

ORAL ARGUMENT HELD DECEMBER 15, 2022
SECOND ORAL ARGUMENT SCHEDULED FOR JANUARY 24, 2025
No. 22-1071

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Secretary of Labor,
Mine Safety and Health Administration,
Petitioner

v.

KC Transport, Inc. and
Federal Mine Safety and Health Review Commission,
Respondents

On Petition for Review of a Decision of the
Federal Mine Safety and Health Review Commission

Supplemental Reply Brief for the Secretary of Labor

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Glossary

JA	Citations to the Joint Appendix
Mine Act	Federal Mine Safety and Health Act of 1977
MSHA	Mine Safety and Health Administration
OSH Act	Occupational Safety and Health Act of 1970
OSHA	Occupational Safety and Health Administration
Sec’y Op. Br.	Secretary’s Final Opening Brief, No. 22-1071 (Nov. 7, 2022)
Sec’y Reply Br.	Secretary’s Final Reply Brief, No. 22-1071 (Nov. 7, 2022)
Sec’y Supp. Br.	Secretary’s Supplemental Brief, No. 22-1071 (Sept. 23, 2024)
Resp.	KC Transport’s Supplemental Response Brief, No. 22-1071 (Oct. 23, 2024)

Introduction

This Court has asked the parties to address five questions. The Secretary has addressed them: (1) an item in 30 U.S.C. 802(h)(1)(C) need not be located at an extraction site or processing plant to be a “mine” under the Mine Act, (2) interpreting the statute to limit Mine Act jurisdiction to subsection (C) moveables only when they are on subsection (C) nonmoveables would frustrate MSHA’s enforcement, (3) the statutory text and scheme indicate that subsection (C) moveables are subject to Mine Act jurisdiction even when not located on non-moveable manifestations, (4) operators can comply with the recordkeeping and documentation obligations of section 819(a) and (d), even when moveable subsection (C) objects are not tethered to a physical location, and (5) the parties agree that about 60% of KC Transport’s services are allocated to Ramaco. See Resp. Br. 21.

KC Transport continues to argue that moveable items must be located at extraction sites, on private appurtenant roads, or at processing plants to be subject to the Act; that a contrary interpretation would frustrate enforcement; that the statute does not suggest that moveables are covered when not on non-moveable manifestations; and that a contrary interpretation would frustrate the statute’s recordkeeping and documentation requirements.

Summary of Argument

KC Transport argues that a “mine” is a “(i) a physical location where (ii) some activity integral to mining occurs.” Resp. 5-6. But the definition of “mine” under the Mine Act includes “equipment” and “facilities” “used in . . . the work of extracting . . . or . . . the work of preparing coal or other minerals” 30 U.S.C. 802(h)(1)(C). The statutory definition reaches facilities (*e.g.*, maintenance facilities) and equipment (*e.g.*, trucks) used in mining, even when they are not located at an extraction site, on a private appurtenant road, or at a processing plant. Because the “equipment” (the trucks) were located at the “facility” (the maintenance facility), the Court can dispense with this case on the basis of the facility alone.

KC Transport urges this Court to forego the statutory definition of a “mine” and apply a location-centric “ordinary meaning” of the term; this violates well-settled principles of statutory construction and defies congressional intent. KC Transport argues that location is dispositive, and that Mine Act jurisdiction applies to subsection (C) items only when they are on extraction sites, private appurtenant roads, or at processing plants. The Secretary has explained that location is significant in determining a subsection (C) item’s “use in” mining. But it is not the sole determinative criterion. KC Transport says that its location-centric definition

would not frustrate MSHA's enforcement obligations but instead would clarify them. Not so, and KC Transport does not grapple with the perverse incentives for operators that this approach would create. KC Transport argues that nothing in the statute suggests that moveable property is covered when not on extraction sites, private appurtenant roads, or at processing plants, but the statutory language indicates that it is. And KC Transport argues that extending jurisdiction to subsection (C) items when not located on non-moveable manifestations conflicts with other statutory provisions enacted for other specialized reasons unrelated to jurisdiction. But KC Transport reads those other provisions in a hypertechnical way and ignores the realities of how MSHA sensibly enforces those provision.

Argument

1. Moveable subsection (C) items need not be located at extraction sites, on private appurtenant roads, at processing plants, or on fixed subsection (C) items to be subject to the Act.

1.1. Statutory definition

The definition of "mine" under the Mine Act includes "equipment" and "facilities" "used in . . . the work of extracting . . . or . . . the work of preparing coal or other minerals" 30 U.S.C. 802(h)(1)(C). The plain meaning of this subsection must include equipment and facilities other than those on extraction sites or mine roads covered in elsewhere in 30 U.S.C. 802(h)(1)(A) and (B).

KC Transport argues that a “mine” is a “(i) a physical location where (ii) some activity integral to mining occurs.” Resp. 5-6. KC Transport’s essential argument appears to be that, in order to be subject to Mine Act jurisdiction, subsection (C) moveable property must be located on subsection (C) nonmoveable property—and only if the nonmoveable property happens to be a processing plant. But that is incorrect. Subsection (C) is clear that MSHA has jurisdiction over both “facilities” and “equipment” “used in” extraction or milling. Clearly the maintenance shop and trucks at issue were “used in” extraction and milling.

KC Transport does not engage meaningfully with the statutory text. Instead, it directs the Court to eschew the statutory definition for the “ordinary meaning” of the word “mine.” In other words, KC Transport would have this Court use its invented definition (which was perhaps inspired by, but apparently not derived from any common dictionary) instead of abiding by congressional intent in the statutory test. Using this definition in lieu of the statute, KC Transport interprets, without authority, a “mine” to mean a fixed location. Resp. 5-7.

But the Supreme Court has recognized that “[w]hen Congress takes the trouble to define the terms it uses, a court must respect its definitions as ‘virtually conclusive.’” *Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) (quoting *Sturgeon v. Frost*, 587 U.S. 28, 56 (2019)); *Stenberg v. Carhart*, 530

U.S. 914, 942 (2000) (“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning”) (citations omitted). Courts “will not deviate from an express statutory definition merely because it ‘varies from the term’s ordinary meaning.’” *Kirtz*, 601 U.S. at 59 (quoting *Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149, 160, (2018)) (cleaned up). This Court adhered to that principle in *Carolina Stalite*, in which it interpreted the statutory definition of “mine” and said that “the statute makes clear that the concept that was to be conveyed by the word is *much more encompassing than the usual meaning* attributed to it—the word means what the statute says it means.” *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1554 (D.C. Cir. 1984) (quoting *Marshall v. Stoudt’s Ferry Preparation Co.*, 602 F.2d 589, 592 (3d Cir. 1979).

And Congress explained that “what is considered to be a mine and to be regulated under this Act [is to] be given the broadest possible interpretation.” S. Rep. No. 95-181, at 14 (“Senate Report”).

In support of its argument that “[t]he ordinary meaning of “coal or other mine’ controls,” Resp. 5, KC Transport cites three Supreme Court cases: *Weyerhaeuser v. U.S. Fish & Wildlife Services*, 586 U.S. 9 (2018), *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).

In *Weyerhaeuser*, the issue was whether a protected “critical habitat” for species protected under the Endangered Species Act included habitats where the species did not live and currently could survive. The statute allows for inclusion of areas outside the geographical areas the species occupies. 586 U.S. at 19-21. The Supreme Court remanded to the court of appeals for further consideration of what “habitat” means. *Id.* at 21. KC Transport appears to argue that *Weyerhaeuser* means that sources other than the text of the statute—i.e., common interpretations of a word—should be considered. But this case seems to stand for the opposite; the statute allowed for more than the ordinary meaning of “habitat” and the Court recognized that in its remand. See *id.* at 586 U.S. at 21.

In *Northern Cook County*, the Court held that a regulatory definition of the Clean Water Act term “navigable waters” did not cover a landfill located on land that contained some waters. 531 U.S. at 174. KC Transport argues that the Supreme Court declined to “expand” the statutorily defined term and that this Court should do the same with “mine,” Resp. 6. But the Secretary’s interpretation is not an expansion. “[T]he word means what the statute says it means.” *Carolina Stalite*, 734 F.2d at 1554. And the Court noted its previous holding “that Congress intended the phrase ‘navigable waters’ to include ‘at least some waters that would not be deemed ‘navigable’ under the classical understanding of that term.’” *N.*

Cook Cnty., 531 U.S. at 171 (quoting *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 133 (1985)). The same approach applies here: the statutory definition of “mine” includes things that are not “mines” in the ordinary sense. *Carolina Stalite*, 734 F.2d at 1554.

In *Sackett*, the Court held that “navigable waters” (in the Clean Water Act) did not include land containing “an ‘unnamed tributary’ on the other side of a 30-foot road” that “feeds into a non-navigable creek, which, in turn, feeds into” a lake. 598 U.S. at 662-663. KC Transport suggests that, because the Court considered the dictionary definition of defined terms, *Sackett* says that ordinary meanings must factor in a court’s analysis. The Court considered the dictionary meaning of defined terms, but it also turned to other indicators of meaning: the text, the context, statutory history, and precedent. *Id.* at 672-673. As the Secretary has explained, these indicators here support jurisdiction over equipment and facilities used in extraction or milling. Sec’y Op. Br. 21-38.

1.2. Other statutory provisions

KC Transport also cites 30 U.S.C. 820(h), which prohibits manufacturers and retailers from misrepresenting their products as Mine Act-compliant, as evidence that Congress knew how to authorize MSHA to regulate equipment regardless of location. Resp. 12. But section 820(h) imposes criminal penalties and the

Department of Justice enforces it. It has nothing to do with the scope of MSHA's civil jurisdiction and MSHA doesn't inspect manufacturers.

KC Transport cites 30 U.S.C. 811(a), which empowers the Secretary to promulgate "mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines," to suggest that "in" means "a physical location that humans can access." Resp. 14. KC Transport does not explain why this language would exclude maintenance facilities and concedes it would not exclude trucks. *Ibid.* KC Transport argues that 811(a) demonstrates that Mine Act coverage is limited to tools, equipment, facilities, and other items only if humans can "get inside of" those things. But it cites no authority for this specific and hyperliteral reading of the word "in."

KC Transport also cites 30 U.S.C. 803, which provides that the Mine Act covers "each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce" to argue that trucks and truck facilities do not have "products" and therefore are not covered. Resp. 14. But even under this reading, the statute would not exclude many moveable subsection (C) items. Many of these items, such as dredges and portable crushers, produce products. Private appurtenant roads also do not have products. And KC Transport selectively quotes from section 803 to focus on "products," without

acknowledging it also covers “operations” of mines, not just those mines that produce “products.”

1.3. Case law

In *Carolina Stalite*, this Court considered whether a stone milling adjacent to the stone extraction site was a mine. 734 F.2d 1547. KC Transport argues that *Carolina Stalite* “underscored the importance of location” in concluding the facility was a mine, because this Court described the facility as “immediately adjacent to a quarry.” Resp. 7. But this Court used that phrase only in its recitation of the background facts of that case. 734 F.2d at 1548. This Court explained the statute “defines a ‘mine’ as including ‘structures’ and ‘facilities’ used in ‘milling’ or ‘the work of preparing . . . minerals.’” *Ibid.* Crucially, it held this language “does not require that those structures or facilities . . . *be located on property where such extraction occurs.*” *Ibid.* (emphasis added). This Court also noted that this definition—not location-bounded—was deliberate:

Because the Act was intended to establish a “single mine safety and health law, applicable to *all mining activity*,” its jurisdictional bases were expanded accordingly to reach not only the “areas from which minerals are extracted,” but also the “structures which are used or are to be used in the preparation of the extracted minerals.”

Id. at 1554 (quoting S. Rep. No. 95-181, at 37, 14) (emphasis in *Carolina Stalite*) (cleaned up).

This Court also explained that “the bill ‘broadly defined mine to include all surface facilities used in preparing or processing the minerals’” *Ibid.* (quoting S. Rep. No. 95-181, at 38). It emphasized that Congress anticipated there would be jurisdictional questions and instructed that “‘what is considered to be a mine and to be regulated under this Act be given the *broadest possible interpretation,*’” and that “[c]lose jurisdictional questions are to ‘be resolved in favor of inclusion of a facility within the coverage of the Act.’” *Ibid.* (quoting S. Rep. No. 95-181, at 14) (cleaned up). *Carolina Stalite* addresses the only issue this Court needs to reach, i.e., whether the maintenance facility is covered by the Act.

KC Transport cites *Director, OWCP v. Ziegler Coal Company*, 853 F.2d 529 (7th Cir. 1988) for the proposition that MSHA lacks jurisdiction over equipment not on an extraction site. Resp. 8. But *Ziegler* concerns the definition of “coal mine” under 30 U.S.C. 802(h)(2) for purposes of federal black lung benefits. That definition applies to different statutory sections governing a miner’s eligibility for black lung benefits. It has nothing to do with MSHA jurisdiction over mines under section 802(h)(1). 853 F.2d at 532-533.

KC Transport also cites *Jeroski v. FMSHRC*, 697 F.3d 651 (7th Cir. 2012). In *Jeroski*, the Seventh Circuit held that a janitorial company working at a cement plant was not a “prevailing party” under the Equal Access to Justice Act (EAJA), 5

U.S.C. 504, when MSHA withdrew enforcement actions it had issued the company. 697 F.3d at 653-656. KC Transport suggests that the Court found no MSHA jurisdiction over the cement plant, so similarly, no MSHA jurisdiction exists over its maintenance facility. Resp. 10-11. But *Jeroski* was not about jurisdiction; the court expressly declined to rule on whether MSHA had jurisdiction. It dealt only with the EAJA issue.

KC Transport also cites *Herman v. Assoc. Elec. Co-op., Inc.*, 172 F.3d 1078 (8th Cir. 1999) to support its location-based interpretation. Resp. 11. In *Herman*, the Eighth Circuit determined that MSHA did not have jurisdiction over a utility company that purchased processed coal from a coal mine operator. But *Herman* was not about the location of the utility company—it was about whether the company was engaged in the “work of preparing coal” as defined in 30 U.S.C. 802(i). The court concluded that it did not do sufficient coal preparation work to qualify as performing the “work of preparing coal.” 172 F.3d at 1083.

And KC Transport cites *Old Dominion Power Co. v. Donovan*, 772 F.2d 92 (4th Cir. 1985) to support its location-based interpretation. But that case was not about the definition of a “mine;” it determined only that a utility that provided electricity to a mine was not an “operator” under 30 U.S.C. 802(d). 772 F.2d at 95-97

(summarizing the utility’s arguments “that electric utilities were not considered as ‘operators’ and about “MSHA’s regulations defining ‘operator’”).

Of course, no court of appeals has suggested that location is *not* a consideration. Neither, for that matter, has the Secretary. Sec’y Op. Br. 34. In fact, the Secretary has explained that location assists in determining whether equipment or facilities are used in extraction or milling. *Ibid.*; Sec’y Op. Br. 34; Sec’y Reply Br. 9. But it is not a dispositive element.

2. KC Transport’s narrow interpretation would frustrate MSHA’s enforcement obligations and does not make practical sense.

KC Transport claims a location-centric interpretation would not frustrate MSHA’s enforcement obligations by suggesting that it is sufficient for MSHA to enforce the Act on subsection (A) lands, subsection (B) roads, and subsection (C) processing plants. Resp. 15. But that is not what the statute says.

An extremely troubling issue is that that approach would incentivize operators to avoid MSHA enforcement by retreating across a hard geographic line. In her opening supplemental brief, the Secretary provided an example of this behavior: an operator drove a truck full of explosives off the mine site and across the public street to avoid enforcement. Sec’y Supp. Br. 11 (citing *Hoover Excavating & Trucking, Inc.*, 41 FMSHRC 761, 768 (2019) (ALJ)). In *Hoover*, the truck driver was

persuaded to come back across the street, so the citations were issued on a subsection (A) extraction site; the truck's off-site location along a public road was not at issue. 41 FMSHRC at 766. The operator testified that he drove away to avoid an inspection. *Hoover*, 41 FMSHRC at 766.

The Secretary also cited to KC Transport itself: KC Transport initially constructed its maintenance facility at the edge of the private haul road. JA 7, 9. After MSHA cited KC Transport at that maintenance facility, KC Transport moved the facility a thousand feet back into the trees. JA 9.

Adopting a location-based reading of “mine” would not only contradict the statute, see 30 U.S.C. 802(h)(1)(C), but also would incentivize operators to avoid enforcement by moving moveable items. Courts consider the incentives created by a given interpretation, *cf. Loc. Union 1261, Dist. 22, UMWA v. FMSHRC*, 917 F.2d 42, 46 (D.C. Cir. 1990) (discussing incentives created by various interpretations); the Court should do so here.

KC Transport continues to argue that the address and posting requirements under 30 U.S.C. 819(a) and (d), as well as the fact that MSHA does not issue mine IDs for all mines, means that subsection (C) items must be at fixed mine locations. Resp. 18-19. But as the Secretary has explained, a hyperliteral reading of those sections is inappropriate and unworkable. *Cf. RadLAX Gateway Hotel, LLC v.*

Amalgamated Bank, 566 U.S. 639, 645 (2012) (discouraging hyperliteralism in statutory interpretation); *Petit v. U.S. Dept. of Educ.*, 675 F.3d 769, 781 (D.C. Cir. 2012) (courts consider statutory purpose in interpreting statutes). And mine IDs are an internal administrative measure. Sec’y Supp. Br. 13. Assigning a mine ID, or not, is irrelevant to MSHA’s jurisdiction.

KC Transport claims that its location-based interpretation would “harmonize” the Mine Act with the OSH Act. Resp. 16. But Congress already has harmonized the statutes, explaining that “what is considered to be a mine and to be regulated under this [Mine] Act [is to] be given the broadest possible interpretation,” and that doubts as to jurisdiction should be “resolved in favor of inclusion . . . within the coverage of the [Mine] Act.” Senate Report 14.

KC Transport suggests that hazards common to industries other than mining should fall outside of the Mine Act’s jurisdiction. Resp. 16. But it appears to concede that the same hazards would be covered if they occurred at excavation sites, mine roads, and processing plants. First, it is unclear why truck-related hazards are less unique when the same hazard occurs at a maintenance facility. Second, KC Transport’s interpretation would apply equally to risks from other moveables, like portable crushers, augers, and dredges, which involve workplace hazards unique to mining and implicate “special mining safety expertise.” Cf.

Resp. 16. Third, the test for Mine Act jurisdiction is not whether hazards are unique to the mining industry. Miners are subject to a variety of common hazards: drowning, suffocating, burning, electrocution, falling, vehicle crashes, and being crushed beneath unblocked trucks. Congress gave MSHA jurisdiction over all of these and there is no reason OSHA should inspect for these hazards when they occur in the mining context.

And while KC Transport suggests repeatedly that ordinary trucks cannot be mines, its argument applies equally to all “moveables,” including portable plants, augers, and dredges. It does not explain how these moveables fit into its definition. Equipment “used in” mining is subject to Mine Act jurisdiction, whether similar items are used in other industries as well.

KC Transport argues that the statute should give notice to regulated communities, particularly because it imposes criminal penalties for certain violations. Resp. 12. But the statute has been sufficiently clear for the decades during which the Secretary has been enforcing the Mine Act. See, *e.g.*, *U.S. Steel Mining Co., Inc.*, 10 FMSHRC 146, 148-149 (1988) (a subsection (C) repair and maintenance shop was subject to the Act); *Jim Walter Res., Inc.*, 22 FMSHRC 21, 22, 25 (2000) (a subsection (C) supply shop was subject to the Act).

KC Transport argues that the Secretary's interpretation will lead to MSHA enforcement in residential garages, diner parking lots, and chapels. Resp. 19. But the hypothetical onslaught of harm that KC Transport implies might result has not materialized in the real world. KC Transport cites nothing in support of its claim. And, of course, operators can challenge jurisdiction in court. *Donovan v. Dewey*, 452 U.S. 594, 604-605 (1981) (the Mine Act "provides an adequate forum" to challenge action an operator believes is outside MSHA's authority).

Respectfully submitted,

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Certificate of Service

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on November 7, 2024 and the following registered users will be served via the CM/ECF system:

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Addendum – Pertinent Statutes and Regulations

All statutes and regulations pertinent to this supplemental briefing but not included here are contained in the addendum to the Secretary's supplemental brief (filed September 23, 2024).

30 U.S.C. 802 - Definitions

(d) “operator” means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine

(h)(2) For purposes of subchapters II, III, and IV, “coal mine” means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities

(i) “work of preparing the coal” means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine;

30 U.S.C. 803 – Mines subject to coverage

Each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this chapter.

30 U.S.C. 811 – Mandatory safety and health standards

(a) Development, promulgation, and revision

The Secretary shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of Title 5 (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this chapter, the Secretary may request the recommendation of an advisory committee appointed under section 812(c) of this title. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within 60 days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than 180 days. When the Secretary receives a recommendation, accompanied by appropriate criteria, from the National Institute for Occupational Safety and Health that a rule be promulgated, modified, or revoked, the Secretary must, within 60 days after receipt thereof, refer such recommendation to an advisory committee pursuant to this paragraph, or publish such as a proposed rule pursuant to paragraph (2), or publish in the Federal Register his determination not to do so, and his reasons therefor. The Secretary shall be required to request the recommendations of an advisory committee appointed under section 812(c) of this title if the rule to be promulgated is, in the discretion of the Secretary which shall be final, new in effect or application and has significant economic impact.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking a mandatory health or safety standard in the Federal Register. If the Secretary determines that a rule should be proposed and in connection therewith has appointed an advisory committee as provided by paragraph (1), the Secretary shall publish a proposed rule, or the reasons for his determination not to publish such rule, within 60 days following the submission of the advisory committee's recommendation or the expiration of the period of time prescribed by the Secretary in such submission. In either event, the Secretary shall afford interested persons a period of 30 days after any such publication to submit written data or comments on

the proposed rule. Such comment period may be extended by the Secretary upon a finding of good cause, which the Secretary shall publish in the Federal Register. Publication shall include the text of such rules proposed in their entirety, a comparative text of the proposed changes in existing rules, and shall include a comprehensive index to the rules, cross-referenced by subject matter.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed mandatory health or safety standard, stating the grounds therefor and requesting a public hearing on such objections. Within 60 days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the mandatory health or safety standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing. Any hearing under this subsection for the purpose of hearing relevant information shall commence within 60 days after the date of publication of the notice of hearing. Hearings required by this subsection shall be conducted by the Secretary, who may prescribe rules and make rulings concerning procedures in such hearings to avoid unnecessary cost or delay. Subject to the need to avoid undue delay, the Secretary shall provide for procedures that will afford interested parties the right to participate in the hearing, including the right to present oral statements and to offer written comments and data. The Secretary may require by subpoena the attendance of witnesses and the production of evidence in connection with any proceeding initiated under this section. If a person refuses to obey a subpoena under this subsection, a United States district court within the jurisdiction of which a proceeding under this subsection is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpoena. A transcript shall be taken of any such hearing and shall be available to the public.

(4)(A) Within 90 days after certification of the record of the hearing held pursuant to paragraph (3), the Secretary shall by rule promulgate, modify, or revoke such mandatory health or safety standards, and publish his reasons therefor.

(B) In the case of a proposed mandatory health or safety standard to which objections requesting a public hearing have not been filed, the Secretary, within 90 days after the period for filing such objections has expired, shall by rule promulgate, modify, or revoke such mandatory standards, and publish his reasons therefor.

(C) In the event the Secretary determines that a proposed mandatory health or safety standard should not be promulgated he shall, within the times specified in subparagraphs (A) and (B) publish his reasons for his determination.

(5) Any mandatory health or safety standard promulgated as a final rule under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(6)(A) The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life. Development of mandatory standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(B) The Secretary of Health and Human Services, as soon as possible after November 9, 1977, but in no event later than 18 months after such date and on a continuing basis thereafter, shall, for each toxic material or harmful physical agent which is used or found in a mine, determine whether such material or agent is potentially toxic at the concentrations in which it is used or found in a mine. The Secretary of Health and Human Services shall submit such determinations with respect to such toxic substances or harmful physical agents to the Secretary. Thereafter, the Secretary of Health and Human Services shall submit to the Secretary all pertinent criteria regarding any such substances determined to be toxic or any such harmful agents as such criteria are developed. Within 60 days after receiving any criteria in accordance with the preceding sentence relating to a toxic material or harmful physical agent which is not adequately covered by a mandatory health or safety standard promulgated under this section, the Secretary shall either appoint an advisory committee to make recommendations with respect to a mandatory health or safety standard covering such material or agent in

accordance with paragraph (1), or publish a proposed rule promulgating such a mandatory health or safety standard in accordance with paragraph (2), or shall publish his determination not to do so.

(7) Any mandatory health or safety standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that miners are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such mandatory standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring miner exposure at such locations and intervals, and in such manner so as to assure the maximum protection of miners. In addition, where appropriate, any such mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of examinations or tests made pursuant to the preceding sentence shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the miner, to his designated physician.

(8) The Secretary shall, to the extent practicable, promulgate separate mandatory health or safety standards applicable to mine construction activity on the surface.

(9) No mandatory health or safety standard promulgated under this subchapter shall reduce the protection afforded miners by an existing mandatory health or safety standard.

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(h) Equipment falsely represented as complying with statute, specification, or regulations

Whoever knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal or other mine, including, but not limited to, components and accessories of such equipment, which is represented as complying with the provisions of this chapter, or with any specification or regulation of the Secretary applicable to such equipment, and which does not so comply, shall, upon conviction, be subject to the same fine and imprisonment that may be imposed upon a person under subsection (f) of this section.