

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2768
OFFERED BY MR. MILLER

Strike all after the enacting clause and insert the following:

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:

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16 Act of 1977 are out of date after 40 years, posing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

1 (3) the Secretary of Labor has failed in recent
2 years to adequately fulfill the Secretary's obligations
3 under the Federal Mine Safety and Health Act of
4 1977 (30 U.S.C. 801 et seq.), additional Congres-
5 sional intervention is needed.

6 **SEC. 3. DEFINITIONS; REFERENCES.**

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

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

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

14 (b) REFERENCES.—Except as otherwise expressly
15 provided, whenever in this Act an amendment or repeal
16 is expressed in terms of an amendment to, or repeal of,
17 a section or other provision, the reference shall be consid-
18 ered to be made to a section or other provision of the Fed-
19 eral Mine Safety and Health Act of 1977 (30 U.S.C. 801
20 et seq.).

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

22 (a) POST ACCIDENT COMMUNICATIONS.—Section
23 316(b)(2)(F)(ii) (30 U.S.C. 876(b)(2)(F)(ii)) is amend-
24 ed—

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

3 (2) by inserting after the clause designation the
4 following—

5 “(I) Not later than 120 days after the en-
6 actment of the S-MINER Act, a plan shall, to
7 be in approved status, provide for a post acci-
8 dent communication system between under-
9 ground and surface personnel, and for an elec-
10 tronic tracking system permitting surface per-
11 sonnel to determine the location of any persons
12 trapped underground, that utilizes a system at
13 least as effective as a ‘leaky feeder’ or wireless
14 mesh type communication and tracking system
15 currently in use in the industry. These systems
16 shall be enhanced physically, electronically, or
17 redundantly, to improve their survivability in
18 the event of a mine disaster. In addition, to be
19 in approved status, an emergency response plan
20 must be revised promptly to incorporate new
21 technology which the National Institute for Oc-
22 cupational Safety and Health certifies can be
23 added to the existing system to improve its abil-
24 ity to facilitate post-accident communication
25 with or tracking of miners. No miner shall be

1 disciplined based on information obtained from
2 an electronic communications and tracking sys-
3 tem.”.

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

7 “(vi) Not later than June 15, 2008,
8 the Secretary shall issue interim final reg-
9 ulations, consistent with the design criteria
10 recommended by National Institute for Oc-
11 cupational Safety and Health in its report
12 pursuant to section 13(b)(1) of the
13 MINER Act, and subject to the require-
14 ments of the next sentence, requiring each
15 emergency response plan to provide for the
16 installation of portable rescue chambers
17 meeting National Institute for Occupa-
18 tional Safety and Health design criteria, or
19 refuge shelters carved out of the mine
20 workings and sealed with bulkheads meet-
21 ing National Institute for Occupational
22 Safety and Health design criteria, or other
23 refuge designs recommended by National
24 Institute for Occupational Safety and
25 Health that provide miners with equivalent

1 or better protection, in the working areas
2 of underground coal mines within 60 days
3 following plan approval. In addition, a plan
4 shall provide for the maintenance of a mo-
5 bile emergency shelter within 500 feet of
6 the nearest working face in each working
7 section of an underground coal mine.”.

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

11 (1) REPEAL.—The MINER of 2006 (30 U.S.C.
12 801 note) is amended by striking section 10 (con-
13 cerning sealing of abandoned areas) and redesign-
14 ating sections 11 through 14 as sections 10
15 through 13, respectively.

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

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

24 “(B) Not later than 3 months of the date of en-
25 actment of the S-MINER Act, the Secretary shall

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

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

1 “(ii) for new seals, unless infeasible due to
2 property rights, sampling through a sufficient
3 number of boreholes from the surface to the
4 sealed areas underground to effectively deter-
5 mine the gas concentrations within the area.

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

8 “(i) seal sampling pipes shall be composed
9 of materials that minimize the risk of transmit-
10 ting any electrical charge, and no conductive
11 materials may be used to line boreholes within
12 three feet of the surface;

13 “(ii) an action plan for sealing and repair
14 be established that will, among any other re-
15 quirements, include specific actions the mine
16 operator will take to protect miners during the
17 critical time period immediately after sealing or
18 repair takes place, and which shall be reviewed
19 by personnel from the Mine Safety and Health
20 Administration who have the required expertise
21 prior to approval; and

22 “(iii) methane pressures behind any seal
23 required to be monitored shall be maintained in
24 such a manner as ensure that normal pressure
25 variations that can be reasonably anticipated in

1 the area of the seal do not bring the methane-
2 air mixture into an appropriate safety range
3 surrounding the known explosive range of such
4 mixtures.”.

5 (3) VENTILATION CONTROLS.—Section 303(c)
6 (30 U.S.C. 863) is amended by inserting at the end
7 the following new paragraph:

8 “(4) Not later than 1 year after the date of en-
9 actment of the S-MINER Act, the Secretary shall
10 publish interim final regulations to enhance the sur-
11 vivability of underground mine ventilation controls.
12 The Secretary shall require that stoppings be con-
13 structed using solid concrete blocks laid wet and
14 sealed with an appropriate bonding agent on at least
15 the side subjected to the velocity of the intake air
16 coursing through the entry, except that in the case
17 of stoppings constructed during barrier reduction
18 and pillar removal operations, such stoppings may
19 be constructed using hollow block and an appro-
20 priate bonding agent.”.

21 (4) ROCK DUSTING.—Section 304(d) (30
22 U.S.C. 864) is amended by adding at the end the
23 following: “Not later than June 15, 2009, the Na-
24 tional Institute for Occupational Safety and Health
25 shall issue recommendations as to whether changes

1 to these requirements are necessary to ensure an
2 equivalent level of protection in light of any changes
3 to the size and composition of coal dust since these
4 requirements were established, and the Secretary of
5 Labor shall take appropriate action, including the
6 issuance of an emergency temporary standard if
7 warranted, to respond to these recommendations.”.

8 (d) LIMITING CONVEYOR BELT RISKS.—

9 (1) FLAME RESISTANT CONVEYOR BELTS.—

10 Section 311(h) is amended by adding at the end the
11 following: “Not later than January 31, 2008, the
12 Secretary shall publish interim final regulations to
13 ensure that all conveyor belts in use in underground
14 coal mines are replaced no later than December 31,
15 2012, with belts that can meet the flame resistance
16 requirements recommended by the National Institute
17 for Occupational Safety and Health, and which limit
18 smoke and toxic emissions. Any conveyor belt in-
19 stalled in a coal mine after the date of enactment of
20 the S-MINER Act shall meet such requirements.”.

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

23 “(3) Not later than June 20, 2008, the Sec-
24 retary shall revise the regulations prescribed pursu-
25 ant to this section to require, in any coal mine, re-

1 regardless of the date on which it was opened, that
2 belt haulage entries not be used to ventilate active
3 working places. The Secretary may agree to a modi-
4 fication of this requirement, pursuant to the proce-
5 dures of section 101(c), if and only if—

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

9 “(B) the mine operator agrees to comply
10 with criteria established by the Secretary which
11 shall, at a minimum, include the conditions rec-
12 ommended by the Technical Study Panel estab-
13 lished under section 514.

14 “(4) Plans that have been approved by the Sec-
15 retary prior to the date of enactment of the S-
16 MINER Act that permit the use of belt-air to venti-
17 late active working places in a mine are permitted
18 to remain in use to complete current mining up until
19 the date of issuance of the regulation required pur-
20 suant to subsection (3).”.

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

24 “(3) Not later than 90 days after the date of
25 enactment of the S-MINER Act, all mine operators

1 shall be required to implement a communication pro-
2 gram at each of such operators' facilities to ensure
3 that each person entering the operation is made
4 aware at the start of that person's shift of the cur-
5 rent conditions of the mine in general and of that
6 person's specific worksite in particular. In an effort
7 to facilitate these communications, all agents of the
8 operator who are responsible for ensuring the safe
9 and healthful working conditions at the mine, includ-
10 ing mine foremen, assistant mine foremen, and mine
11 examiners, shall, upon exiting the mine or work-
12 place, communicate with those replacing them on
13 duty to verbally update them on the conditions they
14 observed during their shift, including any conditions
15 that are abnormal or hazardous. Prior to entering
16 the mine or other workplace the on-coming agent of
17 the operator shall meet with all members of the crew
18 they are responsible for and inform them of the gen-
19 eral conditions at the operation and in their specific
20 work area. This process shall be completed prior to
21 the start of each shift at the operation and recorded
22 in a book designated for that purpose and available
23 for inspection by all interested parties. In the event
24 the operation is idle prior to the start of any shift
25 the agent of the operator shall meet with the indi-

1 vidual or individuals who were responsible for exam-
2 ining the mine to obtain the necessary informa-
3 tion.”.

4 (f) ATMOSPHERIC MONITORING SYSTEMS.—Section
5 317 (30 U.S.C. 877) is amended by adding at the end
6 the following:

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

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

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

21 (h) LIGHTNING STUDY BY NATIONAL ACADEMY OF
22 SCIENCES.—Not later than 1 year after the date of enact-
23 ment of this Act, the National Academy of Sciences shall
24 submit to the Secretary and to Congress recommendations
25 on—

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

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

9 (3) research needed for improved technology.

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

13 (1) AMENDMENTS TO EXISTING LAW.—Section
14 302 is amended—

15 (A) by amending the section heading to
16 read “ROOF AND RIB SUPPORT, BARRIER RE-
17 Duction AND PILLAR EXTRACTION, SPECIAL
18 ATTENTION TO DEEP MINING”;

19 (B) in subsection (a), by inserting after
20 the second sentence the following: “The Sec-
21 retary shall by regulation ensure the appro-
22 priate use of roof screen in belt entries,
23 travelroads, and designated intake and return
24 escapeways in accordance with the requirements
25 of subsection (g).”; and

1 (C) by inserting at the end the following:

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

7 “(h)(1) An operator shall be required to have a cur-
8 rent and approved barrier reduction or pillar extraction
9 plan, or both, before performing such activities. The Sec-
10 retary shall only approve a barrier reduction or pillar ex-
11 traction plan if it provides adequate protection and mini-
12 mizes the risks for miners engaged in the activity, reflect-
13 ing appropriate engineering analysis, computer simula-
14 tions, and consultations with technical experts in the agen-
15 cy, in the National Institute for Occupational Safety and
16 Health, and in the Bureau of Land Management for any
17 mines leasing Federal coal resources, and only if the plan
18 complies with any specific requirements that may be
19 adopted by the Secretary for barrier reduction or pillar
20 extraction activities including requirements related to the
21 depth of the mine, geology of the mine, mine height and
22 methods, and emergency response capabilities.

23 “(2) A copy of a proposed barrier reduction or pillar
24 extraction plan, or both, shall be provided to the author-
25 ized representative of miners at least 10 days prior to sub-

1 mission to the Secretary for approval. The authorized rep-
2 resentative of miners may provide comments to the Sec-
3 retary who shall respond thereto.

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

9 “(i) Not later than 1 week before the commencement
10 of any barrier reduction or pillar extraction operations, the
11 mine operator shall notify the appropriate representative
12 of the Secretary of his intention to begin or resume barrier
13 reduction or pillar extraction. The Secretary shall docu-
14 ment such notification in writing, and shall, before barrier
15 reduction or pillar extraction operations begin, take action
16 to ensure that every person who will be participating in
17 such operations is trained in the operator’s barrier reduc-
18 tion and/or and pillar extraction plan. The Secretary shall
19 observe the barrier reduction or pillar extraction oper-
20 ations for a sufficient period of time to ensure that the
21 mine operator is fully complying with the barrier reduction
22 or pillar extraction plan. The Secretary may preclude the
23 commencement of such operations or halt such operations
24 at any time the safety of miners comes into question.”.

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

7 (A) actions that need to be taken to
8 strengthen existing requirements in law or reg-
9 ulations to ensure that miners are protected, to
10 the fullest extent permitted, from ground con-
11 trol hazards, including the special hazards asso-
12 ciated with barrier reduction and pillar extrac-
13 tion;

14 (B) adopting any existing technology to the
15 mining environment to improve miner protec-
16 tions during barrier reduction and pillar extrac-
17 tion, and on research needed for improved tech-
18 nology to improve miner protections during
19 such operations;

20 (C) adopting any existing technology to the
21 mining environment to improve miner protec-
22 tions during mining at depths below 1000 feet,
23 and on research needed for improved technology
24 to improve miner protections during such oper-
25 ations; and

1 (D) adopting any existing technology to
2 the mining environment to improve miner pro-
3 tections during secondary mining of coal re-
4 sources, and on research needed for improved
5 technology to improve miner protections during
6 such operations.

7 (j) SCSR INSPECTION PROGRAM.—

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

9 (A) establish a program to randomly re-
10 move and have tested by the National Institute
11 for Occupational Safety and Health field sam-
12 ples of each model of self-rescue device used in
13 an underground coal mine in order to ensure
14 that the self-rescue devices in coal mine inven-
15 tories are working in accordance with the ap-
16 proval criteria for such devices;

17 (B) require a manufacturer of a self-rescue
18 device and the mine operator who owns a device
19 to contact the Secretary immediately upon noti-
20 fication of any potential problem with any such
21 device, and provide a copy of such notice to the
22 representative of miners at the affected oper-
23 ation; and

24 (C) notify immediately all operators of un-
25 derground coal mines if the Secretary detects or

1 is advised of any problems with the self-rescue
2 devices.

3 (2) DETERMINATION.—For the purposes of
4 paragraph (1)(A), the National Institute for Occupa-
5 tional Safety and Health shall determine the number
6 of field samples of each device to be removed for
7 testing, and the mines from which the samples are
8 to be drawn to ensure a random sample is obtained,
9 and shall provide mine operators with self-rescue de-
10 vices to replace any removed for random testing.
11 Should this testing reveal a potential problem with
12 a device that requires additional testing, the Sec-
13 retary shall remove such additional samples from
14 such mines as may be requested by the National In-
15 stitute for Occupational Safety and Health, and it
16 shall be the obligation of mine operators to provide
17 self-rescue devices to promptly replace any removed
18 as a result of such additional testing.

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

22 **“SEC. 206. APPLICATION TO UNDERGROUND METAL AND**
23 **NONMETAL MINES.**

24 “(a) CONVEYOR BELTS.—The regulations to be
25 issued pursuant to section 311(h) concerning conveyor

1 belts shall also provide that all conveyor belts in use in
2 underground metal and nonmetal mines are to be re-
3 placed, on the same schedule, with belts that can meet
4 the flame resistance requirements recommended by the
5 National Institute for Occupational Safety and Health,
6 and which limit smoke and toxic emissions. Any conveyor
7 belt installed in an underground metal or nonmetal mine
8 after the date of enactment of the S-MINER Act shall
9 meet such requirements.

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

19 “(c) ADVISORY COMMITTEE.—Promptly after the
20 date of enactment of the S-MINER Act The Secretary
21 shall establish an advisory committee to provide rec-
22 ommendations as to the need to revise the regulations ap-
23 plicable to underground metal and nonmetal mines to en-
24 sure that miners in such mines are as protected in emer-
25 gency situations as will be underground coal miners fol-

1 lowing the full implementation of the MINER Act, the
2 provisions of the S-MINER Act, and related actions by
3 the Secretary. The advisory committee shall be established
4 pursuant to the Advisory Committee Act, and shall pro-
5 vide recommendations to the Secretary and to Congress
6 not later than 21 months after the date of enactment of
7 this Act, including recommendations as to any action by
8 Congress that could facilitate the goal of providing equiva-
9 lent protections to miners in underground metal and
10 nonmetal mines.”.

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

13 (1) self-rescue device that permits the replen-
14 ishment of oxygen without requiring the device user
15 to remove the device; and

16 (2) underground communication device that
17 provides for communication between underground
18 and surface personnel via a wireless two-way me-
19 dium.

20 (m) TECHNOLOGY AND MINE EMERGENCY HEALTH
21 AND SAFETY RESEARCH PRIORITIES.—In implementing
22 its research activities in the 5-year period beginning on
23 the date of enactment of this Act, the National Institute
24 for Occupational Safety and Health shall give due consid-
25 eration to new technologies, and existing technologies that

1 could be adapted for use in underground coal or other
2 mines, that could facilitate the survival of miners in a min-
3 ing emergency. Such technologies include—

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

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

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

14 (4) improved technology, and improved proto-
15 cols for the use of existing technologies, to enable
16 conditions underground to be assessed promptly and
17 continuously in emergencies, so as to facilitate the
18 determination by appropriate officials of the instruc-
19 tions to provide both to miners trapped underground
20 and to mine rescue teams and others engaged in res-
21 cue efforts;

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

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

12 (7) protective strategies for the placement of
13 equipment, cables, and devices that are to be utilized
14 during mine emergencies such as communication
15 systems, oxygen supplies, and mine atmosphere
16 monitoring systems, to protect them from mine fires,
17 roof falls, explosions, and other damage.

18 **SEC. 5. SUPPLEMENTING ENFORCEMENT AUTHORITY.**

19 (a) **AUTHORITY OF INSPECTORS.**—Section 103(a)
20 (30 U.S.C. 813(a)) is amended by adding at the end the
21 following: “No person shall limit or otherwise prevent the
22 Secretary from entry on a coal or other mine, or interfere
23 with the Secretary’s inspection activities, investigative ac-
24 tivities, or rescue or recovery activities.”.

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

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

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

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

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

21 “(d) In the event that, notwithstanding the actions
22 taken by the Secretary to hire and train qualified inspec-
23 tors, the Secretary is temporarily unable, at any time dur-
24 ing the 5-year period beginning on the date of enactment
25 of the S-MINER Act, to employ the number of inspectors

1 required to staff all district offices devoted to coal mines
2 at the offices' highest historical levels without transferring
3 personnel from supervisory or plan review activities or di-
4 minishing current inspection resources devoted to other
5 types of mines, the Administration is authorized to hire
6 retired inspectors on a contractual basis to conduct mine
7 inspections, and the retirement benefits of such retired in-
8 spectors shall not be reduced as a result of such temporary
9 contractual employment.

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

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

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

24 “(a) ESTABLISHMENT OF MINER OMBUDSMAN.—
25 There shall be established, within the Office of the Inspec-

1 tor General of the Department of Labor, the position of
2 Miner Ombudsman. The President, by and with the advice
3 and consent of the Senate, shall appoint an individual with
4 expertise in mine safety and health to serve as the Miner
5 Ombudsman. The Ombudsman shall have authority to
6 hire such personnel as are required to administer his du-
7 ties in accordance with applicable law, provided they meet
8 any general requirements for employment within the Of-
9 fice of the Inspector General.

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

11 “(1) recommend to the Secretary appropriate
12 practices to ensure the confidentiality of the identity
13 of miners, and the families or personal representa-
14 tives of the miners, who contact mine operators, au-
15 thorized representatives of the miners, the Mine
16 Safety and Health Administration, the Department
17 of Labor, or others with information about mine ac-
18 cidents, incidents, injuries, illnesses, possible viola-
19 tions of mandatory health or safety standard viola-
20 tions or plans or other mine safety and health con-
21 cerns;

22 “(2) establish a toll-free telephone number and
23 appropriate Internet website to permit individuals to
24 confidentially report mine accidents, incidents, inju-
25 ries, illnesses, possible violations of mandatory

1 health or safety standard violations or plans or other
2 mine safety and health concerns, and provide plastic
3 wallet cards, refrigerator magnets, or similar devices
4 to all mine operators, which mine operators shall
5 distribute to all current and new miners, with con-
6 tact information for such confidential reports, and
7 also provide supplies of these devices to miner com-
8 munities;

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

20 “(4) monitor the Secretary of Labor’s efforts to
21 promptly act upon complaints filed by miners under
22 section 105(c) of the Act or pursuant to other pro-
23 grams administered by the Department to protect
24 whistleblowers, and report to Congress any rec-

1 ommendations that would enhance such rights or
2 protections.

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

23 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
24 are hereby authorized to be appropriated to the Ombuds-
25 man such sums as may be required for the implementation

1 of his duties out of the sums otherwise made available to
2 the Mine Safety and Health Administration for its activi-
3 ties.”.

4 (d) PATTERN OF VIOLATIONS.—

5 (1) PROMPT IDENTIFICATION OF PATTERN.—

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

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

21 (B) after receiving the notification de-
22 scribed in subparagraph (A), the appropriate
23 official of the Mine Safety and Health Adminis-
24 tration shall promptly review any such potential
25 pattern of violations and, not later than 45

1 days after receiving such notification, make a
2 final decision as to whether a citation for a vio-
3 lation of section 104(e) of such Act should be
4 issued in light of the gravity of the violations
5 and the operator's conduct in connection there-
6 with.

7 (2) IDENTIFICATION OF PATTERN.—Section
8 104(e)(1) (30 U.S.C. 814(e)(1)) is amended by in-
9 serting after the first sentence the following: “In de-
10 termining whether a pattern of violations exists, the
11 Secretary shall give due consideration to all relevant
12 information, such as the gravity of the violations,
13 operator negligence, history of violations, the num-
14 ber of inspection shifts the Secretary or her agents
15 have spent at the operation, and the frequency of
16 violations per number of inspection days spent at the
17 operation.”.

18 (3) TERMINATION OF PATTERN.—Section
19 104(e)(3) (30 U.S.C. 814(e)(3)) is amended by add-
20 ing at the end the following: “In addition, if an op-
21 erator subject to paragraphs (1) and (2) dem-
22 onstrates objective evidence that they are correcting
23 the problems that gave rise to the pattern of viola-
24 tions, and the violation frequency rate for such oper-
25 ator declines significantly for a period of 180 days,

1 the withdrawal order provisions of paragraphs (1)
2 and (2) shall no longer apply.”.

3 (4) FINE FOR A PATTERN OF VIOLATIONS.—

4 Section 110 (30 U.S.C. 820) is amended—

5 (A) by redesignating subsections (i)
6 through (l) as subsections (j) through (m), re-
7 spectively; and

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

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

24 “(2) In addition to the authority to withdraw miners
25 from an area of a coal or other mine pursuant to section

1 104(e), the Secretary shall withdraw all miners from the
2 entire mine when any pattern of violations has been deter-
3 mined to exist until such time as the Secretary certifies
4 that all identified violations have been corrected and the
5 operator has agreed to abide by a written plan approved
6 by the Mine Safety and Health Administration to ensure
7 that such a pattern of conduct will not recur.”.

8 (e) NOTIFICATION OF ABATEMENT.—Section 104(b)
9 (30 U.S.C. 814(b)) is amended—

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

12 (2) by striking “If,” and inserting “(2) If,”;
13 and

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

16 “(1) An operator issued a citation pursuant to
17 subsection (a) shall notify the Secretary that the op-
18 erator has abated the violation involved. If such op-
19 erator fails to provide such a notice to the Secretary
20 within the abatement time as provided for in the ci-
21 tation, the Secretary shall issue an order that re-
22 quires the operator (or the agent of the operator) to
23 immediately cause all persons, except those persons
24 referred to in subsection (c), to be withdrawn from,
25 and to be prohibited from entering, such area as the

1 Secretary determines until an authorized representa-
2 tive of the Secretary determines that such violation
3 has been abated. Notwithstanding any operator no-
4 tice, no violation shall be determined to be abated
5 until an authorized representative of the Secretary
6 visits the site and determines such violation has been
7 fully abated.”.

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

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

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

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

18 (1) in section 105(b)(1)(B)—

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

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

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

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

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

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

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

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

24 “(n) CIVIL PENALTY FOR INTERFERENCE OR DIS-
25 CRIMINATION.—Any operator who is found to be in viola-

1 tion of section 105(c), or in violation of section 103(a)
2 (as amended by this Act) shall be subject to a civil penalty
3 of not less than \$10,000 nor more than \$100,000 for each
4 occurrence of such violation.”.

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

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

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

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

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

23 (C) by striking “or any independent” and

24 inserting “and any independent”; and

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

6 (2) in section 103 (30 U.S.C. 813)—

7 (A) in subsection (b)—

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

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

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

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

3 (3) in section 104 (30 U.S.C. 814)—

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

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

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

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

18 (B) in subsection (c)—

19 (i) in paragraph (1)—

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

1 (II) by inserting at the end the
2 following: “No miner shall be required
3 to work under conditions he has rea-
4 sonable grounds to believe to be ab-
5 normally and immediately dangerous
6 to himself beyond the normal hazards
7 inherent in the operation which could
8 reasonably be expected to cause death
9 of serious physical harm before such
10 condition or practice can be abated.”;
11 and

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

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

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

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

3 (5) in section 110 (30 U.S.C. 820)—

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

7 (B) in subsection (c)—

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

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

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

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

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

1 tion therewith. The advisory committee shall be estab-
2 lished pursuant to the Advisory Committee Act, and shall
3 conduct a review of existing State licensing requirements
4 and registries, assess their effectiveness, and shall provide
5 its recommendations to Congress not later than 2 years
6 after the date of enactment of this Act.

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

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 per day, 7 days per week, by 1
15 or more employees of the Mine Safety and Health Admin-
16 istration. All calls placed to the emergency call center shall
17 be answered by an individual with adequate experience
18 and training to handle emergency mine situations. A sin-
19 gle national phone number shall be provided for this pur-
20 pose and the Secretary shall ensure that all miners and
21 mine operators are issued laminated cards with emergency
22 call 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 Each mine operator shall ensure that the Secretary is pro-
21 vided with completely current information required to be
22 maintained by the Secretary pursuant to paragraphs (1),
23 (3), and (6). The Secretary shall give due consideration
24 to the information collected by the joint government-indus-
25 try Mine Emergency Operations database.

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

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

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

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

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

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

24 (2) REPOSITORY OF MINING MAPS.—The Sec-
25 retary shall establish a national repository for pre-

1 serving a digital archive of mining maps to be acces-
2 sible directly and without delay from the Depart-
3 ment's web site. The mining maps shall include cop-
4 ies of all historic maps that can be obtained, as well
5 as copies of currently approved mining maps, which
6 the Secretary shall arrange to copy and preserve in
7 digital form. The Secretary may coordinate the oper-
8 ation of such repository with the Secretary of the In-
9 terior provided the other requirements of this para-
10 graph are observed. In addition, the Secretary shall
11 include in this repository copies of the most cur-
12 rently available mine emergency response plan, roof
13 plans, ventilation plans, and such other plans re-
14 quired for any type of mine, following any required
15 approval, so that they may be immediately accessed
16 in an emergency, in a manner consistent with the re-
17 quirements of section 312(b) of the Act.

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

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

23 (2) in the second sentence—

24 (A) by inserting “of accidents” after “the
25 notification”; and

1 (B) by inserting “, or in the case of a re-
2 reportable event that is not required to be re-
3 ported as an accident, within 1 hour of the time
4 at which the operator realizes that the event
5 has occurred” before the period; and

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

9 “(1) a fire not required to be reported more
10 promptly;

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

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

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

20 (e) ENHANCING THE CAPABILITIES OF MINE RES-
21 CUE TEAMS.—

22 (1) AMENDMENT TO FMSHA.—Section
23 115(e)(2)(B) (30 U.S.C. 825(e)(2)(B)) is amended
24 by adding at the end the following:

1 “(v) The provision of uniform creden-
2 tials to mine rescue team members, sup-
3 port personnel, or vehicles for immediate
4 access to any mine site.

5 “(vi) The plans required at each mine
6 to ensure coordination with local emer-
7 gency response personnel and to ensure
8 that such personnel receive adequate train-
9 ing to offer necessary assistance to mine
10 rescue teams in the event such assistance
11 is requested. Such local emergency re-
12 sponse personnel shall not perform the du-
13 ties of any mine rescue team.

14 “(vii) Requirements to ensure that op-
15 erators are prepared to facilitate the work
16 of mine rescue teams during an emergency
17 by—

18 “(I) storing necessary equipment
19 not brought on site by mine rescue
20 teams in locations readily accessible to
21 mine rescue teams;

22 “(II) providing mine rescue
23 teams with a parking and staging
24 area adequate for their needs;

1 “(III) identifying a space appro-
2 priate for coordinating emergency
3 communications with the mine rescue
4 team; and

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

13 (2) RESEARCH.—Section 22(h)(5)(A) of the Oc-
14 cupational Safety and Health Act (29 U.S.C.
15 671(h)(5)(A)) is amended by adding before the pe-
16 riod at the end thereof: “including advanced drilling
17 technologies, and any special technologies required
18 for safety or rescue in mining more than 1,500 feet
19 in depth.”.

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

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

23 “Not later than 6 months of the enactment of the
24 S-MINER Act, the Secretary shall establish and dissemi-
25 nate guidelines for rescue operations that will: (1) estab-

1 lish clear lines of authority within the agency for such op-
2 erations; (2) establish clear lines of demarcation so private
3 sector and State responders can properly implement their
4 responsibilities; (3) be appropriate for rescue in various
5 types of conditions reasonably likely to be encountered in
6 the United States, including such factors as the depth of
7 the mining, ground stability, ground slope, remoteness
8 from major roads, surface ownership and access problems,
9 and the availability of necessary communications linkages.
10 The Secretary shall consult with States, rescue teams and
11 other responders in developing such guidelines, and shall
12 update them from time to time based upon experience.”.

13 (g) AUTHORITY OF SECRETARY DURING RESCUE OP-
14 ERATIONS.—Section 103 (30 U.S.C. 813) is further
15 amended—

16 (1) in paragraph (j), by adding at the end
17 thereof: “If the representative of the Secretary su-
18 pervises and directs the rescue and recovery activi-
19 ties in such mine, the operator shall comply with the
20 requests of the authorized representative of the Sec-
21 retary to facilitate rescue and recovery activities in-
22 cluding the provision of all equipment, personnel,
23 and other resources required to perform such activi-
24 ties in accordance with the schedule and require-
25 ments established by the representative of the Sec-

1 retary for this purpose, and failure of the operator
2 to comply in this regard shall be considered an egre-
3 gious violation of this Act.”; and

4 (2) in paragraph (k), by striking “, when
5 present,”.

6 (h) RESCUE COMMUNICATIONS.—

7 (1) REPEAL.—The MINER Act (30 U.S.C. 801
8 note) is amended by striking section 7.

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

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

13 “The Secretary shall—

14 “(1) designate a full-time permanent employee
15 of the Mine Safety and Health Administration to
16 serve as a Family Liaison, who shall, at least in in-
17 stances where multiple miners are trapped, severely
18 injured or killed, act as the primary communication
19 with the families of the miners concerning all as-
20 pects of the rescue operations, including the location
21 or condition of miners, and assist the families in get-
22 ting answers to their questions, and otherwise serve
23 as a liaison to the families, and provide for the tem-
24 porary reassignment of other personnel who may be

1 required to assist the Family Liaison in connection
2 with a particular incident;

3 “(2) require the Mine Safety and Health Ad-
4 ministration to be as responsive as possible to re-
5 quests from the families of such miners for informa-
6 tion relating to the mine accident, and waive any
7 fees required for the production of documents pursu-
8 ant to 5 U.S.C. 552(a)(3) in connection with a re-
9 quest from a family member, or authorized rep-
10 resentative of miners, for documents relating to a
11 mine fatality, notwithstanding any conditions for fee
12 waivers law that may otherwise be imposed by law;
13 and

14 “(3) designate a highly qualified representative
15 of the Secretary with experience in public commu-
16 nications to be present at mine accident sites where
17 rescues are in progress during the entire duration of
18 such rescues, to serve as the primary communicator
19 with the press and the public concerning all aspects
20 of the rescue operations, including the location or
21 condition of miners.”.

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

24 (A) in section 103(f), by inserting before
25 the period at the end of the first sentence the

1 following: “, and to participate in any accident
2 investigation pursuant to the requirements of
3 this Act. Any family member of a miner
4 trapped or otherwise unable to execute a des-
5 ignation of a miner representative on his or her
6 own behalf may do so on behalf of the miner for
7 any and all purposes”; and

8 (B) in section 316(b)(2)(E)(vi), by adding
9 at the end the following “The plan shall also set
10 forth the operator’s plans for assisting the Sec-
11 retary in the implementation of section 118.”.

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

14 “(l) Rescue efforts for trapped miners shall not cease
15 as long as there is any possibility that miners are alive,
16 unless such efforts pose a serious danger to rescue or
17 other workers, and the decision to cease a rescue shall be
18 made by the Secretary’s representative. Thereafter, efforts
19 to recover the remains of miners shall continue unless such
20 efforts pose a serious danger to recovery workers, and the
21 decision to cease such recovery efforts shall be made by
22 the Secretary’s representative.”.

23 (j) ACCIDENT AND INCIDENT INVESTIGATIONS.—
24 Section 103(b) (30 U.S.C. 813(b), as amended by section
25 5(k)(2) of this Act, is further amended—

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

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

5 “(1) For all accident and incident investigations
6 under this Act, the Secretary shall determine why
7 the accident or incident occurred; determine whether
8 civil or criminal requirements were violated and, if
9 so, issue citations and penalties, and make rec-
10 ommendations to avoid any recurrence. The Sec-
11 retary shall also determine whether the conduct or
12 lack thereof by Agency personnel contributed to the
13 accident or incident.

14 “(2)(A) For any accidents or incidents involving
15 multiple serious injuries or deaths, or multiple en-
16 trapments, there shall also be an independent inves-
17 tigation to consider why the accident or incident oc-
18 curred, make recommendations to avoid a recur-
19 rence, and determine whether the conduct or lack
20 thereof by agency personnel contributed to the acci-
21 dent or incident.

22 “(B) Not later than 30 days after the date of
23 enactment of the S-MINER Act, the Secretary shall
24 initiate rulemaking activity to establish rules on the
25 procedures that will be used to investigate accidents

1 and incidents involving multiple serious injuries or
2 deaths, or multiple entrapments, and shall directly
3 contact and solicit the participation of

4 “(i) individuals identified by the Secretary
5 as family members of miners who perished in
6 mining accidents of any type during the pre-
7 ceding 10-year period;

8 “(ii) organizations representing miners;

9 “(iii) mine rescue teams;

10 “(iv) Federal, State, and local investigation
11 and prosecutorial authorities; and

12 “(v) others whom the Secretary determines
13 may have information relevant to this rule-
14 making.

15 Such rulemaking shall be completed by October 1,
16 2008.

17 “(C) The rules for the investigation of ac-
18 cidents or incidents involving multiple serious
19 injuries or deaths, or multiple entrapments,
20 shall provide for the appointment and oper-
21 ations of any such independent investigation
22 team in accordance with the requirements of
23 this paragraph. An independent investigation
24 team shall be appointed by the Director of the
25 National Institute for Occupational Safety and

1 Health as soon as possible after a qualifying ac-
2 cident or incident. The members shall consist
3 of:

4 “(i) a representative from the Na-
5 tional Institute for Occupational Safety
6 and Health who shall serve as the Chair-
7 man;

8 “(ii) a representative of mine opera-
9 tors with familiarity with the type of min-
10 ing involved;

11 “(iii) a representative of mine workers
12 with familiarity with the type of mining in-
13 volved, who shall be the workers’ certified
14 bargaining representative at the mine or, if
15 there is no certified representative at the
16 mine, then a workers’ representative jointly
17 selected by organized labor organizations:

18 “(iv) an academic with expertise in
19 mining; and

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

23 “(D) Such rules shall include procedures to
24 ensure that the Secretary will be able to cooper-
25 ate fully with the independent investigation

1 team and will use the powers of the Secretary
2 under this section to help obtain information
3 and witnesses required by the independent in-
4 vestigation team, procedures to ensure wit-
5 nesses are not coerced and to avoid conflicts of
6 interest in witness representation, procedures to
7 ensure confidentiality if requested by any wit-
8 ness, and procedures to enable the independent
9 investigation team to conduct such public hear-
10 ings as it deems appropriate. Such rules shall
11 also require that upon completion of any acci-
12 dent or incident investigation of accidents or in-
13 cidents involving multiple serious injuries or
14 deaths, or multiple entrapments, the inde-
15 pendent investigation team shall—

16 “(i) issue findings as to the actions or
17 inactions which resulted in the accident or
18 incident;

19 “(ii) make recommendations as to pol-
20 icy, regulatory, enforcement or other
21 changes, including statutory changes,
22 which in the judgment of the independent
23 investigation team would best prevent a re-
24 currence of such actions or inactions at
25 other mines; and

1 “(iii) promptly make all such findings
2 and recommendations public (except find-
3 ings and recommendations that must be
4 temporarily withheld in connection with a
5 criminal referral), including appropriate
6 public hearings to inform the mining com-
7 munity of their respective findings and rec-
8 ommendations.

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

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

16 “(3) Nothing in this Act shall be construed to
17 limit the authority of the Chemical Safety and Haz-
18 ard Investigation Board to conduct an independent
19 investigation of the accident or incident or the
20 events or factors resulting therein, nor with the au-
21 thority of the Office of the Inspector General to con-
22 duct an investigation of the conduct of DOL per-
23 sonnel in connection with an accident or incident or
24 the events or factors resulting therein, and the Sec-
25 retary shall cooperate in full with any such inves-

1 tigation. Such investigation shall be in addition to
2 any investigation 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. For the purposes of determining compliance
13 with the exposure limit for respirable dust, only a single
14 sample shall be required to determine non-compliance, and
15 there shall be no adjustment for measurement error in the
16 measured level of respirable dust.

17 “(3) At intervals established by the Secretary, each
18 operator of a coal mine shall take accurate samples of the
19 amount of respirable dust in the mine atmosphere to
20 which each miner in the active workings of such mine is
21 exposed to identify sources of exposure so that the oper-
22 ator can take corrective action and assure that the expo-
23 sure of each mine is below the exposure limit. Under the
24 provisions of this Act, all such samples shall be taken by
25 a personal dust monitor that measures, records and dis-

1 plays the concentration of respirable dust to which the
2 miner wearing the device is exposed, and may include sam-
3 ples of less than a full shift. The results of such sampling
4 shall be transmitted to the Secretary in a manner estab-
5 lished by him, and recorded by him in a manner that will
6 assure application of the provisions of this section of the
7 Act.

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

16 “(b) Effective on the date of enactment of the S-
17 MINER Act, each operator of a coal or other mine shall
18 continuously maintain the concentration of respirable sili-
19 ca dust in the mine atmosphere during each shift to which
20 each miner in the active workings of such mine is exposed
21 at or below a time-weighted average of 0.05 milligrams
22 of respirable silica dust per cubic meter of air averaged
23 over ten hours or its dose-equivalent for shorter or longer
24 period of time. For the purposes of this paragraph, com-
25 pliance shall be determined by the sampling of areas, occu-

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

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

21 “(d) Each operator shall report and certify to the
22 Secretary at such intervals as the Secretary may require
23 as to the conditions in the active workings of a coal mine,
24 including, the average number of working hours worked
25 during each shift, the quantity and velocity of air regularly

1 reaching the working faces, the method of mining, the
2 amount and pressure of the water, if any, reaching the
3 working faces, and the number, location, and type of
4 sprays, if any, used.”.

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

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

1 requirements, and to quantify to the extent possible the
2 costs to miners of the aforementioned requirements. The
3 Secretary shall further request that recommendations be
4 included in the report, and that such report and rec-
5 ommendations be completed, and forwarded to the Con-
6 gress, no later than 21 months after the date of enactment
7 of this Act.

8 **SEC. 8. OTHER HEALTH REQUIREMENT.**

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

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

1 exposure limits as PELs for application in the mining in-
2 dustry within 30 days of receipt of such information. Upon
3 petition from miners or mine operators providing credible
4 evidence that feasibility may be an issue for the industry
5 as a whole, the Secretary may review the feasibility of any
6 PEL established pursuant to this paragraph before plac-
7 ing it into effect and, following public notice and comment,
8 make necessary adjustments thereto, provided that the ad-
9 justed standard is as protective as is feasible, and that
10 the PEL shall go into effect as required by the other provi-
11 sions of this paragraph if such action is not completed
12 within one year. Moreover, upon petition from miners or
13 mine operators providing credible evidence that a REL
14 issued by the National Institute of Occupational Safety
15 and Health lacks the specificity required to serve as a
16 PEL pursuant to this Act, the Secretary may defer imple-
17 mentation of the requirements of this paragraph and shall
18 promptly request National Institute of Occupational Safe-
19 ty and Health to recommend a sufficiently detailed REL,
20 at which time the provisions of this paragraph shall be
21 implemented. Nothing in this subsection shall limit the
22 ability of the National Institute of Occupational Safety
23 and Health to make such recommendations more fre-
24 quently than 1 time per year, nor limit the Secretary from
25 establishing requirements for chemical and other sub-

1 stances or health hazards in the mining industry that are
2 more comprehensive and protective than those established
3 pursuant to this subsection and in accordance with the
4 other requirements of this section.”.

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

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

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

21 “(h) Unless and until there is additional rulemaking
22 pursuant to the requirements of this section, the Secretary
23 shall apply the provisions of the interim final rule of Octo-
24 ber 3, 2000, concerning hazard communication, in lieu of

1 the final rule of June 21, 2002, concerning hazard com-
2 munication.”.

3 (d) EMERGENCY AND HAZARDOUS CHEMICAL RE-
4 PORTING FOR MINES BURNING HAZARDOUS WASTE AS
5 FUELS.—

6 (1) MATERIAL SAFETY DATA SHEET.—The
7 owner and operator of any mine subject to the re-
8 quirements of section 3004(q) of the Resource Con-
9 servation and Recovery Act (42 U.S.C. 6924(q)),
10 shall submit a material safety data sheet or its
11 equivalent for each chemical present at the mine at
12 any one time (including chemicals found in the
13 waste derived fuels) that is contained on the list of
14 hazardous chemicals established pursuant to the Oc-
15 cupational Safety and Health Act of 1970 (29
16 U.S.C. 651 et seq.), to local and state emergency
17 planning and response officials in accordance with
18 the section 311 of the Emergency Planning Commu-
19 nity Right-To-Know Act of 1986 (42 U.S.C. 11021),
20 and regulations promulgated under that Act.

21 (2) EMERGENCY AND HAZARDOUS CHEMICAL
22 INVENTORY.—The owner and operator of any mine
23 subject to the requirements of section 3004(q) of the
24 Resource Conservation and Recovery Act (42 U.S.C.
25 6924(q)), shall submit an emergency and hazardous

1 chemical inventory form for each chemical present at
2 the mine at any one time (including chemicals found
3 in the waste derived fuels) contained on the list of
4 hazardous chemicals established pursuant to the Oc-
5 cupational Safety and Health Act of 1970 (29
6 U.S.C. 651 et seq.), to local and state emergency
7 planning and response officials in accordance with
8 the section 312 of the Emergency Planning Commu-
9 nity Right-To-Know Act of 1986 (42 U.S.C. 11022),
10 and regulations promulgated under that Act.

11 (3) AUTHORIZATION OF THE SECRETARY.—The
12 Secretary is authorized to promulgate regulations to
13 supplement or supersede the emergency and haz-
14 ardous chemical reporting requirements established
15 pursuant to the Emergency Planning Community
16 Right-To-Know Act of 1986 (42 U.S.C. 11001 et
17 seq.), in order to protect the health and welfare of
18 emergency responders, miners and the public.