, each operator of an
 underground coal mine shall maintain, in
 addition to the caches described in clause
 (i), emergency supplies of air and self-con-
 tained breathing equipment for miners
 awaiting rescue due to an emergency with-
 in the mine. Such equipment shall be suffi-
 cient to supply the highest number of min-
 ers expected to be in the working areas of
 the mine for not less than 5 days.

“(iii) SELF-RESCUE DEVICE AP-
 PROVAL AND INSPECTION PROCESS.—

“(I) EXPEDITED APPROVAL.—

The Secretary shall expedite the proc-
 ess for approving any self-rescue de-
 vice that permits the replenishment of
 oxygen without requiring the device
 user to remove the device.

“(II) INSPECTION PROGRAM.—

The Secretary shall—

“(aa) establish a program to
 randomly check samples of any

1 self-rescue devices used in an un-
2 derground coal mine on a regular
3 basis, in order to ensure that the
4 self-rescue devices in the coal
5 mine inventories are working in
6 accordance with the approval cri-
7 teria for such devices;

8 “(bb) require a manufac-
9 turer of a self-rescue device to
10 contact the Secretary imme-
11 diately upon notification of any
12 potential problem with such de-
13 vice; and

14 “(cc) notify immediately all
15 operators of underground coal
16 mines if the Secretary detects or
17 is advised of any problems with
18 the self-rescue devices.

19 “(iv) SELF-RESCUE DEVICE MAINTEN-
20 NANCE SCHEDULE.—Not later than 30
21 days after the date of enactment of the
22 Protecting America’s Miners Act, each op-
23 erator of an underground coal mine shall
24 develop and implement a maintenance
25 schedule for—

1 “(I) checking the reliability of
2 self-rescue devices;

3 “(II) retiring older self-rescue de-
4 vices first; and

5 “(III) introducing new self-rescue
6 device technology, such as devices
7 with interchangeable air or oxygen
8 cylinders that do not require doffing
9 to replenish airflow and devices with
10 air or oxygen supplies of more than 1
11 hour, as such devices are approved by
12 the Secretary and become available.

13 “(v) SELF-RESCUE DEVICE TRAIN-
14 ING.—Not later than 30 days after the
15 date of enactment of the Protecting Amer-
16 ica’s Miners Act, each operator of an un-
17 derground coal mine shall implement a
18 program to ensure that all miners are
19 trained in the proper procedures for don-
20 ning self-rescue devices, switching from 1
21 self-rescue device to another, and ensuring
22 a proper fit of the self-rescue devices.

23 “(vi) FLAME-RETARDANT LIFE-
24 LINES.—Whenever required by law to in-
25 stall lifelines, each operator of an under-

1 ground coal mine shall use flame-retardant
2 lifelines exclusively.

3 “(C) REFUGES.—Not later than 1 year
4 after the date of enactment of the Protecting
5 America’s Miners Act, each operator of an un-
6 derground coal mine shall establish or provide
7 refuges underground in sufficient locations to
8 ensure that all miners working at any location
9 in a mine can reach a refuge that can accom-
10 modate such miner within 15 minutes, should
11 such miner determine that escape from the
12 mine is not the best course of action to take
13 during an emergency and without regard to the
14 length of time it might take to escape the mine.
15 Each such refuge shall be a stand-alone refuge.
16 Each operator shall ensure that the locations of
17 the refuges are marked and kept current on
18 mine maps, and that mine rescue teams for the
19 mine are regularly provided with information
20 about the design and features of the refuges.
21 Each such refuge shall be—

22 “(i) equipped with adequate air, food,
23 and water to accommodate the calculated
24 number of miners for a period of not less
25 than 5 days;

1 “(ii) constructed or designed in such a
2 way as to seal out toxic mine atmospheres
3 and to eliminate the buildup of toxic
4 atmospheres or other hazardous conditions
5 within the refuge; and

6 “(iii) equipped with telephone lines, or
7 equivalent 2-way communications to the
8 surface.

9 “(D) TRACKING DEVICES TO FACILITATE
10 RESCUE.—Not later than 180 days after the
11 date of enactment of the Protecting America’s
12 Miners Act, each operator of an underground
13 coal mine shall provide each miner working in
14 an underground location with an electronic
15 tracking device that permits the continuous
16 tracking of the location of the miner within the
17 mine, for the purpose of facilitating the miner’s
18 rescue in an emergency.

19 “(2) MODIFICATION AND SUPERSESSION.—The
20 provisions of this subsection may be superseded in
21 whole or in part by improved mandatory safety
22 standards promulgated by the Secretary under this
23 section, and may be modified with respect to a par-
24 ticular mine only in accordance with the require-
25 ments and procedure described in subsection (c).

1 “(3) IMMINENT DANGER.—Any violation of a
 2 mandatory safety standard under this subsection, or
 3 a mandatory safety standard promulgated by the
 4 Secretary that supercedes a standard under this
 5 subsection, shall be deemed to create an imminent
 6 danger to miners for the purposes of section 107.”.

7 **SEC. 5. FACILITATING THE PROMPT INITIATION OF RES-**
 8 **CUE AND MINE RECOVERY EFFORTS.**

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

23 (b) CONTACT INFORMATION.—The Secretary shall
 24 provide the emergency call center with a contact list, up-
 25 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 (c) MINE LOCATION MAPS.—The Secretary shall es-
21 tablish, maintain, and keep current on the Department of
22 Labor’s website a detailed map or set of maps showing
23 the exact geographic location of each operating or aban-
24 doned mine in the United States. Such map or maps
25 shall—

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

5 (2) be available to members of the public; and

6 (3) allow a user to find the geographic location
7 of a particular mine, or the geographic locations of
8 all mines of a particular type in a county, congres-
9 sional district, State, or other commonly used geo-
10 graphic region.

11 (d) REQUIRED NOTIFICATION OF EMERGENCIES AND
12 SERIOUS INCIDENTS.—

13 (1) REPORTING.—An operator of a coal or
14 other mine shall report any emergency or serious
15 mine incident to the emergency call center not later
16 than 15 minutes after becoming aware of any such
17 emergency or serious mine incident, regardless of
18 whether miners remain at risk.

19 (2) EMERGENCIES OR SERIOUS INCIDENTS.—
20 For the purposes of this subsection, an emergency or
21 serious mine incident includes—

22 (A) a mine fire;

23 (B) a roof fall, unplanned inundation, col-
24 lapse, or unplanned explosion;

1 (C) a sudden change in mine atmospheric
2 conditions;

3 (D) a rib fall that impairs ventilation or
4 impedes passage;

5 (E) a coal or rock outburst that causes the
6 withdrawal of miners;

7 (F) the failure of an impoundment;

8 (G) damage to hoisting equipment in a
9 shaft or slope that endangers an individual;

10 (H) any incident that leads to the death,
11 serious injury with a reasonable potential to
12 cause death, or entrapment, of a miner; and

13 (I) any other emergency or incident, as de-
14 termined in regulations promulgated by the
15 Secretary, that needs to be examined in order
16 to determine if the working conditions in the
17 mine are safe.

18 (e) ENHANCING THE AVAILABILITY AND CAPABILI-
19 TIES OF MINE RESCUE TEAMS.—

20 (1) COAL MINE RESCUE TEAM REQUIRE-
21 MENTS.—

22 (A) OPERATORS WITH LESS THAN 36 EM-
23 PLOYEES.—Not later than 30 days after the
24 date of enactment of this Act, an operator of an
25 underground coal mine for which the total num-

1 ber of employees employed in the underground
2 areas of the mine, at any time during the pre-
3 vious year, did not exceed 35 employees, shall
4 ensure that—

5 (i) each mine rescue team that is re-
6 quired under section 115(e) of the Federal
7 Mine Safety and Health Act of 1977 (30
8 U.S.C. 825(e)), and the regulations pro-
9 mulgated pursuant to such section, in-
10 cludes miners who are employed by the op-
11 erator and who are familiar with the work-
12 ings of such mine;

13 (ii) all members of the mine rescue
14 team can reach the mine in not more than
15 1 hour; and

16 (iii) each mine rescue team conducts
17 at least 2 mine rescue drills each year in
18 the mine for which the rescue team has
19 mine rescue responsibilities.

20 (B) OPERATORS WITH 36 OR MORE EM-
21 PLOYEES.—Not later than 30 days after the
22 date of enactment of this Act, an operator of an
23 underground coal mine that employed, at any
24 time during the previous year, a total of 36 or

1 more employees for work in the underground
2 areas of the mine shall ensure that—

3 (i) each mine rescue team that is re-
4 quired under section 115(e) of the Federal
5 Mine Safety and Health Act of 1977 (30
6 U.S.C. 825(e)), and the regulations pro-
7 mulgated pursuant to such section, con-
8 sists exclusively of miners who are em-
9 ployed by such operator and who are famil-
10 iar with the workings of such mine; and

11 (ii) all members of the mine rescue
12 team are available for immediate deploy-
13 ment.

14 (C) ADDITIONAL TEAMS.—Nothing in this
15 paragraph shall be construed to preclude an op-
16 erator of a coal mine from contracting for the
17 services of other mine rescue teams in addition
18 to the mine rescue teams required by section
19 115(e) of the Federal Mine Safety and Health
20 Act of 1977 (30 U.S.C. 825(e)).

21 (2) MINE RESCUE TEAM REGULATIONS.—

22 (A) INITIATION OF RULEMAKING.—Not
23 later than 30 days after the date of enactment
24 of this Act, the Secretary shall initiate rule-
25 making activity to revise the Secretary’s regula-

1 tions under section 115(e) of the Federal Mine
2 Safety and Health Act of 1977 (30 U.S.C.
3 825(e)) regarding mine rescue teams, and shall
4 in this regard directly contact and solicit the
5 participation of—

6 (i) all existing mine rescue teams;

7 (ii) organizations representing other
8 types of rescue workers (such as fire-
9 fighters);

10 (iii) State and local emergency au-
11 thorities; and

12 (iv) others whom the Secretary deter-
13 mines may have information relevant to
14 this rulemaking.

15 (B) INTERIM FINAL RULES.—The Sec-
16 retary shall issue the regulations revised under
17 subparagraph (A) as interim final rules not
18 later than 270 days after the date of enactment
19 of this Act.

20 (C) CONTENT OF REVISED REGULA-
21 TIONS.—In revising the regulations under sub-
22 paragraph (A), the Secretary shall address, at
23 a minimum—

24 (i) the training and qualifications for
25 mine rescue team members;

1 (ii) the equipment and technology
2 used in mine rescue;

3 (iii) the structure and organization of
4 mine rescue teams;

5 (iv) the identification of qualified sur-
6 face personnel to communicate with mine
7 rescue teams during rescue efforts;

8 (v) the provision of uniform creden-
9 tials to mine rescue team members, sup-
10 port personnel, or vehicles for immediate
11 access to any mine site;

12 (vi) the plans required at each mine to
13 ensure coordination with local emergency
14 response personnel and to ensure that such
15 personnel receive adequate training in
16 mine rescue needs and in coordinating with
17 the mine rescue teams at each mine; and

18 (vii) requirements to ensure that oper-
19 ators are prepared to facilitate the work of
20 mine rescue teams during an emergency
21 by—

22 (I) storing necessary equipment
23 in locations readily accessible to mine
24 rescue teams;

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

4 (III) identifying a space appro-
5 priate for coordinating emergency
6 communications with the mine rescue
7 team; and

8 (IV) identifying and maintaining
9 separate spaces for family members,
10 community members, and press to as-
11 semble during an emergency so as to
12 facilitate communications with these
13 groups while ensuring the efforts of
14 the mine rescue teams are not hin-
15 dered.

16 **SEC. 6. ENHANCING THE INVESTIGATION OF MINE ACCI-**
17 **DENTS.**

18 (a) INVESTIGATIONS BY THE SECRETARY.—Not later
19 than 30 days after the date of enactment of this Act, the
20 Secretary shall initiate rulemaking activity to establish
21 regulations regarding the investigation of accidents, and
22 shall in this regard directly contact and solicit the partici-
23 pation of—

24 (1) individuals identified by the Secretary as
25 family members of miners who perished in mining

1 accidents of any type during the preceding 10-year
2 period;

3 (2) organizations representing miners;

4 (3) mine rescue teams;

5 (4) Federal, State, and local investigation and
6 prosecutorial authorities; and

7 (5) others whom the Secretary determines may
8 have information relevant to this rulemaking.

9 (b) INTERIM FINAL RULES.—The Secretary shall
10 issue the regulations revised under subsection (a) as in-
11 terim final rules not later than 270 days after the date
12 of enactment of this Act.

13 (c) CONTENT OF REVISED REGULATIONS.—In revis-
14 ing the regulations under subsection (a), the Secretary
15 shall require that—

16 (1) public hearings are held in connection with
17 any fatal accident and in connection with an acci-
18 dent that could have resulted in multiple fatalities;

19 (2) the recommendations of an investigation of
20 an accident undertaken in accordance with sub-
21 section (a) are made public at such time as the rec-
22 ommendations are provided to the Secretary;

23 (3) the Secretary designate an employee as a
24 family advocate to act as the liaison between the
25 Secretary and the family of any miner killed or in-

1 jured in any accident that is the subject of an inves-
2 tigation;

3 (4) the family of a miner killed or injured in an
4 accident that is the subject of an investigation is in-
5 cluded in all phases of the investigation (including
6 witness interviews) in which a representative of the
7 operator or the miners is included; and

8 (5) the Secretary is the coordinator of rescue
9 operations and communications with the public and
10 families during any investigation of an accident.

11 (d) INDEPENDENT INVESTIGATIONS.—After an acci-
12 dent and upon the timely request of the authorized rep-
13 resentative of the miners at a mine, or representatives of
14 a majority of the families of the miners killed or who could
15 have been killed in such accident, the Secretary shall con-
16 tract with the Chemical Safety and Hazard Investigation
17 Board or other appropriate independent Federal investiga-
18 tive authority to conduct an independent investigation of
19 the accident and provide recommendations to the Sec-
20 retary. Such investigation shall be in addition to any inves-
21 tigation conducted by the Secretary, and shall be con-
22 ducted pursuant to whatever procedures such authority
23 determines are appropriate for the investigation. The Sec-
24 retary shall provide such authority with all information
25 and expertise requested, and shall pay for such authority

1 to conduct the authority's investigation, including the
 2 costs of obtaining the services of independent experts re-
 3 quired for any such investigation.

4 **SEC. 7. ENHANCING OPERATOR AND OWNER INCENTIVES**
 5 **TO AVOID SERIOUS RISKS TO MINERS.**

6 (a) PATTERN OF VIOLATIONS.—

7 (1) PROMPT IDENTIFICATION OF PATTERN.—

8 Not later than 30 days after the date of enactment
 9 of this Act, the Secretary is directed to revise the
 10 regulations issued by the Secretary under section
 11 104(e) of the Federal Mine Safety and Health Act
 12 of 1977 (30 U.S.C. 814(e)) as in effect on the day
 13 before such date of enactment, so that the regula-
 14 tions provide that—

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

23 (B) after receiving the notification de-
 24 scribed in subparagraph (A), the appropriate
 25 Administrator of the Mine Safety and Health

1 Administration shall promptly review any such
 2 potential pattern of violations and, not later
 3 than 45 days after receiving such notification,
 4 make a final decision as to whether a citation
 5 for a violation of section 104(e) of such Act
 6 should be issued.

7 (2) FINE FOR A PATTERN OF VIOLATIONS.—
 8 Section 110 of the Federal Mine Safety and Health
 9 Act of 1977 (30 U.S.C. 820) is amended—

10 (A) by redesignating subsections (i)
 11 through (l) as subsections (k) through (n), re-
 12 spectively; and

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

15 “(i) PATTERNS OF VIOLATION.—

16 “(1) ADDITIONAL PENALTIES.—If the Sec-
 17 retary determines that a pattern of violations under
 18 section 104(e) exists, the Secretary shall assess a
 19 penalty, in addition to any other penalty authorized
 20 in this Act for a violation of such section, of not
 21 more than \$1,000,000. All operators of the mine, in-
 22 cluding any corporate owners, shall be jointly and
 23 severally liable for such penalty. The amount of the
 24 assessment under this paragraph shall be designed
 25 to ensure a change in the future conduct of the op-

1 erators and corporate owners of such mine with re-
 2 spect to mine safety and health, given the overall re-
 3 sources of such operators. Notwithstanding sub-
 4 section (k) or section 113, a penalty assessed by the
 5 Secretary under this paragraph may not be reduced
 6 by the Commission.

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

18 (b) FAILURE TO TIMELY PAY PENALTY ASSESS-
 19 MENTS.—Section 105(a) of the Federal Mine Safety and
 20 Health Act of 1977 (30 U.S.C. 815(a)) is amended by
 21 striking the third sentence and inserting the following:
 22 “The operator has 30 days from the receipt of the notifica-
 23 tion of a citation issued by the Secretary, to notify the
 24 Secretary that the operator intends to contest the citation
 25 or proposed assessment of a penalty and to place in escrow

1 the amount of the proposed assessment. If notification and
2 proof of escrow is not provided to the Secretary, the cita-
3 tion and the proposed assessment of penalty shall be
4 deemed a final order of the Commission and not subject
5 to review by any court or agency. It shall be a felony for
6 any mine operator, including a corporate owner, of a coal
7 or other mine to fail to timely pay any penalties assessed
8 under this Act for which payment has been demanded.
9 Such felony shall be punishable, for each operator, by a
10 fine of not less than \$50,000 or by imprisonment for 1
11 year.”.

12 (c) MAXIMUM AND MINIMUM PENALTIES.—Section
13 110(a) of the Federal Mine Safety and Health Act of 1977
14 (30 U.S.C. 820(a)) is amended by striking “more than
15 \$50,000 for each such violation.” and inserting “less than
16 \$500 or more than \$250,000 for each such violation, ex-
17 cept that, in the case of a violation of a mandatory health
18 or safety standard that could significantly and substan-
19 tially contribute to the cause and effect of a coal or other
20 mine health or safety hazard, the penalty shall not be less
21 than \$1,000 or more than \$500,000, for each such viola-
22 tion.”.

23 (d) PENALTY FOR LATE ACCIDENT NOTIFICATION.—
24 Section 110 of the Federal Mine Safety and Health Act
25 of 1977 (30 U.S.C. 820) is further amended by inserting

1 after subsection (i) (as inserted by subsection (a)(2)(B))
 2 the following:

3 “(j) Any operator who fails to provide timely notifica-
 4 tion of an accident as required under section 5(d)(1) of
 5 the Protecting America’s Miners Act shall be subject to
 6 a civil penalty of not more than \$100,000 and not less
 7 than \$60,000.”.

8 (e) FACTORS IN ASSESSING PENALTIES.—Section
 9 110(k) of the Federal Mine Safety and Health Act of 1977
 10 (30 U.S.C. 820(k)) (as redesignated by subsection
 11 (a)(2)(A)) is amended by striking “the appropriateness”
 12 and all that follows through “the gravity” and inserting
 13 “whether the operator was negligent, the gravity”.

14 **SEC. 8. ENHANCING THE WILLINGNESS OF MINERS AND**
 15 **OTHERS TO REPORT SERIOUS PROBLEMS BE-**
 16 **FORE ACCIDENTS OCCUR.**

17 (a) ESTABLISHMENT OF MINER OMBUDSMAN.—
 18 There shall be established, within the Office of the Inspec-
 19 tor General of the Department of Labor, the position of
 20 Miner Ombudsman. The President, by and with the advice
 21 and consent of the Senate, shall appoint an individual with
 22 expertise in mine safety and health to serve as the Miner
 23 Ombudsman.

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

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

13 (2) establish a toll-free telephone number and
14 appropriate Internet website to permit individuals to
15 confidentially report possible mine mandatory health
16 or safety standard violations or concerns;

17 (3) collect and forward information concerning
18 possible mine safety or health violations or concerns
19 to the appropriate officials of the Mine Safety and
20 Health Administration for investigation;

21 (4) monitor the Secretary of Labor's efforts to
22 protect miners who report that their rights under
23 section 105(c) of the Federal Mine Safety and
24 Health Act of 1977 (30 U.S.C. 815(c)) have been
25 violated, and report to the Congress any rec-

1 ommendations that would enhance such rights or
 2 protections; and

3 (5) carry out public outreach and other activi-
 4 ties to facilitate the transmission, to the Secretary of
 5 Labor, of information that could help avoid mine ac-
 6 cidents.

7 **SEC. 9. ENHANCING SPECIFIC PROTECTIONS FOR UNDER-**
 8 **GROUND COAL MINES.**

9 (a) SPECIAL RULEMAKING.—Section 101 of the Fed-
 10 eral Mine Safety and Health Act of 1977 (30 U.S.C. 811)
 11 is further amended by adding at the end the following:

12 “(g) SPECIAL RULEMAKING PROCEDURE FOR CER-
 13 TAIN SAFETY STANDARDS.—

14 “(1) CONVEYOR BELTS.—

15 “(A) RULEMAKING AND INTERIM STAND-
 16 ARDS.—Not later than 30 days after the date
 17 of enactment of the Protecting America’s Min-
 18 ers Act, the Secretary shall initiate rulemaking
 19 activity to develop mandatory safety standards
 20 that implement the recommendations of the Na-
 21 tional Institute for Occupational Safety and
 22 Health that conveyor belts used in underground
 23 coal mines be designed to minimize flamma-
 24 bility. Such revised mandatory safety standards
 25 shall be issued as interim standards not later

1 than 270 days after the date of enactment of
2 such Act.

3 “(B) APPLICATION OF PRIOR RULE.—Until
4 such time as the interim standards described in
5 subparagraph (A) are issued and new require-
6 ments on belt flammability are placed in effect,
7 the amendments made by the final rule pub-
8 lished on April 2, 2004, in the Federal Register
9 (69 Fed. Reg. 17480) to the mandatory safety
10 standard in section 75.350 of title 30, Code of
11 Federal Regulations, that authorized belt haul-
12 age entries to be used to ventilate active work-
13 ing places are suspended, and the Secretary
14 shall instead apply such mandatory safety
15 standard as it was in effect the day before the
16 effective date of such amendments, including all
17 modifications to such standard that had been
18 approved under subsection (c) prior to such
19 date and any new modifications that may be ap-
20 proved in the future pursuant to such section.

21 “(2) SEALS.—Not later than 30 days after the
22 date of enactment of the Protecting America’s Min-
23 ers Act, the Secretary shall initiate rulemaking ac-
24 tivity to modernize and improve mandatory safety
25 standards relating to seals for abandoned areas in

1 underground coal mines. As part of such rule-
2 making, the Secretary shall improve the 20 psi
3 standard described in section 75.335(a)(2) of title
4 30, Code of Federal Regulations (as such section
5 was in effect on the date of enactment of the Pro-
6 tecting America's Miners Act). The Secretary shall
7 give particular consideration to the standards in ef-
8 fect in other countries in this regard. The Secretary
9 shall further consider whether the Secretary should
10 be required to inspect seals during the seals' con-
11 struction to ensure that the seals are constructed in
12 a safe manner. Such improved standards shall be
13 issued as interim mandatory safety standards not
14 later than 270 days after the date of enactment of
15 such Act.''.
16

17 (b) INSPECTIONS.—Not later than 30 days after the
18 date of enactment of this Act, the Secretary, in consulta-
19 tion with the National Institute for Occupational Safety
20 and Health, shall inspect the seals of all underground coal
21 mines that are composed of nontraditional materials to en-
22 sure that the seals are constructed in a safe manner, and
23 ensure that any seals not constructed in a safe manner,
24 regardless of plan approval, shall be promptly recon-
structed in a safe manner.

1 (c) MANDATORY HEALTH STANDARDS.—Section 101
 2 of the Federal Mine Safety and Health Act of 1977 (30
 3 U.S.C. 811) is further amended by adding at the end the
 4 following:

5 “(h) MANDATORY HEALTH STANDARDS REGARDING
 6 RESPIRABLE DUST.—

7 “(1) CONCENTRATION LEVELS.—Notwith-
 8 standing any other requirement of this Act, not later
 9 than 90 days after the date of enactment of the Pro-
 10 tecting America’s Miners Act, the Secretary shall
 11 initiate rulemaking to develop mandatory health
 12 standards that provide the following:

13 “(A) CONCENTRATION OF DUST.—Each
 14 operator of a coal or other mine shall continu-
 15 ously maintain a concentration of respirable
 16 dust, in the mine atmosphere during each shift
 17 for which a miner is in any place in a coal or
 18 other mine where miners are normally required
 19 to work or travel of such mine, of not more
 20 than 1.0 milligram of respirable dust per cubic
 21 meter of air. In meeting this standard, each
 22 concentration level shall be considered inde-
 23 pendently and shall not be averaged with other
 24 such levels.

1 “(B) METHOD OF MEASUREMENT.—To
 2 measure the level of respirable dust in an area
 3 of a coal or other mine, samples shall be
 4 taken—

5 “(i) by the Secretary, and not by the
 6 operator; or

7 “(ii) by using personal dust monitors
 8 on not less than 3 miners per shift, in each
 9 working section of the mine and in any
 10 section known to contain the highest dust
 11 concentrations, and not less often than
 12 once a year on each miner who works in
 13 the mine.

14 “(2) INTERIM RULES.—The Secretary shall
 15 issue the rules described under subparagraph (A) as
 16 interim final rules not later than 270 days after the
 17 date of enactment of the Protecting America’s Min-
 18 ers Act.”.

19 (d) DEFINITION.—Section 101 of the Federal Mine
 20 Safety and Health Act of 1977 (30 U.S.C. 811) is further
 21 amended by adding at the end the following:

22 “(i) DEFINITION OF COAL MINE.—In this section,
 23 the term ‘coal mine’ has the meaning given the term in
 24 section 3(h)(2).”.

1 **SEC. 10. TRANSITION TO A NEW GENERATION OF INSPEC-**
2 **TORS.**

3 (a) PERSONNEL CEILING TEMPORARILY LIFTED.—
4 In order to ensure that the Secretary has adequate time
5 to provide that a sufficient number of qualified and prop-
6 erly trained inspectors of the Mine Safety and Health Ad-
7 ministration are in place before any inspectors employed
8 as of the date of enactment of this Act retire, any ceilings
9 on the number of personnel that may be employed by the
10 Administration with respect to mine inspectors are abol-
11 ished for the 5-year period beginning on the date of enact-
12 ment of this Act.

13 (b) CONTRACTING WITH RETIRED INSPECTORS.—In
14 the event that, notwithstanding the actions taken by the
15 Secretary to hire and train qualified inspectors, the Sec-
16 retary is temporarily unable, at any time during the 5-
17 year period beginning on the date of enactment of this
18 Act, to employ the number of inspectors required to staff
19 all district offices devoted to coal mines at the offices'
20 highest historical levels without transferring personnel
21 from supervisory or plan review activities or diminishing
22 current inspection resources devoted to other types of
23 mines, the Administration is authorized to hire retired in-
24 spectors on a contractual basis to conduct mine inspec-
25 tions, and the retirement benefits of such retired inspec-

1 tors shall not be reduced as a result of such temporary
2 contractual employment.

3 (c) COMPLIANCE ASSISTANCE AND USER FEES.—In
4 order to ensure that the Secretary has sufficient resources
5 to carry out the enforcement activities of the Mine Safety
6 and Health Administration, during the 5-year period be-
7 ginning on the date of enactment of this Act—

8 (1) the Secretary may not expend any funds for
9 technical support or advice to an operator of a par-
10 ticular mine, except funds that are collected through
11 user fees under paragraph (2); and

12 (2) an operator who incurs a civil penalty or
13 fine under section 110 of the Federal Mine Safety
14 and Health Act of 1977 (30 U.S.C. 820) shall be as-
15 sessed a user fee of \$100 for each such penalty or
16 fine, which fee shall be maintained in a separate ac-
17 count by the Secretary to be used to provide tech-
18 nical support or advice to mine operators, with pri-
19 ority given to requests from mines with less than 20
20 miners.

21 (d) REPORT TO THE CONGRESS.—During the 5-year
22 period beginning on the date of enactment of this Act, the
23 Secretary shall issue a special report to the appropriate
24 committees of Congress every year, or at such more fre-
25 quent intervals as the Secretary or any such committee

1 may deem appropriate, providing information about the
2 actions being taken under this section, the size and train-
3 ing of the inspector workforce at the Mine Safety and
4 Health Administration, the level of enforcement activities,
5 and the number of requests by individual operators of
6 mines for compliance assistance.

7 **SEC. 11. TECHNOLOGY RESEARCH PRIORITIES.**

8 In implementing its research activities in the 5-year
9 period beginning on the date of enactment of this Act, the
10 National Institute for Occupational Safety and Health
11 shall give due consideration to new technologies, and exist-
12 ing technologies that could be adapted for use in under-
13 ground coal or other mines, that could facilitate the sur-
14 vival of miners in a mining emergency. Such technologies
15 include—

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

18 (2) two-way communications devices capable of
19 delivering enhanced performance between under-
20 ground locations or between underground and sur-
21 face locations, including devices capable of sustained
22 operation after underground explosions;

23 (3) improved battery capacity and common con-
24 nection specifications to enable emergency commu-
25 nication devices for miners to be run from the same

1 portable power source as a headlamp, continuous
2 dust monitor, or other device carried by a miner;

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

6 (5) improved technology, and improved proto-
7 cols for the use of existing technologies, to enable
8 conditions underground to be assessed promptly and
9 continuously in emergencies, so as to facilitate the
10 determination by appropriate officials of the instruc-
11 tions to provide both to miners trapped underground
12 and to mine rescue teams and others engaged in res-
13 cue efforts.

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