
MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE
ACT OF 2006 OR THE “MINER ACT”

DECEMBER 6, 2006.—Ordered to be printed

Mr. ENZI, from the Committee on Health, Education, Labor, and
Pensions, submitted the following

R E P O R T

[To accompany S. 2803]

The Committee on Health, Education, Labor, and Pensions, to which was referred the bill (S. 2803) to amend the Federal Mine Safety and Health Act of 1977 to improve the safety of mines and mining, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

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I. PURPOSE AND SUMMARY

The purpose of the “Mine Improvement and New Emergency Response [‘MINER’] Act of 2006”, S. 2803, is to further the goals set out in the Mine Safety and Health Act of 1977 and to enhance worker safety in our nation’s mines. The bill amends the 1977 act to require incident assessment and planning, harness new and emerging technology, enhance research and education, improve safety-related procedures and protocols and increase enforcement and compliance to improve mine safety.

II. BACKGROUND

The record of mine safety in the United States is one of continuing and oftentimes significant improvement. These improvements are undoubtedly a function of the increased focus and emphasis on safety by both mine operators and their employees, as well as the efforts of State and Federal regulators and members of the regulated community. But despite this progress, mining remains a dangerous endeavor.

The year 2006 began with the tragic loss of 12 miners at the Sago Mine in West Virginia, followed closely by the deaths of two miners at the Alma Mine, also in West Virginia; and some 4 months later by the deaths of 5 miners at the Darby Mine in Harlan County, Kentucky. The death toll in the first 5 months of the year was nearly 50 percent higher than the entire previous year. Additionally, the rise in coal production in the last few years raises the committee's concerns that there is the potential for a return to higher numbers of accidents and fatalities.

Improvements in safety come about because of a continued re-examination and revision of safety and regulatory practices in light of experience. These tragedies serve as a somber reminder that even that which has been done well can always be done better.

III. HISTORY OF LEGISLATION AND COMMITTEE ACTION

After the Sago Mine accident on January 2, 2006, the Health, Education, Labor, and Pensions (HELP) Committee assembled a group of members to travel to West Virginia to explore the need for reforms to the Mine Safety and Health Act of 1977. Senators Enzi, Kennedy, Isakson, and staff of Senator Murray were hosted there by Senator Rockefeller.

On February 15, the Employment and Workplace Safety Subcommittee held a roundtable hearing, "Mine Safety Technology" chaired by Senators Isakson and Murray. Witnesses at this hearing included: Mr. Bob Campman, Vice President of R&D, Grace Industries Incorporated; Mr. Pat Droppleman, President of Ocenco Corporation, Dr. R. Larry Grayson, Chairman of the Department of Mining & Nuclear Engineering at University of Missouri-Rolla, Mr. Wes Kenneweg, President of Draeger Industries; Dr. Roy Nutter, a professor at the College of Engineering and Mineral Resources at West Virginia University; Mr. Dennis O'Dell, Administrator of Health and Safety Programs for the United Mine Workers of America; Mr. Sam Shearer, President of CSE Corporation; Dr. Starnes Walker, Technical Director of the Office of Naval Research at the United States Navy; and Mr. Gary Zamel, President of Mine Site Technologies Pty. Ltd. Also in attendance but not testifying was Dr. Kohler, Associate Director for Mining and Construction at the National Institute of Occupational Safety and Health.

On March 2, the HELP Committee held a hearing on the State of Mine Safety and Health. Witnesses at the hearing were Mr. David Dye, Acting Assistant Director, MSHA; Mr. Ray McKinney, Administrator, Coal Mine Safety and Health, MSHA; Dr. John Howard, Director, National Institute of Occupational Safety and Health (NIOSH); Dr. Jeffery Kohler, Associate Director for Mining and Construction, NIOSH; Mr. Mike Peelish, Senior Vice President, Safety & Human Resources, Foundation Coal Corporation; Mr. Mi-

chael E. Neason, American Society of Safety Engineers (Safety Director at Hanson Aggregates); Dr. Tom Novak, C.T. Holland Professor, Head of Department of Mining and Minerals Engineering, Virginia Tech; and Mr. Cecil Roberts, President of the United Mine Workers of America.

The Mine Improvement and New Emergency Response ["MINER"] Act of 2006, S. 2803, was introduced by Senators Enzi, Kennedy, Isakson, Murray, Rockefeller, Byrd, DeWine, and Santorum on May 16, 2006 and referred to the HELP Committee. Additional cosponsors included Senators Specter, McConnell, Bunning, and Obama. On May 17, 2006, the committee held an executive session to consider S. 2803. After accepting a manager's amendment and a Sessions amendment which changed the name of the Sago Mine Safety Grant program authorized in Section 14 of the Act to "Brookwood-Sago", S. 2803 was favorably and unanimously reported out of the HELP Committee. It was passed by the Senate by unanimous consent on May 24, 2006.

S. 2803 was passed by the House of Representatives on June 7, 2006 by a vote of 381–37, and was signed into law by President George W. Bush on June 15, 2006. It became Public Law number 109–236.

After the MINER Act was signed into law, a small number of technical changes were made to the Act as enacted. These were included in Section 1301 of H.R. 4, the Pension Protection Act, which was signed into law by the President as Public Law 109–280 on August 17, 2006. The changes made in this later law affect only the numbering of the penalties section of the statute. These changes are not reflected in Title IX of this report.

IV. EXPLANATION OF BILL AND COMMITTEE VIEWS

Successfully managing risk and ensuring worker safety in the underground coal environment requires innovation, vigilance, adaptability and resources. The MINER Act, by requiring mines to develop, adopt and periodically modify accident response plans, seeks to incorporate these essential characteristics into its approach to workplace safety.

Section 2 of the Act reflects a wide range of considerations. First, the committee recognizes that effective risk management is forward-looking, and that assessing potential dangers and planning for them in advance not only makes the management of future accidents more effective, but may lessen the risk of accidents occurring in the first place. The committee believes that utilization of a plan concept will encourage such forward-looking risk assessment. Second, the committee recognizes that good safety practice is often an evolving concept based upon experience and technological development. The committee's approach therefore contemplates change as safety improvements warrant. Third, the committee recognizes that each underground coal environment is unique and that what works effectively in one setting may not be optimal in the next. Accordingly, the committee believes an approach that sets minimum standards but also enables operators to achieve safety goals with some degree of latitude will best effectuate the purposes of the act. The goals of optimizing safety and survivability must be unchanging, but the manner for doing so must be practical and sensible.

THE PLAN: GENERAL CONSIDERATIONS

In order to facilitate implementation of the act's provisions, the committee decided to make use of the "plan" model since all parties were familiar with its use in other contexts. The MINER Act requires the development and adoption of response and preparedness plans, which must provide for the evacuation of miners who may be endangered in an emergency or, if miners cannot evacuate, provide for their maintenance underground.

Under current law, operators are required to file, and MSHA is required to review and approve both mine roof plans and mine ventilation plans. The use of such plans is thus familiar to employees and their representatives. Roof and ventilation plans are periodically revised to reflect changes in the physical structure of the individual mine and any relevant advancements in technology or technique. They are forward-looking, and their formulation requires that potential problems or issues be anticipated and planned for in advance. Additionally, their formulation and approval is, in most instances, a cooperative process that is traditionally guided by practicality, flexibility and front line expertise. These are all features that are of value in a broader safety context as well, so long as basic safety protections are not compromised.

The individual plan model contemplates that safety solutions and risk-management plans will be designed and reviewed by those who are "on the ground," and therefore most familiar with the unique circumstances and most practical approaches. This envisions that operators, in formulating their plans and MSHA field personnel, in reviewing and approving them, think creatively and practically.

The committee recognizes that effective risk management must be goal-oriented, and that use of the most practical and efficient means to achieve the goal should always be the guiding regulatory principle. Flexibility and practicality are valuable provided they are directed to formulating the best available means to achieve the goal, and that safety goals and basic safety standards are not compromised in their achievement.

There was understandable concern over the degree to which the plan model might place additional burdens on both regulators and the regulated community. On balance, however, the committee determined this model was the most useful, and that some of these concerns might be met through more efficient administration of the process. In this regard, the committee would note that a plan that is reviewed and approved at the district office level is not only likely to be the most practical; it is also the most expeditious. Operators are therefore encouraged to work with district office personnel in the formulation and approval process; and district office personnel are encouraged to take initiative in the process and to utilize their judgment and expertise in working with operators to craft flexible and practical solutions. The committee also envisions that, where possible, all parties utilize available means of communication designed to make the process more efficient. For example, operators should be allowed to file final safety plans on-line.

The committee also recognizes the expertise of working miners, who are very familiar with the conditions of a mine. The act requires that operators allow input from miners in the development

of their safety plan, and that such input will be considered seriously and thoroughly. Such involvement will help to ensure that safety plans are based on a broad scope of safety information and allow for the development of the most effective and efficient safety plans.

While the committee is hopeful that the vast majority of plans will be formulated and approved without difficulty, it also recognizes that in some instances there may be controversies that require prompt and impartial resolution. Once again, the committee opted to utilize a procedure with which the parties are familiar as a means of resolving such disputes. Thus, where a dispute regarding the approval or content of a plan arises between the Secretary and an operator, the Secretary will issue a citation with regard to the underlying issue. Use of a "technical violation" and accompanying citation is the means by which roof and ventilation plan disputes are traditionally reviewed. Typically, in the case of such a dispute, the citation issued is one under Section 104(a). The same process is anticipated with regard to safety plan disputes. The committee also has recognized the need for expedition in the resolution of such disputes and has therefore provided for an accelerated procedural framework. As is currently the case with roof and ventilation plans, the dispute resolution process begins with a review and decision by an Administrative Law Judge from the Mine Safety and Health Review Commission. Further appeal from the ALJ's decision may be taken in the same manner as with any other citation. This process is, of course, to be distinguished from the issuance of a citation for non-compliance with the provisions of an already approved plan. In those instances the normal procedures regarding citation level and appeal process would apply.

SPECIFIC PLAN CONTENT: IMMEDIATE REQUIREMENTS

As noted, the committee recognizes the value and necessity of a flexible, individualized and goal-oriented approach to safety and incident management. It also, however, has made particular note of areas of concern that have universal applicability and are therefore susceptible of more generalized regulation. In reviewing the problems historically encountered and recently experienced in accidents in the underground coal setting, the committee had specific concerns in six areas: post-accident communication, post-accident tracking, post-accident breathable air, lifelines for use in post-accident escape, training, and local emergency coordination. These are discussed below.

Redundant communication systems

In the wake of a coal mine accident, the ability of underground personnel to communicate with rescue workers is essential and can be the margin of difference between a successful rescue operation and tragic result. As essential as such communication may be, its use is complicated by current technological limitations, the unique physical characteristics of an underground mining environment, and a number of other relevant considerations. While all underground coal mines are required to maintain a telephone line or its equivalent, experience has shown that such systems are often rendered unusable in a post accident setting. Explosions, roof falls, or

similar accidents often sever the continuously wired connection necessary for the operation of such systems.

The legislation aims to increase the likelihood that telephone or equivalent wired systems remain operable in a post-accident setting. The committee concluded that one of the most readily implemented means achieving this goal is through the use of redundant systems. Thus, while an approved plan must contain two means by which underground personnel can communicate with the surface, the configuration of such a redundant system should be guided by the goal of ensuring at least one communication survives a potential incident. In most instances, the survivability of a wired system is most likely to be achieved by locating the redundant line in a different entry than the primary line. However, there may be limited instances where this is not possible, or where the survivability of the redundant system is equally, or even more greatly enhanced, through the use of an alternate placement. Here, as throughout the act, the determining factor should always be what is most likely to achieve the goal that is contemplated by the act's provision. In this case, of course, the goal is the accident survivability of a wired communication system or its equivalent.

Tracking system

The ability to locate and account for all underground personnel is often critical to incident outcome. Like communication systems, tracking systems are vulnerable to damage and consequent interruption in the event of a fire, explosion, or similar catastrophic event. Technological advances will assist tracking and locator systems to meet the unique physical challenges of underground mining. Subsection (F) of Section 2 reflects the committee's belief that wireless post-accident tracking technology of general utility will become commercially available and approved in the near future. Subsection (E)(ii) of the Act serves as a bridge to that anticipated technology by requiring the use of dispatcher or equivalent systems in the interim.

Breathable air

In committee hearings, there was agreement among safety experts that in the event of an underground mine accident, escape is the first and the preferred option. The act does not signify a change in that philosophy. However, whether miners are effectuating an escape or awaiting rescue, where escape proves impossible, breathable air is essential to sustaining life.

The act increases the quantity of self-contained self-rescuers ["SCSRs"] that will be required to be stored underground, and thus, increases the amount of breathable air available to underground personnel both in the event of escape and entrapment. In addition, with regard to an entrapment, the act requires that emergency plans analyze likely risks to determine if breathable air beyond the increased stores of SCSRs is necessary; and, if so, by what means can the goal be attained.

Subpart (I): Although at least one jurisdiction has adopted a fixed time standard for breathable air, the committee elected not to do so. Instead the committee believes an emergency plan should address possible incidents and the attendant need for sufficient breathable air. The projected need is obviously fact-specific. For ex-

ample, a single entry mine in which the working face is located at a great depth and distance from the mouth of the entry presents a very different set of circumstances than a shallow mine, or one in which the working face is accessible from alternative entries. Equally diverse are the possible means by which a goal of additional breathable air can be achieved. The use of additional caches of SCSRs, the development and deployment of SCSRs with greater capacity and reliability, the development and use of innovations such as “dockable” SCSRs, air locks with stored oxygen, secure refuge areas with surface boreholes represent just a few possibilities in this regard.

Subpart (II): This section requires that miners have 2 hours of breathable air that is readily accessible at their worksite. It also requires the storage of additional breathable air along escapeways from the deepest work area of the mine to the surface. These additional storage caches are to be spaced at a distance no further than the average miner could walk in 30 minutes. The committee anticipates that this will result in the availability of no less than 2 hours of breathable air per miner along the escapeways, and that miners will be provided with sufficient oxygen to exit the mine under emergency conditions.

Subpart (II) contemplates the use of a performance-based measure of this 30-minute period to determine how far apart the breathable air caches are to be located. The committee anticipates that the 30-minute measure will be calculated by reference to studies and/or actual demonstrations that take into account a variety of factors and that reflect actual distances that miners can walk in emergency conditions.

The subpart provides that SCSR caches will be maintained in the escapeway, however, the committee recognizes that actual storage “in” an escapeway could impede passage through the escapeway, and, consequently that caches may be stored in cutouts or cross-cuts. In those instances where primary and alternative escapeways are connected by a cross-cut, consideration should be given to use of a common cache that would service both escapeways, provided there is adequate protection of the common cache from incident damage originating in either escapeway, and that such caching otherwise meets MSHA standards and has demonstrated safety benefits.

Subpart (III): This provision reflects the committee’s concern that SCSR units must be properly maintained and checked for reliability as part of an approved plan. In addition, units, at the end of their respective service lives, be replaced with more technically advanced models as they become available and approved.

Lifelines

Providing underground personnel with assistance in locating and following escape routes, particularly in circumstances of diminished visibility, is an important feature in any emergency plan. Flame-resistant directional lifelines are likely the most common method for achieving this end, and are the most reasonably calculated to remain usable in a post-accident setting. However, there were clearly situations where other types of marking systems might be equivalent, or even better in terms of functionality. The committee was of the view that such alternative systems may be acceptable

provided that they achieve the same goal of enhancing evacuation and escape. The act requires that flame-resistant lifelines be introduced as lifelines are replaced, but in working sections of the mine they must be installed upon date of replacement of existing lifelines or 3 years after the enactment of the MINER Act, whichever is sooner.

Training

Ensuring that employees are adequately trained with respect to emergency procedures and safety standards is an important component of any comprehensive approach to safety. It is contemplated that the provisions of the legislation will result in the adoption of new and different procedures that will require additional employee training and that such training will be in addition to, and will not detract from, what is currently required under section 115 of the act.

Local Coordination

Mine rescue work is very specialized and must be left to those who are properly trained to carry it out. While local first responders do not possess the necessary training for the underground work associated with mine rescue, they can serve a vital above-ground resource to rescue operations. It is important that the appropriate assignment of roles, coordination of functions, and anticipation and planning for rescue-related activities be periodically reviewed with local first responders. Integrated above ground operations greatly facilitate underground rescue work. For these reasons, the committee determined that an emergency response plan should provide the means to achieve these ends through appropriate advance contact, discussion and coordination with local first responders and emergency personnel.

SPECIFIC PLAN CONTENT: FUTURE REQUIREMENTS

The committee believes that communications and tracking technology hold great promise and, further believes that such promise must be fostered and encouraged. At the same time, it recognizes that technology continues to evolve, and that such systems may be limited by the particular characteristics of individual mines. For example, some surface-based systems may not be capable of achieving the necessary ground cover penetration to be useful.

Despite current short-comings, the pace of technological progress is encouraging. Given such pace the committee believed that a 3 year goal of developing and deploying two-way communication and tracking systems that would remain functional even after a catastrophic underground event was not unreasonable. The committee, however, was fully aware that it could not reasonably enact legislation that mandated the use of technology that was not yet available, and that might not work in all instances, without making some allowance for such contingencies. Thus, the legislation requires that emergency plans address these issues in not less than 3 years either by providing for the use of such technologies or detailing within the plan the fact that the technology is either not commercially available, or, if commercially available, why it would not work in the particular mine in question and what alternative is being utilized. It is also the committee's intent that minor tech-

nological limitations shall not discourage mines from adopting new technologies, in cases where such technologies have significant safety benefits.

In Section 3, the committee recognizes the critically important work of mine rescue teams and the concerns of companies which sponsor them. Mine rescue team members are volunteers, and the companies that deploy them to mines they do not own or have rescue team contracts with do so voluntarily. Neither the team members nor the mine companies should fear liability in the course of their rescue work. This section is intended to avoid disputes about liability at the scene of an emergency and to encourage miners to participate in rescue teams. It is also intended to encourage employers to field rescue teams and to send them to other mines.

Section 4 imposes new requirements for mine rescue teams at underground coal mines. It is not the intent of the committee to displace the current practice in some States of providing state-sponsored mine rescue teams. It is the view of the committee that state-sponsored teams which meet the familiarity, training and proximity requirements in Section 4 will satisfy the requirement to make available mine rescue teams for underground coal mines with 36 employees or less and those with more than 36 employees. It is also the view of the committee that the classifications established by Section 4 of "more than 36" or "36 or fewer employees" should be interpreted, as it is currently (30 CFR 49.3), to encompass total underground employment.

Section 5 requires MSHA notification within 15 minutes for a subset of situations which are currently defined as accidents under regulation [30 CFR 50.2(h)]. The committee intends the 15 minute requirement to apply only to accidents described in 30 CFR 50.2(h)(1), (2), and (3): meaning those that involve death of an individual at the mine, and those that involve an injury or entrapment of an individual at the mine which has reasonable potential to cause death. Similarly, it is the intent of the committee that the minimum fine of \$5,000 be assessed only for those accidents described in 30 CFR 50.2(h)(1), (2), and (3).

The intent of Section 6 is to strengthen the focus of the National Institute of Occupational Safety and Health ["NIOSH"] on mining issues. The committee recognizes that Federal mining safety research was dislocated when its parent agency, the Bureau of Mines under the Department of Interior, was eliminated in 1995. Federal mining research was eventually transferred into NIOSH at the Centers for Disease Control and Prevention (CDC). In fiscal year 2005, NIOSH received \$257 million in funding, \$30.7 million of which was devoted to mine safety research. By permanently creating an Office of Mine Safety and Health within NIOSH, the committee wishes to enhance the current mining research performed and maintain NIOSH's significant research capabilities and resources, such as the laboratory facilities in Spokane and Pittsburgh.

The committee has heard the argument that the placement of NIOSH within CDC diffuses leadership and funding, ultimately compromising the NIOSH mission. However, it is the view of the committee that CDC will recognize the strong Congressional desire that the new Office of Mine Safety and Health be placed in a position of high priority within the agency. The committee looks for-

ward to working with the Director of CDC to enhance the position of NIOSH and mine research in the agency.

By authorizing the Office of Mine Safety and Health to award grants and contracts to appropriate entities to develop and test new technologies, the committee intends to accelerate the pace of research and progress. The committee notes the observation of experts that the pace of mining safety technology has slowed in the years since the Bureau of Mines was eliminated; as well as the frustration that some safety-enhancing technologies which are able to be produced today remain unavailable on the commercial market. The committee hopes that NIOSH will place particular emphasis on development and demonstration of wireless, multimode, two-way radio communications and tracking technologies for underground mines, which will alleviate the current problems with locating and communicating with trapped miners.

Section 6 also requires the establishment of an Interagency Working Group to ensure that the Office of Mine Safety and Health has access to the full scale of research being conducted by the Federal Government. The Associate Director of Mine Safety and Health has the authority to determine which research agencies should be included in the working group. The committee intends that every federally-funded entity requested to participate will do so to the full extent possible.

Section 10 requires the Secretary to raise the required strength level for materials sealing off abandoned areas in underground coal mines. The committee notes that the vast majority of existing seals are used to close off areas with stabilized levels of methane, the disturbance of which could create extreme and unnecessary danger.

In Section 11, the committee responds to the wide divergence of views on the use of belt air in underground coal mining. It is the committee's view that a scientific review of the safety of belt air would provide clarity to this debate. The committee also seeks additional information regarding the use of fire retardant materials in belts installed in entries that conduct fresh air for the ventilation of active working sections. Section 11 therefore establishes a Technical Study panel to review these questions and report back to Congress, the Department of Labor and the Department of Health and Human Services. It is the intent of the committee that this Panel be made up of highly qualified experts in the field of mining engineering or other scientific fields demonstrably related to the subject of the report, and, furthermore, that no person appointed to the Panel be an employee of the mining industry or organized labor.

The committee also recognizes that refuge chambers may be a viable means to protect miners' lives in the event they are unable to evacuate from the mine. In Section 12, the committee directed further research by NIOSH on the potential use of refuge chambers, including portable chambers. It is anticipated that in the course of such study, the use of, and experience with, refuge chambers in other countries that have utilized them will be considered.

V. COST ESTIMATE

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2006.

Hon. JUDD GREGG,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2803, the Mine Improvement and New Emergency Response Act of 2006. The Congress completed action on S. 2803 on June 7, 2006, and the President signed it into law on June 15, 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Geoffrey Gerhardt (for federal spending), and Emily Schlect (for federal revenues).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 2803—Mine Improvement and New Emergency Response Act of 2006

Summary: S. 2803, signed into law as Public Law 109–236, requires operators of underground coal mines to improve accident preparedness. The legislation requires mining companies to develop an emergency response plan specific to each mine they operate, and requires that every mine have at least two rescue teams located within one hour. This act also limits the legal liability of rescue team members and the companies that employ them. It increases both civil and criminal penalties for violations of federal mining safety standards and gives the Mine Safety and Health Administration (MSHA) the ability to temporarily close a mine that fails to pay the penalties or fines. In addition, the law requires several studies into ways to enhance mine safety, as well as the establishment of a new office within the National Institute for Occupational Safety and Health devoted to improving mine safety. Finally, the law establishes new scholarship and grant programs devoted to training individuals with respect to mine safety.

By increasing civil and criminal penalties, CBO estimates that Public Law 109–236 will increase federal revenues by \$1 million in 2006, by \$27 million over the 2006–2011 period, and by \$53 million through 2016. (Civil and criminal penalties are recorded by the federal budget as revenues). Funds collected through increases in criminal penalties are deposited in the Crime Victims Fund and subsequently spent. CBO estimates that the law will increase direct spending by about \$5 million over the 2007–2011 period, and by \$10 million over the 2007–2016 period.

Estimated cost to the Federal Government: The following table summarizes the estimated effects of the act on revenues and direct spending.

| | By fiscal year, in millions of dollars— | | | | | | | | | | |
|---------------------------|---|------|------|------|------|------|------|------|------|------|------|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
| Changes in revenues | 1 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| Changes in outlays | 0 | * | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |

Note: * = less than \$500,000.

Under prior law, civil penalties for mine safety violations were capped at \$60,000 per violation. This legislation raises that ceiling to \$220,000. It also increases minimum civil penalties for certain violations from \$60 to \$2,000. Further, the law raises criminal penalties from \$25,000 to \$250,000 for a first conviction and from \$50,000 to \$500,000 for successive violations.

CBO estimates that these changes will increase federal revenues by \$1 million in 2006, by \$27 million over the 2006–2011 period, and by \$53 million over the 2006–2016 period. Civil penalties are recorded in the federal budget as revenues. Criminal penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates that the additional criminal penalties collected as a result of the law will increase direct spending from the Crime Victims Fund by about \$5 million over the 2007–2011 period, and about \$10 million through 2016.

Estimate prepared by: Federal Revenues: Emily Schlect, Federal Spending: Geoffrey Gerhardt.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax Analysis.

VI. APPLICATION OF LAW TO LEGISLATIVE BRANCH

The committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of Section 102(b)(3) of the Congressional Accountability Act.

VII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b) of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out this legislation. The MINER Act requires operators of underground coal mines to develop a written accident response and preparedness plan for each mine they operate. It also requires the Secretary of Labor to issue new regulations regarding the sealing of abandoned areas in underground coal mines to increase the 20 psi standard in effect at the time the MINER Act was enacted. The act requires changes to the regulation concerning rescue teams. It also requires the Secretary of Labor to promulgate final regulations with respect to penalties by December 30, 2006, and requires that monetary penalties be raised for specific violations.

VIII. SECTION BY SECTION ANALYSIS

Section 1—Title. Mine Improvement and New Emergency Response Act of 2006.

Section 2—Mine-Specific Emergency Response Plans. This section contains the essence of the legislation’s regulatory approach. It requires each covered mine to develop, and to continuously update,

a written emergency response plan that is adapted to the individual mine; and calls for the use of equipment and technology that is currently commercially available, and workable in the particular mine. These emergency response plans must be continuously reviewed and updated by the operator, and must be reviewed and recertified by MSHA every 6 months.

The plans must, at a minimum, provide for (a) post-accident communication such as secondary telephone lines or equivalent two-way communications; (b) post-accident tracking to locate underground personnel; (c) post-accident breathable air in sufficient quantities to maintain miners underground for a sustained period of time; (d) post-accident lifelines to enable evacuations; (e) training; and (f) local coordination with emergency response personnel to facilitate above ground activities in support of rescue efforts. In addition to these general requirements, this section directs the Secretary to require wireless two-way communications and an electronic tracking system permitting those on the surface to locate persons trapped underground within 3 years, or to set forth, within the plan, reasons such provisions cannot be adopted at that mine and alternative means of compliance. The intent of this section is for operators to use the most advanced technology available that works best in their particular mine, to provide a means for the plan to be continuously adapted to changes in the mine or in the commercial technical equipment market, and to avoid the "behave only to the letter of the standard" syndrome that stifles innovation and delays the implementation of new methods or equipment. Minor limitations shall not discourage mines from adopting new technology, in cases where it has significant safety benefits.

Section 3—Resolution/Limitation on Liability for Rescue Teams. This provision protects rescue team members and the employer of rescue team members from tort lawsuits based on injuries, deaths or property damage related to the carrying out of mine rescue operations, with an exception for gross negligence, reckless conduct or illegal conduct or in the event that the employer is the operator of the mine in which the rescue is taking place. The provision does not in any case reduce individuals' ability to avail themselves of workers' compensation under existing State regimes.

Section 4—Rescue Teams. This provision requires the Secretary of Labor to issue new regulations on mine rescue teams within 18 months. These will require that every mine make available two rescue teams which are well-trained, familiar with the operations of the particular mine, and which are located at rescue stations within 1 hour of the mine. At the same time, the regulations will preserve systems that are currently working, such as consortium teams, "co-op" and leased teams and State teams.

Section 5—Prompt Incident Notification. This provision codifies the recent MSHA emergency regulation which requires that operators make notification of all incidents/accidents which pose a reasonable risk of death within 15 minutes of when the operator realizes an accident has occurred. It would fix a minimum civil penalty of \$5,000, up to \$60,000 (which is the current maximum) for failure to do so.

Section 6—Strengthening of Mine Research National Institute of Occupational Safety and Health.

- Permanent Office of Mine Safety and Health: Establishes a permanent Office of Mine Safety and Health within NIOSH to enhance the development of new mine safety technology and expedite its commercial availability and implementation in mines.
- Grants and Contracts for New Technology: Establishes a competitive grant program to be administered by NIOSH. The grant program would provide capital and incentives to encourage the development and manufacture of mine safety equipment that might not otherwise be produced because of the limited potential market.
- NIOSH-chaired interagency working group: Establishes an interagency working group to provide a formal means of sharing non-classified technology with applicability to mine safety and accident/incident management. In addition to NIOSH, the group could include entities such as the National Aeronautics and Space Administration [“NASA”], the Department of Defense [“DOD”] and others as appropriate. The working group would be chaired by NIOSH mining personnel and would issue an annual report.
- Expedite Approval of New Technology: This provision would streamline the approval and certification process for new mine safety technology by providing NIOSH with funding to enter into review and testing contracts with third party laboratories.

Section 7—Family Liaison Policy. This provision requires the Secretary to establish a policy of assigning an official to be liaison between MSHA and the families of victims of mine tragedies. It also would direct MSHA to be as responsive as possible to victims’ families’ requests for information relating to mine accidents and direct MSHA to be the primary communicator to operators, miners’ families, the press and the public in mine accident cases.

Section 8—Penalties. This provision raises the maximum civil penalty for flagrant violations to the amount proposed by the Administration, \$220,000. The term flagrant violation is defined as a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury. It would also impose a minimum fine of \$2,000 for violations of section 104(d)(1) and a minimum fine of \$4,000 for violations of section 104(d)(2). This section also directs the Secretary to finalize regulations revising the penalties structure by December 31, 2006. This provision would also codify in the Mine Safety and Health Act a tenfold increase in the criminal penalty cap to \$250,000 for first offenses and \$500,000 for second offenses, which is the applicable amount pursuant to the Omnibus Crime Control Act of 1984.

Section 9—Fine Collections and Injunctions. This provision gives MSHA the power to seek an injunction (shutting down a mine) in cases where the mine has refused to pay an MSHA penalty.

Section 10—Sealing of Abandoned Areas. This provision requires the Secretary to issue final regulations strengthening the required standard for seals of abandoned areas within 18 months of the date of enactment or issuance of the MSHA report on Sago.

Section 11—Technical Study Panel on Belt Air. This provision establishes a Technical Study Panel to provide independent scientific and engineering review and comment with respect to the utilization of belt air and the possible use and integration of fire retardant belt components in underground coal mining. The panel will be made up of six individuals, four of which must hold masters or doctoral-level mining-related degrees and who are not current employees of any coal or other mine, or of any labor organization, or of any State or Federal agency primarily devoted to regulating the mining industry. Two panelists would be selected by the Secretary of Labor (in consultation with MSHA), two by the Secretary of Health and Human Services (in consultation with NIOSH), and two by Congress (one by majority, one by minority). The panel will report back to the respective Secretaries and Congress within 1 year of enactment. Within 180 days of receipt of this report, the Secretary of Labor is required to inform the Senate HELP Committee and House Education and Workforce Committee of what, if any, actions she intends to take based upon the report, including proposing regulatory changes, and the reasons therefore. If the panel finds it useful, it may coordinate with NIOSH to make use of NIOSH's research resources, such as the NIOSH test mine.

Section 12—Mine Safety Scholarships. This provision addresses the anticipated shortage in trained and experienced miners and MSHA enforcement staff by creating a college, community college, and graduate level scholarship program available to miners and those who wish to become miners and MSHA enforcement staff.

Section 13—Refuge Chambers. This provision requires the National Institute of Occupational Safety and Health to conduct research—including field tests in their underground mine—on the use of refuge chambers in underground coal mines. Within 180 days of receipt of this report on this research, the Secretary of Labor is required to inform the Senate HELP Committee and House Education and Workforce Committee of what, if any, actions she intends to take based upon the report, including proposing regulatory changes, and the reasons therefore.

Section 14—Brookwood—Sago Mine Safety Grants. Establishes a program to provide training grants to better identify, avoid and prevent unsafe working conditions in and around mines. These grants will be made on an annual, competitive basis to provide education and training programs or to develop training materials for employers and miners about safety and health topics in the mines, as selected by MSHA, with a special emphasis on smaller mines, including training miners and employers about new MSHA standards, high risk activities or hazards identified by MSHA.

IX. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

* * * * *

TITLE I—GENERAL

MANDATORY SAFETY AND HEALTH STANDARDS

SEC. 101. (a) * * *

* * * * *

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 103. (a) * * *

(j) In the event of any accident occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. *For purposes of the preceding sentence, the notification required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred.* In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine.

* * * * *

INJUNCTIONS

SEC. 108. (a)(1) The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal or other mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent—

(A) violates or fails or refuses to comply with any order or decision issued under this Act, *or fails or refuses to comply with any order or decision, including a civil penalty assessment order, that is issued under this Act,*

* * * * *

PENALTIES

SEC. 110. (a) [The operator] (1) *The operator* of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provisions of this Act, shall be assessed a civil penalty by the Secretary which penalty shall not be more than \$50,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

(2) *The operator of a coal or other mine who fails to provide timely notification to the Secretary as required under section 103(j) (relating to the 15 minute requirement) shall be assessed a civil pen-*

alty by the Secretary of not less than \$5,000 and not more than \$60,000.

(3) Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 104 and section 107, or any order incorporated in a final decision issued under this title, except an order incorporated in a decision under paragraph (1) or section 105(c), shall, upon conviction, be punished by a fine of not more than \$250,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this Act, punishment shall be by a fine of not more than \$500,000, or by imprisonment for not more than five years, or both.

(4)(A) The minimum penalty for any citation or order issued under section 104(d)(1) shall be \$2,000.

(B) The minimum penalty for any order issued under section 104(d)(2) shall be \$4,000.

(5) Nothing in this subsection shall be construed to prevent an operator from obtaining a review, in accordance with section 106, of an order imposing a penalty described in this subsection. If a court, in making such review, sustains the order, the court shall apply at least the minimum penalties required under this subsection.

(b) Any operator who fails to correct a violation for which a citation has been issued under section 104(a) within the period permitted for its correction may be assessed a civil penalty of not more than \$5,000 for each day during which such failure or violation continues. Violations under this section that are deemed to be flagrant may be assessed a civil penalty of not more than \$220,000. For purposes of the preceding sentence, the term "flagrant" with respect to a violation means a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.

* * * * *

MANDATORY HEALTH AND SAFETY TRAINING

SEC. 115. (a) * * *

* * * * *

(e)(1) Within 180 days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977, the Secretary shall publish proposed regulations which shall provide that mine rescue teams shall be available for rescue and recovery work to each underground coal or other mine in the event of an emergency. The costs of making advance arrangements for such teams shall be borne by the operator of each such mine.

(2)(A) The Secretary shall issue regulations with regard to mine rescue teams which shall be finalized and in effect not later than 18 months after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006.

(B) Such regulations shall provide for the following:

(i) That such regulations shall not be construed to waive operator training requirements applicable to existing mine rescue teams.

(ii) *That the Mine Safety and Health Administration shall establish, and update every 5 years thereafter, criteria to certify the qualifications of mine rescue teams.*

(iii)(I) *That the operator of each underground coal mine with more than 36 employees—*

(aa) have an employee knowledgeable in mine emergency response who is employed at the mine on each shift at each underground mine; and

(bb) make available two certified mine rescue teams whose members—

(AA) are familiar with the operations of such coal mine;

(BB) participate at least annually in two local mine rescue contests;

(CC) participate at least annually in mine rescue training at the underground coal mine covered by the mine rescue team; and

(DD) are available at the mine within one hour ground travel time from the mine rescue station.

(II)(aa) *For the purpose of complying with subclause (I), an operator shall employ one team that is either an individual mine site mine rescue team or a composite team as provided for in item (bb)(BB).*

(bb) *The following options may be used by an operator to comply with the requirements of item (aa):*

(AA) An individual mine-site mine rescue team.

(BB) A multi-employer composite team that is made up of team members who are knowledgeable about the operations and ventilation of the covered mines and who train on a semi-annual basis at the covered underground coal mine—

(aaa) which provides coverage for multiple operators that have team members which include at least two active employees from each of the covered mines;

(bbb) which provides coverage for multiple mines owned by the same operator which members include at least two active employees from each mine; or

(ccc) which is a State-sponsored mine rescue team comprised of at least two active employees from each of the covered mines.

(CC) A commercial mine rescue team provided by contract through a third-party vendor or mine rescue team provided by another coal company, if such team—

(aaa) trains on a quarterly basis at covered underground coal mines;

(bbb) is knowledgeable about the operations and ventilation of the covered mines; and

(ccc) is comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.

(DD) A State-sponsored team made up of State employees.

(iv) *That the operator of each underground coal mine with 36 or less employees shall—*

- (I) have an employee on each shift who is knowledgeable in mine emergency responses; and
- (II) make available two certified mine rescue teams whose members—
 - (aa) are familiar with the operations of such coal mine;
 - (bb) participate at least annually in two local mine rescue contests;
 - (cc) participate at least semiannually in mine rescue training at the underground coal mine covered by the mine rescue team;
 - (dd) are available at the mine within one hour ground travel time from the mine rescue station;
 - (ee) are knowledgeable about the operations and ventilation of the covered mines; and
 - (ff) are comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.

* * * * *

SEC. 116. LIMITATION ON CERTAIN LIABILITY FOR RESCUE OPERATIONS.

(a) *IN GENERAL.*—No person shall bring an action against any covered individual or his or her regular employer for property damage or an injury (or death) sustained as a result of carrying out activities relating to mine accident rescue or recovery operations. This subsection shall not apply where the action that is alleged to result in the property damages or injury (or death) was the result of gross negligence, reckless conduct, or illegal conduct or, where the regular employer (as such term is used in this Act) is the operator of the mine at which the rescue activity takes place. Nothing in this section shall be construed to preempt State workers' compensation laws.

(b) *COVERED INDIVIDUAL.*—For purposes of subsection (a), the term “covered individual” means an individual—

- (1) who is a member of a mine rescue team or who is otherwise a volunteer with respect to a mine accident; and
- (2) who is carrying out activities relating to mine accident rescue or recovery operations.

(c) *REGULAR EMPLOYER.*—For purposes of subsection (a), the term “regular employer” means the entity that is the covered employee’s legal or statutory employer pursuant to applicable State law.

* * * * *

COMMUNICATIONS AND EMERGENCY RESPONSE PLANS

SEC. 316. [TELEPHONE] (a) *IN GENERAL.*—Telephone service or equivalent two-way communication facilities, approved by the Secretary or his authorized representative, shall be provided between the surface and each landing of main shafts and slopes and between the surface and each working section of any coal mine that is more than one hundred feet from a portal.

(b) *ACCIDENT PREPAREDNESS AND RESPONSE.*—

(1) *IN GENERAL.*—Each underground coal mine operator shall carry out on a continuing basis a program to improve accident preparedness and response at each mine.

(2) *RESPONSE AND PREPAREDNESS PLAN.*—

(A) *IN GENERAL.*—Not later than 60 days after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, each underground coal mine operator shall develop and adopt a written accident response plan that complies with this subsection with respect to each mine of the operator, and periodically update such plans to reflect changes in operations in the mine, advances in technology, or other relevant considerations. Each such operator shall make the accident response plan available to the miners and the miners' representatives.

(B) *PLAN REQUIREMENTS.*—An accident response plan under subparagraph (A) shall—

(i) provide for the evacuation of all individuals endangered by an emergency; and

(ii) provide for the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine.

(C) *PLAN APPROVAL.*—The accident response plan under subparagraph (A) shall be subject to review and approval by the Secretary. In determining whether to approve a particular plan the Secretary shall take into consideration all comments submitted by miners or their representatives. Approved plans shall—

(i) afford miners a level of safety protection at least consistent with the existing standards, including standards mandated by law and regulation;

(ii) reflect the most recent credible scientific research;

(iii) be technologically feasible, make use of current commercially available technology, and account for the specific physical characteristics of the mine; and

(iv) reflect the improvements in mine safety gained from experience under this Act and other worker safety and health laws.

(D) *PLAN REVIEW.*—The accident response plan under subparagraph (A) shall be reviewed periodically, but at least every 6 months, by the Secretary. In such periodic reviews, the Secretary shall consider all comments submitted by miners or miners' representatives and intervening advancements in science and technology that could be implemented to enhance miners' ability to evacuate or otherwise survive in an emergency.

(E) *PLAN CONTENT-GENERAL REQUIREMENTS.*—To be approved under subparagraph (C), an accident response plan shall include the following:

(i) *POST-ACCIDENT COMMUNICATIONS.*—The plan shall provide for a redundant means of communication with the surface for persons underground, such as secondary telephone or equivalent two-way communication.

(ii) *POST-ACCIDENT TRACKING.*—Consistent with commercially available technology and with the physical

constraints, if any, of the mine, the plan shall provide for above ground personnel to determine the current, or immediately pre-accident, location of all underground personnel. Any system so utilized shall be functional, reliable, and calculated to remain serviceable in a post-accident setting.

(iii) *POST-ACCIDENT BREATHABLE AIR.*—The plan shall provide for—

(I) emergency supplies of breathable air for individuals trapped under-ground sufficient to maintain such individuals for a sustained period of time;

(II) in addition to the 2 hours of breathable air per miner required by law under the emergency temporary standard as of the day before the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, caches of self-rescuers providing in the aggregate not less than 2 hours per miner to be kept in escapeways from the deepest work area to the surface at a distance of no further than an average miner could walk in 30 minutes;

(III) a maintenance schedule for checking the reliability of self rescuers, retiring older self-rescuers first, and introducing new self-rescuer technology, such as units with interchangeable air or oxygen cylinders not requiring doffing to replenish airflow and units with supplies of greater than 60 minutes, as they are approved by the Administration and become available on the market; and

(IV) training for each miner in proper procedures for donning self-rescuers, switching from one unit to another, and ensuring a proper fit.

(iv) *POST-ACCIDENT LIFELINES.*—The plan shall provide for the use of flame-resistant directional lifelines or equivalent systems in escapeways to enable evacuation. The flame-resistance requirement of this clause shall apply upon the replacement of existing lifelines, or, in the case of lifelines in working sections, upon the earlier of the replacement of such lifelines or 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006.

(v) *TRAINING.*—The plan shall provide a training program for emergency procedures described in the plan which will not diminish the requirements for mandatory health and safety training currently required under section 115.

(vi) *LOCAL COORDINATION.*—The plan shall set out procedures for coordination and communication between the operator, mine rescue teams, and local emergency response personnel and make provisions for familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.

(F) *PLAN CONTENT-SPECIFIC REQUIREMENTS.*—

(i) *IN GENERAL.*—In addition to the content requirements contained in subparagraph (E), and subject to the considerations contained in subparagraph (C), the Secretary may make additional plan requirements with respect to any of the content matters.

(ii) *POST ACCIDENT COMMUNICATIONS.*—Not later than 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, a plan shall, to be approved, provide for post accident communication between underground and surface personnel via a wireless two-way medium, and provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground or set forth within the plan the reasons such provisions cannot be adopted. Where such plan sets forth the reasons such provisions cannot be adopted, the plan shall also set forth the operator's alternative means of compliance. Such alternative shall approximate, as closely as possible, the degree of functional utility and safety protection provided by the wireless two-way medium and tracking system referred to in this subpart.

(G) *PLAN DISPUTE RESOLUTION.*—

(i) *IN GENERAL.*—Any dispute between the Secretary and an operator with respect to the content of the operator's plan or any refusal by the Secretary to approve such a plan shall be resolved on an expedited basis.

(ii) *DISPUTES.*—In the event of a dispute or refusal described in clause (i), the Secretary shall issue a citation which shall be immediately referred to a Commission Administrative Law Judge. The Secretary and the operator shall submit all relevant material regarding the dispute to the Administrative Law Judge within 15 days of the date of the referral. The Administrative Law Judge shall render his or her decision with respect to the plan content dispute within 15 days of the receipt of the submission.

(iii) *FURTHER APPEALS.*—A party adversely affected by a decision under clause (ii) may pursue all further available appeal rights with respect to the citation involved, except that inclusion of the disputed provision in the plan will not be limited by such appeal unless such relief is requested by the operator and permitted by the Administrative Law Judge.

(H) *MAINTAINING PROTECTIONS FOR MINERS.*—Notwithstanding any other provision of this Act, nothing in this section, and no response and preparedness plan developed under this section, shall be approved if it reduces the protection afforded miners by an existing mandatory health or safety standard.

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BLACK LUNG BENEFITS ACT

TITLE V—ADMINISTRATION

RESEARCH

SEC. 501. (a) * * *

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SEC. 513. * * *

SEC. 514. TECHNICAL STUDY PANEL.

(a) *ESTABLISHMENT.*—There is established a Technical Study Panel (referred to in this section as the “Panel” which shall provide independent scientific and engineering review and recommendations with respect to the utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining.

(b) *MEMBERSHIP.*—The Panel shall be composed of—

(1) two individuals to be appointed by the Secretary of Health and Human Services, in consultation with the Director of the National Institute for Occupational Safety and Health and the Associate Director of the Office of Mine Safety;

(2) two individuals to be appointed by the Secretary of Labor, in consultation with the Assistant Secretary for Mine Safety and Health; and

(3) two individuals, one to be appointed jointly by the majority leaders of the Senate and House of Representatives and one to be appointed jointly by the minority leader of the Senate and House of Representatives, each to be appointed prior to the sine die adjournment of the second session of the 109th Congress.

(c) *QUALIFICATIONS.*—Four of the six individuals appointed to the Panel under subsection (b) shall possess a masters or doctoral level degree in mining engineering or another scientific field demonstrably related to the subject of the report. No individual appointed to the Panel shall be an employee of any coal or other mine, or of any labor organization, or of any State or Federal agency primarily responsible for regulating the mining industry.

(d) *REPORT.*—

(1) *IN GENERAL.*—Not later than 1 year after the date on which all members of the Panel are appointed under subsection (b), the Panel shall prepare and submit to the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives a report concerning the utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining.

(2) *RESPONSE BY SECRETARY.*—Not later than 180 days after the receipt of the report under paragraph (1), the Secretary of Labor shall provide a response to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives containing a description of the actions, if any, that the Secretary intends to take based upon the report, including proposing regulatory changes, and the reasons for such actions.

(e) *COMPENSATION.*—Members appointed to the panel, while carrying out the duties of the Panel shall be entitled to receive compensation, per diem in lieu of subsistence, and travel expenses in the same manner and under the same conditions as that prescribed under section 208(c) of the Public Health Service Act.

SEC. 515. SCHOLARSHIPS.

(a) *ESTABLISHMENT.*—The Secretary of Education referred to in this section as the “Secretary”, consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall establish a program to provide scholarships to eligible individuals to increase the killed workforce for both private sector coal mine operators and mine safety inspectors and other regulatory personnel for the Mine Safety and Health Administration.

(b) *FUNDAMENTAL SKILLS SCHOLARSHIPS.*—

(1) *IN GENERAL.*—Under the program under subsection (a), the Secretary may award scholarship to fully or partially pay the tuition costs of eligible individuals enrolled in 2-year associate’s degree programs at community colleges or other colleges and universities that focus on providing the fundamental skills and training that is of immediate use to a beginning coal miner.

(2) *SKILLS.*—The skills described in paragraph (1) shall include basic math, basic health and safety, business principles, management and supervisory skills, skills related to electric circuitry, skills related to heavy equipment operations, and skills related to communications.

(3) *ELIGIBILITY.*—To be eligible to receive a scholarship under this subsection an individual shall—

(A) have a high school diploma or a GED;

(B) have at least 2 years experience in full-time employment in mining or mining-related activities;

(C) submit to the Secretary an application at such time, in such manner, and containing such information; and

(D) demonstrate an interest in working in the field of mining and performing an internship with the Mine Safety and Health Administration or the National Institute for Occupational Safety and Health Office of Mine Safety.

(c) *MINE SAFETY INSPECTOR SCHOLARSHIPS.*—

(1) *IN GENERAL.*—Under the program under subsection (a), the Secretary may award scholarship to fully or partially pay the tuition costs of eligible individuals enrolled in undergraduate bachelor’s degree programs at accredited colleges or universities that provide the skills needed to become mine safety inspectors.

(2) *SKILLS.*—The skills described in paragraph (1) include skills developed through programs leading to a degree in mining engineering, civil engineering, mechanical engineering, electrical engineering, industrial engineering, environmental engineering, industrial hygiene, occupational health and safety, geology, chemistry, or other fields of study related to mine safety and health work.

(3) *ELIGIBILITY.*—To be eligible to receive a scholarship under this subsection an individual shall—

(A) have a high school diploma or a GED;

(B) have at least 5 years experience in full-time employment in mining or mining-related activities;

(C) submit to the Secretary an application at such time, in such manner, and containing such information; and

(D) agree to be employed for a period of at least 5 years at the Mine Safety and Health Administration or, to repay, on a pro-rated basis, the funds received under this program, plus interest, at a rate established by the Secretary upon the issuance of the scholarship.

(d) **ADVANCED RESEARCH SCHOLARSHIPS.**—

(1) **IN GENERAL.**—Under the program under subsection (a), the Secretary may award scholarships to fully or partially pay the tuition costs of eligible individuals enrolled in undergraduate bachelor's degree, masters degree, and Ph.D. degree programs at accredited colleges or universities that provide the skills needed to augment and advance research in mine safety and to broaden, improve, and expand the universe of candidates for mine safety inspector and other regulatory positions in the Mine Safety and Health Administration.

(2) **SKILLS.**—The skills described in paragraph (1) include skills developed through programs leading to a degree in mining engineering, civil engineering, mechanical engineering, electrical engineering, industrial engineering, environmental engineering, industrial hygiene, occupational health and safety, geology, chemistry, or other fields of study related to mine safety and health work.

(3) **ELIGIBILITY.**—To be eligible to receive a scholarship under this subsection an individual shall—

(A) have a bachelor's degree or equivalent from an accredited 4-year institution;

(B) have at least 5 years experience in full-time employment in underground mining or mining-related activities; and

(C) submit to the Secretary an application at such time, in such manner, and containing such information.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

SEC. 22. (a) * * *

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(g) **LEAD-BASED PAINT ACTIVITIES.**—

(1) **TRAINING GRANT PROGRAM.**—(A) * * *

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(h) **OFFICE OF MINE SAFETY AND HEALTH.**—

(1) **IN GENERAL.**—There shall be permanently established within the Institute an Office of Mine Safety and Health which shall be administered by an Associate Director to be appointed by the Director.

(2) *PURPOSE.*—The purpose of the Office is to enhance the development of new mine safety technology and technological applications and to expedite the commercial availability and implementation of such technology in mining environments.

(3) *FUNCTIONS.*—In addition to all purposes and authorities provided for under this section, the Office of Mine Safety and Health shall be responsible for research, development, and testing of new technologies and equipment designed to enhance mine safety and health. To carry out such functions the Director of the Institute, acting through the Office, shall have the authority to—

(A) award competitive grants to institutions and private entities to encourage the development and manufacture of mine safety equipment;

(B) award contracts to educational institutions or private laboratories for the performance of product testing or related work with respect to new mine technology and equipment; and

(C) establish an interagency working group as provided for in paragraph (5).

(4) *GRANT AUTHORITY.*—To be eligible to receive a grant under the authority provided for under paragraph (3)(A), an entity or institution shall—

(A) submit to the Director of the Institute an application at such time, in such manner, and containing such information as the Director may require; and

(B) include in the application under subparagraph (A), a description of the mine safety equipment to be developed and manufactured under the grant and a description of the reasons that such equipment would otherwise not be developed or manufactured, including reasons relating to the limited potential commercial market for such equipment.

(5) *INTERAGENCY WORKING GROUP.*—

(A) *ESTABLISHMENT.*—The Director of the Institute, in carrying out paragraph (3)(D) shall establish an interagency working group to share technology and technological research and developments that could be utilized to enhance mine safety and accident response.

(B) *MEMBERSHIP.*—The working group under subparagraph (A) shall be chaired by the Associate Director of the Office who shall appoint the members of the working group, which may include representatives of other Federal agencies or departments as determined appropriate by the Associate Director.

(C) *DUTIES.*—The working group under subparagraph (A) shall conduct an evaluation of research conducted by, and the technological developments of, agencies and departments who are represented on the working group that may have applicability to mine safety and accident response and make recommendations to the Director for the further development and eventual implementation of such technology.

(6) *ANNUAL REPORT.*—Not later than 1 year after the establishment of the Office under this subsection, and annually thereafter, the Director of the Institute shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate

and the Committee on Education and the Workforce of the House of Representatives a report that, with respect to the year involved, describes the new mine safety technologies and equipment that have been studied, tested, and certified for use, and with respect to those instances of technologies and equipment that have been considered but not yet certified for use, the reasons therefore.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, such sums as may be necessary to enable the Institute and the Office of Mine Safety and Health to carry out this subsection.

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