



December 4, 2007

U.S. House of Representatives
Washington, DC 20515

Dear Member of Congress:

On behalf of the organizations listed below, this letter is to inform you of our opposition to HR 2768, the Supplemental Mine Improvement and New Emergency Response Act (S-MINER). As you are aware, the bill requires the National Institute of Occupational Safety and Health to forward all Recommended Exposure Limits (RELs) for air contaminants to the Secretary of Labor, who must then require the Mine Safety and Health Administration (MSHA) to adopt the RELs as permissible exposure limits, or PELs, as enforceable health standards. Because of these concerns, we urge you to vote against HR 2768.

In particular we have the following objections to HR 2768:

- The bill precludes public participation through notice and comment in the rulemaking process, which is the cornerstone for setting health and safety standards for protecting employees, and a key tenet of the Administrative Procedures Act.
- The bill ignores impacts on small businesses by not analyzing the impact of what amounts to a “*significant*” regulatory action as mandated by the Regulatory Flexibility Act.
- The bill thrusts NIOSH into a regulatory and policy-setting role that was never envisioned and for which NIOSH, a research agency, is not prepared. We agree with the statement of concern about this legislation voiced by the steelworkers union that many NIOSH RELS have been adopted without considering technological feasibility, but regulatory agencies recognize standards must both protect and be feasible.
- The bill removes the authority of the presidentially-appointed and Senate-confirmed Secretary of Labor as the prime decision-maker in promulgating workplace federal rules.

Passage of HR 2768 reverses decades of government operating in the sunshine – transparency that in these times is sorely needed for the credibility of the federal government, business and labor. All of these groups have relied on the longstanding and

well-established process that mandates scientific research combined with technologic and economic feasibility when finalizing health and safety standards. We strongly urge you to vote against passage of HR 2768.

Sincerely,

American Road and Transportation Builders Association

Associated Builders and Contractors

Associated Equipment Distributors

Associated General Contractors

Association of Equipment Manufacturers

Industrial Minerals Association - North America

Mason Contractors Association of America

National Mining Association

National Stone, Sand & Gravel Association