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BEFORE THE

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SUBCOMMITTEE ON WORKFORCE PROTECTIONS
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Woolsey, Ranking Member Wilson, and Members of the Subcommittee, I am pleased to appear before you today to discuss H.R. 2768, the “Supplemental Mine Improvement and Emergency Response Act of 2007” – the “S-MINER Act”.

I have 28 years of experience in mining, including 27 years with MSHA. I currently serve as the Administrator of the Coal Mine Safety and Health program. I am here today to offer my technical advice to the Subcommittee on how the provisions of H.R. 2768 will affect mine safety and the administration of coal mine safety standards in underground mines.

Before discussing the provisions of H.R. 2768, I would like to summarize briefly the progress MSHA has made over the past year in implementing the MINER Act (Act).

Implementing the MINER Act of 2006

MSHA’s number one priority is to protect the health and safety of our nation’s miners. This commitment has resulted in the timely and successful implementation of MINER Act provisions— often ahead of schedule and beyond the requirements of the Act. Significant accomplishments over the past 12 months include:

New Penalties for Late Accident Notification and Unwarrantable Failure Violations

Upon the signing of the MINER Act of 2006, MSHA immediately implemented new minimum penalties for late accident notification and “unwarrantable failure” violations.

New Penalties for Flagrant Violations

MSHA issued a Procedure Instruction Letter (I06-III-04) to implement the new “flagrant violation” maximum penalty of up to \$220,000.

Secretarial Order to Improve Post-Accident Communication with Families

The Secretary of Labor signed an Order creating the Family Liaison and Primary Communicator positions that will be filled by specially trained MSHA employees at emergency sites. MSHA, with the assistance of the National Transportation Safety Board and the American Red Cross, has trained 14 family liaisons to date.

Strengthening Evacuation Practices

MSHA issued a final rule to strengthen mine evacuation practices. The rule included:

- ***Self-Contained Self Rescue (SCSR) Devices:*** The rule requires coal mine operators to provide additional SCSRs for each miner underground in areas such as working places, mantrips, escapeways, and other areas where outby crews work or travel. The rule also requires that SCSRs be readily accessible in the event of an emergency.
- ***Multi-Gas Detectors:*** The rule goes beyond the requirements of the MINER Act by requiring coal mine operators to provide multi-gas detectors to miners working in close proximity to others or to individual miners working alone.
- ***Lifelines:*** The rule requires coal mine operators to install directional lifelines in all primary and alternate escape routes out of the mine. Lifelines help guide miners in poor visibility conditions toward evacuation routes and SCSR storage locations.
- ***Training:*** The rule requires coal mine operators to conduct quarterly training sessions instructing miners how to don SCSRs and, in particular, how to transfer one SCSR to another. The training provisions in the mine emergency evacuation rule go beyond the requirements of the MINER Act by requiring “expectations training,” a process exposing miners to simulated conditions they would encounter using a SCSR during an emergency. SCSR training units for annual expectations training have now been developed.
- ***Accident Notification:*** The rule requires all mine operators to contact MSHA within 15 minutes of a serious accident. MSHA also implemented a nation-wide single call-in number (1-800-746-1553) for accidents and hazardous condition notifications to ensure an immediate, consistent and effective response by MSHA.

Requiring Breathable Air for Trapped Miners

MSHA issued a Program Information Bulletin (PIB) (No. P07-03) gives mine operators a range of options to provide breathable air to miners who are trapped underground, including the use of boreholes and oxygen supplies. The use of state-approved refuge chambers is acceptable as a means of meeting the requirements of the PIB.

New Civil Penalties for Safety and Health Violations

MSHA published a final rule to increase civil penalty amounts for mine safety and health violations. Issuance of this rule goes beyond the requirements of the MINER Act. The new rule provides for a general increase in civil penalties for violations and is applicable to all mines and contractors. The new penalty schedule:

1. **Increases penalties:** Increases civil penalties overall, targeting the more severe health and safety violations.

2. **Repeat violations:** Adds a new provision to increase penalties for operators who repeatedly violate the same MSHA standards.
3. **Single penalty:** No longer applies. Non-significant and substantial (non-S&S) violations formerly processed as \$60 single penalties are now processed as regular formula assessments.

As of the one-year anniversary of the MINER Act, MSHA issued 13 citations for flagrant violations, including three of the largest proposed penalties in the history of the Agency.

Enforcing Safety Device Requirements

MSHA published a notice in the *Federal Register* notifying mine operators that SCSR training units were available. Mine operators were required to possess these training units, or provide a purchase order, by April 30, 2007, and conduct expectations training with them within 60 days of receipt of the units.

Tracking Inventory of Safety Devices

MSHA implemented a system for coal mine operators to electronically submit their inventories of SCSRs – a requirement of the mine emergency evacuation rule that went beyond the mandates of the MINER Act.

Protecting Miners Near Abandoned Areas

MSHA published an Emergency Temporary Standard (ETS) that increased the protections for miners working near sealed-off abandoned areas in underground coal mines on May 22, 2007. The ETS significantly increases the strength standard for mine seals from 20 pounds-per-square-inch (psi) set in 1992, to 50psi, 120psi, and more than 120psi when conditions exist that may create pressures in excess of 120psi.

Developing New Communications Technologies

MSHA has conducted meetings with representatives of 55 communications and tracking system companies, observed the testing and/or demonstration of 22 post-accident communications and tracking systems, and approved 22 systems, including six new devices.

Approval of Emergency Response Plans

MSHA has approved over 97 percent of the Emergency Response Plans (ERPs) for active producing mines.

MSHA is using all available tools, including tough enforcement, education and training, and technology, to achieve its goal of safer and healthier mines. For example, MSHA is using its statutory authority under the pattern of violations provision in the Mine Act of 1977 to bring mine operators who habitually violate MSHA standards and view penalties as the cost of doing business into compliance. In addition, MSHA developed a database to provide a more objective analysis of accident trends and enforcement results to better identify persistent repeat violators.

Technical Analysis of H.R. 2768

At this point, I would like to turn to the technical analysis of H.R. 2768. Several of the provisions contained in H.R. 2768 would cause administrative problems for MSHA; some would be problematic to implement; and others would actually weaken current safety and health standards administered by MSHA. Some of these concerns include:

1. *Section 4(a), Post Accident Communications:* This provision would require a “hardened” electronic tracking and communication system “at least as effective as a ‘leaky feeder’ type communications and tracking system currently in use.” This section also requires that a leaky feeder system be “hardened to the extent possible.” MSHA’s experience with violent explosions leads me to conclude that these systems cannot feasibly be “hardened” to survive all explosions. Moreover, in many cases, hardening these systems may diminish their functionality.
2. *Section 4(b), Underground Refuges:* This section of the S-MINER Act would require the installation of rescue chambers, rather than “refuge alternatives” as referred to in the MINER Act, within 1,000 feet of the nearest working face in each working section of an underground coal mine. Mandating rescue chambers precludes other refuge options that may provide greater protection to miners, such as boreholes to the surface from locations further than 1,000 feet from the working face. Also, rescue chambers may not be practical in all underground mining situations. For example, some mines have mining heights no higher than the table at which we are now sitting. Also, mandating rescue chambers through statute will discourage innovation and limit the flexibility that MSHA and the National Institute for Occupational Safety and Health (NIOSH) have in exploring new solutions and technologies that could provide better protections for miners trapped underground.
3. *Section 4(c)(2), Mine Seals:* This section would require monitoring all sealed-off areas in a mine. It would also require atmospheric sampling of sealed areas through boreholes. There are several safety concerns with this provision. First, this section requires mine operators to monitor behind all seals. If a mine operator were to build a high psi-rated seal, there should be no need to monitor behind it. Therefore, the legislation as currently written creates an incentive for mine operators to build seals at a lower strength level because the legislation would require monitoring no matter how strong the seals are. Second, while the bill requires monitoring behind all seals, it does not prescribe what actions a mine owner should take if they find an explosive atmosphere behind a seal. Furthermore, the provision requiring that mine operators sample behind mine seals through boreholes drilled from the surface raises two concerns: (1) it is not always feasible to sample from the surface due to geologic conditions and surface property rights; and (2) boreholes have metal casings, introducing other safety hazards into a sealed area that may be liberating methane.
4. *Section 4 (c)(3), Ventilation Controls:* This section requires MSHA to publish an interim final rule on ventilation controls. The bill requires that ventilation controls in an underground mine be “constructed of solid concrete block” and “sealed with an

appropriate bonding agent.” The problem with this provision is that, in mines where convergence or other geological conditions exist, other types of ventilation controls must be used. There are also questions about whether or not existing ventilation controls would be grandfathered.

5. *Section 4(d), Belt Air:* This section would prohibit belt haulage entries from being used to ventilate active working places. The total ban on the use of belt air does not permit a mine-specific variance (a petition for modification) where belt air would improve safety protections or a mine-specific variance that would add sufficient additional provisions to ensure comparable safety protections.
6. *Section 4(e), Pre-Shift Review of Mine Conditions:* This section requires no later than 90 days after enactment, mine foremen, examiners and assistant foremen meet their counterparts on incoming shifts to verbally update them on conditions they observed during their shifts, including hazardous conditions. Agents of the operator would also be required to meet with crew members prior to entering shifts and these meetings will have to be recorded in a book available for inspection. This section of the bill may simply be impractical to implement and regulate given irregular work shifts and the large numbers of people it involves. For example, current regulation requires pre-shift exams every 8 hours. However, many shift changes are made at 8, 10 or 12 hour intervals. As such, this provision would be quite confusing to implement and very difficult to enforce.
7. *Section 4(h)(2), Multi-Gas Detectors:* This section requires every miner “who may be working alone” must be equipped with a multi-gas detector. This section of the bill is, for all practical purposes, identical to current MSHA regulations that require all miners working alone and all groups of miners must be equipped with a multi-gas detector, with one exception. This provision is unnecessary.
8. *Section 4(h), Lightning:* This section requires mine operators to use “appropriate administrative controls” to protect miners when lightning is present and when operators “cannot fully protect their miners from the effects of lightning through grounding and other engineering controls.” Under the aforementioned Seals ETS MSHA issued on May 22, 2007, lightning hazards are addressed by the increased strength and monitoring requirements of seals in addition to the required removal of conductive materials from behind seals.
9. *Section 4(i), SCSR Inspection Program:* This section would require MSHA to test at least 5 percent of self-contained self-rescuers (SCSRs) every 6 months. Under MSHA’s best estimate, once the current backlog of SCSRs is eliminated, there will be approximately 200,000 SCSRs in underground coal mines. This provision would require MSHA to withdraw approximately 20,000 of these critical safety devices per year for testing. Testing this number of SCSRs would require a commitment of significant resources from both MSHA and NIOSH and remove SCSRs from service where they could otherwise be used to protect miners.

10. *Section 5(e), Notice of Abatement*: This section requires a mine operator to notify MSHA when a violation is abated. MSHA currently returns to the site of the violation and ensures that the violation is abated, rather than accepting notice from a mine operator as proof of abatement. This section may have the unintended consequence of weakening current requirements for abatement.
11. *Section 5(j), Imminent Dangers*: This section of the S-MINER Act expands the scope of “imminent danger” withdrawal authority contained in the Mine Act of 1977. This section promotes an inconsistent and inappropriate use of the term “imminent danger”—a term of art clearly defined in the Mine Act of 1977. The Mine Act’s definition of “imminent danger” applies now to situations where one can reasonably expect death or serious physical harm to occur before the condition is abated. As used in the draft legislation, the term would apply to any violations concerning emergency shelters or communications— violations which may not involve death or serious physical harm before they can be abated.
12. *Section 6(c), Mine Location Maps*: This provision needs clarification. After discussions with staff, we understand that the concern being addressed is the ability of rescue teams to find a mine during an emergency. If so, current training provisions for rescue teams take care of this concern.
13. *Section 6(d), Required Notification of Emergencies and Serious Incidents*: This section of the S-MINER Act sets up a two-tiered system of notification for mine incidents. Last year, MSHA issued regulations – which became part of the MINER Act – requiring mine operators to notify MSHA within 15 minutes of an incident listed in Section 6(d) of the S-MINER Act. If Congress were to enact this provision, it would establish emergency notification procedures that are less stringent than current requirements.
14. *Section 6 (f)(1), Emergency Medical Response*: This provision requires all mine operators – not just underground coal mine operators – to have “an ambulance or other means of providing emergency medical response in the event of an accident.” This provision presents compliance difficulties for mines in isolated sections of the country.
15. *Section 6(f)(2), Medical Emergency Technical Training*: This section of the S-MINER Act references “training and medical emergency technicians” and requires MSHA to revise current first aid and medical training requirements. MSHA does have requirements to train miners in basic first aid, but does not have any emergency medical technical training requirements in its regulations.
16. *Section 6(g), Accidents and Investigations*: This section of the S-MINER Act raises a number of complex policy issues. MSHA takes its accident investigation responsibilities very seriously as part of our law enforcement mandate. Our accident report forms the basis for our civil and criminal enforcement actions and must stand alone as the government’s authoritative accident report. MSHA is the only federal

agency charged with mine safety and health enforcement and is therefore in the unique position of having the world's best mining experts to address the cause or causes of mine accidents. No other agency has this particular expertise. Its accident reports must be written to support its enforcement efforts because MSHA is the only federal agency with enforcement authority at mines when violations are found. If another entity is contracted to produce another accident report as prescribed in the bill, it raises questions about which report is the final word on the causes of an accident and upon which report MSHA's enforcement actions can be based.

Conclusion

Madam Chairman, thank you for allowing me to testify today to present a technical review of this legislation. I look forward to answering any questions you may have.