



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

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(House Rules)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 2768 – Supplemental Mine Improvement and New Emergency Response Act

(Rep. Miller (D) CA and 24 cosponsors)

In 2006, the President signed the Mine Improvement and New Emergency Response (MINER) Act – the most significant mine safety legislation in nearly 30 years. The Administration has worked with miners, mine owners, miners' representatives, and other stakeholders in the mining industry to meet the safety improvement goals set forth in the original MINER act, including issuing regulations to strengthen emergency mine evacuation practices, improve the strength requirements for seals, and increase civil penalties. In addition, on December 26, 2007, the President signed the Omnibus Appropriations Act, which mandates additional rulemaking on belt air and refuge chambers on rigorous timetables.

H.R. 2768, the Supplemental Mine Improvement and New Emergency Response Act – the “S-MINER” bill – would place in jeopardy meaningful achievements and efforts currently underway as a result of these measures. In particular, several of the regulatory mandates in the S-MINER bill would weaken several existing regulations and overturn regulatory processes that were required by the MINER Act and are ongoing. These changes would provide no opportunity for stakeholder participation in the regulatory process and would impose burdensome and unrealistic time requirements. The S-MINER bill also would fundamentally change the investigation of mining accidents and jeopardize the ability to hold mine operators accountable for violations of mine safety regulations. For these reasons, the Administration strongly opposes House passage of the bill. If H.R. 2768 were presented to the President in its current form, the President's senior advisors would recommend he veto the bill.

The S-MINER bill requires new regulations on the strength of mine seals, even though a new Emergency Temporary Standard on mine seals was issued in May 2007 and a final regulation will be issued in February 2008. To re-open this process would cause confusion within the industry and put on hold improvements already being made to underground mine seals. The requirement to use boreholes to sample behind mine seals weakens existing safety standards since boreholes have metal casings that could introduce an ignition source, such as lightning, into an area of the mine that may contain explosive methane. The S-MINER bill would weaken current regulations requiring a mine operator to contact the Mine Safety and Health Administration (MSHA) within 15 minutes of a serious accident by creating a two-tiered notification system of 15 minutes or one hour depending on the severity of the incident.

Of particular concern is a provision requiring the MSHA to adopt the recommended exposure limits issued by the National Institute for Occupational Safety and Health as permissible exposure limits (PELs). This provision overturns a Federal court decision that requires agencies like the MSHA to perform a risk assessment prior to issuing a PEL. This provision would

mandate the adoption of potentially hundreds of PELs without any input from stakeholders and without determination of whether the PEL is economically and technologically feasible. The S-MINER bill would allow a stakeholder to challenge a PEL only *after* its issuance. This process undermines the rigor of the normal rulemaking process and places the burden of proof of technological and economic feasibility on stakeholders, instead of the Department of Labor.

The S-MINER bill could potentially quadruple the number of investigations into multi-injury or multi-fatality accidents by adding a requirement for another investigation by an independent investigative team and by giving the Chemical Safety Board, as well as the Office of the Inspector General within the Department of Labor, the right to investigate mine accidents. These provisions undermine the government's ability to hold accountable mine operators who violate mine safety and health regulations since multiple investigations potentially using different methodologies and reaching different conclusions could prejudice the government's ability to prosecute civil or criminal violations of mine safety and health standards that contributed to, or exacerbated, an accident. Current law gives the MSHA the sole power to investigate mining accidents, and, when MSHA investigators uncover possible criminal violations, they identify the necessary enforcement action to take against a mine operator and make an appropriate referral to the Department of Justice.

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