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COAL MINE HEALTH AND SAFETY

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON
OR AND PUBLIC WELFARE
UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST SESSION

ON

S. 355, S. 467, S. 1094, S. 1178, S. 1300, and S. 1907

BILLS TO IMPROVE THE HEALTH AND SAFETY CONDITIONS OF PERSONS WORKING IN THE COAL MINING INDUSTRY OF THE UNITED STATES

Part 1

FEBRUARY 27, MARCH 7, 12, 13, 14, 18, 20, 26, AND MAY 2, 1969

Printed for the use of the
Committee on Labor and Public Welfare

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COAL MINE HEALTH AND SAFETY

THURSDAY, FEBRUARY 27, 1969

U.S. SENATE,
SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senators Williams, Randolph, Nelson, Eagleton, Hughes, Javits, Prouty, Saxbe, Bellmon, and Schweiker.

Committee staff members present: Robert O. Harris, staff director; Frederick R. Blackwell, counsel to the subcommittee; Eugene Mittelman, minority counsel; and Peter C. Benedict, minority labor counsel.

Senator WILLIAMS. I think it most appropriate that we commence hearings on this very important legislation with a senior Member of the U.S. Senate who has been our leader on measures to bring greater safety to coal mines, Senator Jennings Randolph, of West Virginia.

As I read the record, and I have part of it here, Senator Randolph, way back in the beginning, in 1941, was one of the prominent leaders in the House of Representatives when coal mine safety was the subject and the first coal mine safety bill was passed.

The record doesn't show it, but I know that Senator Randolph led the petition drive to bring that measure to the floor of the House of Representatives for successful debate.

More recently, in 1965 here in the Senate, Senator Randolph led the battle to extend the Safety Act without the same success in the Congress. We were successful in the Senate but the measure did not pass the House. So, here we are today beginning what we hope will be a return to victory for you, for the miners, for the people of this country, Senator Jennings Randolph.

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Thank you, Mr. Chairman, and my colleague, Senator Javits.

To complete the record concerning the legislation you mentioned, to extend the Coal Mine Safety Act to the smaller mines with 15 workers and under, we did pass that legislation in the Senate in 1965. It was not acted on in the House in that year, but in 1966 the House passed it and it was signed into law by the President of the United States.

Mr. Chairman, my presence here and my active participation in this opening hearing on coal mine health and safety legislative proposals grow out of three major interests and responsibilities, to wit:

I am a Senator from West Virginia, the leading producer of bituminous coal of all the coal-producing States. Last year, 556 million tons of coal were produced in the United States. Approximately 48,000 coal miners—more than 95 percent of them West Virginians—were employees of the mines in our State while producing 146 million tons of the 1968 national total.

Our combined nonagricultural labor force in West Virginia at the end of 1968 approximated 511,000 persons. Thus, coal mining last year represented a source of employment for approximately 9.4 percent of the total of our nonagricultural labor force. Hence, these measures on our agenda have a direct relationship to a substantial part of our West Virginia economy and to a significant number of our citizens. I have a duty and a responsibility, as well as a desire, to be concerned and to act constructively.

Then, too, I am a member of the Labor and Public Welfare Committee and of this Subcommittee on Labor as a consequence of both preference and assignment. I have been active on legislation in connection with the subject matter we have before us today and on other matters of importance to management, to labor and to the general welfare. Consequently, I do have a commitment which I recognize on these important personal, official, and certainly national matters.

Additionally, I am a prime sponsor of two of the measures on coal mine health and safety before us. On January 10, 1969, I introduced the then administration's proposed Federal Coal Mine Health and Safety Act of 1969, S. 355, a bill carefully developed over months of study and effort and refined further as a consequence of the tragic November 1968, fire and explosion at Mountaineer Mine No. 9 between Farmington and Mannington, W. Va. S. 355 is combined coal mine health and safety legislation.

On January 21, 1969, I introduced, at the request of President Boyle of the United Mine Workers of America, another measure—S. 467, proposed with the title, "Coal Mine Health Act," and considerably broader in scope than the provisions of S. 355 relating to the purpose of elimination of health dangers to coal miners resulting from the inhalation of coal dust.

So, Mr. Chairman, I shall participate actively with you in seeing that competently developed proposals for legislative improvement of coal mine health and safety conditions are brought to fruition for my State and wherever else coal is mined in the United States.

By reason of my introduction of the two measures, and thanks to your introduction of the two additional measures to which you referred, Mr. Chairman, there are before our subcommittee a wide range of proposed provisions for modernization—perhaps recodification—of Federal coal mine health and safety statutes. We should study them side by side.

My action in introducing S. 355 and S. 467 does not mean that I enter these hearings with a closed mind or preconceived and fixed opinions of what should be the ultimate measure reported by this subcommittee. I will wish to hear the witnesses and to study the record of these hearings before forming judgments on specific provisions.

My only dedication to position is to the principle that there must be

modernization of the Federal coal mine health and safety laws because these laws have not been kept current with the pace of the mechanization which has developed in the extraction of coal.

Coal miners must have the safest attainable working conditions short of the destruction of their jobs. There must be improvement of existing conditions in the interest of arresting and, hopefully, of preventing black lung and other diseases incident to coal mining. I underscore the word "preventing" if for no other reason than to emphasize that legislation relating to compensation for claims growing out of the occupation is generally a State matter, the responsibility of the legislatures of the States.

In West Virginia delegates and State senators are giving active consideration in our legislature at the present time to these compensation matters.

And, matters having to do with compensation as a Federal proposition properly are within the purview of the House Ways and Means Committee and the Senate Finance Committee.

Mr. Chairman, I had intended to read certain portions of a letter I addressed to the editor of the St. Louis Post-Dispatch in response to an editorial which appeared in that newpaper on February 13, 1969. But that material is available. It is in the hands of the working press and the news media, so I shall not take time other than to ask unanimous consent that the editorial to which I made reference, as well as my letter of February 24 in clarification of the legislative situation, be made a part of the record.

Senator WILLIAMS. Without objection they will be included in the record.

(The material referred to above follows:)

[From the St. Louis Post-Dispatch, Thursday, Feb. 13, 1969]

DEATH IN THE COAL MINES

Is the United Mine Workers Union playing footsy with the coal mining industry again? In a New York Times dispatch from Washington Ben A. Franklin writes that the UMW has informally agreed to divide the health and safety aspects of pending legislation into two bills. Senator Jennings Randolph of West Virginia, who announced this odd approach, is ranking member of the committee that will pass on mine safety legislation.

Health and safety are dealt with together in a bill drafted by the Department of Interior and another, even stronger, introduced by Representative Ken Hechler of West Virginia. And that, we think it plain, is exactly as it should be. A cave-in is as unhealthful as "black lung" disease, and black lung is as unsafe as a cave-in. Together the hazards to health and safety make coal mining, as Mr. Franklin reports, "the most dangerous and disabling of industrial occupations."

So it continues to be despite the Coal Mine Safety Act of 1952 and the amendments to it in 1966. In the wake of the coal mine disaster last November at Farmington (W.Va.) that killed 78 miners, the public conscience has been stricken anew and the climate of opinion is favorable for genuine reform. The coal mining industry should not be allowed again to divide and conquer. Only by laying the whole damning picture of life in the coal mines on its doorstep may Congress be at last induced to put human lives first and corporate profits second.

U.S. SENATE,
February 24, 1969.

EDITOR,
St. Louis Post-Dispatch,
St. Louis, Mo.

DEAR SIR: Your Thursday, February 13, 1969 editorial, "Death in the Coal Mines," implies someting "odd" in my introduction of separate bills in the Senate on coal mine safety and coal mine health.

Separate safety and health measures have been introduced at the request of the United Mine Workers of America—one relating to reduction of dust inhalation in mines (known as the UMWA health bill) which I introduced, and one relating to general coal mine safety which Senator Harrison A. Williams, Jr. (D–N.J.) introduced.

Also there are at least two bills combining both health and safety—one recommended by the Director of the Bureau of Mines and the Secretary of the Interior of the Johnson Administration which I introduced; and one introduced by Senator Williams (D–N.J.) which is the same as the bill in the House of Rep. Ken Hechler (D–W. Va.). We are expecting an additional bill or bills from the Department of the Interior of the Nixon Administration.

At the time I introduced the Johnson Administration bill (January 10, 1969), I said I believed coal mine safety and coal mine health should be handled separately, but I introduced the Johnson Administration measure as a single bill, with the subject matter divided into separate titles. There seemed, on January 10, to be much closer but not complete agreement on the part of producers and miners to the safety provisions of the Administration proposal than to the health (dust control) provisions. The United Mine Workers differed sharply with the Administration's proposed legislative approach to the dust control (anti-black lung) problem. That is why the UMWA proposed and why I introduced a dust control bill.

Subsequently, the UMWA has found much to disagree with in the coal mine safety provisions of the Johnson Administration bill. So the UMWA has had Senator Williams sponsor a separate mine safety bill.

There is nothing unusual about these procedures. They occur on many subjects in the Congress. I have had many such experiences. So has the United Mine Workers.

There are probably opponents of health provisions of these bills (on medical and/or other technical grounds) who are not against the safety provisions.

All persons will not agree with this evaluation, but it seems to me that the prime target of all this legislation is first to recodify and modernize the mine safety laws to mitigate against or, if possible, totally obviate, the catastrophic coal mine explosions and fires which kill and seriously injure miners and cause intensive property damage. If we can do this without encumbering the objective and delaying its fulfillment with a long and tedious controversy over dust control procedures and technology, it seems to me that we should do it.

But we are going to open the hearings on February 27 in the Senate Subcommittee on Labor by placing all of the coal mine safety and coal mine health bills on the agenda. However, if we can make more progress on safety provisions than on health, I believe it would then be wise and prudent to fully develop the one aspect ahead of the other into a public law—and then return to the other aspect and seek to finalize it, too. If the reverse proves to be the case and health provisions can be moved faster than safety, then we should proceed accordingly.

Ideally, of course, we hope both the health and safety aspects can be moved in concept and that they can be combined in a single public law in the interest of the betterment of working conditions of the miners which would also improve their occupational health status and their occupational safety.

Of course the "safest" mine and the "healthiest" mine is the closed one—but it does not produce the coal that is so vital to much of our country's economy—and it does not provide payrolls and livelihood for miners. The search must be for feasible ways to achieve safety and improved occupational health in active mining operations where jobs are provided. To be too reckless or too little, too late in any direction in coal mine safety and coal mine health would be catastrophic. To achieve the feasible and the "proper balance" and, at the same time, the effective will not be done easily. We are committed to begin the effort in the Senate on February 27—in the House on March 4.

With the hope that I have clarified the legislative situation, I am

Truly,

JENNINGS RANDOLPH.

Senator RANDOLPH. Thank you, Mr. Chairman.

Senator WILLIAMS. Thank you very much, Senator Randolph, for a strong beginning of what we certainly hope will be successful hearing and successful passage of this legislation after the whole legislative process has been gone through.

Senator Javits, do you wish to make a statement?

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Thank you, Mr. Chairman. Mr. Chairman, as the ranking member of the minority of the committee, I am authorized by the President to announce that just before he left for Europe he ordered a message on coal mine health and safety be prepared for him, together with the implementing legislation. I suspect that these will be before us early next week, shortly after the President's return from abroad.

I make this statement at the request of the White House, and I am delighted to make it. I note, too, with great interest, that Senator Randolph with his customary foresight contemplated just such a prospect in the letter which is contained in his statement which he wrote to one of the newspapers.

May I say, too, that I will pledge my best efforts, I will do my utmost with respect to the minority on this legislation and I am delighted that Senator Schweiker and Senator Bellmon are here today. Both have enormous and direct interest in this legislation. We will do our utmost to support a strong measure.

My own conscience has been deeply troubled by the terrible things which we have seen happen in the coal mines, particularly the recent disaster in Farmington, W. Va.

I know that feelings often run high in these matters, especially when the very lives of the men are at stake.

I think we ought to give, Mr. Chairman, and I know the Chair well enough to know that the Chair will do exactly that, reassurance to the workers concerned that our minds are clear and unprejudiced. We have only one single objective, which is their lives and their fortunes, and we will really devote our best talents to working out the most effective measures which will deal with what every American must regard as a threat to himself because it is a threat to hard-working Americans who are indispensible to our economy and to our country.

I am grateful to the Chair for his customary courtesy in calling on the minority even before he spoke himself. I hope we shall make a very creditable contribution to what I know will be a bipartisan effort in this field.

Senator WILLIAMS. Thank you very much, Mr. Javits.

Senator Schweiker, do you have a statement?

STATEMENT OF HON. RICHARD S. SCHWEIKER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SCHWEIKER. Thank you, Mr. Chairman. I should like to associate myself with the opening remarks of the other gentlemen and say as a Pennsylvanian I am very much concerned about the bill and what we are doing in the problem. It is of vital interest to the people of Pennsylvania. I would like to see a strong bill and a fair bill. By the same token, I think I have an open mind, too.

I commend the chairman for conducting this hearing and he shall have my support. I am delighted to have some Pennsylvanians who are going to testify today. I think it is vital that we get on-the-job

experience with the problem and I am happy to welcome them here too.

Senator WILLIAMS. Thank you very much.

Senator Bellmon, do you have a statement to make?

Senator BELLMON. No.

Senator WILLIAMS. Senator Saxbe has joined us. We are having opening statements in this room, Senator Saxbe, then we are going to the ground floor auditorium for the testimony.

We begin hearings today on four bills relating to the need to improve the health and safety conditions in the coal mining industry. The next hearing date will probably be next week, with such additional hearings as are necessary to compile a complete and full record on the issues. We intend to hear from all persons who can be helpful in formulating effective, comprehensive health and safety standards in the coal mining industry. We want the best for coal mine workers that our industrial genius and know-how can provide.

The four bills before us at this time are S. 355, S. 467, S. 1094 and S. 1178. The first two bills, S. 355 and S. 467 were introduced by our highly esteemed colleague, Senator Jennings Randolph, the senior Senator from West Virginia.

The bill, S. 1094, which I introduced in the Senate on February 19, 1969 is a companion measure to House bill H.R. 6540, introduced by Congressman Heckler of West Virginia.

The bill, S. 1178, which I introduced on February 25, 1969, has been developed by the legislative department of the United Mine Workers.

(The bills referred to and the departmental reports follow:)

91ST CONGRESS
1ST SESSION

S. 355

IN THE SENATE OF THE UNITED STATES

JANUARY 16 (legislative day, JANUARY 10), 1969

Mr. RANDOLPH introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To improve the health and safety conditions of persons working in the coal mining industry of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Coal Mine Health and Safety Act of 1969".

TITLE I—ADMINISTRATION AND PENALTIES

DECLARATION OF PURPOSE

SEC. 101. Congress declares that there is an immediate need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm resulting from unsafe practices and careless-

ness that continue to plague the industry and cause grief and suffering to persons working in such mines and their families, and in order to control the causes of occupational diseases originating in such mines resulting from unhealthful conditions existing therein; that the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the worker; that the operators of such mines have the primary responsibility to prevent the existence of unsafe and unhealthful conditions and practices in such mines with the assistance of persons working in such mines; and that it is therefore the purpose of the Act to require the operators of the Nation's coal mines and the persons working in such mines to become more vigilant in carrying out their responsibilities through compliance with applicable mandatory health and safety standards promulgated by the Secretary of the Interior under this Act.

DEFINITIONS

SEC. 102. For the purpose of this Act, the term—

(a) "Secretary" means the Secretary of the Interior or his delegate;

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or any place outside thereof, or within the District of Columbia, or a possession of the United States,

or between points in the same State, but through a point outside thereof;

(c) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(d) "operator" means a person operating a coal mine;

(e) "agent" means the person charged with responsibility for the operation of all or part of such mine and the supervision of the employees in a coal mine;

(f) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "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 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;

(h) "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;

(i) "imminent danger" means the existence of conditions or practices in a coal mine which could reasonably be expected to cause death or serious physical harm before such conditions or practices can be abated; and

(j) "Board" means the Federal Coal Mine Health and Safety Board of Review established by this Act.

MINES SUBJECT TO ACT

SEC. 103. Each coal mine the products of which enter commerce, or the operations of which affect commerce, shall be subject to this Act, and each operator of such mine and every person working in such mine shall comply with the provisions of this Act and the applicable regulations of the Secretary issued under this Act.

INSPECTIONS AND INVESTIGATIONS

SEC. 104. (a) Authorized representatives of the Secretary shall make inspections and investigations in coal mines for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents involving bodily injury or death, and the causes of diseases and physical impairments originating in such mines, (2) developing health and safety

standards, (3) determining whether an imminent danger exists in a coal mine, and (4) determining whether or not there is compliance with the mandatory health and safety standards promulgated by the Secretary by regulation, or any notice, or order issued under this Act.

(b) For the purpose of making any inspection or investigation under this Act, the Secretary or any authorized representative of the Secretary shall have a right of entry to, upon, or through, any coal mine.

(c) For the purpose of carrying out his responsibilities under this Act, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal or State agency.

(d) For the purpose of making any investigation of any disaster or accident or other occurrence relating to health or safety in a coal mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United

States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) In the event of any disaster or accident occurring in a coal mine, the operator shall take appropriate measures to prevent, to the greatest extent possible, the destruction of any evidence which would assist in investigating the cause or causes of the disaster or accident.

ADVISORY COMMITTEES

SEC. 105. (a) The Secretary may appoint one or more advisory committees to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each such committee.

(b) Advisory committee members, other than employees of Federal, State, or local governments, while performing committee business shall be entitled to receive compensation at rates fixed by the Secretary but not exceeding $100 per day, including traveltime. While so serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of

subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

HEALTH AND SAFETY STANDARDS

SEC. 106. (a) The Secretary shall develop and promulgate, and from time to time he may revise, by regulation, mandatory health and safety standards to provide for the protection of life and the prevention of injuries and occupational diseases in and around coal mines. Mandatory safety standards for surface coal mines shall be promulgated by the Secretary not later than one year after enactment of this Act.

(b) In the development of such standards, the Secretary shall consult with other interested Federal agencies, representatives of the States, appropriate representatives of the coal mine operators and workers, other interested persons and organizations, and such advisory committees as he may appoint. All such standards shall be developed by taking into account such considerations as the latest available scientific data in the field, the technical and economic feasibility of such standards, experience gained under this and other health and safety statutes, and, in the case of health standards, shall be based on criteria developed by the Secretary of Health, Education, and Welfare pursuant to section 17 of this Act.

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FINDINGS, NOTICES, AND ORDERS

SEC. 107. (a) If, upon any inspection or investigation of a coal mine, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue an order requiring the operator of the mine to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be barred from entering, such area until an authorized representative of the Secretary determines that such imminent danger no longer exists.

(b) If, upon any inspection or investigation of a coal mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard promulgated under this Act, but the violation has not created an imminent danger, he shall find what would be a reasonable period of time within which the violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, an authorized representative of the Secretary finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall also find the extent of the area affected by the violation and shall promptly issue

an order requiring the operator of such mine to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be barred from entering, such area until an authorized representative of the Secretary determines that the violation has been abated.

(c) The following persons shall not be required to be withdrawn from, or barred from entering, any area of the coal mine subject to an order issued under this section:

(1) any person whose presence in such area is necessary in the judgment of the operator, to eliminate the condition described in the order;

(2) any public official whose official duties require him to enter such area; and

(3) any consultant or any representative of the employees of such mine who is, in the judgment of the operator, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order.

(d) Notices and orders issued pursuant to this section shall contain a description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of any mandatory health or safety standard

promulgated under this Act and a description of the area of the coal mine from which persons must be withdrawn and barred.

(e) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the Secretary issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative.

(f) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the Secretary.

REVIEW BY THE SECRETARY

SEC. 108. (a) An operator notified of an order issued pursuant to section 8 of this Act may apply to the Secretary for review of the order within thirty days of receipt thereof. The operator shall send a copy of such application to the representative, if any, of persons working in the affected mine. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing at the request of the applicant or a representative of persons working in such mine, to enable the applicant and the representatives of persons working in such mines to present information relating to the issuance and continuance of such order.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and (1), in the case of an order issued under subsection (a) of section 8 of this Act, he shall find whether or not the imminent danger as set out in the order existed at the time of issuance of the order and whether or not the imminent danger existed at the time of the investigation, and (2), in the case of an order issued under subsection (b) of section 8 of this Act, he shall find whether or not there was a violation of any mandatory health or safety standard promulgated under this Act as described in the order and whether or not such violation has been abated at the time of such investigation, and upon making such findings he shall issue a written decision vacating, affirming, modifying, or terminating the order complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decisions of matters submitted to the Secretary under this section, all actions which the Secretary takes under this section shall be taken as promptly as practicable, consistent with the adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under subsection (b) of section 8 of this Act, together with a detailed statement giving rea-

sons for granting such relief. The Secretary may issue a decision granting such relief, under such conditions as he may prescribe, only after a hearing in which all parties are given an opportunity to be heard.

FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF REVIEW

SEC. 109. (a) The Federal Coal Mine Health and Safety Board of Review is hereby established and shall be composed of five members who shall be appointed by the President by and with the consent of the Senate.

(b) The terms of office of members of the Board shall be five years, except that (1) the members of the Federal Coal Mine Safety Board of Review established under the Federal Coal Mine Safety Act, as amended, who are in office on the effective date of this Act, shall be members of the Board established by this Act and their terms shall expire on the dates originally fixed for their expiration, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) Each member of the Board shall be entitled to receive compensation at the rate specified at the time of

actual service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime and shall be allowed travel expenses, including a per diem allowance in accordance with section 5703 (b) of title 5, United States Code, when engaged in the performance of services for the Board.

(d) The Board, at all times, shall consist of one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of operators of coal mines employing fourteen or fewer employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of operators of coal mine employing fifteen or more employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers in mines employing fourteen or fewer employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers in mines employing fifteen or more employees, and one person, who shall be Chairman of the Board, who shall be a graduate engineer with experience in the coal mining industry or shall have at least five years' experience as a practical mining engineer in the coal mining industry, and shall not, within one year of his appointment as a member of the Board, have had a pecuniary interest in, or have been regularly employed or engaged in, the mining

of coal, or have regularly represented either coal mine operators or coal mine workers, or have been an officer or employee of the Department of the Interior.

(e) The principal office of the Board shall be in the District of Columbia. Whenever the Board deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the secretary of the Board.

(f) The Board shall, without regard to the civil service laws, appoint and prescribe the duties of a secretary of the Board and such legal counsel as it deems necessary. Subject to the civil service laws, the Board shall appoint such other employees as it deems necessary in exercising its powers and duties. The compensation of all employees appointed by the Board shall be fixed in accordance with chapter 53 of title 5, United States Code.

(g) Three members of the Board shall constitute a quorum, and official actions of the Board shall be taken only on the affirmative vote of at least three members; but a special panel composed of one or more members, upon order of the Board, may conduct any hearing provided for in section 11 of this Act and shall submit the transcript of such

hearing to the entire Board for its action thereon. Every official act of the Board shall be entered of record, and its hearings and records thereof shall be open to the public.

(h) The Board shall hear and determine applications filed pursuant to section 11 of this Act for review of orders made pursuant to section 9 of this Act. The Board shall not make or cause to be made any inspection of a coal mine for the purpose of determining any pending application.

(i) The Board is authorized to make such rules as are necessary for the orderly transaction of its proceedings, which shall provide for adequate notice of hearings to all parties. The existing rules of the Federal Coal Mine Safety Board of Review shall constitute the rules of the Board until superseded or modified by the Board.

(j) Any member of the Board may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(k) The Board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Reasonable notice must first be given in writing by the party or his attorney of record, which notice shall state the name of the witness and the time and place of

the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as provided in subsection (j) of this section. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(l) In the case of contumacy by, or refusal to obey a subpena served upon, any person under this section, the Federal district court for any district in which such person is found or resides or transacts business, upon application by the United States, and after notice to such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Board or to appear and produce documents before the Board, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REVIEW BY BOARD

SEC. 110. (a) Within thirty days after the receipt of a decision made by the Secretary pursuant to section 108 of this Act, an operator may apply to the Board for a review of the decision. The operator shall be designated as the applicant in such proceeding, and the application filed by him

shall recite the decision complained of and other facts sufficient to advise the Board and the Secretary of the nature of the proceeding. The Secretary shall be the respondent in such proceeding, and the applicant shall send a copy of such application by registered or certified mail to the respondent and to the representative, if any, of the persons working in such mine. Immediately upon the filing of such an application the Board shall fix the time for a prompt hearing thereof. The Board shall permit any interested person to intervene in such proceedings. The Secretary shall certify and file with the Board the record on which the decision complained of was issued.

(b) The record and the decision of the Secretary shall be received in evidence and the findings of the Secretary included in the decision shall constitute a prima facie case for the issuance of the decision complained of and the burden of rebutting such prima facie case shall be upon the applicant, but either party may adduce additional evidence.

(c) Upon conclusion of the hearing, the Board shall find, with respect to the order which was the subject of the Secretary's decision, whether or not the imminent danger or a violation of a mandatory health or safety standard existed at the time of issuance of such order and whether or not such danger or such violation existed at the time of

filing the application, and shall issue a written decision incorporating such finding therein and affirming, vacating, modifying, or terminating the order issued under section 107 of this Act.

(d) Each decision made by the Board shall show the date on which it is made, and shall bear the signatures of the members of the Board who concur therein. Upon issuance of a decision under this section, the Board shall cause a true copy thereof to be sent by registered or certified mail to all parties and their attorneys of record. The Board shall cause each decision to be entered on its official record, together with any written opinion prepared by any members in support of, or dissenting from, any such decision.

(e) Pending the hearing required by this section, the applicant may file with the Board a written request that the Board grant temporary relief from any order issued under subsection (b) of section 107 of this Act, together with a detailed statement giving reasons for granting such relief. The Board may issue a decision granting such relief, under such conditions as it may prescribe, only after a hearing in which all parties are given an opportunity to be heard.

(f) In view of the urgent need for prompt decision of matters submitted to the Board under this section, all actions which the Board takes under this section shall be taken

as promptly as practicable, consistent with adequate consideration of the issues involved.

JUDICIAL REVIEW

SEC. 111. (a) Any decision issued by the Secretary under section 108 of this Act shall be subject to judicial review by the United States Court of Appeals for the circuit in which the affected coal mine is located, upon the filing in such court within thirty days from the date of such decision of a petition by the operator aggrieved by the decision praying that the action of the Secretary be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary and thereupon the Secretary shall certify and file in such court the record upon which the decision complained of was issued, as provided in section 2112 of title 28, United States Code.

(b) Any decision issued by the Board under section 110 of this Act shall be subject to judicial review by the United States Court of Appeals for the circuit in which the affected mine is located, upon the filing in such court within thirty days from the date of such decision of a petition by the Secretary or by the operator aggrieved by the decision praying that the action of the Board be modified or set aside in whole or in part. A copy of the petition shall forthwith be

sent by registered or certified mail to the other party and to the Board, and thereupon the Board shall certify and file in such court the record upon which the decision complained of was issued, as provided in section 2112, title 28, United States Code.

(c) The court shall hear such appeal on the record made before the Secretary, in the case of an appeal of a decision issued by the Secretary, or on the record made before the Board, in the case of an appeal of a decision issued by the Board. The findings of the Secretary, in the case of an appeal from a decision issued by the Secretary, or of the Board, in the case of a decision issued by the Board, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceedings to the appropriate administrative body from which the appeal was taken for such further action as it directs.

(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may, after due notice to, and hearing of, the parties to the appeal, issue all necessary and appropriate process and grant such other relief as may be appropriate pending final determination of the appeal.

(e) The judgment of the court shall be subject only to review by the Supreme Court of the United States upon

certiorari or certification as provided in section 1254 of title 28, United States Code.

(f) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the Board's or Secretary's action in issuing the decision.

POSTING OF NOTICES AND ORDERS

SEC. 112. (a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices required by law or regulation to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice or order required by this Act to be given to an operator shall be delivered to the office of the affected mine, and shall be immediately posted on the bulletin board of such mine.

(b) The Secretary shall cause a copy of any notice or order required by this Act to be given to an operator to be mailed immediately to a duty designated representative of persons working in the affected mine, and to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine.

(c) In order to insure prompt compliance with any notice or order issued under section 107 of this Act, the authorized representative of the Secretary may deliver such notice or order to the agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice or order.

RECORDS

SEC. 113. Every operator of a coal mine and his agent shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require from time to time to enable him to perform his functions under this Act, and shall, upon request of any person authorized by the Secretary, permit such person at reasonable times to have access to and copy such records.

INJUNCTIONS

SEC. 114. The Secretary may request the Attorney General to 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 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 sections 107, 108, or 110 of this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representa-

tive in carrying out the provisions of this Act, or (c) refuses to admit such representative to the mine, or (d) refuses to permit the inspection or investigation of the mine, or an accident, injury, or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary, or (f) refuses to permit access to, and copying of, records. Each such court shall have jurisdiction to provide such relief as may be appropriate.

PENALTIES

SEC. 115. (a) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard promulgated under this Act shall be assessed a civil penalty by the Secretary of not less than $500 and not more than $10,000 for each such violation. Each violation shall be a separate offense. Any civil penalty assessed may be compromised by the Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the operator charged, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the Secretary. Whenever the Sec-

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retary compromises a penalty under this subsection, he shall publish the findings leading thereto in the Federal Register.

The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the operator charged or may be recovered in a civil action in the United States district courts.

(b) Any person working in a coal mine who violates a mandatory health or safety standard promulgated under this Act shall be assessed a civil penalty of not less than $25 or not more than $500 for each such violation. Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the gravity of the violation shall be considered. The amount of such penalty when finally determined or the amount agreed upon in compromise may be recovered in a civil action in the United States district courts.

(c) Whoever knowingly violates or fails or refuses to comply with any order issued under this Act shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment for not more than six months, or by both, except that if the conviction is for a violation committed after the first conviction of such person, punishment shall be by a

fine of not more than $10,000 or by imprisonment for not more than one year, or by both.

RESEARCH AND RELATED ACTIVITIES

SEC. 116. (a) The Secretary shall conduct such studies, research, experiments, and demonstrations as may be appropriate for the purpose of carrying out his responsibilities under this Act. In carrying out these activities, the Secretary may enter into contracts with, and make grants to, public and private agencies and organizations and individuals, and acquire interests in real property.

(b) The Secretary shall expand programs for the education and training of coal mine operators and employees subject to this Act in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in such mines, and in the use of permissible methane detectors and other means approved by the Secretary for accurately detecting gases.

(c) The Secretary of Health, Education, and Welfare shall from time to time develop, after consultation with the Secretary and on the basis of research, demonstrations, and experiments and such other information as may be appropriate, health criteria to enable the Secretary to formulate and prescribe health standards under this Act. The provi-

sions of this Act relating to inspections, investigations, records, and injunctions shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this section.

(d) Both the Secretary and the Secretary of Health, Education, and Welfare shall take whatever measures are necessary to avoid any duplication of efforts under this section.

EFFECT ON STATE LAWS

SEC. 117. (a) No State law in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any provision of this Act or regulations issued thereunder, except insofar as such State law is in conflict with this Act or with any regulations issued pursuant to this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal mines, than do provisions of this Act or the regulations issued thereunder shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for health

and safety standards applicable to coal mines for which no provision is contained in this Act or the regulations issued thereunder, shall not be construed or held to be superseded by this Act or regulations issued thereunder.

(b) Nothing in this Act shall be construed or held to supersede or in any manner affect the workmen's compensation laws of any State, or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under State laws in respect of injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

ADMINISTRATIVE PROCEDURES

SEC. 118. The provisions of sections 551–559 and sections 701–706 of title 5 of the United States Code shall not apply to the making of any order or decision pursuant to section 107, 108, or 110 of this Act, or to any proceeding for the review thereof.

REGULATIONS

SEC. 119. The Secretary is authorized to issue such regulations as he deems appropriate to carry out any provision of this Act.

TITLE II—SAFETY

INTERIM SAFETY STANDARDS FOR UNDERGROUND COAL MINES

SEC. 201. (a) The provisions of subsection (b) of this section shall be interim safety standards applicable to all underground coal mines until superseded in whole or in part by mandatory health and safety standards promulgated by the Secretary by regulation for such mines. For the purposes of this Act, such provisions shall be regarded as mandatory health and safety standards promulgated under section 106 of this Act for such mines and shall be enforced in the same manner and to the same extent as any mandatory standard promulgated under said section. Any orders issued in the enforcement of the interim standards set forth in subsection (b) of this section shall be subject to review as provided in sections 108, 110, and 111 of this Act.

(b) (1) ROOF SUPPORT.—The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof-control plan and revisions thereof suitable to the roof conditions and mining system of each mine and approved by the Secretary shall be adopted and set out in printed form within a reasonable period to be established by the Secretary by regulation. The plan shall show the type and spacing of

supports approved by the Secretary. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such support is not required under the approved roof-control plan. A copy of the plan shall be furnished the Secretary or his authorized representative upon request.

(2) VENTILATION.—(A) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(B) All active underground working places shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away, flammable or harmful gases and smoke and fumes. In bituminous coal and lignite mines, the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be six thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be six thousand cubic feet a

minute. In anthracite mines, the minimum quantity of air reaching the face of each working place shall be two hundred cubic feet a minute for each man working in the place. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(C) Line brattice or other suitable devices shall be installed from the last open crosscut to a point near the face to assure positive air flow to the face of every active underground working place, unless the Secretary or his authorized representative permits an exception to this requirement.

(D) Within three hours immediately preceding the beginning of a coal-producing shift, and before any workmen in such shift enter the underground areas of the mine, certified persons designated by the operator of the mine shall examine a definite underground area of the mine. Each such examiner shall examine every active underground working place in that area and each such working place shall make tests for accumulations of methane with means approved by the Secretary for detecting gas and tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in the active underground working places and on active roadways

and travelways and all belt conveyors on which coal is carried; examine active roadways, travelways, approaches to abandoned workings, and accessible falls in active sections for hazards; examine by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume; and examine for such other hazards as an authorized representative of the Secretary may from time to time require. Such mine examiner shall place his initials and the date at all places he examines. If such mine examiner finds a condition which he considers to be hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "DANGER" sign conspicuously at a point which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the mine operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination such mine examiner shall report the results of his examination to a person, designated by the mine operator to receive such reports at a designated station on the surface of the mine or underground, before other persons enter the underground areas of such mine

to work in such coal-producing shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book kept for such purpose at a place on the surface of the mine designated by the mine operator. No person (other than certified persons designated under this subparagraph) shall enter any underground area, except during a coal-producing shift, unless an examination of such area as prescribed in this subparagraph has been made within eight hours immediately preceding his entrance into such area.

(E) At least once during each coal-producing shift, or more often if necessary for safety, the underground active working places shall be examined for hazardous conditions by certified persons designated by the mine operator to do so. Such examination shall include tests with means approved by the Secretary for detecting methane and with a permissible flame safety lamp for oxygen deficiency.

(F) Examinations for hazardous conditions, including tests for methane, shall be made at least once each week by a certified person designated by the operator of the mine in the return of each split where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return airway in its entirety, idle workings, and, insofar as conditions permit, abandoned workings. Such weekly examination need not be made during any week

in which the mine is idle for the entire week. The person making such examinations and tests shall place his initials and the date at the places examined, and if hazardous conditions are found, such conditions shall be reported promptly. A record of these examination and tests shall be kept.

(G) At least once each week, a certified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in each active entry, the volume being delivered to the intake end of each pillar line, and the volume at the intake and return of each split. A record of such measurements shall be kept in a book on the surface, and the record shall be open for inspection by interested persons.

(H) (i) In all underground face workings where electrically driven equipment is operated, examinations for methane shall be made by a qualified person designated by the operator of such mine before such equipment is taken into, or operated in, face workings, and examinations for methane shall be made during such operations at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

(ii) If the air at an underground face working, when tested at a point not less than twelve inches from the roof, face, or rib, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall not contain more than 1.0 volume per centum of methane. If such air, when tested at a point not less than twelve inches from the roof, face, or rib, but as near to twelve inches as possible, contains 1.5 volume per centum of methane, as determined by means approved by the Secretary for detecting methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the methane content in such face working shall not contain more than 1.0 volume per centum.

(I) If, when tested, a split of air returning from active underground working places, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall not contain more than 1.0 volume per centum of methane. Such tests shall be conducted at frequent intervals by a qualified person designated by the operator of the mine during each shift. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

(J) If a split of air returning from active underground working places contains 1.5 volume per centum of methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the methane content in such split shall not contain more than 1.0 volume per centum. In virgin territory in mines ventilated by exhaust fans, if the quantity of air in a split ventilating the workings in such territory equals or exceeds twice the minimum volume of air prescribed in subparagraph (B) of this paragraph and if only permissible electric equipment is used in such workings and the air in the split returning from such workings does not pass over trolley or other bare electric power wires, and if a certified person designated by the mine operator is continually testing the methane content of the air in such split during mining operations in such workings, it shall be necessary to withdraw all persons and cut off all electric power from the portion of the mine endangered by methane only when the air returning from such workings contains more than 2 per centum, as determined by means approved by the Secretary for detecting such methane.

(K) Air which has passed by an opening of any unsealed, abandoned area shall not be used to ventilate any active face area in the mine if such air contains 0.25 volume per centum or more of methane. Examinations of such air

shall be conducted during the preshift examination required by subparagraph (D) of this paragraph. For the purposes of this subparagraph, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

(L) Air that has passed through an abandoned panel or area which is inaccessible for inspection shall not be used to ventilate any active face workings in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any active face workings in such mine, except that such air may be used to ventilate enough advancing working places or rooms immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(M) An authorized representative of the Secretary may require in any coal mine that electric face equipment, except shuttle cars, operated therein be equipped with a methane monitor approved by the Secretary.

(N) Idle and abandoned areas shall be inspected for gas and for oxygen deficiency and other dangerous conditions by a certified person as soon as possible, but not more than three hours, before other employees are permitted to enter or work in such places. However, persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified in means approved by the Secretary for detecting

methane and who are trained in the use of a permissible flame safety lamp for oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

(O) Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether methane is present. Such person shall use means approved by the Secretary for detecting gas. If in such examination methane is found in amounts of more than 1.0 volume per centum, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(P) All workings which are abandoned after the operative date of this section shall be sealed or ventilated by a current of air, and all workings, which were abandoned after July 16, 1952, and prior to such operative date, and which were required by the Federal Coal Mine Safety Act, as amended, to be sealed or ventilated by a current of air, shall continue to be maintained with such seals or ventilation. If such workings are sealed, the sealing shall be done in a substantial manner with incombustible material. One or more of the seals of every sealed area shall be fitted with a

pipe and cap or valve to permit the sampling of gases and the measuring of hydrostatic pressure behind such seals. For the purposes of this subparagraph, workings within a panel shall not be deemed to be abandoned until such panel is abandoned.

(Q) Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subparagraph cannot be complied with on the operative date of this section.

(R) Immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for methane shall be made by a qualified person with means approved by the Secretary for detecting gas. If methane is found in amounts of 1.0 volume per centum, changes or adjustments shall be made at once in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(S) Each operator of a coal mine shall adopt a plan within a reasonable period to be established by regulation which shall provide that when any mine fan stops, immediate action shall be taken by the operator or his agent (i) to withdraw all persons from the face workings, (ii) to cut

off the power in the mine in a timely manner, (iii) to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the face workings and other working places where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of 1.0 volume per centum exists therein, and (iv) to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative upon request.

(T) Changes in ventilation that materially affect the main air current or any split thereof and may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts and not restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

(U) The mine foreman shall read and countersign promptly the daily reports of the preshift examiner and assistant mine foreman, and he shall read and countersign promptly the weekly report covering the examinations for

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hazardous conditions. Where such reports disclose hazardous conditions, the mine foreman shall take prompt action to have such conditions corrected. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

(V) Each day, the mine foreman and each assistant shall enter plainly and sign with ink or indelible pencil in a book provided for that purpose a report of the condition of the mine or portion thereof under his supervision which report shall state clearly the location and nature of any hazardous condition observed by them or reported to them during the day and what action, if any, was taken to remedy such condition.

(3) COMBUSTIBLE MATERIALS AND ROCK DUSTING.—(A) Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall not be present in excessive quantities in active underground working places or on electrical equipment therein.

(B) Where underground mining operations create an excessive amount of dust, water, or water with a wetting agent added to it, or other effective method shall be used to reduce such dust to safe limits.

(C) All mines, except those mines or areas of mines in which the dust is too wet or too high in incombustible

content to propagate an explosion, shall be rock-dusted to within forty feet of all faces, and, all open crosscuts shall be rock-dusted.

(D) In mines that are required to start rock-dusting, haulageways and parallel entries connected thereto by open crosscuts shall be rock-dusted. Back entries shall be rock-dusted for at least one thousand feet outby the junction with the first active entry. Inby this junction, the rooms, entries, and crosscuts shall be rock-dusted.

(E) Where rock dust is applied, it shall be distributed upon the top, floor, and sides of all open workings and maintained in such quantity that the incombustible content of the combined coal dust, rock dust, and other dust will be not less than 65 per centum, but the incombustible content in the return air courses shall be not less than 80 per centum, except as provided in subparagraph (D) of this paragraph. Where methane is present in any ventilating current, the percent of incombustible content of such combined dust shall be increased 1 per centum for each 0.1 per centum of methane.

(F) Subparagraphs (B) through (E) of this paragraph shall not apply to underground anthracite mines subject to this Act.

(4) ELECTRICAL EQUIPMENT.—(A) One year after the operative date of this section—

(i) all electric face equipment used in a coal mine shall be permissible and shall be maintained in a permissible condition, except that the Secretary may permit, under such conditions as he may prescribe, nonpermissible or open-type electric face equipment in use in such mine on the effective date of this Act, to continue in use for such period as he deems appropriate after taking into consideration the availability of replacement equipment; and

(ii) only permissible junction or distribution boxes shall be used for making multiple power connections inby the last open crosscut or in any other place where dangerous quantities of methane may be present or may enter the air current, except that the Secretary may permit, under such conditions as he may prescribe, nonpermissible junction or distribution boxes in use, on the operative date of this section, inby the last open crosscut or in any other place where dangerous quantities of methane may be present or may enter the air current, to continue in use for such period as he deems appropriate, after taking into consideration the availability of permissible junction or distribution boxes and the time required to install such boxes.

(B) A copy of any permit granted under this paragraph shall be mailed immediately to a duly designated representa-

tive of the employees of the mine to which it pertains, and to the public official or agency of the State charged with administering State laws relating to coal mine health and safety in such mine.

(C) Any coal mine which, prior to the operative date of this section, was classed gassy and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

(D) All power-connection points out by the last open crosscut shall be in intake air.

(E) Trolley and feeder wires shall not extend beyond the last open crosscut and shall be kept at least one hundred and fifty feet from pillar workings.

(5) FIRE PROTECTION.—(A) Each coal mine shall be provided with suitable firefighting equipment adequate for the size of the mine. After every blasting operation performed on shift, an examination shall be made to determine whether fires have been started.

(B) Underground storage places for lubricating oil and grease in excess of two days' supply shall be of fireproof construction.

(C) Underground structures installed in a mine shall be of fireproof construction.

(D) Welding, cutting, or soldering with arc or flame

in other than a fireproof enclosure shall be done under the supervision of a certified person when such work is done in—

(i) the region between the face and a point twenty feet out by the last open crosscut in first mining;

(ii) the region between the pillar line and a point one hundred and fifty feet outby; and

(iii) the region between the face and gob in longwall mining.

Such person shall make a diligent search for fire during and after such operations and shall, at a minimum of hourly intervals, test for methane with means approved by the Secretary for detecting methane before and during such operations. Welding, cutting, or soldering shall not be conducted in air that contains more than 1.0 volume per centum of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(E) Beginning one year after the operative date of this section, only fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic system of underground equipment. The Secretary may waive the requirement as to the use of fire-resistant hydraulic fluids if fire suppression devices meeting specifications prescribed by him are used on such equipment.

(F) Deluge-type water sprays, automatically actuated

by rise in temperature, or other effective means of controlling fire shall be installed at main and secondary belt-conveyor drives. Such sprays shall be supplied with a sufficient quantity of water to control fires.

(G) Underground belt conveyors installed after the operative date of this section shall be equipped with control switches to stop automatically the driving motor in the event that the belt is stopped by slipping on the driving pulley, by breakage, or other cause.

(6) MAPS.—(A) The operator of an active working underground coal mine shall have in a location chosen to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on such scale and containing such information as the Secretary by regulation may prescribe. Such map shall show the active workings, all worked out and abandoned areas, excluding those areas which have been worked out or abandoned before the effective date of this paragraph which cannot be entered safely and on which no information is available, elevations, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and oil and gas wells in such mine. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. As the Secretary may by regulation require, such map shall be kept up to date by tem-

porary notations, and such map shall be revised and supplemented at intervals on the basis of a survey made or certified by such engineer or surveyor.

(B) The coal mine map and any revision and supplement thereof shall be available for inspection by the Secretary or his authorized representative, by coal mine inspectors of the State in which the mine is located, and by persons working in the mine and their authorized representatives and by operators of adjacent coal mines. The operator shall furnish to the Secretary or his authorized representative, upon request, one or more copies of such map and any revision and supplement thereof.

(C) Whenever an operator permanently closes such mine, or temporarily closes such mine for a period of more than ninety days, he shall promptly notify the Secretary of such closure. Within sixty days of the permanent closure of the mine, or, when the mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the Secretary a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified as true and correct by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

(7) BLASTING AND EXPLOSIVES.—(A) Black blasting

powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground, except that in underground anthracite mines mudcaps or other open, unconfined shots may be fired, if restricted to battery starting when no gas or fire hazard is present, and if it is otherwise impracticable to start the battery, and in such anthracite mines open, unconfined "shake" shots in working places and other places in pitching veins may be fired, when no gas or fire hazard is present, if the taking down of loose, hanging coal by other means is too hazardous for men working in such places. Except as provided in the last sentence of this paragraph, only permissible explosives and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock.

(B) Explosives or detonators carried anywhere underground by any person shall be in containers constructed substantially of nonconductive material, maintained in good condition, and kept closed.

(C) Neither explosives nor detonators shall be transported on chain or shaker conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, drilling

machines, or any self-propelled mobile equipment, except that this subparagraph does not prohibit the transportation of explosives or detonators in cars moved by means of a locomotive, rope, shuttle cars, or in equipment designed especially to transport such explosives or detonators, so long as such explosives or detonators are in special closed containers.

(D) When supplies of explosives and detonators for use in one or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and in a reasonably dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

(E) Explosives and detonators stored near the working faces shall be in separate closed containers, and shall be in a location out of line of blast not less than fifty feet from the face and fifteen feet from any pipeline, powerline, rail, or conveyor; except that if kept in niches in the rib, the distance from pipeline, powerline, rail, or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

(F) Explosives and detonators shall be kept in separate containers until immediately before use at the working faces.

(8) HOISTING AND MANTRIPS.—Every hoist used to transport persons at an underground coal mine, other than hoists used in excavating shafts or slopes, shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist used to transport such persons shall be equipped with brakes capable of stopping the platform, cage, or other device for transporting persons when fully loaded, and with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device for transporting persons, and have a proper margin of safety. Cages or platforms which are used to transport persons in vertical shafts shall be equipped with safety catches that act quickly and effectively in an emergency, and the safety catches shall be tested at least once every two months. Hoisting equipment that is used to transport persons at such a mine shall be inspected daily. Where persons are regularly transported into or out of a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages or platforms. Safeguards adequate, in the judgment of the Secretary, to minimize hazards with respect to mantrips and haulage shall be provided.

(9) MISCELLANEOUS.—(A) Each operator of a coal mine shall comply with State laws and regulations in establishing and maintaining barriers around oil and gas wells

penetrating coal beds or underground workings of underground coal mines.

(B) Whenever any working place approaches within fifty feet of abandoned workings in the mine as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any other abandoned workings of the mine, which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, a boreline or boreholes shall be drilled to a distance of at least twenty feet in advance of the face of such working place and shall be continually maintained at least ten feet in advance of the advancing solid face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing face will not accidentally hole through into such workings. Boreholes shall also be drilled not more than eight feet apart in the rib of such working place to a distance of at least twenty feet and at an angle of forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of persons working in such place.

(C) Smoking shall not be permitted underground, nor shall any person carry smoking materials, matches, or lighters underground. Smoking shall be prohibited in or around

oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator of a coal mine shall institute a program, approved by the Secretary, at each mine to insure that any person entering the mine does not carry smoking materials, matches, or lighters.

(D) Persons underground shall use only permissible electric lamps for portable illumination.

(E) At least two separate and distinct travelable passageways to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each mine-working section to the surface, and shall be maintained in safe condition and properly marked. Mine openings shall have adequate protection against surface fires, fumes, smoke, and water from floods entering the mine.

(F) After the operative date of this section, all structures erected on the surface within one hundred feet of any mine opening shall be of reasonably fireproof construction. Unless existing structures located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests

shall be kept and shall be available for inspection by interested persons.

(G) Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations on surface coal-handling facilities. Where coal is dumped at or near airintake openings, provisions shall be made to prevent the dust from entering the mine in such quantities as to create a dangerous condition.

(H) Every operator of a coal mine shall provide a program, approved by the Secretary, of training and retraining of both qualified and certified persons needed to carry out functions prescribed in this section.

(I) Temporary splices in trailing cables shall not be permitted inby the last open crosscut.

(J) The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors or by water or water with a wetting agent. Persons exposed for short periods to gas and dust-fume- and mist-inhalation hazards shall wear permissible respiratory equipment. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

(10) DEFINITIONS.—For the purpose of this section and section 22 of this Act, the term—

(A) "certified person" means a person certified by the State in which the coal mine is located to per-

form duties prescribed by such sections, except that, in a State where no program of certification is provided, such certification shall be by the Secretary.

(B) "qualified person" means an individual deemed qualified by the Secretary to make tests or measurements, as appropriate, required by this section.

(C) "permissible" as applied to—

(i) equipment used in the operation of a coal mine means equipment to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire;

(ii) explosives or blasting devices used in such mine means explosives or blasting devices which meet specifications which are prescribed by the Secretary; and

(iii) the manner of use of explosives and blasting devices means the manner of use prescribed by the Secretary;

(D) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, talc, adobe, or other

inert material, preferably light colored, 100 per centum of which will pass through a sieve having 20 meshes per linear inch and 70 per centum or more of which will pass through a sieve having 200 meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast or air, and which does not contain more than 5 per centum of combustible matter or more than a total of 5 per centum of free and combined silica (SiO_2);

(E) "coal mine" includes areas of adjoining mines connected underground;

(F) "anthracite" means coals with a volatile ratio equal to .12 or less;

(G) "volatile ratio" means volatile matter content divided by the volatile matter plus the fixed carbon.

(H) "active underground working places" means all underground places in which persons are required to be or to pass through in the performance of normal mining operations;

(I) "abandoned areas" means sections, panels, and other areas that are not ventilated and examined in the manner required for active underground working places; and

(J) "electric face equipment" means electric equip-

ment that is installed or used inby the last open crosscut in an entry or a room.

TITLE III—HEALTH

INTERIM HEALTH STANDARDS FOR UNDERGROUND MINES

SEC. 301. (a) The provisions of subsection (b) of this section shall be interim health standards applicable to all underground mines until superseded in whole or in part by mandatory health and safety standards promulgated by the Secretary by regulation for such mines. For the purposes of this Act, such provisions shall be regarded as the mandatory health standards promulgated under section 106 of this Act for such mines and shall be enforced in the same manner and to the same extent as any mandatory standard promulgated under said section. Any orders issued in the enforcement of the interim standards set forth in subsection (b) of this section shall be subject to review as provided in sections 108, 110, and 111 of this Act.

(b) The Secretary shall prescribe by regulation, not later than sixty days after enactment of this Act, the date on which an interim mandatory health standard of not more than 3 milligrams of dust per cubic meter of air shall be achieved, and, if appropriate, a schedule of permissible levels of airborne concentrations of dust to be reached in graduated descending concentrations as he may specify. Such concentrations shall be measured at a point or points prescribed by

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the Secretary by a gravemetric sampling device having the following characteristics for particles of unit density spheres or its equivalent:

2 microns and less will pass 98 percent.

5 microns will pass 50 percent.

7.1 microns will pass 0 percent.

Such interim standard shall not apply to rock dusting operations. On and after the effective date of such regulation each underground coal mine shall have a respirator maintenance program so that at the beginning of each shift each person working in an active underground working place shall have issued to him a clean and sterile respirator with a new filter. After the effective date of this section each person working in an underground coal mine shall annually be given a chest roentgenogram by a physician approved by a State health authority as a competent radiologist. The files shall be read and classified in a manner to be prescribed by the Secretary of Health, Education, and Welfare and the results of each reading on each such person shall be made available to the Secretary, the Secretary of Health, Education, and Welfare, the operator, and such person.

OPERATIVE DATE AND REPEAL

SEC. 5. The provisions of sections 106 through 111 and section 201 of this Act shall become operative ninety days after enactment. The provisions of the Federal Coal Mine

Safety Act, as amended, are repealed on the operative date of those sections, except that such provisions shall continue to apply to any order, notice, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, or finding. All other provisions of this Act shall be effective on the date of enactment of this Act.

SEPARABILITY

SEC. 6. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORTS

SEC. 7. Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress an annual report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal mine health and safety, and any other relevant information, including any recommendations he deems appropriate.

91ST CONGRESS
1ST SESSION

S. 467

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 10), 1969

Mr. RANDOLPH (by request) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

For the elimination of health dangers to coal miners resulting from the inhalation of coal dust.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Coal Mine Health Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) The term "Board" means the Federal Coal Mine Safety Board of Review created by section 205 of the Federal Coal Mine Safety Act.

(2) The term "Bureau" means the Bureau of Mines.

(3) The term "certified person", when used to designate the kind of person to whom the performance of a duty

in connection with the operation of a mine shall be assigned, means a person who is qualified under the laws of the State in which such mine is located to perform such duty, except that in a State the laws which do not provide for such qualification, the term means a person deemed by the operator of such mine to be qualified to perform such duty.

(4) The term "commerce" means trade, traffic, commerce, transportation, or communications between any State, territory, possession, or the District of Columbia and any other State, territory, or possession of the United States, or between any State, territory, possession, or the District of Columbia and any foreign country, or wholly within any territory, possession, or through any other State or through any territory, possession, or the District of Columbia or through any foreign country.

(5) The term "Director" means the Director of the Bureau of Mines.

(6) The term "duly authorized representative of the Bureau" means a person authorized in writing by the Director to perform the duties of a duly authorized representative of the Bureau as provided in sections 3, 4, and 6 of this Act.

(7) The term "mine" means an area of land including everything annexed to it by nature and all structures, machinery, tools, equipment, and other property, real or per-

sonal, placed upon, under, or above its surface by man, used in the work of extracting bituminous coal lignite or anthracite, from its natural deposits in the earth in such area and in the work of processing the coal so extracted. The term "mine" does not include any strip mine. The term "work of processing the coal" as used in this paragraph means the sizing, cleaning, drying, mixing, and crushing of bituminous coal, lignite, or anthracite, and such other work of processing such coal as is usually done by the operator, and does not mean crushing, coking, or distillation of such coal or such other work of processing such coal as is usually done by a consumer or others in connection with the utilization of such coal.

(8) The term "operator" means the person, partnership, association, or corporation operating a mine and owning the right to do so.

(9) The term "permissible sensing device" means any device or equipment which meets specifications prescribed by the Director designed to assure that such device or equipment will be effective in determining the level of coal dust in a mine.

(10) The term "premises", when used in referring to the premises of a mine, means the land within the mine's area of land.

INSPECTIONS

SEC. 3. (a) For the purpose of determining whether a health danger described in section 4 (a) exists in any mine the products of which regularly enter commerce or the operations of which substantially affect commerce, the Director shall cause a health inspection of each such mine to be made by duly authorized representatives of the Bureau at least once every sixty days. The Director shall also make, or cause duly authorized representatives of the Bureau to make, such special health inspections of such mines as may be required by section 6, and such other health inspections of such mines as he deems necessary for the proper administration of this Act.

(b) (1) In order to promote sound and effective coordination in Federal and State activities within the field covered by this Act, the Director shall cooperate with the official mine inspection, safety, or health agencies of the several States.

(2) The Director, and any duly authorized representative of the Bureau, shall be entitled to admission to any mine, the products of which regularly enter commerce or the operations of which substantially affect commerce, for the purpose of making any health inspection authorized under this Act.

FINDINGS AND ORDERS

SEC. 4. (a) A health danger shall be deemed to exist in a mine or area thereof if the coal dust level in such mine, or in an area thereof, exceeds three milligrams of respirable dust (five microns or less) per cubic meter of air.

(b) If a duly authorized representative of the Bureau, upon making a health inspection of a mine as authorized in section 3, finds a health danger present in the mine he shall also find the extent of the area of such mine throughout which such health danger exists. Thereupon he shall immediately make an order requiring the operator of such mine to cause all persons, excepting persons referred to in subsection (c) of this section, to be withdrawn from, and be debarred from entering, such area. Such findings and order shall contain a detailed description of the conditions which such representative finds cause and constitute such health danger, and a description of the area of such mine throughout which persons must be withdrawn and debarred.

(c) No order issued under subsection (b) shall require any of the following persons to be withdrawn from, or to be debarred from entering, the area described in the order—

(1) any person whose presence in such area is

necessary, in the judgment of the operator of the mine, to eliminate the danger described in the order;

(2) any public official whose official duties require him to enter such area; or

(3) any legal, technical consultant, or any representative of employees of the mine who is a certified person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) Notice of each finding and order made under this section shall promptly be given to the operator of the mine to which it pertains, by the person making such finding or order.

NOTICES

SEC. 5. (a) All findings and orders made pursuant to section 4 or 6 and all notices required to be given of the making of such findings and orders, shall be in writing. All such findings and orders shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice. All such notices shall contain a copy of the findings and orders referred to therein.

(b) Notice of any finding or order acquired by section 4

or section 6 to be given to an operator shall be given by causing such notice, addressed to the operator of the mine to which it pertains, to be delivered to the office of such mine provided for in the first sentence of section 204 (b) of the Federal Coal Mines Safety Act, and by causing a copy of such notice to be posted on the bulletin board of such mine provided for in the second sentence of such section. The requirement of the preceding sentence that a notice shall be "addressed to the operator of the mine to which it pertains", shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to "Operator of Mine", specifying the mine sufficiently to identify it, shall satisfy such requirement.

(c) The Director shall cause a copy of each such notice to be mailed immediately to a duly designated representative of the employee of the mine to which it pertains, and to the public official or agency of the State or territory charged with administering State or territorial laws, if any, relating to health dangers in such mine.

REVIEW BY DIRECTOR

SEC. 6. (a) An operator notified of an order made pursuant to section 4 may apply to the Director for annulment or revision of such order. Upon receipt of such appli-

cation, the Director shall make a special health inspection of the mine affected by such order, or cause three duly authorized representatives of the Bureau, other than the representative who made such order, to make such inspection of such mine and to report thereon to him. Upon making such special health inspection himself, or upon receiving the report of such inspection made by such representatives, the Director shall find whether or not a health danger throughout the area of such mine as set forth in such order existed at the time of making such special inspection. If he finds that such danger did not then exist throughout the area of such mine, he shall make an order, consistent with his findings, revising or annulling the order under review. If he finds that such danger did then exist throughout such area of such mine, he shall make an order denying such application.

(b) The Director shall cause notice of each finding and order made under this section to be given promptly to the operator of the mine to which it pertains.

(c) At any time while an order made pursuant to section 4 or this section is in effect, or any time during the tendency of proceedings under section 7 or section 8 seeking annulment or revision of such order, the operator of the mine affected by such order may apply to the Director for annulment or revision of such order. The Director shall there-

upon proceed to act upon such application in the manner provided in subsection (a) of this section.

(d) In view of the urgent need for prompt decision of matters submitted to the Director under this section, all actions which the Director or his representative are required to take under this section shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

REVIEW BY THE BOARD

SEC. 7. (a) An operator notified of an order made pursuant to section 4 may apply to the Board for annulment or revision of such order without seeking its annulment or revision under section 6. An operator notified of an order made pursuant to section 6 may apply to the Board for an annulment or revision of such order.

(b) The operator shall be designated as the applicant in such proceeding and the application filed by him shall recite the order complained of and other facts sufficient to advise the Board of the nature of the proceeding. He may allege in such application: That the health danger as set out in such order does not exist at the time of the filing of such application; that the area of the mine described in such order as the area affected by the health danger referred to in such order is not so affected at the time of the filing of such appli-

cation. The Director shall be the respondent in such proceeding, and the applicant shall send a copy of such application by registered mail or by certified mail to the Director at Washington, District of Columbia.

(c) Immediately upon the filing of such an application the Board shall fix the time for a prompt hearing thereof.

(d) Pending such hearing the applicant may file with the Board a written request that the Board grant such temporary relief from such order as the Board may deem just and proper. Such temporary relief may be granted by the Board only after a hearing by the Board at which both the applicant and the respondent were afforded an opportunity to be heard, and only if respondent was given ample notice of the filing of applicant's request and of the time and place of the hearing thereon as fixed by the Board.

(e) The Board shall not be bound by any previous findings of fact by the respondent or by any other representative of the Bureau. Evidence relating to the making of the order complained of and relating to the questions raised by the allegations of the pleadings or other questions pertinent in the proceeding may be offered by both parties to the proceeding. If the respondent claims that a health danger, as set out in such order, existed at the time of the filing of the application, the burden of proving the then existence of such danger, as set out in the order under review, shall be upon

the respondent, and the respondent shall present his evidence first to prove the then existence of such danger. Following presentation of respondent's evidence the applicant may present his evidence, and thereupon respondent may present evidence to rebut the applicant's evidence.

(f) The Board, upon conclusion of the hearing, shall find whether or not the health danger throughout the area of such mine as set out in such order existed at the time of the filing of the operator's application. If the Board finds that such danger did not then exist throughout such area of such mine, the Board shall make an order, consistent with its findings, revising or annulling the order under review. If the Board finds that such danger did then exist throughout such area of such mine, the Board shall make an order denying such application.

(g) Each finding and order made by the Board shall be in writing. It shall show the date on which it is made, and shall bear the signatures of the members of the Board who concur therein. Upon making a finding and order the Board shall cause a true copy thereof to be sent by registered mail or by certified mail to all parties or their attorneys of record. The Board shall cause each such finding and order to be entered on its official record, together with any written opinion prepared by any members in support of, or dissenting from, any such finding or order.

(h) In view of the urgent need for prompt decision of matters submitted to the Board under this section, all actions which the Board is required to take under this section shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

JUDICIAL REVIEW

SEC. 8. (a) Any final order issued by the Board under section 7 shall be subject to judicial review by the United States court of appeals for the circuit in which the mine affected is located, upon the filing in such court of a notice of appeal by the Director or the operator aggrieved by such final order within thirty days from the date of the making of such final order.

(b) The party making such appeal shall forthwith send a copy of such notice of appeal, by registered mail or by certified mail, to the other party and to the Board. Upon receipt of such copy of a notice of appeal the Board shall promptly certify and file in such court a complete transcript of the record upon which the order complained of was made. The costs of such transcript shall be paid by the party making the appeal.

(c) The court shall hear such appeal on the record made before the Board, and shall permit argument, oral or written or both, by both parties. The court shall permit such pleadings, in addition to the pleadings before the Board, as

it deems to be required or as provided for in the Rules of Civil Procedure governing appeals in such court.

(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the United States Court of Appeals may, after due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of the final order of the Board or to grant such other relief as may be appropriate pending final determination of the appeal.

(e) The United States Court of Appeals may affirm, annul, or revise the final order of the Board, or it may remand the proceeding to the Board for such further action as it directs. The findings of the Board as to facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(f) The decision of a United States Court of Appeals on an appeal from the Board shall be final, subject only to review by the Supreme Court as provided in section 1254 of title 28 of the United States Code.

MONITORING OF COAL DUST LEVELS

SEC. 9. Each operator of a mine to which section 3 applies shall—

(1) continuously monitor the level of coal dust in all of the mine through the use of approved sensing

devices and by such other means as the Director shall prescribe,

(2) keep such records as the Director deems necessary to enable him to carry out effective inspections under section 3, and

(3) at all bituminous and lignite underground coal mines, adopt procedures to assure that all coal to be mined must first be undercut, centercut, topcut, or sheared:

Provided, however, That other mining methods may be used if the operator can conclusively demonstrate to the Director, or a duly authorized representative of the Bureau as authorized in section 3, and to the employees in the mine, or their collective-bargaining representatives, that such mining methods can be accomplished without exceeding the dust level set forth in this Act.

PENALTIES

SEC. 10. (a) Any operator of a mine notified of an order made pursuant to section 3 or section 6, requiring him to cause persons to be withdrawn from, and to be debarred from entering, any area of such mine, who willfully fails to comply with such order shall be fined not more than $5,000. $5,000.

(b) Any agent of an operator of a mine, knowing of

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the making of an order requiring such operator to cause persons to be withdrawn from, and to be debarred from entering, any area of such mine, who willfully directs, authorizes, or causes any person, other than one who is lawfully authorized to enter or be in such area, to enter or be in such area while such order is in effect, shall be fined not more than $5,000.

(c) Any person, knowing of the making of an order requiring an operator of a mine to cause persons to be withdrawn from, and to be debarred from entering, any area of such mine, who enters such area or remains therein while such order is in effect, shall, unless he is a person who is lawfully authorized to enter or be in such area, be fined not more than $5,000.

(d) Any owner, lessee, agent, manager, superintendent, or other person having control or supervision of any coal mine subject to section 3 who refuses to admit the Director or any duly authorized representative of the Bureau to such mine, pursuant to section 3(c), shall be fined not more than $500.

(e) Any operator of a mine who violates section 9 shall be fined not more than $500 for the first such violation, and shall be fined not more than $1,000, or imprisoned not more than thirty days, or both, for each subsequent violation.

EFFECT ON STATE LAWS

SEC. 11. (a) No State or territorial law in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any provision of this Act, except insofar as such State or territorial law is in conflict with this Act, or with orders issued pursuant to this Act.

(b) Provisions in any State or territorial law in effect upon the effective date of this Act, or which may become effective thereafter, which provide for greater protection from health dangers for persons on coal mine premises, in connection with a particular phase of coal-mining operations, than do provisions of this Act, which relate to the same phase of such operations, shall not be construed or held to be in conflict with this Act. Provisions in any State or territorial law in effect upon the effective date of this Act, or which may become effective thereafter, which provide for the protection of the health of persons on coal mine premises in connection with phases of coal-mining operations concerning which no provision is contained in this Act, shall not be construed or held to be superseded by this Act.

ADMINISTRATIVE PROVISIONS

SEC. 12. (a) The Director shall submit annually to the Congress, as soon as practicable after the beginning of each regular session, a full report of the administration of his functions under this Act during the preceding calendar year. Such

report shall include, either in summary or detailed form, the information obtained by him under this Act, together with such findings and comments thereon and such recommendations for legislative action as he may deem proper.

(b) For the promotion of sound and effective coordination of Federal and State activities within the field covered by this Act, to eliminate duplication of effort and expense, and to secure effective enforcement of health requirements established by this Act, the Director shall affirmatively and diligently seek to cooperate with the mine inspection, safety, or health agencies of the several States, through formal agreement or otherwise, in the enforcement of the provisions of this Act.

(c) Nothing in this Act shall be construed or held to supersede or in any manner affect the workmen's compensation laws of any State or territory, or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under State or territorial laws in respect of injuries, occupational or other diseases, or death of employees arising out of or in the course of employment.

ADVISORY COMMITTEE

SEC. 13. (a) The Secretary of the Interior shall establish an Advisory Committee on Coal Mine Health (hereinafter referred to as the "Advisory Committee"), which shall

consist of three representatives from labor, three representatives from industry, and three representatives from the general public.

(b) The Advisory Committee shall advise the Secretary with respect to mines of improving the implementation of this Act, on steps needed to reduce further exposure of coal miners to dust and other health hazards, and with respect to the administration of this Act.

(c) Members of the Advisory Committee shall, while serving on business of the Committee, receive compensation at a rate to be fixed by the Secretary, but not exceeding $100 per day, including traveltime; and, while so serving away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in Government service employed intermittently.

X-RAY PROGRAM

SEC. 14. For the purposes of enabling appropriate Federal officials to appraise the effectiveness of this Act, and other Federal and State laws in preventing conditions in coal mines which impair the health of coal miners, the Secretary of the Interior, in cooperation with the Secretary of Health, Education, and Welfare shall make available on a voluntary basis (but at intervals of not greater than three

years), to coal miners X-rays designed to ascertain the extent of health disabilities related to coal mining. Results derived from such X-rays shall be held in confidence, unless released with the permission of the person X-rayed.

RESEARCH PROGRAM

SEC. 15. The Secretary of the Interior shall formulate and carry out a research and development program designed to improve dust collection techniques on mining machinery, and to initiate and expand adequate health research. In carrying out this program, the Secretary may make grants to, or contracts with, both public and private agencies and organizations.

EXCLUSION FROM ADMINISTRATIVE PROCEDURE ACT

SEC. 16. The Administrative Procedure Act shall not apply to the making of any order pursuant to this Act, or to any proceeding for the annulment or revision of any such order.

AUTHORIZATION OF APPROPRIATIONS

SEC. 17. There are hereby authorized to be appropriated such sums as may be necessary for the due execution of this Act.

SEVERABILITY

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision

to other persons or circumstances, shall not be affected thereby.

EFFECTIVE DATE

SEC. 19. The provisions of this Act shall become effective one year after the date of its enactment.

91ST CONGRESS
1ST SESSION

S. 1094

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1969

Mr. WILLIAMS of New Jersey introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To improve the health and safety conditions of persons working in the coal mining industry of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Coal Mine Health and Safety Act of 1969".

DECLARATION OF PURPOSE

SEC. 2. Congress declares that it is imperative to provide effective means and measures for maintaining safe and healthy working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm resulting from unsafe practices and carelessness that continue to plague the industry and cause grief and suffering

to persons working in such mines and their families, and in order to control the causes of occupational diseases originating in such mines resulting from unhealthful conditions existing therein; that the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the worker; that the operators of such mines have the primary responsibility to prevent the existence of unsafe and unhealthful conditions and practices in such mines with the assistance of persons working in such mines; and that it is therefore the purpose of this Act to require the operators of the Nation's coal mines and the persons working in such mines to become more vigilant in carrying out their responsibilities through compliance with applicable mandatory health and safety standards promulgated by the Secretary of Labor under this Act.

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

(a) "Secretary" means the Secretary of Labor or his delegate;

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or any place outside thereof, or within the District of Columbia, or a possession of the United States, or between points in the same State, but through a point outside thereof;

(c) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(d) "operator" means a person operating a coal mine;

(e) "agent" means the person charged with responsibility for the operation of all or part of such mine and the supervision of the employees in a coal mine;

(f) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "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 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;

(h) "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;

(i) "imminent danger" means the existence of conditions or practices in a coal mine which could reasonably be expected to cause death or serious physical harm before such conditions or practices can be abated; and

(j) "Center" means the Coal Mine Disaster Evaluation Center of the Office of Emergency Preparedness.

(k) "Dependent" means any person, other than an injured employee, who is entitled to benefits under an applicable State workmen's compensation law or occupational disease law, or, with respect to section 103, who is a dependent within the meaning of the Longshoremen's and Harbor Workers' Compensation Act.

(l) "Benefit" means any monetary compensation payment or medical payment provided under a State workmen's compensation or occupational disease law or under this Act.

MINES SUBJECT TO ACT

SEC. 4. Each coal mine, the products of which enter commerce, or the operations of which affect commerce, shall be subject to this Act, and each operator of such mine and every person working in such mine shall comply with the provisions of this Act and the applicable regulations of the Secretary issued under this Act.

INSPECTIONS AND INVESTIGATIONS

SEC. 5. (a) Authorized representatives of the Secretary shall make inspections and investigations in coal mines for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents involving bodily injury or death, and the causes of diseases and physical impairments originating in such mines, (2) developing health and safety standards, (3) determining whether an imminent danger exists in a coal mine, and (4) determining whether or not there is a compliance with the mandatory health and safety standards promulgated by the Secretary by regulation, or any notice, or order issued under this Act.

(b) For the purpose of making any inspection or investigation under this Act, the Secretary or any authorized representative of the Secretary shall have a right of entry to, upon, or through, any coal mine.

(c) For the purpose of carrying out his responsibilities under this Act, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal or State agency.

(d) For the purpose of making any investigation of any disaster or accident or other occurrence relating to

health or safety in a coal mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) In the event of any disaster or accident occurring in a coal mine, the operator shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes of the disaster or accident.

(f) Any authorized representative of the Secretary found in violation of the provisions of this section during the conduct of any inspection or investigation shall be subject to the hearings and judicial review provisions of this Act.

ADVISORY COMMITTEES

SEC. 6. (a) The Secretary may appoint one or more advisory committees to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each such committee.

(b) Advisory committee members, other than employees of Federal, State, or local governments, while performing committee business shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime. While so serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

HEALTH AND SAFETY STANDARDS

SEC. 7. (a) The Secretary shall develop and promulgate, and from time to time he may revise, by regulation, mandatory health and safety standards to provide for the protection of life and the prevention of injuries and occupational diseases in and around coal mines. Mandatory safety standards for surface coal mines shall be promulgated by the Secretary not later than six months after enactment of this Act.

(b) In the development of such standards, the overriding consideration shall be the highest degree of health and safety of the individual worker. The Secretary shall consult

with other interested Federal agencies, representatives of the States, appropriate representatives of the coal mine operators and workers, other interested persons and organizations, and such advisory committees as he may appoint. All such standards shall be developed by taking into account such considerations as the latest available scientific data in the field, experience gained under this and other health and safety statutes and, in the case of health standards, shall be based on criteria developed by the Secretary of Health, Education, and Welfare pursuant to section 15 of this Act.

FINDINGS, NOTICES, AND ORDERS

SEC. 8. (a) If, upon any inspection or investigation of a coal mine, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue an order requiring the operator of the mine to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be barred from entering, such area until an authorized representative of the Secretary determines that such imminent danger no longer exists.

(b) If, upon any inspection or investigation of a coal mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard promulgated under this Act, but the viola-

tion has not created an imminent danger, he shall find what would be a reasonable period of time within which the violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, an authorized representative of the Secretary finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall also find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be barred from entering, such area until an authorized representative of the Secretary determines that the violation has been abated.

(c) The following persons shall not be required to be withdrawn from, or barred from entering, any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary, in the judgment of the operator, to eliminate the condition described in the order;

(2) Any public official whose official duties require him to enter such area; and

(3) Any consultant or any representative of the

employees of such mine who is qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order.

(d) Notices and orders issued pursuant to this section shall contain a description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of any mandatory health or safety standard promulgated under this Act and a description of the area of the coal mine from which persons must be withdrawn and barred.

(e) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the Secretary issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative.

(f) If it becomes necessary, as a result of a violation or violations which the Secretary finds to be the responsibility of the operator, to withdraw or bar employees from the area affected by the violation or violations, the operator shall fully compensate the employees for such time as may be lost during the period they are barred or withdrawn from the area.

(g) A notice or order issued pursuant to this section

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may be modified or terminated by an authorized representative of the Secretary.

REVIEW BY THE SECRETARY

SEC. 9. (a) An operator notified of an order issued pursuant to section 8 of this Act may apply to the Secretary for review of the order within thirty days of receipt thereof. The operator shall send a copy of such application to the representative, if any, of persons working in the affected mine. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of the applicant or a representative of persons working in such mine, to enable the applicant and the representatives of persons working in such mines to present information relating to the issuance and continuance of such order.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and (1) in the case of an order issued under subsection (a) of section 8 of this Act he shall find whether or not the imminent danger as set out in the order existed at the time of issuance of the order and whether or not the imminent danger existed at the time of the investigation, and (2) in the case of an order issued under subsection (b) of section 8 of this Act he shall find whether or not there was a violation of any

mandatory health or safety standard promulgated under this Act as described in the order and whether or not such violation has been abated at the time of such investigation, and upon making such findings he shall issue a written decision vacating, affirming, modifying, or terminating the order complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decisions of matters submitted to the Secretary under this section, all actions which the Secretary takes under this section shall be taken as promptly as practicable, consistent with the adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under subsection (b) of section 8 of this Act, together with a detailed statement giving reasons for granting such relief. The Secretary may issue a decision granting such relief, under such conditions as he may prescribe, only after a hearing in which all parties are given an opportunity to be heard.

JUDICIAL REVIEW

SEC. 10. (a) Any decision issued by the Secretary under section 9 of this Act shall be subject to judicial review by the United States Court of Appeals for the circuit in which the affected coal mine is located, upon the filing in

such court within thirty days from the date of such decision of a petition by the operator aggrieved by the decision praying that the action of the Secretary be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary and thereupon the Secretary shall certify and file in such court the record upon which the decision complained of was issued, as provided in section 2112 of title 28, United States Code.

(b) The court shall hear such appeal on the record made before the Secretary, in the case of an appeal of a decision issued by the Secretary. The findings of the Secretary, in the case of an appeal from a decision issued by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceedings to the appropriate administrative body from which the appeal was taken for such further action as it directs.

(c) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may, after due notice to, and hearing of, the parties to the appeal, issue all necessary and appropriate process and grant such other relief as may be appropriate pending final determination of the appeal.

(d) The judgment of the court shall be subject only

to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's action in issuing the decision.

POSTING OF NOTICES AND ORDERS

SEC. 11. (a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices required by law or regulation to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice or order required by this Act to be given to an operator shall be delivered to the office of the affected mine, and shall be immediately posted on the bulletin board of such mine.

(b) The Secretary shall cause a copy of any notice or order required by this Act to be given to an operator to be mailed immediately to a duly designated representative of persons working in the affected mine, and to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine.

(c) In order to insure prompt compliance with any notice or order issued under section 8 of this Act, the authorized representative of the Secretary may deliver such notice or order to the agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice or order.

RECORDS

SEC. 12. (a) Every operator of a coal mine and his agent shall establish and maintain such records, make such reports, and provide such information as the Secretary may require from time to time to enable him to perform his functions under this Act, and shall, upon request of any person authorized by the Secretary, permit such person to have access to and copy such records.

(b) Any operator found deliberately obfuscating or suppressing information necessary for the performance of the functions of this Act shall be punishable under the hearings and judicial review provisions and penalties of this Act.

INJUNCTIONS

SEC. 13. The Secretary may request the Attorney General to 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 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 section 8 or 9 of this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representative in carrying out the provisions of this Act, or (c) refuses to admit such representative to the mine, or (d) refuses to permit the inspection or investigation of the mine, or an accident, injury, or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary, or (f) refuses to permit access to, and copying of, records. Each such court shall have jurisdiction to provide such relief as may be appropriate.

PENALTIES

SEC. 14. (a) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard promulgated under this Act shall be assessed a civil penalty by the Secretary of not less than $1,000 and not more than $20,000 for each such violation. Each violation shall be a separate offense. Any civil penalty assessed may be compromised by the Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance, after notification of

a violation, shall be considered by the Secretary. Whenever the Secretary compromises a penalty under this subsection, he shall publish the findings leading thereto in the Federal Register. The amount of such penalty, when finally determined, or the amount agreed upon in corpromise, may be deducted from any sums owing by the United States to the operator charged or may be recovered in a civil action in the United States district courts.

(b) Any person working in a coal mine who violates a mandatory health or safety standard promulgated under this Act shall be assessed a civil penalty of not less than $50 or not more than $1,000 for each such violation. Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the gravity of the violation shall be considered as well as the past record of the individual with respect to violations of mandatory health or safety standards. The amount of such penalty when finally determined or the amount agreed upon in compromise may be recovered in a civil action in the United States district courts.

(c) Whoever knowingly violates or fails or refuses to comply with any order issued under this Act shall, upon conviction, be punished by a fine of not more than $10,000,

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 person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than two years, or by both.

RESEARCH AND RELATED ACTIVITIES

SEC. 15. (a) The Office of Science and Technology in the Executive Office of the President shall formulate general research policy and furnish guidance for the various agencies whose functions relate to coal mine health and safety. In carrying out these functions, the Office of Science and Technology shall insure that any related or applicable research which has been completed or is being conducted in European and other nations and by the National Aeronautics and Space Administration, the Department of Defense and other United States Federal and State agencies, be immediately evaluated for its possible application to the improvement of health and safety conditions in the coal mines.

(b) The Office of Science and Technology shall direct the Secretary or the Secretary of the Interior as may be appropriate to conduct or contract for studies and analyses, research and development processes, devices and working models related to the drilling, breaking, preparation and utilization of coal and related coal products, construction of mine structures and mining machinery, mine ventilation, gas

detection systems and devices and individual miner life-support systems.

(c) The Office of Science and Technology shall direct the Secretary or the Secretary of the Interior as may be appropriate to procure developed devices and systems for the monitoring and detection of mine safety conditions and for the protection of the individual miner. Such devices shall be distributed as expeditiously as possible for the use and benefit of Federal and State mine safety officials, the operators, and the persons working in the coal mines.

(d) The Office of Science and Technology shall be authorized to procure studies and analyses relating to the costs and effectiveness of the Federal Coal Mine Health and Safety Act of 1969. Results and recommendations derived from such evaluations shall be forwarded in the form of an annual report to the President and to the Congress.

(e) The Secretary shall expand programs for the education and training of coal mine operators and employees subject to this Act in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in such mines, and in the use of permissible methane detectors and other means approved by the Secretary for accurately detecting gases.

(f) The Secretary of Health, Education, and Welfare shall periodically develop, after consultation with the

Secretary and on the basis of research, demonstrations, and experiments and such other information as may be appropriate, health criteria to enable the Secretary to formulate and prescribe health standards under this Act. The Secretary of Health, Education, and Welfare shall conduct an annual survey of the health conditions and status of coal miners, the results of which shall be published in the form of an annual report. The provisions of this Act relating to inspections, investigations, records, and injunctions shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this section.

(g) The Office of Science and Technology in consultation with the Secretary of Health, Education, and Welfare shall be authorized to procure studies and analyses relating the health and health status of coal miners to the environmental conditions of their employment.

COAL MINE DISASTER EVALUATION CENTER

SEC. 16. (a) With the advice and assistance of the Director of the Office of Emergency Preparedness, the Secretary is hereby directed to establish the Coal Mine Disaster Evaluation Center.

(b) The Center shall prepare contingency plans for the procurement and airlifting of necessary rescue, communications, safety and medical material, equipment and personnel,

including high-speed boring machinery, in the event of a possible disaster. The Center shall be authorized to conduct tests of such contingency plans, with the advice and assistance of the Office of Science and Technology and such other agencies as that Office may direct, including but not exclusively confined to the Director of Civil Defense, the National Aeronautics and Space Administration and individual state offices of civil defense. Each contingency plan shall be updated biennially.

(c) The Center shall maintain an adequate inventory of reasonably contemporary maps and diagrams of all underground, above ground and ancillary mine structures.

(d) The Center shall assist mine operators in the preparation of such maps and diagrams through the conduct of mine surveys to be conducted through the resources of the United States Coast and Geodetic Survey and the Army Map Service. The Center shall further seek to establish procedures for the revision and up-dating of such maps and diagrams with mine operators. Revisions to basic mine maps and diagrams shall be reported to the Center no later than one hundred and twenty days following the completion of changes in mine structures.

(e) Such maps shall show the active workings, all worked out and abandoned areas, excluding those areas which have been worked out or abandoned before the effec-

tive date of this paragraph which cannot be entered safely and which no information is available, elevations, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and oil and gas wells in such mine.

(f) Whenever an operator permanently closes such mine, or temporarily closes such mine for a period of more than ninety days, he shall promptly notify the Center of such closure. Within sixty days of the permanent closure of the mine, or when the mine is temporarily closed, upon expiration of a period of ninety days from the date of closure, the operator shall file with the Center a copy of the mine map revised and supplemented to the date of the closure.

(g) The Center shall conduct studies and analyses to evaluate the adequacy of escape facilities for each mine under the jurisdiction of this Act.

EFFECT ON STATE LAWS

SEC. 17. (a) No State law in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any provision of this Act or regulations issued thereunder, except insofar as such State law is in conflict with this Act or with any regulations issued pursuant to this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for

more stringent health and safety standards applicable to coal mines, than do provisions of this Act or the regulations issued thereunder shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for health and safety standards applicable to coal mines for which no provision is contained in this Act or the regulations issued thereunder, shall not be construed or held to be superseded by this Act or regulations issued thereunder.

(b) Any coal miner who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifyng or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any coal miner as a result of any such personal injury the personal representative of such coal miner may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his

principal office is located. This section shall not preempt any existing State statutes which provide for workmen's compensation for coal miners; however, any recovery obtained under this section shall be reduced by any amounts received under such State compensation.

SUPPLEMENTAL COMPENSATION PAYMENTS

SEC. 18. The Secretary is authorized to pay, or to make arrangements for the payment of, benefits supplemental to those which have been paid or are being paid, to any person employed at a coal mine or his surviving dependent under a State workmen's compensation law or occupational disease law for temporary partial, permanent partial, temporary total or permanent total disability or death from pneumoconiosis.

AMOUNT OF PAYMENTS

SEC. 19. (a) Payments for a disabled employee or his surviving dependent under section 18 shall not exceed the difference between payment under the State law and compensation as measured by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 424, as amended).

(b) When payments under a State workmen's compensation or occupational disease law cease because of a time or monetary limitation in such law, or insolvency of the entity liable for such compensation, payments under this section shall be increased to include the amount of com-

pensation previously paid under State law and shall continue during the person's disability or during the eligibility of his dependents which would exist under the State law except for its time or monetary limitations.

(c) Supplemental payments may be made retroactively to the date payments commenced under a State workmen's compensation or occupational disease law: *Provided*, That payments hereunder to surviving dependents shall be limited to: (1) widows during widowhood; and (2) other dependents eligible for death benefits under such State law at the time their claim is filed hereunder.

COMPENSATION AND DEATH PAYMENTS IN NONCOVERED CASES

SEC. 20. The Secretary is authorized to pay benefits to any person employed at a coal mine for temporary partial, permanent partial, temporary total, or permanent total disability from pneumoconiosis if benefits have been denied under or he is not covered by a State workmen's compensation law or occupational disease law. In case of death from pneumoconiosis resulting from such exposure, benefits are authorized for his surviving dependents.

AMOUNT OF PAYMENTS IN NONCOVERED CASES

SEC. 21. (a) Payments under section 20 shall be made in accordance with the distribution rights and benefit amounts

established by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 424, as amended).

(b) In the event that workmen's compensation benefits are awarded under a State workmen's compensation law or occupational disease law for disability or death from pneumoconiosis during employment in a coal mine for which payments have been made under section 20, payments hereunder shall cease for the duration of such compensation benefits. If payments under section 20 and under State law covering the same compensable period have been received, the Secretary may bring an action in any court of competent jurisdiction to recover any payments made under section 20.

(c) Any payments for disability or death under section 20 shall be reduced by the amount of payments or judgments based on or resulting from legal liability of an employer or other legal entity with respect to such disability or death. If such reductions are not made, the Secretary may bring an action in any court of competent jurisdiction to recover payments made under section 20 to the extent they should have been so reduced.

(d) Payments under section 20 may be made retroactively to the date of disability or death: *Provided*, That such payments shall be limited to: (1) widows during widowhood; and (2) other dependents who would qualify for death benefits at the time their claim is filed hereunder

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upon application of the death benefit distribution provisions of the Longshoremen's and Harbor Workers' Compensation Act.

FINANCIAL ASSISTANCE TO STATES

REIMBURSEMENT FOR WORKMEN'S COMPENSATION PAYMENTS

SEC. 22. Where any State or any workmen's compensation fund of any State has paid or pays benefits under any State workmen's compensation law to any person employed at a coal mine on account of disability or death from pneumoconiosis, such State or fund shall be entitled to be reimbursed for 90 per centum of the benefits so paid or payable, including funeral and burial expenses, medical, hospital, or other similar costs for treatment and care, and reasonable and necessary claims expense in connection therewith. Claim for such reimbursement shall be filed with the Secretary under regulations promulgated by him.

GRANTS TO STATES

SEC. 23. (a) The Secretary is authorized to make grants to any State, in which coal mining takes place, to enable it to conduct research and planning studies and to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation for pneumoconiosis in coal mine employment.

(b) Grants under this section shall not extend beyond a period of ten years following the effective date of this Act.

SEC. 24. (a) Grants under section 23 shall be made to States which have a plan or plans approved by the Secretary under this section.

(b) The Secretary may approve any plan which—

(1) provides that the State or the appropriate State agency will make such reports to the Secretary, in such form and containing such information, as may reasonably be necessary to enable the Secretary to review the effectiveness of the program or programs involved, and will keep such records and afford such access thereto as the Secretary finds necessary or appropriate to assure the correctness and verification of such reports;

(2) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State;

(3) contains assurances that the State will not in any way diminish existing State programs or benefits with respect to coal mine health and safety and related conditions and injuries; and

(4) meets any additional conditions which the Secretary may prescribe by rule in furtherance of the provisions of this Act.

(c) The Secretary shall not finally disapprove any State

plan, or modification thereof, without affording the State reasonable notice and opportunity for a hearing.

SEC. 25. The Secretary shall submit annually to the Congress a report on the amounts of the grants made under section 23, and the research and planning studies being conducted pursuant thereto.

RULEMAKING AUTHORITY

SEC. 26. The Secretary shall prescribe such rules and regulations as he deems necessary and appropriate to carry out the provisions of this Act, including appropriate procedures for filing claims and regulations specifying the degree of proof necessary to establish compensability under section 20.

In developing such rules and regulations, the Secretary shall consult, as appropriate, with the States which may be affected by the Secretary's administration of the Act, and the Departments of the Interior and Health, Education, and Welfare. Without regard to the exceptions contained in subsection (a) (2) of section 553 of title 5, United States Code, such rules and regulations shall be subject to the notice and informal public participation requirements of the section.

COMPENSATION FUND

SEC. 27. Claims for reimbursement and compensation benefits authorized for persons or their dependents under this

Act shall be paid from the Employees' Compensation Fund established by section 35 of the Federal Employees' Compensation Act, as recodified in section 8147 of title 5, United States Code.

TIME FOR FILING CLAIMS

SEC. 28. (a) Claims for retroactive supplemental payments under section 18 shall be made within two years of the date of this enactment, and for future supplemental payments as prescribed by the Secretary.

(b) Claims for benefits under section 20 shall be filed within two years of the time an employee or his dependent knew or reasonably should have known of a possible causal connection between his lung injuries and exposure to coal dust during employment in a coal mine: *Provided*, That disability or death within the purview of section 20 which occurred prior to enactment of this Act shall be deemed to have occurred as of the date of enactment.

(c) The Secretary for good cause may extend the time limitations in subsections (a) and (b) of this section up to five years.

ADMINISTRATIVE PROCEDURES

SEC. 29. The provisions of section 551–559 and sections 701–706 of title 5 of the United States Code, shall not apply to the making of any order or decision pursuant to section 8 or 9, of this Act, or to any proceeding for the review thereof.

REGULATIONS

SEC. 30. The Secretary is authorized to issue such regulations as he deems appropriate to carry out any provision of this Act.

INTERIM SAFETY STANDARDS FOR UNDERGROUND COAL MINES

SEC. 31. (a) The provisions of subsection (b) of this section shall be interim safety standards applicable to all underground coal mines until superseded in whole or in part by mandatory health and safety standards promulgated by the Secretary by regulation for such mines. For the purposes of this Act, such provisions shall be regarded as mandatory health and safety standards promulgated under section 7 of this Act for such mines and shall be enforced in the same manner and to the same extent as any mandatory standard promulgated under said section. Any orders issued in the enforcement of the interim standards set forth in subsection (b) of this section shall be subject to review as provided in sections 9 and 10 of this Act.

(b) (1) ROOF SUPPORT.—The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof-control plan and revisions thereof suitable to the roof conditions and mining system of each mine and approved by the Secretary

shall be adopted and set out in printed form within a reasonable period to be established by the Secretary by regulation. The plan shall show the type and spacing of supports approved by the Secretary. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such support is not required under the approved roof-control plan. A copy of the plan shall be furnished the Secretary or his authorized representative upon request.

(2) VENTILATION.—(A) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(B) All active underground working places shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away, flammable or harmful gases and smoke and fumes. In bituminous coal and lignite mines, the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be six thousand cubic feet

a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be six thousand cubic feet a minute. In anthracite mines, the minimum quantity of air reaching the face of each working place shall be two hundred cubic feet a minute for each man working in the place. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(C) Line brattice or other suitable devices shall be installed from the last open crosscut to a point near the face to assure positive airflow to the face of every active underground working place, unless the Secretary or his authorized representative permits an exception to this requirement.

(D) Within three hours immediately preceding the the beginning of a coal-producing shift, and before any workmen in such shift enter the underground areas of the mine, certified persons designated by the operator of the mine shall examine a definite underground area of the mine. Each such examiner shall examine every active underground working place in that area and each such working place shall make tests for accumulations of methane with means approved by the Secretary for detecting gas and tests for oxygen deficiency with the most modern means approved by the Secretary; examine seals and doors to determine

whether they are functioning properly; examine and test the roof, face, and rib conditions in the active underground working places and on active roadways and travelways and all belt conveyors on which coal is carried; examine active roadways, travelways, approaches to abandoned workings, and accessible falls in active sections for hazards; examine by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume; and examine for such other hazards as an authorized representative of the Secretary may from time to time require. Such mine examiner shall place his initials and the date at all places he examines. If such mine examiner finds a condition which he considers to be hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "DANGER" sign conspicuously at a point which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the mine operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination such mine examiner shall report the results of his examination to a person, designated by the mine operator

to receive such reports at a designated station on the surface of the mine or underground, before other persons enter the underground areas of such mine to work in such coal-producing shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book kept for such purpose at a place on the surface of the mine designated by the mine operator. No person (other than certified persons designated under this subparagraph) shall enter any underground area, except during a coal-producing shift, unless an examination of such area as prescribed in this subparagraph has been made within eight hours immediately preceding his entrance into such area.

(E) At least once during each coal-producing shift, or more often if necessary for safety, the underground active working places shall be examined for hazardous conditions by certified persons designated by the mine operator to do so. Such examination shall include tests with means approved by the Secretary for detecting methane and with the most modern means for oxygen deficiency.

(F) Examinations for hazardous conditions, including tests for methane, shall be made at least once each week by a certified person designated by the operator of the mine in the return of each split where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of

each intake and return airway in its entirety, idle workings, and, insofar as conditions permit, abandoned workings. Such weekly examination need not be made during any week in which the mine is idle for the entire week. The person making such examinations and tests shall place his initials and the date at the places examined, and if hazardous conditions are found, such conditions shall be reported promptly. A record of these examinations and tests shall be kept.

(G) At least once each week, a certified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in each active entry, the volume being delivered to the intake end of each pillar line, and the volume at the intake and return of each split. A record of such measurements shall be kept in a book on the surface, and the record shall be open for inspection by interested persons.

(H) (i) In all underground face workings where electrically driven equipment is operated, examinations for methane shall be made by a qualified person designated by the operator of such mine before such equipment is taken into, or operated in, face workings, and examinations for methane shall be made during such operations at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such

person shall use means approved by the Secretary for detecting methane.

(ii) If the air at an underground face working, when tested at a point not less than twelve inches from the roof, face, or rib, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall not contain more than 1.0 volume per centum of methane. If such air, when tested at a point not less than twelve inches from the roof, face, or rib, but as near to twelve inches as possible, contains 1.5 volume per centum of methane, as determined by means approved by the Secretary for detecting methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the methane content in such face working shall not contain more than 1.0 volume per centum.

(I) If, when tested, a split of air returning from active underground working places, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall not contain more than 1.0 volume per centum of methane. Such tests shall be conducted at frequent intervals by a qualified person designated by the operator of

the mine during each shift. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

(J) If a split of air returning from active underground working places contains 1.5 volume per centum of methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the methane content in such split shall not contain more than 1.0 volume per centum.

(K) Air which has passed by an opening of any unsealed abandoned area shall not be used to ventilate any active face area in the mine if such air contains 0.25 volume per centum or more of methane. Examinations of such air shall be conducted during the preshift examination required by subparagraph (D) of this paragraph. For the purposes of this subparagraph, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

(L) Air that has passed through an abandoned panel or area which is inaccessible for inspection shall not be used to ventilate any active face workings in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any active face workings in such mine, except that such air may be used to ventilate enough advancing working places or

rooms immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(M) An authorized representative of the Secretary may require in any coal mine that electric face equipment, except shuttle cars, operated therein be equipped with a methane monitor approved by the Secretary.

(N) Idle and abandoned areas shall be inspected for gas and for oxygen deficiency and other dangerous conditions by a certified person as soon as possible, but not more than three hours, before other employees are permitted to enter or work in such places. However, persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified in means approved by the Secretary for detecting methane and who are trained in the use of the most modern means for detecting oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

(O) Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether methane is present. Such person shall use means approved by the Secretary for detecting gas. If in such examination methane is found in amounts of more than 1.0 volume per centum,

such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(P) All workings which are abandoned after the operative date of this section shall be sealed or ventilated by a current of air, and all workings, which are abandoned after July 16, 1952, and prior to such operative date, and which were required by the Federal Coal Mine Safety Act, as amended, to be sealed or ventilated by a current of air, shall continue to be maintained with such seals or ventilation. If such workings are sealed, the sealing shall be done in a substantial manner with incombustible material. One or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and the measuring of hydrostatic pressure behind such seals. For the purposes of this subparagraph, workings within a panel shall not be deemed to be abandoned until such panel is abandoned.

(Q) Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subparagraph cannot be complied with on the operative date of this section.

(R) Immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for methane shall be made by a qualified person with means approved by the Secretary for detecting gas. If methane is found in amounts of 1.0 volume per centum, changes or adjustments shall be made at once in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(S) Each operator of a coal mine shall adopt a plan to be established by regulation which shall provide that when any mine fan stops immediate action shall be taken by the operator or his agent (i) to withdraw all persons from the face workings, (ii) to cut off the power in the mine in a timely manner, (iii) to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the face workings and other working places where methane is likely to accumulate are re-examined by a certified person to determine if methane in amounts of 1.0 volume per centum exists therein, and (iv) to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative upon request.

(T) Changes in ventilation that materially affect the main air current or any split thereof and may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts and not restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

(U) The mine foreman shall read and countersign promptly the daily reports of the pre-shift examiner and assistant mine foreman, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. Where such reports disclose hazardous conditions, the mine foreman shall take prompt action to have such conditions corrected. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

(V) Each day, the mine foreman and each assistant shall enter plainly and sign with ink or indelible pencil in a book provided for that purpose a report of the condition of the mine or portion thereof under his supervision which report shall state clearly the location and nature of any hazardous condition observed by them or reported to them

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during the day and what action, if any, was taken to remedy such condition.

(3) COMBUSTIBLE MATERIALS AND ROCK DUSTING.—(A) Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall not be present in excessive quantities in active underground working places or on electrical equipment therein.

(B) Where underground mining operations create an excessive amount of dust, water, or water with a wetting agent added to it, or other effective method shall be used to reduce such dust to safe limits.

(C) All mines, except those mines or areas of mines in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock-dusted to within forty feet of all faces, and, all open crosscuts shall be rock-dusted.

(D) In mines that are required to start rock-dusting, haulageways and parallel entries connected thereto by open crosscuts shall be rock-dusted. Back entries shall be rock-dusted for at least one thousand feet outby the junction with the first active entry. Inby this junction, the rooms, entries, and crosscuts shall be rock-dusted.

(E) Where rock dust is applied, it shall be distributed

upon the top, floor, and sides of all open workings and maintained in such quantity that the incombustible content of the combined coal dust, rock dust, and other dust will be not less than 65 per centum, but the incombustible content in the return air course shall be not less than 80 per centum, except as provided in subparagraph (D) of this paragraph. Where methane is present in any ventilating current, the percent of incombustible content of such combined dust shall be increased 1 per centum for each 0.1 per centum of methane.

(F) Subparagraphs (B) through (E) of this paragraph shall not apply to underground anthracite mines subject to this Act.

(4) ELECTRICAL EQUIPMENT.—(A) One year after the operative date of this section—

(i) all electric face equipment used in a coal mine shall be permissible and shall be maintained in a permissible condition; and

(ii) only permissible junction or distribution boxes shall be used for making multiple power connections inby the last open crosscut or in any other place where dangerous quantities of methane may be present or may enter the air current.

(B) A copy of any permit granted under this paragraph shall be mailed immediately to a duly designated repre-

sentative of the employees of the mine to which it pertains, and to the public official or agency of the State charged with administering State laws relating to coal mine health and safety in such mine.

(C) Any coal mine which, prior to the operative date of this section, was classed gassy and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

(D) All power-connection point outby the last open crosscut shall be in intake air.

(E) Trolley and feeder wires shall not extend beyond the last open crosscut and shall be kept at least one hundred and fifty feet from pillar workings.

(5) FIRE PROTECTION.—(A) Each coal mine shall be provided with suitable fire-fighting equipment adequate for the size of the mine. After every blasting operation performed on shift, an examination shall be made to determine whether fires have been started.

(B) Underground storage places for lubricating oil and grease in excess of two days' supply shall be of fireproof construction.

(C) Underground structures installed in a mine shall be of fireproof construction.

(D) Welding, cutting, or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a certified person when such work is done in—

(i) the region between the face and a point twenty feet outby the last open crosscut in first mining;

(ii) the region between the pillar line and a point one hundred and fifty feet outby; and

(iii) the region between the face and gob in longwall mining.

Such person shall make a diligent search for fire during and after such operations and shall, at a minimum of hourly intervals, test for methane with means approved by the Secretary for detecting methane before and during such operations. Welding, cutting, or soldering shall not be conducted in air that contains more than 1.0 volume per centum of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(E) Beginning one year after the operative date of this section, only fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic system of underground equipment. The Secretary may waive the requirement as to the use of fire-resistant hydraulic fluids if

fire suppression devices meeting specifications prescribed by him are used on such equipment.

(F) Deluge-type water sprays, automatically actuated by rise in temperature, or other effective means of controlling fire shall be installed at main and secondary belt-conveyor drives. Such sprays shall be supplied with a sufficient quantity of water to control fires.

(G) Underground belt conveyors installed after the operative date of this section shall be equipped with control switches to stop automatically the driving motor in the event that the belt is stopped by slipping on the driving pulley, by breakage, or other cause.

(6) BLASTING AND EXPLOSIVES.—(A) Black blasting powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground, except that in underground anthracite mines mudcaps or other open, unconfined shots may be fired, if restricted to battery starting when no gas or fire hazard is present, and if it is otherwise impracticable to start the battery, and in such anthracite mines open, unconfined "shake" shots in working places and other places in pitching veins may be fired, when no gas or fire hazard is present, if the taking down of loose, hanging coal by other means is too hazardous for men working in such places. Except as pro-

vided in the last sentence of this paragraph, only permissible explosives and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock.

(B) Explosives or detonators carried any where underground by any person shall be in containers constructed substantially of nonconductive material, maintained in good condition, and kept closed.

(C) Neither explosives nor detonators shall be transported on chain or shaker conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, drilling machines, or any self-propelled mobile equipment, except that this subparagraph does not prohibit the transportation of explosives or detonators in cars moved by means of a locomotive, rope, shuttle cars, or in equipment designed especially to transport such explosives or detonators, so long as such explosives or detonators are in special closed containers.

(D) When supplies of explosives and detonators for use in one or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and

in a reasonably dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

(E) Explosives and detonators stored near the working faces shall be in separate closed containers, and shall be in a location out of line of blast not less than fifty feet from the face and fifteen feet from any pipeline, powerline, rail, or conveyor; except that if kept in niches in the rib, the distance from pipeline, powerline, rail or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

(F) Explosives and detonators shall be kept in separate containers until immediately before use at the working faces.

(7) HOISTING AND MANTRIPS.—Every hoist used to transport persons at an underground coal mine, other than hoists used in excavating shafts or slopes, shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist used to transport such persons shall be equipped with brakes capable of stopping the platform, cage, or other device for transporting persons when fully loaded, and with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device for transporting persons, and have a proper margin of safety. Cages or platforms which are used to transport persons in vertical shafts shall be equipped with

safety catches that act quickly and effectively in an emergency, and the safety catches shall be tested at least once every two months. Hoisting equipment that is used to transport persons at such a mine shall be inspected daily. Where persons are regularly transported into or out of a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages or platforms. Safeguards adequate, in the judgment of the Secretary, to minimize hazards with respect to mantrips and haulage shall be provided.

(8) MISCELLANEOUS.—(A) Each operator of a coal mine shall comply with State laws and regulations in establishing and maintaining barriers around oil and gas wells penetrating coal beds or underground workings of underground coal mines.

(B) Whenever any working place approaches within fifty feet of abandoned workings in the mine as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any other abandoned workings of the mine, which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least twenty feet in advance of the face of such working place

and shall be continually maintained at least ten feet in advance of the advancing solid face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing face will not accidentally hole through into such workings. Boreholes shall also be drilled not more than eight feet apart in the rib of such working place to a distance of at least twenty feet and at an angle of forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of persons working in such place.

(C) Smoking shall not be permitted underground, nor shall any person carry smoking materials, matches, or lighters underground. Smoking shall be prohibited in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator of a coal mine shall institute a thorough search program, in a manner approved by the Secretary, at each mine to insure that any person entering the mine does not carry smoking materials, matches, or lighters.

(D) Persons underground shall use only permissible electric lamps for portable illumination.

(E) At least two separate and distinct travelable passageways to be designated as escapeways, both of which are

to be ventilated with intake air, shall be provided from each mine working section to the surface, and shall be maintained in safe condition and properly marked. Mine openings shall have adequate protection against surface fires, fumes, smoke, and water from floods entering the mine.

(F) After the operative date of this section, all structures erected on the surface within one hundred feet of any mine opening shall be of reasonably fireproof construction. Unless existing structures located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept and shall be available for inspection by interested persons.

(G) Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations on surface coal-handling facilities. Where coal is dumped at or near air intake openings, provisions shall be made to prevent the dust from entering the mine in such quantities as to create a dangerous condition.

(H) Every operator of a coal mine shall provide a program, approved by the Secretary, of training and retraining of both qualified and certified persons needed to carry out functions prescribed in this section.

(I) Temporary splices in trailing cables shall not be permitted inby the last open crosscut.

(J) The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors or by water or water with a wetting agent. Persons exposed for short periods to gas- and dust-fume- and mist-inhalation hazards shall wear permissible respiratory equipment. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

(9) DEFINITIONS.—For the purpose of this section and section 33 of this Act, the term—

(A) "certified person" means a person certified by the State in which the coal mine is located to perform duties prescribed by such sections, except that, in a State where no program of certification is provided, such certification shall be by the Secretary.

(B) "qualified person" means an individual deemed qualified by the Secretary to make tests or measurements, as appropriate, required by this section.

(C) "permissible" as applied to—

(i) equipment used in the operation of a coal mine, means equipment to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which

are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire;

(ii) explosives or blasting devices used in such mine, means explosives or blasting devices which meet specifications which are prescribed by the Secretary; and

(iii) the manner of use of explosives and blasting devices, means the manner of use prescribed by the Secretary;

(D) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, talc, adobe, or other inert material, preferably light colored, 100 per centum of which will pass through a sieve having 20 meshes per linear inch and 70 per centum or more of which will pass through a sieve having 200 meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and which does not contain more than 5 per centum of combustible matter or more than a total of 5 per centum of free and combined silica (SiO_2);

(E) "coal mine" includes areas of adjoining mines connected underground;

(F) "anthracite" means coals with a volatile ratio equal to .12 or less;

(G) "volatile ratio" means volatile matter content divided by the volatile matter plus the fixed carbon;

(H) "active underground working places" means all underground places in which persons are required to be or to pass through the performance of normal mining operations;

(I) "abandoned areas" means sections, panels, and other areas that are not ventilated and examined in the manner required for active underground working places; and

(J) "electric face equipment" means electric equipment that is installed or used inby the last open crosscut in an entry or a room.

INTERIM HEALTH STANDARDS FOR UNDERGROUND MINES

SEC. 32. (a) The provisions of subsection (b) of this section shall be interim health standards applicable to all underground mines until superseded in whole or in part by mandatory health and safety standards promulgated by the Secretary by regulation for such mines. For the purposes of this Act, such provisions shall be regarded as the mandatory health standards promulgated under section 7 of this Act for such mines and shall be enforced in the same manner and to the same extent as any mandatory

standard promulgated under said section. Any orders issued in the enforcement of the interim standards set forth in subsection (b) of this section shall be subject to review as provided in sections 9 and 10 of this Act.

(b) The Secretary shall prescribe by regulation, not later than sixty days after enactment of this Act, the date on which an interim mandatory health standard of not more than 3.0 milligrams of dust per cubic meter of air shall be achieved, and, if appropriate, a schedule of permissible levels of airborne concentrations of dust to be reached in graduated descending concentrations as he may specify. Such concentrations shall be measured at a point or points prescribed by the Secretary by a gravemetric sampling device having the following characteristics for particles of unit density spheres or its equivalent:

2 microns and less will pass 98 percent.

5 microns will pass 50 percent.

7.1 microns will pass 0 percent.

Such interim standard shall not apply to rock dusting operations. On and after the effective date of such regulation each underground coal mine shall have a respirator maintenance program so that at the beginning of each shift each person working in an active underground working place shall have issued to him a clean and sterile respirator with a new filter.

X-RAY PROGRAM

SEC. 33. For the purpose of enabling appropriate Federal officials to appraise the effectiveness of this Act, and other Federal and State laws in preventing conditions in coal mines which impair the health of coal miners, the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall make available on a voluntary, no-cost basis (but at intervals of not greater than one year) a physical examination, including a chest roentgenogram and such X-rays as are designed to ascertain the extent of health disabilities related to coal mining. These examinations and X-rays shall be administered by an officer of the Public Health Service. Results derived from such X-rays shall be held in confidence, unless released with the permission of the person X-rayed.

STRICTER COAL DUST STANDARDS FOR AFFECTED WORKERS

SEC. 34. Any person working in a coal mine who shows evidence, by X-ray or other means, of incipient development of coal worker's pneumoconiosis as judged by an officer of the Public Health Service shall be assigned to that portion of the mine where the level of coal dust does not exceed 1.0 milligrams of coal dust per cubic meter of the mine air. No worker can be discharged because he shows evidence of, or has early symptoms of, any disease attributable to coal dust.

INSPECTIONS

SEC. 35. (a) For the purpose of determining whether a health danger exists in any mine the products of which regularly enter commerce or the operations of which substantially affect commerce, the Secretary shall cause a health inspection of each such mine to be made at least once every sixty days. The Secretary shall also make such other health inspections of such mines as he deems necessary for the proper administration of this Act.

(b) (1) In order to promote sound and effective coordination in Federal and State activities within the field covered by this Act, the Secretary shall cooperate with the official mine inspection, safety, or health agencies of the several States.

(2) The Secretary and his duly authorized representatives shall be entitled to admission to any mine, the products of which regularly enter commerce or the operations of which substantially affect commerce, for the purpose of making any health inspection authorized under this Act.

ADVISORY COMMITTEE

SEC. 36. (a) The Secretary shall establish an Advisory Committee on Coal Mine Health (hereinafter referred to as the "Advisory Committee"), which shall consist of three representatives from labor, three representatives from industry, and three representatives from the general public.

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(b) The Advisory Committee shall advise the Secretary with respect to mines of improving the implementation of this Act, on steps needed to reduce further exposure of coal miners to dust and other health hazards, and with respect to the administration of this Act.

(c) Members of the Advisory Committee shall, while serving on business of the Committee, receive compensation at a rate to be fixed by the Secretary, but not exceeding $100 per day, including traveltime; and, while so serving away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in Government service employed intermittently.

RESEARCH PROGRAM

SEC. 37. The Secretary shall formulate and carry out a research and development program designed to improve dust collection techniques on mining machinery, and to initiate and expand adequate health research. In carrying out this program, the Secretary may make grants to, or contracts with, both public and private agencies and organizations.

OPERATIVE DATE AND REPEAL

SEC. 38. The provisions of sections 7 through 10 and section 32 of this Act shall become operative ninety days after enactment. The provisions of the Federal Coal Mine

Safety Act, as amended, are repealed on the operative date of those sections, except that such provisions shall continue to apply to any order, notice, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, or finding. All other provisions of this Act shall be effective on the date of enactment of this Act.

SEPARABILITY

SEC. 39. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORTS

SEC. 40. Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress an annual report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal mine health and safety, and any other relevant information, including any recommendations he deems appropriate.

DEFINITIONS

SEC. 41. There is hereby authorized to be appropriated necessary funds to carry out the purposes of this Act.

91ST CONGRESS
1ST SESSION

S. 1178

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1969

Mr. WILLIAMS of New Jersey introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To improve the safety conditions of persons working in the coal mining industry of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Coal Mine Safety Act of 1969".

DECLARATION OF PURPOSE

SEC. 2. Congress declares that there is an immediate need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm resulting from unsafe practices and carelessness that continue to plague the industry and cause grief

and suffering to persons working in such mines and their families, that the first priority and concern of all in the coal mining industry must be the safety of its most precious resource—the worker; that the operators of such mines have the primary responsibility to prevent the existence of unsafe conditions and practices in such mines with the assistance of persons working in such mines; and that it is therefore the purpose of this Act to require the operators of the Nation's coal mines and the persons working in such mines to become more vigilant in carrying out their responsibilities through compliance with applicable mandatory safety standards.

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

(a) "Secretary" means the Secretary of the Interior or his delegate;

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or anyplace outside thereof, or within the District of Columbia, or a possession of the United States, or between points in the same State, but through a point outside thereof;

(c) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(d) "operator" means a person operating a coal mine;

(e) "agent" means the person charged with responsibility for the operation of all or part of such mine and the supervision of the employees in a coal mine;

(f) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "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 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;

(h) "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;

(i) "imminent danger" means the existence of conditions or practices in a coal mine which could reason-

ably be expected to cause death or serious physical harm before such conditions or practices can be abated; and

(j) "Board" means the Federal Coal Mine Safety Board of Review established by this Act.

MINES SUBJECT TO ACT

SEC. 4. Each coal mine the products of which enter commerce, or the operations of which affect commerce, shall be subject to this Act, and each operator of such mine and every person working in such mine shall comply with the provisions of this Act.

INSPECTIONS AND INVESTIGATIONS

SEC. 5. (a) Authorized representatives of the Secretary shall make inspections and investigations in coal mines for the purpose of (1) obtaining, utilizing, and disseminating information relating to safety conditions, the causes of accidents involving bodily injury or death, (2) developing safety standards, (3) determining whether an imminent danger exists in a coal mine, and (4) determining whether or not there is compliance with the mandatory safety standards or any notice, or order issued under this Act.

The Secretary shall cause an inspection of each mine to be made by a duly authorized representative at least four times annually. These inspections shall be in addition to any special inspections.

(b) For the purpose of making any inspection or investigation under this Act, the Secretary or any authorized representative of the Secretary shall have a right of entry to, upon, or through, any coal mine.

(c) For the purpose of carrying out his responsibilities under this Act, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal or State agency.

(d) For the purpose of making any investigation of any disaster or accident or other occurrence relating to safety in a coal mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary or both, and any

failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) In the event of any disaster or accident occurring in a coal mine, the operator shall take appropriate measures to prevent, to the greatest extent possible, the destruction of any evidence which would assist in investigating the cause or causes of the disaster or accident.

ADVISORY COMMITTEES

SEC. 6. (a) The Secretary may appoint one or more advisory committees to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each such committee.

(b) Advisory committee members, other than employees of Federal, State or local governments, while performing committee business shall be entitled to receive compensation at rates fixed by the Secretary but not exceeding $100 per day, including traveltime. While so serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

SAFETY STANDARDS

SEC. 7. (a) Mandatory safety standards for surface coal mines shall be promulgated by the Secretary not later than one year after enactment of this Act.

FINDINGS, NOTICES, AND ORDERS

SEC. 8. (a) If, upon any inspection or investigation of a coal mine, an authorized representative of the Secretary finds that an imminent danger exists such representative shall determine the area throughout which such danger exists, and thereupon shall issue an order requiring the operator of the mine to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be barred from entering, such area until an authorized representative of the Secretary determines that such imminent danger no longer exists.

(b) If, upon any inspection or investigation of a coal mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory safety standard but the violation has not created an imminent danger, he shall find what would be a reasonable period of time within which the violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, an authorized representative of the Secretary finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall also find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine

to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be barred from entering, such area until an authorized representative of the Secretary determines that the violation has been abated.

(c) The following persons shall not be required to be withdrawn from, or barred from entering, any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary, in the judgment of the operator, to eliminate the condition described in the order;

(2) Any public official whose official duties require him to enter such area; and

(3) Any consultant or any representative of the employees of such mine who is, in the judgment of the operator, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order.

(d) Notices and orders issued pursuant to this section shall contain a description of the conditions or practices which cause and constitute a situation of imminent danger and a description of the area of the coal mine from which persons must be withdrawn and barred.

(e) Each notice or order issued under this section shall

be given promptly to the operator of the coal mine or his agent by an authorized representative of the Secretary issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative.

(f) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the Secretary.

REVIEW BY THE SECRETARY

SEC. 9. (a) An operator notified of an order issued pursuant to section 8 of this Act may apply to the Secretary for review of the order within thirty days of receipt thereof. The operator shall send a copy of such application to the representative, if any, of persons working in the affected mine. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of the applicant or a representative of persons working in such mine, to enable the applicant and the representatives of persons working in such mines to present information relating to the issuance and continuance of such order.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and (1), in the case of an order issued under subsection (a) of section 8

of this Act, he shall find whether or not the imminent danger as set out in the order existed at the time of issuance of the order and whether or not the imminent danger existed at the time of the investigation, and (2), in the case of an order issued under subsection (b) of section 8 of this Act, he shall find whether or not there was a violation of any mandatory safety standard under this Act as described in the order and whether or not such violation has been abated at the time of such investigation, and upon making such findings he shall issue a written decision vacating, affirming, modifying, or terminating the order complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decisions of matters submitted to the Secretary under this section, all actions which the Secretary takes under this section shall be taken as promptly as practicable, consistent with the adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under subsection (b) of section 8 of this Act, together with a detailed statement giving reasons for granting such relief. The Secretary may issue a decision granting such relief, under such conditions as he may pre-

scribe, only after a hearing in which all parties are given an opportunity to be heard.

FEDERAL COAL MINE SAFETY BOARD OF REVIEW

SEC. 10. (a) The Federal Coal Mine Safety Board of Review is hereby established and shall be composed of five members who shall be appointed by the President by and with the consent of the Senate.

(b) The terms of office of members of the Board shall be five years, except that (1) the members of the Federal Coal Mine Safety Board of Review established under the Federal Coal Mine Safety Act, as amended, who are in office on the effective date of this Act, shall be members of the Board established by this Act and their terms shall expire on the dates originally fixed for their expiration, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) Each member of the Board shall be entitled to receive compensation at the rate specified at the time of actual service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime and shall be

allowed travel expenses, including a per diem allowance in accordance with section 5703(b) of title 5, United States Code, when engaged in the performance of services for the Board.

(d) The Board, at all times, shall consist of one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of operators of coal mines employing fourteen or fewer employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of operators of coal mines employing fifteen or more employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers in mines employing fourteen or fewer employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers in mines employing fifteen or more employees, and one person, who shall be Chairman of the Board, who shall be a graduate engineer with experience in the coal mining industry or shall have at least five years experience as a practical mining engineer in the coal mining industry, and shall not, within one year of his appointment as a member of the Board, have had a pecuniary interest in, or have been regularly employed or engaged in, the mining of coal, or have regularly represented either coal

mine operators or coal mine workers, or have been an officer or employee of the Department of the Interior.

(e) The principal office of the Board shall be in the District of Columbia. Whenever the Board deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the secretary of the Board.

(f) The Board shall, without regard to the civil service laws, appoint and prescribe the duties of a secretary of the Board and such legal counsel as it deems necessary. Subject to the civil service laws, the Board shall appoint such other employees as it deems necessary in exercising its powers and duties. The compensation of all employees appointed by the Board shall be fixed in accordance with chapter 53 of title 5, United States Code.

(g) Three members of the Board shall constitute a quorum, and official actions of the Board shall be taken only on the affirmative vote of at least three members; but a special panel composed of one or more members, upon order of the Board, may conduct any hearing provided for in section 11 of this Act and shall submit the transcript of such hearing to the entire Board for its action thereon.

Every official act of the Board shall be entered on record, and its hearings and records thereof shall be open to the public.

(h) The Board shall hear and determine applications filed pursuant to section 11 of this Act for review of orders made pursuant to section 9 of this Act. The Board shall not make or cause to be made any inspection of a coal mine for the purpose of determining any pending application.

(i) The Board is authorized to make such rules as are necessary for the orderly transaction of its proceedings, which shall provide for adequate notice of hearings to all parties. The existing rules of the Federal Coal Mine Safety Board of Review shall constitute the rules of the Board until superseded or modified by the Board.

(j) Any member of the Board may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(k) The Board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Reasonable notice must first be given in writing by the party or his attorney of record, which notice shall state the name of the witness and the time and place

of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as provided in subsection (j) of this section. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(l) In the case of contumacy by, or refusal to obey a subpena served upon, any person under this section, the Federal district court for any district in which such person is found or resides or transacts business, upon application by the United States, and after notice to such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Board or to appear and produce documents before the Board, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REVIEW BY BOARD

SEC. 11. (a) Within thirty days after the receipt of a decision made by the Secretary pursuant to section 9 of this Act, an operator may apply to the Board for a review of the decision. The operator shall be designated as the applicant in such proceeding, and the application filed by

him shall recite the decision complained of and other facts sufficient to advise the Board and the Secretary of the nature of the proceeding. The Secretary shall be the respondent in such proceeding, and the applicant shall send a copy of such application by registered or certified mail to the respondent and to the representative, if any, of the persons working in such mine. Immediately upon the filing of such an application the Board shall fix the time for a prompt hearing thereof. The Board shall permit any interested person to intervene in such proceedings. The Secretary shall certify and file with the Board the record on which the decision complained of was issued.

(b) The record and the decision of the Secretary shall be received in evidence and the findings of the Secretary included in the decision shall constitute a prima facie case for the issuance of the decision complained of and the burden of rebutting such prima facie case shall be upon the applicant, but either party may adduce additional evidence.

(c) Upon conclusion of the hearing, the Board shall find, with respect to the order which was the subject of the Secretary's decision, whether or not the imminent danger or a violation of a mandatory safety standard existed at the time of issuance of such order and whether or not such danger or such violation existed at the time of filing the application, and shall issue a written decision incorporating such finding

therein and affirming, vacating, modifying, or terminating the order issued under section 8 of this Act.

(d) Each decision made by the Board shall show the date on which it is made, and shall bear the signatures of the members of the Board who concur therein. Upon issuance of a decision under this section, the Board shall cause a true copy thereof to be sent by registered or certified mail to all parties and their attorneys of record. The Board shall cause each decision to be entered on its official record, together with any written opinion prepared by any members in support of, or dissenting from, any such decision.

(e) Pending the hearing required by this section, the applicant may file with the Board a written request that the Board grant temporary relief from any order issued under subsection (b) of section 8 of this Act, together with a detailed statement giving reasons for granting such relief. The Board may issue a decision granting such relief, under such conditions as it may prescribe, only after a hearing in which all parties are given an opportunity to be heard.

(f) In view of the urgent need for prompt decision of matters submitted to the Board under this section, all actions which the Board takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

JUDICIAL REVIEW

SEC. 12. (a) Any decision issued by the Secretary under section 9 of this Act shall be subject to judicial review by the United States court of appeals for the circuit in which the affected coal mine is located, upon the filing in such court within thirty days from the date of such decision of a petition by the operator aggrieved by the decision praying that the action of the Secretary be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary and thereupon the Secretary shall certify and file in such court the record upon which the decision complained of was issued, as provided in section 2112 of title 28, United States Code.

(b) Any decision issued by the Board under section 11 of this Act shall be subject to judicial review by the United States court of appeals for the circuit in which the affected mine is located, upon the filing in such court within thirty days from the date of such decision of a petition by the Secretary or by the operator aggrieved by the decision praying that the action of the Board be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Board, and thereupon the Board shall certify and file in such court the record upon which the decision complained

of was issued, as provided in section 2112, title 28, United States Code.

(c) The court shall hear such appeal on the record made before the Secretary, in the case of an appeal of a decision issued by the Secretary, or on the record made before the Board, in the case of an appeal of a decision issued by the Board. The findings of the Secretary, in the case of an appeal from a decision issued by the Secretary, or of the Board, in the case of a decision issued by the Board, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceedings to the appropriate administrative body from which the appeal was taken for such further action as it directs.

(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may, after due notice to, and hearing of, the parties to the appeal, issue all necessary and appropriate process, and grant such other relief as may be appropriate pending final determination of the appeal.

(e) The judgment of the court shall be subject only to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(f) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the Board's or Secretary's action in issuing the decision.

POSTING OF NOTICES AND ORDERS

SEC. 13. (a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices required by law or regulations to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice or order required by this Act to be given to an operator shall be delivered to the office of the affected mine, and shall be immediately posted on the bulletin board of such mine.

(b) The Secretary shall cause a copy of any notice or order required by this Act to be given to an operator to be mailed immediately to a duly designated representative of persons working in the affected mine, and to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine.

(c) In order to insure prompt compliance with any

notice or order issued under section 8 of this Act, the authorized representative of the Secretary may deliver such notice or order to the agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice or order.

RECORDS

SEC. 14. Every operator of a coal mine and his agent shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require from time to time to enable him to perform his functions under this Act, and shall, upon request of any person authorized by the Secretary, permit such person at reasonable times to have access to and copy such records.

INJUNCTIONS

SEC. 15. The Secretary may request the Attorney General to 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 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 sections 8, 9, or 11 of this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representative in

carrying out the provisions of this Act, or (c) refuses to admit such representative to the mine, or (d) refuses to permit the inspection or investigation of the mine, or an accident or injury occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary, or (f) refuses to permit access to, and copying of, records. Each such court shall have jurisdiction to provide such relief as may be appropriate.

PENALTIES

SEC. 16. (a) The operator of a coal mine in which a violation occurs of a mandatory safety standard under this Act shall be assessed a civil penalty by the Secretary of not less than $500 and not more than $10,000 for each such violation. Each violation shall be a separate offense. Any civil penalty assessed may be compromised by the Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the operator charged, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the Secretary. Whenever the Secretary compromises a penalty under this subsection, he shall publish the findings leading thereto in the Federal Register. The amount of such

penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the operator charged or may be recovered in a civil action in the United States district courts.

(b) Whoever knowingly violates or fails or refuses to comply with any order issued under this Act shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment for not more than six months, or by both, except that if the conviction is for a violation committed after the first conviction of such person, punishment shall be by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both.

RESEARCH AND RELATED ACTIVITIES

SEC. 17. (a) The Secretary shall conduct such studies, research, experiments, and demonstrations as may be appropriate for the purpose of carrying out his responsibilities under this Act. In carrying out these activities, the Secretary may enter into contracts with, and make grants to, public and private agencies and organizations and individuals, and acquire interests in real property.

(b) The Secretary shall expand programs for the education and training of coal mine operators and employees subject to this Act in the recognition, avoidance, and prevention of accidents or unsafe working conditions in such mines,

and in the use of permissible methane detectors and other means approved by the Secretary for accurately detecting gases.

EFFECT ON STATE LAWS

SEC. 18. (a) No State law in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any provision of this Act, except insofar as such State law is in conflict with this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for more stringent safety standards applicable to coal mines, than do provisions of this Act shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for safety standards applicable to coal mines for which no provision is contained in this Act, shall not be construed or held to be superseded by this Act.

(b) Nothing in this Act shall be construed or held to supersede or in any manner affect the workmen's compensation laws of any State, or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under State laws in respect of injuries, occupational or other diseases, or

death of employees arising out of, or in the course of, employment.

ADMINISTRATIVE PROCEDURES

SEC. 19. The provisions of sections 551–559 and sections 701–706 of title 5 of the United States Code shall not apply to the making of any order or decision pursuant to sections 8, 9, or 11 of this Act, or to any proceeding for the review thereof.

REGULATIONS

SEC. 20. The Secretary is authorized to issue such regulations as he deems appropriate to carry out any provision of this Act.

SAFETY STANDARDS FOR UNDERGROUND COAL MINES

SEC. 21. (a) The provisions of subsection (b) of this section shall be safety standards applicable to all underground coal mines.

(b) (1) ROOF SUPPORT.—The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof-control plan and revisions thereof suitable to the roof conditions and mining system of each mine and approved by the Secretary shall be adopted and set out in printed form within a reasonable period to be established by the Secretary by

regulation. The plan shall show the type and spacing of supports approved by the Secretary. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such support is not required under the approved roof-control plan. A copy of the plan shall be furnished the Secretary or his authorized representative upon request.

(2) VENTILATION.—(A) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(B) All active underground working places shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away, flammable or harmful gases and smoke and fumes. In bituminous coal and lignite mines, the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be nine thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand cubic feet a

minute. In anthracite mines, the minimum quantity of air reaching the face of each working place shall be two hundred cubic feet a minute for each man working in the place. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(C) Line brattice or other suitable devices shall be installed from the last open crosscut to a point near the face to assure positive air flow to the face of every active underground working place, unless the Secretary or his authorized representative permits an exception to this requirement.

(D) Within three hours immediately preceding the beginning of a coal-producing shift, and before any workmen in such shift enter the underground areas of the mine, certified persons designated by the operator of the mine shall examine a definite underground area of the mine. Each such examiner shall examine every active underground working place in that area and each such working place shall make tests for accumulations of methane with means approved by the Secretary for detecting gas and tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in the active underground working places and on active roadways and travel-

ways and all belt conveyors on which coal is carried; examine active roadways, travelways, approaches to abandoned workings, and accessible falls in active sections for hazards; examine by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume; and examine for such other hazards as an authorized representative of the Secretary may from time to time require. Such mine examiner shall place his initials and the date at all places he examines. If such mine examiner finds a condition which he considers to be hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "DANGER" sign conspicuously at a point which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the mine operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination such mine examiner shall report the results of his examination to a person, designated by the mine operator to receive such reports at a designated station on the surface of the mine or underground, before other persons enter the underground areas of such mine to work in such coal-produc-

ing shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book kept for such purpose at a place on the surface of the mine designated by the mine operator. No person (other than certified persons designated under this subparagraph) shall enter any underground area, except during a coal-producing shift, unless an examination of such area as prescribed in this subparagraph has been made within eight hours immediately preceding his entrance into such area.

(E) At least once during each coal-producing shift, or more often if necessary for safety, the underground active working places shall be examined for hazardous conditions by certified persons designated by the mine operator to do so. Such examination shall include tests with means approved by the Secretary for detecting methane and with a permissible flame safety lamp for oxygen deficiency.

(F) Examinations for hazardous conditions, including tests for methane, shall be made at least once each week by a certified person designated by the operator of the mine in the return of each split where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return airway in its entirety, idle workings, and, insofar as conditions permit, abandoned workings. Such weekly examination need not be made during any

week in which the mine is idle for the entire week. The person making such examinations and tests shall place his initials and the date at the places examined, and if hazardous conditions are found, such conditions shall be reported promptly. A record of these examinations and tests shall be kept.

(G) At least once each week, a certified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in each active entry, the volume being delivered to the intake end of each pillar line, and the volume at the intake and return of each split. A record of such measurements shall be kept in a book on the surface, and the record shall be open for inspection by interested persons.

(H) (i) In all underground face workings where electrically driven equipment is operated, examinations for methane shall be made by a qualified person designated by the operator of such mine before such equipment is taken into, or operated in, face workings, and examinations for methane shall be made during such operations at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

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(ii) If the air at an underground face working, when tested at a point not less than twelve inches from the roof, face, or rib, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall not contain more than 1.0 volume per centum of methane. If such air, when tested at a point not less than twelve inches from the roof, face, or rib, but as near to twelve inches as possible, contains 1.5 volume per centum of methane, as determined by means approved by the Secretary for detecting methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the methane content in such face working shall not contain more than 1.0 volume per centum.

(I) If, when tested a split of air returning from active underground working places, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall not contain more than 1.0 volume per centum of methane. Such tests shall be conducted at frequent intervals by a qualified person designated by the operator of the mine during each shift. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

(J) If a split of air returning from active underground working places contains 1.5 volume per centum of methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the methane content in such split shall not contain more than 1.0 volume per centum. In virgin territory in mines ventilated by exhaust fans, if the quantity of air in a split ventilating the workings in such territory equals or exceeds twice the minimum volume of air prescribed in subparagraph (B) of this paragraph and if only permissible electric equipment is used in such workings and the air in the split returning from such workings does not pass over trolley or other bare electric power wires and if a certified person designated by the mine operator is continually testing the methane content of the air in such split during mining operations in such workings, it shall be necessary to withdraw all persons and cut off all electric power from the portion of the mine endangered by methane only when the air returning from such workings contains more than 2 per centum as determined by means approved by the Secretary for detecting such methane.

(K) Air which has passed by an opening of any unsealed, abandoned area shall not be used to ventilate any active face area in the mine if such air contains 0.25 volume per centum or more of methane. Examinations of such air

shall be conducted during the preshift examination required by subparagraph (D) of this paragraph. For the purposes of this subparagraph, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

(L) Air that has passed through an abandoned panel or area which is inaccessible for inspection shall not be used to ventilate any active face workings in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any active face workings in such mine, except that such air may be used to ventilate enough advancing working places or rooms immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(M) An authorized representative of the Secretary may require in any coal mine that electric face equipment, except shuttle cars, operated therein be equipped with a methane monitor approved by the Secretary.

(N) Idle and abandoned areas shall be inspected for gas and for oxygen deficiency and other dangerous conditions by a certified person as soon as possible, but not more than three hours, before other employees are permitted to enter or work in such places. However, persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified

in means approved by the Secretary for detecting methane and who are trained in the use of a permissible flame safety lamp for oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

(O) Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether methane is present. Such person shall use means approved by the Secretary for detecting gas. If in such examination methane is found in amounts of more than 1.0 volume per centum, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(P) All workings which are abandoned after the operative date of this section shall be sealed or ventilated by a current of air, and all workings, which were abandoned after July 16, 1952, and prior to such operative date, and which were required by the Federal Coal Mine Safety Act, as amended, to be sealed or ventilated by a current of air, shall continue to be maintained with such seals or ventilation. If such workings are sealed, the sealing shall be done in a substantial manner with incombustible material. One or more of the seals of every sealed area shall be fitted with

a pipe and cap or valve to permit the sampling of gases and the measuring of hydrostatic pressure behind such seals. For the purposes of this subparagraph, workings within a panel shall not be deemed to be abandoned until such panel is abandoned.

(Q) Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time may be permitted by the Secretary, but not to exceed six months, under such conditions as he may prescribe, whenever he determines that this subparagraph cannot be complied with on the operative date of this section.

(R) Immediately before firing each shot or group of multiple shots and after blasing is completed, examinations for methane shall be made by a qualified person with means approved by the Secretary for detecting gas. If methane is found in amounts of 1.0 volume per centum, changes or adjustments shall be made at once in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(S) Each operator of a coal mine shall adopt a plan within a reasonable period to be established by regulation which shall provide that when any mine fan stops, immediate action shall be taken by the operator or his agent (i) to withdraw all persons from the face workings, (ii) to cut

off the power in the mine in a timely manner, (iii) to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the face workings and other working places where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of 1.0 volume per centum exists therein, and (iv) to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative upon request.

(T) Changes in ventilation that materially affect the main air current or any split thereof and may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts and not restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

(U) The mine foreman shall read and countersign promptly the daily reports of the preshift examiner and assistant mine foreman, and he shall read and countersign promptly the weekly report covering the examinations for

hazardous conditions. Where such reports disclose hazardous conditions, the mine foreman shall take prompt action to have such conditions corrected. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

(V) Each day, the mine foreman and each assistant shall enter plainly and sign with ink or indelible pencil in a book provided for that purpose a report of the condition of the mine or portion thereof under his supervision which report shall state clearly the location and nature of any hazardous condition observed by them or reported to them during the day and what action, if any, was taken to remedy such condition.

(3) COMBUSTIBLE MATERIALS AND ROCK DUSTING.—(A) Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be present in excessive quantities in active underground working places or on electrical equipment therein.

(B) Where underground mining operations create an excessive amount of dust, water, or water with a wetting agent added to it, or other effective method shall be used to reduce such dust to safe limits.

(C) All mines, except those mines or areas of mines in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock-dusted to within forty feet of all faces, and, all open crosscuts shall be rock-dusted.

(D) In mines that are required to start rock-dusting, haulageways and parallel entries connected thereto by open crosscuts shall be dock-dusted. Back entries shall be rock-dusted for at least one thousand feet outby the junction with the first active entry. Inby this junction, the rooms, entries, and crosscuts shall be rock-dusted.

(E) Where rock dust is applied, it shall be distributed upon the top, floor, and sides of all open workings and maintained in such quantity that the incombustible content of the combined coal dust, rock dust, and other dust will be not less than 65 per centum, but the incombustible content in the return air courses shall be not less than 80 per centum, except as provided in subparagraph (D) of this paragraph. Where methane is present in any ventilating current, the percent of incombustible content of such combined dust shall be increased 1 per centum for each 0.1 per centum of methane.

(F) Subparagraphs (B) through (E) of this paragraph shall not apply to underground anthracite mines subject to this Act.

(4) ELECTRICAL EQUIPMENT.—(A) One year after the operative date of this section—

(i) all electric face equipment used in a coal mine shall be permissible and shall be maintained in a permissible condition, except that the Secretary may permit, under such conditions as he may prescribe, nonpermissible or open-type electric face equipment in use in such mine on the effective date of this Act, to continue in use for such period as he deems appropriate after taking into consideration the availability of replacement equipment; and

(ii) Only permissible junction or distribution boxes shall be used for making multiple power connections inby the last open crosscut or in any other place where dangerous quantities of methane may be present or may enter the air current, except that the Secretary may permit, under such conditions as he may prescribe, nonpermissible junction or distribution boxes in use, on the operative date of this section, inby the last open crosscut or in any other place where dangerous quantities of methane may be present or may enter the air current, to continue in use for such period as he deems appropriate, after taking into consideration the availability of permissible junction or distribution boxes and the time required to install such boxes.

(B) A copy of any permit granted under this paragraph shall be mailed immediately to a duly designated representative of the employees of the mine to which it pertains, and to the public official or agency of the State charged with administering State laws relating to coal mine health and safety in such mine.

(C) Any coal mine which, prior to the operative date of this section, was classed gassy and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

(D) All power-connection points outby the last open crosscut shall be intake air.

(E) Trolley and feeder wires shall not extend beyond the last open crosscut and shall be kept at least one hundred and fifty feet from pillar workings.

(5) FIRE PROTECTION.—(A) Each coal mine shall be provided with suitable firefighting equipment adequate for the size of the mine. After every blasting operation performed on shift, an examination shall be made to determine whether fires have been started.

(B) Underground storage places for lubricating oil and grease in excess of two days' supply shall be of fireproof construction.

(C) Underground structures installed in a mine shall be of fireproof construction.

(D) Welding, cutting, or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a certified person when such work is done in—

(i) the region between the face and a point twenty feet outby the last open crosscut in first mining;

(ii) the region between the pillar line and a point one hundred and fifty feet outby; and

(iii) the region between the face and gob in longwall mining.

Such person shall make a diligent search for fire during and after such operations and shall, at a minimum of hourly intervals, test for methane with means approved by the Secretary for detecting methane before and during such operations. Welding, cutting, or soldering shall not be conducted in air that contains more than 1.0 volume per centum of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering. Small pieces of material shall be taken to the surface or inside shop to weld, cut, or solder.

(E) Beginning one year after the operative date of this section, only fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic system of underground equipment. The Secretary may waive the require-

ment as to the use of fire-resistant hydraulic fluids if fire suppression devices meeting specifications prescribed by him are used on such equipment.

(F) Deluge-type water sprays, automatically actuated by rise in temperature, or other effective means of controlling fire shall be installed at main and secondary belt conveyor drives. Such sprays shall be supplied with a sufficient quantity of water to control fires.

(G) Underground belt conveyors installed after the operative date of this section shall be equipped with control switches to stop automatically the driving motor in the event that the belt is stopped by slipping on the driving pulley, by breakage, or other cause.

(6) MAPS.—(A) The operator of an active working underground coal mine shall have in a location chosen to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on such scale and containing such information as the Secretary by regulation may prescribe. Such map shall show the active workings, all worked out and abandoned areas, excluding those areas which have been worked out or abandoned before the effective date of this paragraph which cannot be entered safely and on which no information is available, elevations, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above,

and oil and gas wells in such mine. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. As the Secretary may by regulation require, such map shall be kept up to date by temporary notations, and such map shall be revised and supplemented at intervals on the basis of a survey made or certified by such engineer or surveyor.

(B) The coal mine map and any revision and supplement thereof shall be available for inspection by the Secretary or his authorized representative, by coal mine inspectors of the State in which the mine is located, and by persons working in the mine and their authorized representatives and by operators of adjacent coal mines. The operator shall furnish to the Secretary or his authorized representative, upon request, one or more copies of such map and any revision and supplement thereof.

(C) Whenever an operator permanently closes such mine, or temporarily closes such mine for a period of more than ninety days, he shall promptly notify the Secretary of such closure. Within sixty days of the permanent closure of the mine, or, when the mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the Secretary a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified as true and cor-

rect by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

(7) BLASTING AND EXPLOSIVES.—(A) Black blasting powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground, except that in underground anthracite mines mudcaps or other open, unconfined shots may be fired, if restricted to battery starting when no gas or fire hazard is present, and if it is otherwise impracticable to start the battery, and in such anthracite mines open, unconfined "shake" shots in working places and other places in pitching veins may be fired, when no gas or fire hazard is present, if the taking down of loose, hanging coal by other means is too hazardous for men working in such places. Except as provided in the last sentence of this paragraph, only permissible explosives and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock.

(B) Explosives or detonators carried anywhere underground by any person shall be in containers constructed

substantially of nonconductive material, maintained in good condition, and kept closed.

(C) Neither explosives nor detonators shall be transported on chain or shaker conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, drilling machines, or any self-propelled mobile equipment, except that this subparagraph does not prohibit the transportation of explosives or detonators in cars moved by means of a locomotive, rope, shuttle cars, or in equipment designed especially to transport such explosives or detonators, so long as such explosives or detonators are in special closed containers.

(D) When supplies of explosives and detonators for use in one or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and in a reasonably dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

(E) Explosives and detonators stored near the working faces shall be in separate closed containers, and shall be in a location out of line of blast not less than fifty feet from the face and fifteen feet from any pipeline, powerline, rail, or

conveyor; except that if kept in niches in the rib, the distance from pipeline, powerline, rail, or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

(F) Explosives and detonators shall be kept in separate containers until immediately before use at the working faces.

(8) HOISTING AND MANTRIPS.—Every hoist used to transport persons at an underground coal mine, other than hoists used in excavating shafts or slopes, shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist used to transport such persons shall be equipped with brakes capable of stopping the platform, cage, or other device for transporting persons when fully loaded, and with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device for transporting persons, and have a proper margin of safety. Cages or platforms which are used to tranport persons in vertical shafts shall be equipped with safety catches that act quickly and effectively in all emergency, and the safety catches shall be tested at least once every two months. Hoisting equipment that is used to transport persons at such a mine shall be inspected daily. Where persons are regularly transported into or out of a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages or plat-

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forms. Safeguards adequate, in the judgment of the Secretary, to minimize hazards with respect to mantrips and haulage shall be provided.

(9) MISCELLANEOUS.—(A) Each operator of a coal mine shall comply with State laws and regulations in establishing and maintaining barriers around oil and gas wells penetrating coal beds or underground workings of underground coal mines.

(B) Whenever any working place approaches within fifty feet of abandoned workings in the mine as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any other abandoned workings of the mine, which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least twenty feet in advance of the face of such working place and shall be continually maintained at least ten feet in advance of the advancing solid face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing face will not accidentally hole through into such workings. Boreholes shall also be drilled not more than eight feet apart in the rib of such working place to a distance of at least twenty feet and at an angle of

forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of persons working in such place.

(C) Smoking shall not be permitted underground, nor shall any person carry smoking materials, matches, or lighters underground. Smoking shall be prohibited in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator of a coal mine shall institute a program, approved by the Secretary, at each mine to insure that any person entering the mine does not carry smoking materials, matches, or lighters.

(D) Persons underground shall use only permissible electric lamps for portable illumination.

(E) At least two separate and distinct travelable passageways to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each mine working section to the surface, and shall be maintained in safe condition and properly marked. Mine openings shall have adequate protection against surface fires, fumes, smoke, and water from floods entering the mine.

(F) After the operative date of this section, all structures erected on the surface within one hundred feet of any mine opening shall be of reasonably fireproof construction.

Unless existing structures located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept and shall be available for inspection by interested persons.

(G) Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations on surface coal-handling facilities. Where coal is dumped at or near air-intake openings, provisions shall be made to prevent the dust from entering the mine in such quantities as to create a dangerous condition.

(H) Every operator of a coal mine shall provide a program, approved by the Secretary, of training and retraining of both qualified and certified persons needed to carry out functions prescribed in this section.

(I) Temporary splices in trailing cables shall not be permitted in by the last open crosscut.

(J) The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors or by water or water with a wetting agent. Persons exposed for short periods to gas and dust-fume- and mist-inhalation hazards shall wear permissible respiratory equipment. When

the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

(10) REQUIREMENTS.—(A) Every operator of a coal mine shall report immediately to the Secretary or his duly authorized representative the occurrence of fatal accidents, serious nonfatal accidents, explosions, ignitions, mine fires, and all other unusual occurrences.

(B) The Secretary or any authorized representative of the Secretary may require in any coal mine that rescue chambers, properly sealed and ventilated, be erected at suitable locations in the mine to which men could go in case of a mine explosion where they would be protected from carbon monoxide. The safety chambers are to be properly equipped with first aid material, a communication system to the surface, and proper accommodations for the men while awaiting rescue. A plan for the erection, maintenance, and revisions of safety chambers shall be submitted to and approved by the Secretary.

(C) In any mine that liberates excessive quantities of methane, and if in the opinion of the Secretary such excessive liberations present or are likely to present explosion dangers, he shall have a Federal inspector at the mine, for the purpose of making mine inspections on each and every day the mine is producing coal.

(D) Should a mine or portion of a mine be closed by

an order issued by the Secretary or his representative for failure by the operator to comply with any safety provision of this Act, all men on the inside and outside of the mine who are idled due to said order shall be fully compensated by the operator for lost time at their regular rates of pay.

(11) DEFINITIONS.—For the purpose of this section and section 22 of this Act, the term—

(A) "certified person" means a person certified by the State in which the coal mine is located to perform duties prescribed by such sections, except that, in a State where no program of certification is provided, such certification shall be by the Secretary.

(B) "qualified person" means an individual deemed qualified by the Secretary to make tests for measurements, as appropriate, required by this section.

(C) "permissible" as applied to—

(i) equipment used in the operation of a coal mine, means equipment to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire;

(ii) explosives or blasting devices used in such

mine, means explosives or blasting devices which meet specifications which are prescribed by the Secretary; and

(iii) the manner of use of explosives and blasting devices, means the manner of use prescribed by the Secretary;

(D) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, talc, adobe, or other inert material, preferably light colored, 100 per centum of which will pass through a sieve having twenty meshes per linear inch and 70 per centum or more of which will pass through a sieve having two hundred meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and which does not contain more than 5 per centum of combustible matter or more than a total of 5 per centum of free and combined silica (SiO_2);

(E) "coal mine" includes areas of adjoining mines connected underground;

(F) "anthracite" means coals with a volatile ratio equal to 0.12 or less;

(G) "volatile ratio" means volatile matter content divided by the volatile matter plus the fixed carbon;

(H) "active underground working places" means

all underground places in which persons are required to be or to pass through in the performance of normal operations;

(I) "abandoned areas" means sections, panels, and other areas that are not ventilated and examined in the manner required for active underground working places; and

(J) "electric face equipment" means electric equipment that is installed or used inby the last open crosscut in an entry or a room.

OPERATIVE DATE AND REPEAL

SEC. 22. The provisions of this Act shall become operative thirty days after enactment. The provisions of the Federal Coal Mine Safety Act, as amended, are repealed on the operative date of this Act, except that such provisions shall continue to apply to any order, notice, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, or finding.

SEPARABILITY

SEC. 23. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORTS

SEC. 24. Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress an annual report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal mine safety, and any other relevant information, including any recommendations he deems appropriate.

91ST CONGRESS
1ST SESSION

S. 1300

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1969

Mr. JAVITS (for himself, Mr. COOPER, Mr. SCHWEIKER, Mr. SCOTT, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To improve the health and safety conditions of persons working in the coal mining industry of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That this Act may be cited as the "Federal Coal Mine Health and Safety Act of 1969."

FINDINGS

SEC. 2. Congress declares that—

(a) the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner;

(b) the occupationally caused death or injury of a

miner causes grief and suffering, and is a serious impediment to the future growth of this industry;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm, and in order to control the causes of occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in such mines cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(f) the disruption of production and the loss of income to operators and miners as a result of a coal mine accident or occupationally caused disease unduly impedes and burdens commerce; and

(g) it is the purpose of this Act to provide for the establishment of mandatory health and safety standards and to require that the operators and the miners comply with such standards in carrying out their responsibilities.

MINES SUBJECT TO ACT

SEC. 3. Each coal mine the products of which enter commerce, or the operations of which affect commerce,

shall be subject to this Act, and each operator of such mine and every person working in such mine shall comply with the provisions of this Act and the applicable regulations of the Secretary promulgated under this Act.

DEFINITIONS

SEC. 4. For the purpose of this Act, the term—

(a) "Secretary" means the Secretary of the Interior or his delegate;

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

(c) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(d) "operator" means a person operating a coal mine:

(e) "agent" means any person charged with responsibility for the operation of all or part of a coal mine and the supervision of the employees in a coal mine;

(f) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "miner" means any individual working in a coal mine and includes the agent of the operator;

(h) "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 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;

(j) "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated;

(k) "accident" includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any person;

(l) "inspection" means the period beginning when

an authorized representative of the Secretary first enters a coal mine and ending when he leaves the coal mine during or after the coal-producing shift in which he entered; and

(m) "Board" means the Federal Coal Mine Health and Safety Board of Review established by this Act.

TITLE I—GENERAL

HEALTH AND SAFETY STANDARDS; REVIEW

SEC. 101. (a) The Secretary shall, in accordance with the procedures set forth in this section, develop, promulgate, and revise as may be appropriate, mandatory health and safety standards for the protection of life and the prevention of injuries and occupational diseases in a coal mine.

(b) In the development of such standards, the Secretary shall consult with other interested Federal agencies, representatives of State, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, and such advisory committees as he may appoint. 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 technical and economic feasibility of the standards, and experience gained under this and other health and safety statutes.

(c) Mandatory health standards proposed by the Sec-

retary shall be based upon criteria developed and furnished to the Secretary by the Secretary of Health, Education, and Welfare on the basis of research, demonstrations, experiments, and such other information as may be appropriate and in consultation with appropriate representatives of the operators and miners, other interested persons, the States, advisory committees, and where appropriate, foreign countries.

(d) The Secretary shall from time to time publish proposed mandatory health and safety standards in the Federal Register and shall afford interested persons a period of not less than thirty days after publication to submit written data or comments. Except as provided in subsection (e) of this section, the Secretary may, upon the expiration of such period and after consideration of all relevant matter presented, promulgate such standards with such modifications as he may deem appropriate. Proposed mandatory safety standards for surface coal mines shall be developed and published by the Secretary not later than twelve months after the enactment of this Act.

(e) On or before the last day of any period fixed for the submission of written data or comments under subsection (d) of this section, any interested person may file with the Secretary written objections to a proposed standard, stating the grounds therefor and requesting a public hearing by

the Board on such objections. As soon as practicable after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specifying the proposed standards to which objections have been filed and a hearing requested, and shall refer such standards and objections to the Board for review in accordance with subsection (f) of this section.

(f) Promptly after any matter is referred to the Board by the Secretary under subsection (e) of this section, the Board shall issue notice of and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearing, the Board shall issue a report to the Secretary setting forth findings of fact on such objections and appropriate recommendations thereon and shall make such report and recommendations public. Upon receipt of such report and recommendations, the Secretary may, upon consideration of the Board's findings of fact and recommendations, promulgate the mandatory standards with such modifications, or take other action, as he deems appropriate. In any instance in which the Secretary does not adopt the Board's recommendations, he shall publish his reasons therefor.

(g) Any mandatory standard promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

ADVISORY COMMITTEES

SEC. 102. (a) The Secretary may appoint one or more advisory committees to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each such committee.

(b) Advisory committee members, other than employees of Federal, State, or local governments, while performing committee business shall be entitled to receive compensation at rates fixed by the Secretary but not exceeding $100 per day, including travel time. While so serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

INSPECTIONS AND INVESTIGATIONS

SEC. 103. (a) Authorized representatives of the Secretary shall make frequent inspections and investigations in coal mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) developing health and safety standards, (3) determining whether an imminent danger exists in a coal mine, and (4) determining whether or not there is compliance with the mandatory health and safety standards pro-

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mulgated by the Secretary under this Act or with any notice or order issued under this Act. In carrying out the requirements of clauses (3) and (4) of this subsection in each underground coal mine, such representatives shall make inspections of the entire mine at least three times a year.

(b) For the purpose of making any inspection or investigation under this Act, the Secretary or any authorized representative of the Secretary shall have a right of entry to, upon, or through, any coal mine.

(c) For the purpose of carrying out his responsibilities under this Act, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal or State agency.

(d) For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United

States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) In the event of any accident occurring in a coal mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent, to the greatest extent possible, the destruction of any evidence which would assist in investigating the cause or causes thereof.

(f) In the event of any accident occurring in a coal mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

STATE PLANS

SEC. 104. (a) In order to promote sound and effective coordination in Federal and State activities within the field

covered by this Act, the Secretary shall cooperate with the official coal mine inspection or safety agencies of the several States.

(b) Any State desiring to cooperate in making inspections required under this title may submit, through its official coal mine inspection or safety agency, a State plan for carrying out the purposes of this section. Such State plan shall—

(1) designate such State coal mine inspection or safety agency as the sole agency responsible for administering the plan throughout the State and contain satisfactory evidence that such agency will have the authority to carry out the plan,

(2) give assurances that such agency has or will employ an adequate and competent staff of inspectors qualified under the laws of such State to make mine inspections within such State, and that no advance notice of an inspection will be provided operators,

(3) give assurances, that upon request of the Secretary or upon request of an operator under section 105 (h) (1) of this title, such agency will promptly assign inspectors employed by it to participate in inspections to be made in such State under this title, and

(4) provide that the agency will make such reports to the Secretary, in such form and containing such in-

formation, as the Secretary may from time to time require.

(c) The Secretary shall approve any State plan or any modification thereof which complies with the provisions of subsection (b) of this section. He shall not finally disapprove any State plan or modification thereof without first affording the State agency reasonable notice and opportunity for hearing.

(d) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency, finds that in the administration of an approved State plan there is—

(1) a failure to comply substantially with any provision of the State plan; or

(2) a failure to afford reasonable cooperation in administering the provisions of this title,

the Secretary shall notify such State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect.

(e) No inspection of a mine shall be made by an authorized representative of the Secretary under this title in any State in which a State plan is in effect unless a State inspector participates in such inspection in accordance with such plan, except where, in the Secretary's judgment, an inspection is urgently needed to determine whether an imminent danger exists in such mine, and participation by

a State inspector would unreasonably delay such inspection, or where, following due notice, a State inspector is not provided in due time to participate in an inspection, or where a spot inspection is deemed essential by a representative of the Secretary.

(f) Any State inspector assigned in accordance with a State plan, and any independent inspector appointed under section 105 (h) (3) of this title, shall be entitled to admission to any mine for the purpose of making any inspection authorized under this title.

FINDINGS, NOTICES, AND ORDERS

SEC. 105. (a) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger no longer exists.

(b) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard promulgated under this title, but the violation has not created

an imminent danger, he shall find what would be a reasonable period of time within which the violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or subsequently extended, an authorized representative of the Secretary finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representatives of the Secretary determines that the violation has been abated.

(c) (1) If, upon the inspection of a coal mine, an authorized representative of the Secretary finds that any mandatory health or safety standard promulgated under this title is being violated, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a mine hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health and safety standards, he shall include such

finding in the notice given to the operator under subsection (b) of this section. Within ninety days of the time such notice was given to such operator, the Secretary shall cause such mine to be reinspected to determine if any similar such violation exists in such mine. Such reinspection shall be in addition to any inspection required under subsection (b) of this section, or section 106 of this title. If, during any inspection relating to such violation or during such reinspection, a representative of the Secretary finds such similar violation does exist, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with the provisions of the mandatory health or safety standards promulgated under this title, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (d) of this section, to be withdrawn from, and to be debarred from entering, such area.

(2) If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, thereafter a withdrawal order shall promptly be issued by a duly authorized representative of the Secretary who finds upon any following inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) of this subsection until such time as an inspection of such mine dis-

closes no similar violations. Following an inspection of such mine which discloses no similar violations, the provisions of paragraph (1) of this subsection shall again be applicable to that mine.

(d) The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary, in the judgment of the operator, to eliminate the condition described in the order;

(2) Any public official whose official duties require him to enter such area; and

(3) Any consultant or any representative of the employees of such mine who is, in the judgment of the operator, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order.

(e) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard promulgated under this Act and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(f) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the Secretary issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative.

(g) Except as provided in subsection (h) of this section, a notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the Secretary.

(h) (1) If an order is made pursuant to subsection (a) of this section, and a State inspector did not participate in the inspection on which such order is based, the duly authorized representative of the Secretary who issued the order shall notify the State mine inspection or safety agency immediately, but not later than twenty-four hours after the issuance of such order, that such order has been issued. Following such order the operator of the mine may immediately request the State mine inspection or safety agency to assign a State inspector to inspect the mine. The State agency shall then promptly assign a State inspector to inspect the mine affected by such order and file an inspection report with the Secretary and the State agency. The order of the duly authorized representative of the Secretary shall remain in effect, but shall immediately be subject to review as provided in this title.

(2) No order shall be made pursuant to subsection (b) or (c) of this section with respect to a mine in a State in which a State plan approved under section 104 (c) of this title is in effect unless a State inspector participated in the inspection on which such order is based and concurs in such order, or an independent inspector appointed under paragraph (3) of this subsection concurs in such order, or participation of the State inspector in the inspection was not required under section 104 (c) of this title. If the State inspector does not concur in such order, the operator of the mine, the duly authorized representative of the Secretary who proposes to make such order, or the State inspector may apply, within twenty-four hours after the completion of the inspection involved, for the appointment of an independent inspector under paragraph (3) of this subsection. Within five days after the date of his appointment, the independent inspector shall inspect the mine. The representative of the Secretary and the State inspector shall be given the opportunity to accompany the independent inspector during such inspection. If, after such inspection is completed, either the independent inspector or the State inspector concurs in the order, it shall be issued.

(3) Within five days after the date of receipt of an application under paragraph (2) of this subsection, the chief judge of the United States district court for the district in

which the mine involved is located (or in his absence, the clerk of such court) shall appoint a graduate engineer with experience in the coal mining industry to serve as an independent inspector under this subsection. Each independent inspector so appointed shall be compensated at the rate of $50 for each day of actual service (including each day he is traveling on official business) and shall, notwithstanding the Travel Expense Act of 1949, be fully reimbursed for traveling, subsistence, and related expenses.

(4) An order made pursuant to subsection (a), (b), or (c) of this section with respect to a mine in a State in which a State plan approved under section 104 (c) of this title, is in effect shall not be subject to review under section 106 of this title, but shall be subject to review under section 108 of this title.

REVIEW BY THE SECRETARY

SEC. 106. (a) Except as provided in section 105 (h) (4) of this title, an operator notified of an order issued pursuant to section 105 of this title may apply to the Secretary for review of the order within thirty days of receipt thereof. The operator shall send a copy of such application to the representative, if any, of persons working in the affected mine. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hear-

ing, at the request of the applicant or a representative of persons working in such mine, to enable the applicant and the representatives of persons working in such mine to present information relating to the issuance and continuance of such order.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and (1) in the case of an order issued under subsection (a) of section 105 of this title, he shall find whether or not the imminent danger as set out in the order existed at the time of issuance of the order and whether or not the imminent danger existed at the time of the investigation, and (2) in the case of an order issued under subsection (b) or (c) of section 105 of this title, he shall find whether or not there was a violation of any mandatory health or safety standard promulgated under this title as described in the order and whether or not such violation had been abated at the time of such investigation, and upon making such findings he shall issue a written decision vacating, affirming, modifying, or terminating the order complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decision of matters submitted to the Secretary under this section, all actions which the Secretary takes under this section shall be taken as promptly as practicable, consistent with the adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under section 105 of this title, together with a detailed statement giving reasons for granting such relief. The Secretary may issue a decision granting such relief, under such conditions as he may prescribe, only after a hearing in which all parties are given an opportunity to be heard.

FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF REVIEW

SEC. 107. (a) The Federal Coal Mine Health and Safety Board of Review is hereby established. For the purpose of carrying out its functions under sections 108 and 113 of this Act, the Board shall be composed of five members who shall be appointed by the President by and with the consent of the Senate.

(b) For the sole purpose of carrying out the review functions set forth in section 101 of this Act and matters related thereto, there shall be included on the Board three additional members appointed by the President by and with the consent of the Senate, at least one of which shall have a public health background and the others shall have a background, either by reason of previous training, education, or experience, in coal mining technology. All such

additional members shall not have had any interest in, nor connection with, the coal mining industry for at least one year prior to their appointment.

(c) The terms of office of members of the Board shall be five years, except that (1) the members of the Federal Coal Mine Safety Board of Review established under the Federal Coal Mine Safety Act, as amended, who are in office on the effective date of this Act, shall be members of the Board established by this Act and their terms shall expire on the dates originally fixed for their expiration, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) Each member of the Board shall be entitled to receive compensation at a rate specified at the time of actual service for grade GS–18 in section 5332 of title 5, United States Code, including travel time and shall be allowed travel expenses, including a per diem allowance in accordance with section 5703 (b) of title 5, United States Code, when engaged in the performance of services for the Board.

(e) The Board, at all times, shall consist of one person who by reason of previous training and experience may

reasonably be said to represent the viewpoint of operators employing fourteen or fewer employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of operators employing fifteen or more employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners in mines employing fourteen or fewer employees, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners in mines employing fifteen or more employees, and one person, who shall be Chairman of the Board, who shall be a graduate engineer with experience in the coal mining industry or shall have at least five years experience as a practical mining engineer in the coal mining industry, and, within one year of his appointment as a member of the Board, shall not have had a pecuniary interest in, or have been regularly employed or engaged in, the mining of coal, or have regularly represented either coal mine operators or miners, or have been an officer or employee of the Department of the Interior.

(f) The principal office of the Board shall be in the District of Columbia. Whenever the Board deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place. At the request

of an operator of a mine the Board shall hold hearings or conduct other proceedings on an application filed under section 108 of this title, at the county seat of the county in which the mine is located or at any place mutually agreed to by the Chairman of the Board and the operator of the mine involved in the appeal or proceeding. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the Secretary of the Board.

(g) The Board shall, without regard to the civil service laws, appoint and prescribe the duties of a Secretary of the Board and such legal counsel as it deems necessary. Subject to the civil service laws, the Board shall appoint such other employees as it deems necessary in exercising its powers and duties. The compensation of all employees appointed by the Board shall be fixed in accordance with chapter 53 of title 5, United States Code.

(h) For the purpose of carrying out its functions under sections 108 and 113 of this title, three members of the Board shall constitute a quorum, and official action can be taken only on the affirmative vote of at least three members, except that in any official action involving mines in which no more than fourteen individuals are regularly employed underground the participation of the small mine operators' representative and small mine workers' representative shall be required, and in any official action involving mines in which

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more than fourteen individuals are regularly employed underground the participation of the large mine operators' representative and large mine workers' representative shall be required; but a special panel composed of one or more members, upon order of the Board, shall conduct any hearing provided for in section 108 or 113 of this title and submit the transcript of such hearing to the entire Board for its action thereon. Such transcript shall be made available to the parties prior to any final action of the Board. An opportunity to appear before the Board shall be afforded the parties prior to any final action and the Board may afford the parties an opportunity to submit additional evidence as may be required for a full and true disclosure of the facts.

(i) Every official act of the Board shall be entered of record, and its hearings and records thereof shall be open to the public. The Board shall not make or cause to be made any inspection of a coal mine for the purpose of determining any pending application.

(j) The Board is authorized to make such rules as are necessary for the orderly transaction of its proceedings, which shall provide for adequate notice of hearings to all parties. The existing rules of the Federal Coal Mine Safety Board of Review shall constitute the rules of the Board until superseded or modified by the Board.

(k) Any member of the Board may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(l) The Board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Reasonable notice must first be given in writing by the party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as provided in subsection (k) of this section. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(m) In the case of contumacy by, or refusal to obey a subpena served upon, any person under this subsection, the Federal district court for any district in which such person is found or resides or transacts business, upon application by the United States, and after notice to such person and

hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Board or to appear and produce documents before the Board, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REVIEW BY BOARD

SEC. 108. (a) Within thirty days after receipt of an order made pursuant to subsection (a), (b), or (c) of section 105 of this title, an operator may apply to the Board for annulment or revision of such order without seeking its annulment or revision under section 106 of this title. Within thirty days after the receipt of a decision made by the Secretary pursuant to section 106 of this title, an operator may apply to the Board for a review of the decision.

(b) The operator shall be designated as the applicant in such proceeding, and the application filed by him shall recite the order or decision complained of and other facts sufficient to advise the Board and the Secretary of the nature of the proceeding. The Secretary shall be the respondent in such proceeding, and the applicant shall send a copy of such application by registered or certified mail to the respondent and to the representative, if any, of the persons working in the affected mine. Immediately upon the filing of such an application, the Board shall fix the time

for a prompt hearing thereof. The Board shall permit any interested person to intervene in such proceedings.

(c) (1) If the application is made to the Board directly from an order issued under section 105 of this title, the Board shall not be bound by any previous finding of fact by any representative of the Secretary, the burden of proof shall be upon the respondent, and evidence relating to the making of the order complained of and other pertinent matters may be offered by the parties to the proceeding.

(2) If the application is made to the Board from a decision issued under section 106 of this title, the record and the decision of the Secretary shall be received in evidence and the findings of the Secretary included in the decision shall constitute a prima facie case for the issuance of the decision complained of and the burden of rebutting such prima facie case shall be upon the applicant, but either party may adduce additional evidence.

(d) Upon conclusion of the hearing, the Board shall find, with respect to the order or decision, whether or not the imminent danger or a violation of a mandatory health or safety standard existed at the time of issuance of such order and whether or not such danger or such violation existed at the time of filing the application, and shall issue a written decision incorporating such finding therein and affirming, vacating, modifying, or terminating the order or decision issued under section 105 or 106 of this title.

(e) Each decision made by the Board shall show the date on which it is made, and shall bear the signatures of the members of the Board who concur therein. Upon issuance of a decision under this section, the Board shall cause a true copy thereof to be sent by registered or certified mail to all parties and their attorneys of record. The Board shall cause each decision to be entered on its official record, together with any written opinion prepared by any members in support of, or dissenting from, any such decision.

(f) Pending the hearing required by this section for review of an order or decision issued under section 105 or 106 of this title, the applicant before the Board may file with the Board a written request that the Board grant temporary relief from the order or decision, together with a detailed statement giving reasons for granting such relief. The Board may issue a decision granting such relief, under such conditions as it may prescribe, only after a hearing in which all parties are given an opportunity to be heard.

(g) In view of the urgent need for prompt decision of matters submitted to the Board under this section, all actions which the Board takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issue involved.

JUDICIAL REVIEW

SEC. 109. (a) Any decision issued by the Board under section 108 of this title shall be subject to judicial review by

the United States court of appeals for the circuit in which the affected mine is located, upon the filing in such court within thirty days from the date of such decision of a petition by the Secretary or by the operator aggrieved by the decision praying that the action of the Board be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Board, and thereupon the Board shall certify and file in such court the record upon which the decision complained of was issued, as provided in section 2112, title 28, United States Code.

(b) The court shall hear such appeal on the record made before the Board. The findings of the Board, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceedings to the Board for such further action as it directs.

(c) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may, after due notice to, and hearing of, the parties to the appeal, issue all necessary and appropriate process and grant such other relief as may be appropriate pending final determination of the appeal.

(d) The judgment of the court shall be subject only to review by the Supreme Court of the United States upon

certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the Board's decision.

POSTING OF NOTICES AND ORDERS

SEC. 110. (a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices required by law or regulation to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice or order required by this title to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

(b) The Secretary shall cause a copy of any notice or order required by this title to be given to an operator to be mailed immediately to a duly designated representative of persons working in the affected mine, and to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine.

(c) In order to insure prompt compliance with any notice or order issued under section 105 of this title, the authorized representative of the Secretary may deliver such notice or order to an agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice or order.

RECORDS

SEC. 111. Every operator of a coal mine and his agent shall establish and maintain such records, including records of any accident occurring in the mine, make such reports, and provide such information as the Secretary may reasonably require from time to time to enable him to perform his functions under this Act, shall upon request of any person authorized by the Secretary, permit such person at reasonable times to have access to and copy such records, and the Secretary may compile, analyze, and publish, either in summary or detailed form, the information obtained. All information, reports, findings, notices, orders, or decisions issued under this Act may be published from time to time and released to any interested person and shall be made available for public inspection.

INJUNCTIONS

SEC. 112. The Secretary may request the Attorney General to 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 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 issued under section 105 of this title or decision issued under this title, or (b) interferes with, hinders, or delays the Secretary or his authorized representative in carrying out the provisions of this Act, or (c) refuses to admit such representative to the mine, or (d) refuses to permit the inspection of the mine, or an accident, injury, or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary, or (f) refuses to permit access to, and copying of, records. Each court shall have jurisdiction to provide such relief as may be appropriate.

PENALTIES

SEC. 113. (a) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard promulgated under this title may by order be assessed a civil penalty by the Secretary which penalty shall not be more than $10,000 for each occurrence of a violation of a mandatory health or safety standard. Each occurrence of a violation of a health or safety standard may constitute a separate

offense. In determining the amount of the penalty, the Secretary shall consider the operator's history of previous violations of health or safety standards, the appropriateness of such penalty to the size of the business of the operator charged, the effect on the operator's ability to continue in business, the gravity of the violation of the health or safety standard, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance, after notification of a violation of a health or safety standard. No penalty shall be assessed under this subsection pending the completion of proceedings for review of an order or decision under this title.

(b) Upon written request made by an operator within thirty days after receipt of an order assessing a penalty under this section, the Board shall afford such operator an opportunity for a hearing and, in accordance with the request, determine by decision whether or not a violation of a mandatory health or safety standard did occur or whether the amount of the penalty is warranted or should be compromised.

(c) Upon any failure of an operator to pay a penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty,

and such court shall have jurisdiction to hear and decide any such action.

(d) Whoever knowingly violates or fails or refuses to comply with any order issued under section 105 of this title or any final decision issued under this title shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both, except that if the conviction is for a violation committed after the first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or both.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS FOR CONTROLLING DUST AT UNDERGROUND MINES

SCOPE OF COVERAGE

SEC. 201. The provisions of this title shall be interim mandatory health standards applicable to all underground mines until superseded in whole or in part by mandatory health standards promulgated by the Secretary for such mines to become effective after the effective date of section 202 (a) of this title, and shall be enforced in the same manner and to the same extent as any mandatory health standard promulgated under title I of this Act. Any orders issued in the enforcement of the provisions of this title shall be

subject to review as provided in sections 106, 108, and 109 of title I of this Act.

DUST STANDARD AND RESPIRATORS

SEC. 202. (a) Except as provided in subsection (c) of this section, effective sixty days after the operative date of this title—

(1) Each operator shall at intervals prescribed by the Secretary or his authorized representative cause the mine atmosphere to be sampled by a qualified person to determine if hazardous atmospheric concentrations of respirable dust are present in the mine atmosphere. Samples shall be taken by a device approved by the Secretary and in accordance with the methods and at locations prescribed by him.

(2) Each operator shall continuously maintain the concentrations of respirable dust in the mine atmosphere in any active working place at or below 4.5 milligrams of dust per cubic meter of air if measured with an MRE instrument or at or below an equivalent amount of dust if measured with another device approved by the Secretary, and shall take corrective action immediately when the concentrations of respirable dust in such place are in excess of such limit. When the mine atmosphere in any active working place contains concentrations of respirable dust in excess of 5.5 milligrams of dust per

cubic meter of air if measured with an MRE instrument or in excess of an equivalent amount of dust if measured with another device approved by the Secretary, all persons, other than those whose presence is required to take corrective measures, shall be withdrawn from, and prohibited from entering, such place, until corrective action has been taken to maintain the concentrations at or below the limit prescribed in the first sentence of this paragraph.

(3) Respirators approved by the Secretary shall be worn for protection against exposures to concentrations of dust in excess of 4.5 milligrams of dust per cubic meter of air if measured with an MRE instrument or in excess of an equivalent amount of dust if measured with another device approved by the Secretary. Only miners wearing such a respirator shall enter or be exposed to concentrations in excess of 4.5 milligrams of dust per cubic meter of air if measured with an MRE instrument or in excess of an equivalent amount of dust if measured with another device approved by the Secretary, and only short-term exposures to such concentrations shall be permitted. Use of respirators shall not be substituted for environmental control measures, unless such use is approved by the Secretary. Each underground mine shall maintain a supply of approved respirators ade-

quate to deal with occurrences of concentrations of respirable due in the mine atmosphere in excess of the limit prescribed in this subsection.

(4) As used in this section, the term "MRE instrument" means the gravimetric dust sampler with four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(b) Whenever the Secretary determines, upon application of an operator of an underground coal mine, that the application of the dust standard prescribed in subsection (a) of this section within the time prescribed is not feasible from the standpoint of existing engineering technology applicable to said mine, he may suspend, under such conditions as he may prescribe, the application of such standard for an additional period of not to exceed six months.

(c) The Secretary, after taking into consideration available technology, shall prescribe, as soon as possible after the operative date of this title, the date upon which the atmospheric concentrations of respirable dust at each active working place in all underground coal mines shall not exceed 3.0 milligrams of dust per cubic meter of air if measured with an MRE instrument or an equivalent amount of dust if measured by another device approved by the Secretary.

MEDICAL EXAMINATION

SEC. 203. (a) The operator of an underground coal mine shall cooperate with the Secretary in making arrangements for each miner working in an underground coal mine to be given, at least annually, beginning six months after the operative date of this title, a chest roentgenogram by a competent radiologist. The films shall be read and classified in a manner to be prescribed by the Secretary of Health, Education, and Welfare and the results of each reading on each such person shall be submitted to the Secretary and the Secretary of Health, Education, and Welfare, and at the request of the miner, to his physician.

(b) Any miner who, in the judgment of the United States Public Health Service based upon such reading, shows substantial evidence of the development of pneumoconiosis shall be assigned by the operator, for such period or periods as may be necessary to prevent further development of such disease, to work, at the option of the miner, either (1) in any active working place in a mine where the mine atmosphere contains concentrations of respirable dust of not more than 2.0 milligrams of dust per cubic meter of air if measured with an MRE instrument or not more than an equivalent amount of dust if measured with another device approved by the Secretary, or (2)

in an area of the mine containing more than such 2.0 milligrams, or equivalent, provided the miner wears a respirator approved by the Secretary.

DUST FROM DRILLING; FUMES

SEC. 204. The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors or by water or water with a wetting agent. Persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist, shall wear permissible respiratory equipment. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

TITLE III—INTERIM SAFETY STANDARDS FOR UNDERGROUND COAL MINES

COVERAGE

SEC. 301. The provisions of this title shall be the interim mandatory safety standards applicable to all underground coal mines until superseded in whole or in part by mandatory safety standards promulgated by the Secretary, and shall be enforced in the same manner and to the same extent as any mandatory safety standard promulgated under title I of this Act. Any orders issued in the enforcement of the interim standards set forth in this title shall be subject to review as provided in sections 106, 108, and 109 of this Act.

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GENERAL STANDARDS

SEC. 302. (a) Telephone service or equivalent two-way communication facilities shall be provided between the surface and each landing of main shafts and slopes and between the surface and each working section.

(b) Smoking shall be prohibited underground. No person shall carry smoking materials, matches, or lighters underground. Smoking shall be prohibited in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator of a coal mine shall institute a program, approved by the Secretary, at each mine to insure that any person entering the underground portion of the mine does not carry smoking materials, matches, or lighters.

(c) All accidents shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the State.

(d) Arrangements shall be made in advance for obtaining emergency medical assistance and transportation for injured persons. Emergency communications shall be pro-

vided to the nearest point of assistance. Selected agents of the operator shall be trained in first aid and first aid training shall be made available to all miners. Each mine shall have an adequate supply of first aid equipment located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces.

(e) The Secretary may from time to time provide, under such guidelines as he may prescribe, that each operator provide emergency shelters in the mine which have an adequate supply of air and which are equipped with an independent communication system.

(f) The Secretary may from time to time provide, under such guidelines as he may prescribe, that all active underground working places in a mine be illuminated adequately by fixed permissible lighting while persons are working in such places.

(g) Every operator of a coal mine shall establish a program, approved by the Secretary, of training and retraining of qualified and certified persons needed to carry out functions prescribed in this title.

ROOF SUPPORT

SEC. 303. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof-control plan and revisions

thereof suitable to the roof conditions and mining system of each mine and approved by the Secretary shall be adopted and set out in printed form within a reasonable period to be established after the operative date of this title by the Secretary by regulation. The plan shall show the type and spacing of supports approved by the Secretary. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof-control plan. A copy of the plan shall be furnished the Secretary or his authorized representative upon request.

VENTILATION

SEC. 304. (a) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(b) All active underground working places shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away, flammable or harmful gases and smoke and fumes. In bituminous coal and lignite mines,

the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be six thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be six thousand cubic feet a minute. In anthracite mines, the minimum quantity of air reaching the face of each working place shall be two hundred cubic feet a minute for each man working in the place. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(c) Line brattice or other suitable devices shall be installed from the last open crosscut to a point near the face to assure positive air flow to the face of every active underground working place, unless the Secretary or his authorized representative permits an exception to this requirement.

(d) Within three hours immediately preceding the beginning of a coal-producing shift, and before any workmen in such shift enter the underground areas of the mine, certified persons designated by the operator of the mine shall examine a definite underground area of the mine. Each such examiner shall examine every active underground working place in that area and shall make tests in each such working

place for accumulations of methane with means approved by the Secretary for detecting methane and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in the active underground working places and on active roadways and travelways; examine active roadways, travelways, and all belt conveyors on which coal is carried, approaches to abandoned workings, and accessible falls in active sections for hazards; examine by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume; and examine for such other hazards as an authorized representative of the Secretary may from time to time require. Such mine examiner shall place his initials and the date at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "DANGER" sign conspicuously at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine

inspector or persons authorized by the mine operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination such mine examiner shall report the results of his examination to a person, designated by the mine operator to receive such reports at a designated station on the surface of the mine or underground, before other persons enter the underground areas of such mine to work in such coal-producing shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book approved by the Secretary kept for such purpose at a place on the surface of the mine designated by the mine operator. No person (other than certified persons designated under this subsection) shall enter any underground area, except during a coal-producing shift, unless an examination of such area as prescribed in this subsection has been made within eight hours immediately preceding his entrance into such area.

(e) At least once during each coal-producing shift, or more often if necessary for safety, the active underground working places shall be examined for hazardous conditions by certified persons designated by the mine operator to do so. Such examination shall include tests with means approved by the Secretary for detecting methane and with a per-

missible flame safety lamp or other means approved by the Secretary for detecting oxygen deficiency.

(f) Examinations for hazardous conditions, including tests for methane, shall be made at least once each week, by a certified person designated by the operator of the mine, in the return of each split of air where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return airway in its entirety, idle workings, and insofar as conditions permit, abandoned workings. Such weekly examination need not be made during any week in which the mine is idle for the entire week. The person making such axaminations and tests shall place his initials and the date at the places examined, and if hazardous conditions are found, such conditions shall be reported promptly. A record of these examinations and tests shall be kept.

(g) At least once each week, a certified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in each active entry, the volume begin delivered to the intake end of each pillar line, and the volume at the intake and return of each split of air. A record of such measurements shall be kept in a book on the surface, and the record shall be open for inspection by interested persons.

(h) (1) At the start of each coal-producing shift, tests

for methane shall be made at the face of each working place immediately before electrically operated equipment is energized. Such tests shall be made by qualified persons. If more than 1.0 volume per centum of methane is detected, electrical equipment shall not be energized, taken into, or operated in, such face workings until such methane content is reduced below 1.0 volume per centum of methane. Examinations for methane shall be made during such operations at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

(2) If the air at an underground face working, when tested at a point not less than twelve inches from the roof, face, or rib, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall not contain more than 1.0 volume per centum of methane. If such air, when tested at a point not less than twelve inches from the roof, face, or rib, but as near to twelve inches as possible, contains 1.5 volume per centum of methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such

portion of the mine, until the air in such face working shall not contain more than 1.0 volume per centum of methane.

(i) If, when tested, a split of air returning from active underground working places contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall not contain more than 1.0 volume per centum of methane. Such tests shall be made at four-hour intervals during each shift by a qualified person designated by the operator of the mine. In making such tests, such person shall use means approved by the Secretary for detecting methane.

(j) If a split of air returning from active underground working places contains 1.5 volume per centum of methane, all persons shall be withdrawn from the portion of the mine endangered thereby, and all electric power shall be cut off from such portion of the mine, until the air in such split shall not contain more than 1.0 volume per centum of methane. In virgin territory, if the quantity of air in a split ventilating the workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section and if only permissible electric equipment is used in such workings and the air in the split returning from such workings does not pass over trolley or other bare electric power wires, and if a certified person designated by the

mine operator is continually testing the methane content of the air in such split during mining operations in such workings, it shall be necessary to withdraw all persons and cut off all electric power from the portion of the mine endangered by methane only when the air returning from such workings contains more than 2.0 volume per centum.

(k) Air which has passed by an opening of any unsealed, abandoned area shall not be used to ventilate any active face area in the mine if such air contains 0.25 volume per centum or more of methane. Examinations of such air shall be made during the pre-shift examination required by subsection (d) of this section. In making such tests, a qualified person designated by the operator of the mine shall use means approved by the Secretary for detecting methane. For the purposes of this subsection, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

(l) Air that has passed through an abandoned panel or area which is inaccessible for inspection shall not be used to ventilate any active face workings in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any active face workings in such mine, except that such air may be used to ventilate enough advancing working places or rooms im-

mediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(m) An authorized representative of the Secretary may require in any coal mine in which methane has been found that electric face equipment, except shuttle cars, operated therein be equipped with a methane monitor approved by the Secretary and kept operative and in operation.

(n) Idle and abandoned areas shall be inspected for methane and for oxygen deficiency and other dangerous conditions by a certified person with means approved by the Secretary as soon as possible, but not more than three hours, before other employees are permitted to enter or work in such places. However, persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified in the use of means approved by the Secretary for detecting methane and in the use of a permissible flame safety lamp or other means for detecting oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

(o) Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether methane is present. Such person shall use means approved by the Secre-

tary for detecting methane. If in such examination methane is found in amounts of more than 1.0 volume per centum, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(p) Within twelve months after the operative date of this title, and thereafter, all areas in all mines in which the pillars have been extracted or areas which have been abandoned for other reasons shall be effectively sealed or shall be effectively ventilated by bleeder entries, or by bleeder systems or an equivalent means. Such sealing or ventilation shall be approved by an authorized representative of the Secretary.

(q) Pillared areas ventilated by means of bleeder entries, or by bleeder systems or an equivalent means, shall have sufficient air coursed through the area so that the return split of air shall not contain more than 2.0 volume per centum of methane before entering another split of air.

(r) Where areas are being pillared on the operative date of this title without bleeder entries, or without bleeder systems or an equivalent means, pillar recovery may be completed in the area to the extent approved by an authorized representative of the Secretary if the edges of pillar lines adjacent to active working places are ventilated with

sufficient air to keep the air in open areas along the pillar line below 1.0 volume per centum of methane.

(s) Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subsection cannot be complied with on the operative date of this title.

(t) Immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for methane shall be made by a qualified person with means approved by the Secretary for detecting methane. If methane is found in amounts of more than 1.0 volume per centum, changes or adjustments shall be made at once in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(u) Each operator of a coal mine shall adopt a plan within a reasonable period after the operative date of this subsection to be established by the Secretary which shall provide that when any mine fan stops immediate action shall be taken by the operator or his agent (1) to withdraw all persons from the face workings, (2) to cut off the power in the mine in a timely manner, (3) to provide for restoration of power and resumption of work if ventilation is restored within a rea-

sonable period as set forth in the plan after the face workings and other working places where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of more than 1.0 volume per centum exists therein, and (4) to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative upon request.

(v) Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts to make the change and shall not be restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

(w) The mine foreman shall read and countersign promptly the daily reports of the preshift examiner and assistant mine foreman, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. Where such reports disclose hazardous

conditions, the mine foreman shall take prompt action to have such conditions corrected. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

(x) Each day, the mine foreman and each of his assistants shall enter plainly and sign with ink or indelible pencil in a book provided for that purpose a report of the condition of the mine or portion thereof under his supervision which report shall state clearly the location and nature of any hazardous condition observed by them or reported to them during the day and what action, if any, was taken to remedy such condition.

COMBUSTIBLE MATERIALS AND ROCK DUSTING

SEC. 305. (a) Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall not be present in excessive quantities in active underground working places or on electrical equipment therein.

(b) Where underground mining operations create an excessive amount of dust, water, or water with a wetting agent added to it, or other effective method shall be used to reduce such dust to safe limits.

(c) All areas of a mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock-dusted to within forty

feet of all faces, unless such areas are inaccessible or unsafe to enter or unless an authorized representative of the Secretary permits an exception. All crosscuts that are less than forty feet from a face shall be rock-dusted.

(d) Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all open workings and maintained in such quantity that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible content in the return air courses shall be not less than 80 per centum. Where methane is present in any ventilating current, the percent of incombustible content of such combined dusts shall be increased 1 per centum for each 0.1 per centum of methane.

(e) Subsections (b) through (d) of this section shall not apply to underground anthracite mines subject to this Act.

ELECTRICAL EQUIPMENT—GENERAL

SEC. 306. (a) The location and the electrical rating of all stationary electrical apparatus in connection with the mine electrical system, including permanent cables, switchgear, rectifying substations, transformers, permanent pumps and trolley wires and trolley feeders, and settings of all direct-current circuit breakers protecting underground trolley circuits, shall be shown on a mine map. Any changes made

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in a location, electrical rating, or setting shall be promptly shown on the map when the change is made.

(b) All power circuits and electrical equipment shall be deenergized before work is done on such circuits and equipment, except, when necessary, a person may repair energized trolley wires if he wears insulated shoes and lineman's gloves. No work shall be performed on high-voltage circuits or equipment except by or under the direct supervision of a competent electrician. Switches shall be locked out and suitable warning signs posted by the persons who are to do the work. Locks shall be removed only by the persons who installed them.

(c) Electrical equipment shall be frequently examined by a competent electrician to assure safe operating conditions. When a potentially dangerous condition is found on electrical equipment, such equipment shall be removed from service until such condition is corrected.

(d) All electrical conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that the rise in temperature resulting from normal operation will not damage the insulating materials.

(e) All joints or splices in conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All joints in insulated wire shall be reinsulated at least to the same degrees as the remainder of the wire.

(f) Cables shall enter metal frames of motors, splice boxes and electrical compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

(g) All power wires (except trailing cables), specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires, shall be supported on well-installed insulators and shall not contact combustible material, roof, or ribs.

(h) Power wires and cables installed in haulage slopes shall be insulated adequately and fully protected against mechanical injury. Power wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables.

(i) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads, except on locomotives operating regularly on grades exceeding 5 percent. Three-phase motors shall be equipped in such a manner that such motors shall not operate on single phase.

(j) In all main power circuits disconnecting switches shall be installed underground within five hundred feet of

the bottoms of shafts and boreholes through which main power circuits enter the underground portion of the mine and at all other places where main power circuits enter the underground portion of the mine.

(k) All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(l) One year after the operative date of this section—

(1) all electric face equipment used in a coal mine shall be permissible and shall be maintained in a permissible condition, except that the Secretary may permit, under such conditions as he may prescribe, nonpermissible or open-type electric face equipment in use in such mine on the operative date of this title, to continue in use for such period as he deems appropriate after taking into consideration the availability of replacement equipment;

(2) only permissible junction or distribution boxes shall be used for making multiple power connections inby the last open crosscut or in any other place where dangerous quantities of methane may be present or may enter the air current, except that the Secretary may permit, under such conditions as he may prescribe, nonpermissible junction or distribution boxes in use, on the operative date of this title, inby the last open crosscut

or in any other place where dangerous quantities of methane may be present or may enter the air current, to continue in use for such period as he deems appropriate, after taking into consideration the availability of permissible junction or distribution boxes and the time required to install such boxes;

(3) a copy of any permit granted under this subsection shall be mailed immediately to a duly designated representative of the employees of the mine to which it pertains, and to the public official or agency of the State charged with administering State laws relating to coal mine health and safety in such mine; and

(4) any coal mine which, prior to the operative date of this title, was classed gassy and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

(m) All power-connection points outby the last open crosscut shall be in intake air.

TRAILING CABLES

SEC. 307. (a) Trailing cables used underground shall meet the requirements established by the Secretary for flame-resistant cables.

(b) Short-circuit protection for trailing cables shall be

provided by an automatic circuit breaker of adequate current interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(c) When two or more trailing cables junction to the same distribution center, means shall be provided to eliminate the possibility of connecting a trailing cable to the wrong size breaker.

(d) No more than five temporary splices shall be made in any trailing cable. A temporary splice in a trailing cable within twenty-five feet of the machine shall be eliminated before the machine or cable is used on the next shift. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used.

(e) When permanent splices in trailing cables are made, they shall be—

(1) mechanically strong with adequate electrical conductivity and flexibility;

(2) effectively insulated and sealed so as to exclude moisture; and

(3) vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(f) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. Trailing cables shall be adequately protected to prevent damage by mobile machinery.

(g) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

GROUNDING

SEC. 308. (a) All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded. Metallic frames, casing, and other enclosures of electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded.

(b) The frames of all offtrack machines and the enclosures of related detached components shall be maintained at safe voltages by methods approved by an authorized representative of the Secretary.

(c) The frames of all high-voltage switchgear, trans-

formers, and other high-voltage equipment shall be grounded to the high-voltage system ground.

(d) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them.

(e) When not in use, power circuits underground shall be deenergized on idle days and idle shifts.

UNDERGROUND HIGH-VOLTAGE DISTRIBUTION

SEC. 309. (a) High-voltage circuits entering the underground portion of the mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall be protected by relaying circuits against overcurrent and ground fault.

(b) High-voltage circuits extending underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit. At the point where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed outby the automatic breaker and such devices shall be equipped or designed in such a manner

that it can be determined by visual observation that the power is disconnected.

(c) The grounding resistor shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground by a voltage equal to the phase-to-phase voltage of the system.

(d) High-voltage systems installed underground after the operative date of this title shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken.

(e) Underground high-voltage cables purchased after the effective date of this Act shall be equipped with metallic shields around each power conductor. One or more ground conductors shall be provided having a cross-sectional area of not less than one-half the power conductor. There shall also be provided an insulated conductor not smaller than number 10 (AWG) for the ground continuity check circuit. Cables shall be adequate for the intended current and voltage. Splices made in the cable shall provide continuity of all components and shall be made in accordance with cable manufacturers' recommendations.

(f) If couplers are used they shall be of the three-phase type with a full metallic shell, and shall be adequate for the voltage and current expected. All exposed metal on the couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(g) Single-phase loads such as transformer primaries shall be connected phase to phase.

(h) Each ungrounded, exposed power conductor that leads underground shall be equipped with lightning arresters of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arresters shall be connected to a low-resistance grounding medium on the surface which shall be separated from equipment grounds by a distance of not less than twenty-five feet.

(i) All underground high-voltage transmission cables shall be installed only in regularly inspected airways and haulageways, and shall be covered, buried, or placed so as to afford protection against damage by derailed trips, trolley equipment, roof falls, and blasts, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insu-

lated, or placed to prevent contact with trolley and other low-voltage circuits.

(j) Disconnecting devices shall be installed at the beginning of branch lines in high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(k) Circuit breakers and disconnecting switches underground shall be marked for identification.

(l) Terminations and splices of high-voltage cable shall be made in accordance with manufacturer's specifications.

(m) Frames, supporting structures, and enclosures of substation or switching station apparatus shall be effectively grounded.

(n) Power centers and portable transformers shall be deenergized before they are moved from one location to another. High-voltage cables, other than trailing cables, shall not be moved or handled while energized.

UNDERGROUND LOW-VOLTAGE CIRCUITS

SEC. 310. Low-voltage power circuits serving three-phase alternating-current electric equipment shall include a neutral circuit whether direct or derived, which shall be used as part of a grounding system that will maintain the frame of the equipment and the frames of all accessory equipment at ground potential. Three-phase alternating-

current electric equipment, including its controls and portable or trailing cable, shall be deenergized automatically upon the occurrence of an incipient ground fault. The ground-fault-tripping current shall be limited by a grounding resistor to that current necessary for dependable relaying. The maximum ground-fault-tripping current shall not exceed 25 amperes.

TROLLEY AND TROLLEY FEEDER WIRES

SEC. 311. (a) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than one thousand five hundred feet and near the beginning of all branch lines.

(b) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(c) Trolley and trolley feeder wires, high-voltage cables and transformers shall not be located beyond the last open crosscut and shall be kept at least one hundred and fifty feet from pillar workings.

FIRE PROTECTION

SEC. 312. (a) Each coal mine shall be provided with suitable firefighting equipment adequate for the size of the mine.

(b) Underground storage places for lubricating oil and grease in excess of two days' supply shall be of fireproof construction.

(c) Underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return.

(d) Welding, cutting, or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a certified person when such work is done in—

(1) the region between the face and a point twenty feet outby the last open crosscut in first mining;

(2) the region between the pillar line and a point one hundred and fifty feet outby; or

(3) the region between the face and gob in longwall mining.

Such person shall make a diligent search for fire during and after such operations and shall immediately before and during such operations, at a minimum of hourly intervals, test for methane with means approved by the Secretary for detecting methane. Welding, cutting, or soldering shall not be conducted in air that contains more than 1.0 volume per centum of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(e) Beginning one year after the operative date of this

title, unless fire suppression devices meeting specifications prescribed by the Secretary are used on underground equipment, only fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic system of such equipment.

(f) Deluge-type water sprays, automatically actuated by rise in temperature, or other effective means of controlling fire shall be installed at main and secondary belt-conveyor drives. Such sprays shall be supplied with a sufficient quantity of water to control fires.

(g) Underground belt conveyors shall be equipped with slippage and sequence switches.

(h) After every blasting operation performed on shift, an examination shall be made to determine whether fires have been started.

BLASTING AND EXPLOSIVES

SEC. 313. (a) Black blasting powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground, except that in underground anthracite mines mudcaps or other open, unconfined shots may be fired, if restricted to battery starting when no methane or fire hazard is present, and if it is otherwise impracticable to start the battery, and in such anthracite mines, open, unconfined "shake" shots in working places and other places in pitching veins may be fired,

when no methane or fire hazard is present, if the taking down of loose hanging coal by other means is too hazardous for men working in such places. Except as provided in the next to the last sentence of this subsection, only permissible explosives, electric detonators of proper strength and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. Permissible explosives shall be fired only with permissible shot firing units. Only incombustible materials shall be used for stemming boreholes. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. This section shall not prohibit the use of compressed air blasting.

(b) Explosives or detonators carried anywhere underground by any person shall be in containers constructed of nonconductive material, maintained in good condition, and kept closed.

(c) Explosives or detonators may be transported (1) in special closed containers in cars moved by means of a locomotive, rope, or belt, or (2) in shuttle cars, or (3) in equipment designed especially to transport such explosives or detonators.

(d) When supplies of explosives and detonators for use

in one or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and in a reasonably dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

(e) Explosives and detonators stored near the working faces shall be kept in separate closed containers, which shall be located out of the line of blast and not less than fifty feet from the face and fifteen feet from any pipeline, powerline, rail, or conveyor; except that if kept in niches in the rib, the distance from any pipeline, powerline, rail, or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

(f) Explosives and detonators shall be kept in separate containers until immediately before use at the working faces.

HOISTING AND MANTRIPS

SEC. 314. (a) Every hoist used to transport persons at an underground coal mine shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist used to transport persons shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device used for transporting persons, and with hoisting cable ade-

quately strong to sustain the fully loaded platform, cage, or other device for transporting persons, and have a proper margin of safety. Cages, platforms, or other devices which are used to transport persons in vertical shafts shall be equipped with safety catches that act quickly and effectively in an emergency, and the safety catches shall be tested at least once every two months. Hoisting equipment, including automatic elevators, that is used to transport persons shall be examined daily. Where persons are regularly transported into or out of a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages, platforms, or elevators.

(b) Safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

(c) Hoists shall have rated capacities consistent with the loads handled and the recommended safety factors of the ropes used. An accurate and reliable indicator of the position of the cage, platform, skip, bucket, or cars, in the shaft shall be provided.

(d) There shall be at least two effective approved methods of signaling between each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

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MAPS

SEC. 315. (a) The operator of an active working underground coal mine shall have in a location chosen to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on such scale and containing such information as the Secretary by regulation may prescribe. Such map shall show the active workings, all worked out and abandoned areas, excluding those areas which have been worked out or abandoned before the operative date of this subsection which cannot be entered safely and on which no information is available, contour elevations, elevations of all main and cross or side entries, dip of the coalbed, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and oil and gas wells in such mine. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. As the Secretary may by regulation require, such map shall be kept up to date by temporary notations, and such map shall be revised and supplemented at intervals on the basis of a survey made or certified by such engineer or surveyor.

(b) The coal mine map and any revision and supplement thereof shall be available for inspection by the Secretary or his authorized representative, by coal mine inspectors of the State in which the mine is located, and by any miner

and their authorized representatives and by operators of adjacent coal mines. The operator shall furnish to the Secretary or his authorized representative, upon request, one or more copies of such map and any revision and supplement thereof. Any such map or revision or supplement thereof shall be confidential and its contents shall not be divulged to any person other than those mentioned in this subsection without the consent of the operator of the mine covered by such map, except that such map or revision or supplement thereof may be used by the Secretary to carry out any provision of this Act and in any proceeding, investigation, or hearing conducted pursuant to this Act.

(c) Whenever an operator permanently closes such mine, or temporarily closes such mine for a period of more than ninety days, he shall promptly notify the Secretary of such closure. Within sixty days of the permanent closure of the mine, or, when the mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the Secretary a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified as true and correct by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

ESCAPEWAYS

SEC. 316. At least two separate and distinct travelable passageways to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each mine working section to the surface, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground portion of the mine of surface fires, fumes, smoke, and floodwater.

MISCELLANEOUS

SEC. 317. (a) Each operator of a coal mine shall comply with State laws and regulations in establishing and maintaining barriers around oil and gas wells penetrating coalbeds or underground workings of underground coal mines.

(b) Whenever any working place approaches within fifty feet of abandoned workings in the mine as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any other abandoned workings of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, or a borehole or boreholes shall be drilled to a distance of at least twenty feet in advance of the face of such working place and shall be continually maintained to a distance of at least ten feet in advance of the advancing solid face. When

there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing face will not accidentally hole through into abandoned workings or adjacent mines. Boreholes shall also be drilled not more than eight feet apart in the rib of such working place to a distance of at least twenty feet and at an angle of forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of persons working in such place.

(c) Persons underground shall use only permissible electric lamps for portable illumination.

(d) After the operative date of this section, all structures erected on the surface within one hundred feet of any mine opening shall be of reasonably fireproof construction. Unless existing structures located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from surface sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept and shall be available for inspection by interested persons.

(e) Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations in or on surface coal-handling facilities. Where

coal is dumped at or near air-intake openings, provisions shall be made to prevent the dust from entering the mine in such quantities as to create a dangerous condition.

DEFINITIONS

SEC. 318. For the purpose of this title and title II of this Act, the term—

(a) "certified person" means a person certified by the State in which the coal mine is located to perform duties prescribed by such titles, except that, in a State where no program of certification is provided, such certification shall be by the Secretary;

(b) "qualified person" means an individual deemed qualified by the Secretary to make tests or measurements, as appropriate, required by such titles;

(c) "permissible" as applied to—

(1) equipment used in the operation of a coal mine, means equipment to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire, or to assure that such equipment will afford adequate protection against specific health hazards;

(2) explosives or blasting devices used in such mines, means explosives or blasting devices which meet specifications which are prescribed by the Secretary; and

(3) the manner of use of equipment or explosives and blasting devices, means the manner of use prescribed by the Secretary.

(d) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, talc, adobe, or other inert material, preferably light colored, (1) 100 per centum of which will pass through a sieve having 200 meshes per linear inch; (2) the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and (3) which does not contain more than 5 per centum of combustible matter or more than a total of 5 per centum of free and combined silica (SiO_2);

(e) "coal mine" includes areas of adjoining mines connected underground;

(f) "anthracite" means coals with a volatile ratio equal to .12 or less; and

(g) "high-voltage" means more than 650 volts.

TITLE IV—ADMINISTRATION

RESEARCH

SEC. 401. The Secretary, in coordination with the Secretary of Health, Education, and Welfare, shall conduct such

studies, research, experiments, and demonstrations as may be appropriate—

(a) to improve working conditions and practices, prevent accidents, and control the causes of occupational diseases originating in the coal mining industry;

(b) after an accident, to recover persons in a coal mine and to recover the mine;

(c) to develop new or improved means and methods of communication from the surface to the underground portion of the mine;

(d) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine; and

(e) for such other purposes as he deems necessary to carry out the purposes of this Act.

TRAINING AND EDUCATION

SEC. 402. The Secretary shall expand programs for the education and training of coal mine operators, agents thereof, and miners in—

(a) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines, and

(b) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for accurately detecting gases.

ASSISTANCE TO STATES

SEC. 403. (a) The Secretary, in coordination with the Secretary of Labor and the Secretary of Health, Education, and Welfare, is authorized to make grants to any State in which coal mining takes place—

(1) to conduct research and planning studies and to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation for pneumoconiosis and injuries in coal mine employment; and

(2) to assist the States in planning and implementing other programs for the advancement of health and safety in coal mines.

(b) Grants under this section shall not extend beyond a period of five years following the effective date of this Act.

(c) Federal grants under this section shall be made to States which have a plan or plans approved by the Secretary.

(d) The Secretary shall approve any plan which—

(1) provides that reports will be made to the Secretary, in such form and containing such information, as may reasonably be necessary to enable him to review the effectiveness of the program or programs involved, and that records will be kept and afford such access

thereto as he finds necessary or appropriate to assure the correctness and verification of such reports;

(2) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State;

(3) contains assurances that the State will not in any way diminish existing State programs or benefits with respect to pneumoconiosis and related conditions; and

(4) meets any additional conditions which the Secretary may prescribe by rule in furtherance of the provisions of this section.

(e) The Secretary shall not finally disapprove any State plan, or modification thereof, without affording the State reasonable notice and opportunity for a hearing.

(f) The amount granted any State for a fiscal year under this section may not exceed 80 per centum of the amount expended by such State in such year for carrying out such programs, studies, and research and no one State may be granted an amount in a fiscal year which exceeds 15 per centum of the amount appropriated for grants to all States for that year.

(g) There is hereby authorized to be appropriated for

the fiscal year ending June 30, 1970, and each of the succeeding fiscal years, the sum of $1,000,000 to carry out the provisions of this section.

RELATED CONTRACTS AND GRANTS

SEC. 404. In carrying out the provisions of sections 401 and 402, the Secretary may enter into contracts with, and make grants to, public and private agencies and organizations and individuals.

INSPECTORS; QUALIFICATIONS; TRAINING

SEC. 405. The Secretary may, subject to the civil service laws, appoint such employees as he deems requisite for the administration of this Act and prescribe their duties. Persons appointed as authorized representatives of the Secretary shall be qualified by practical experience in the mining of coal or by experience as a practical mining engineer and by education. Such persons shall be adequately trained by the Secretary. The Secretary shall seek to develop programs with educational institutions and operators designed to enable persons to qualify for positions in the administration of this Act. In selecting persons and training and retraining persons to carry out the provisions of this Act, the Secretary shall work with appropriate educational institutions and operators in developing adequate programs for the training of persons, particularly inspectors. Where appropriate, the Secretary shall cooperate with such institutions in carrying out the

provisions of this section by providing financial and technical assistance to such institutions.

EFFECT ON STATE LAWS

SEC. 406. (a) No State law in effect upon the effective date of this Act or which may become effective thereafter shall be superseded by any provision of this Act or order issued or standard promulgated thereunder, except insofar as such State law is in conflict with this Act or with any order issued or standard promulgated pursuant to this Act.

(b) The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal mines, than do the provisions of this Act or any order issued or standard promulgated thereunder shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provide for health and safety standards applicable to coal mines for which no provision is contained in this Act or any order issued or standard promulgated thereunder, shall not be held to be in conflict with this Act.

(c) Nothing in this Act shall be construed or held to supersede or in any manner affect the workmen's compensation laws of any State, or to enlarge or diminish or affect in

any other manner the common law or statutory rights, duties, or liabilities of employers and employees under State laws in respect of injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

ADMINISTRATIVE PROCEDURES

SEC. 407. The provisions of sections 551–559 and sections 701–706 of title 5 of the United States Code, shall not apply to the making of any order or decision pursuant to this Act, or to any proceeding for the review thereof.

REGULATIONS

SEC. 408. The Secretary is authorized to issue such administrative regulations as he deems appropriate to carry out any provision of this Act.

OPERATIVE DATE AND REPEAL

SEC. 409. The provisions of titles I through III of this Act shall become operative one hundred and twenty days after enactment. The provisions of the Federal Coal Mine Safety Act, as amended, are repealed on the operative date of those titles, except that such provisions shall continue to apply to any order, notice, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, or finding. All other provisions of this Act shall be effective on the date of enactment of this Act.

SEPARABILITY

SEC. 410. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held

invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORTS

SEC. 411. Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress an annual report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal mine health and safety, and any other relevant information, including any recommendations he deems appropriate.

91ST CONGRESS
1ST SESSION

S. 1907

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1969

Mr. COOK (by request) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To improve the health and safety conditions of persons working in the coal mining industry of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Coal Mine Health and Safety Act of 1969."

FINDINGS

SEC. 2. Congress declares that—

(a) the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resources—the miner;

(b) the occupationally caused death or injury of a

miner causes grief and suffering, and is a serious impediment to the future growth of this industry;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm, and in order to control the causes of occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in such mines cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(f) the disruption of production and the loss of income to operators and miners as a result of a coal mine accident or occupationally caused disease unduly impedes and burdens commerce; and

(g) it is the purpose of this Act to provide for the establishment of mandatory health and safety standards and to require the operators and the miners comply with such standards in carrying out their responsibilities.

MINES SUBJECT TO ACT

SEC. 3. Each coal mine the products of which enter commerce, or the operations of which affect commerce, shall be

subject to this Act, and each operator of such mine and every person working in such mine shall comply with the provisions of this Act and the applicable regulations of the Secretary and/or Director promulgated under this Act.

TITLE I—GENERAL

DEFINITIONS

SEC. 101. For the purposes of this Act—

(a) The term "Secretary" means the Secretary of the Interior or his delegate.

(b) The term "Board" means the Federal Coal Mine Health and Safety Board of Review created by section 105.

(c) The term "Director" means the Director of the Bureau of Mines.

(d) The term "Bureau" means the Bureau of Mines.

(e) The terms "certified persons", and "certified official", when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the laws of the State in which a mine is located to perform such duty. In a State the laws of which do not provide for such qualifications, the term means a person deemed by the operator of such mine to be qualified to perform such duty: *Provided, however,* That the Director may by regulation establish minimum qualifications for

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"certified persons" and "certified officials" applicable where the State does not establish such qualifications.

(f) The term "commerce" means trade, traffic, commerce, transportation, or communications between any State, territory, possession, or the District of Columbia and any other State, territory, or possession of the United States; or between any State, territory, possession, or the District of Columbia and any foreign country; or wholly within any territory or possession; or through any other State, territory, possession, the District of Columbia, or any foreign country.

(g) The term "duly authorized representative of the Bureau" means a person appointed under section 109 of title I of the Coal Mine Safety Act of 1952, as amended, or under section 115 of this Act, and authorized in writing by the Director to perform the duties of a duly authorized representative of the Bureau as provided in sections 102, 103, and 106 of this title, and who meets the requirements set forth in section 115 (b).

(h) The term "authorized State official" means the director or chief executive of any State official mine inspection agency or safety agency which has submitted a State plan, as provided for in section 102 (b) of this title and which has been approved by the Director.

(i) The term "authorized State agency" shall mean any official mine safety inspection agency or safety agency which

has submitted a State plan, as provided for in section 102 (b) of this title and which has been approved by the Director.

(j) The terms "inspector" and "mine inspector" mean a duly authorized representative assigned by the Director or a public employee assigned by an authorized State official to make mine inspections as required by section 102 (a) of title I.

(k) The term "mine" means an area of land including everything annexed to it by nature and all structures, machinery, tools, equipment, and other property, real or personal, placed upon, under or above its surface by man, used in the work of extracting bituminous coal, lignite or anthracite, from its natural deposits in the earth in such area and in the work of processing the coal so extracted. The term "work of processing the coal" as used in this paragraph means the sizing, cleaning, drying, mixing, and crushing of bituminous coal, lignite, or anthracite, and such other work of processing such coal as is usually done by the operator, and does not mean crushing, coking, or distillation of such coal or such other work of processing such coal as is usually done by the operator, by a consumer or others in connection with the utilization of such coal.

(l) The term "operator" means the person, partnership, association, or corporation operating a mine and owning the right to do so.

(m) The term "permissible", as applied to equipment used in the operation of a mine, means equipment to which an approval plate, label, or other device is attached as authorized by the Director under section 212 (a), and which meets specifications which (A) are prescribed by the Director for the construction and maintenance of such equipment; and (B) are designed to assure that such equipment will not cause a mine explosion or mine fire.

(n) The term "premises", when used in referring to the premises of a mine, means the land within the mine's area of land.

(o) The term "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, talc, adobe, or other inert material, preferably light colored, (A) 100 per centum of which will pass through a sieve having twenty meshes per linear inch and 70 per centum or more of which will pass through a sieve having two hundred meshes per linear inch; (B) the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and (C) which does not contain more than 5 per centum of combustible matter, nor more than a total of 5 per centum of free and combined silica (SiO_2).

(p) The term "accident" includes a mine explosion,

mine ignition, mine fire, or mine inundation; or injury to, or death of, any person.

(q) The term "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated, and shall refer to any violations of the following sections of this Act:

Roof Support: section 304 (a) (1); section 304 (b) (2).

Ventilation: section 305 (c) (1) and (2); section 305 (e) (1); section 305 (j) (4).

Rock Dusting: section 306.

Mining Fire Hazards: section 307 (i) (1)-(4); section 307 (d) (1); section 307 (j) (1), (4)-(5); section 309 (f); section 309 (k).

(r) The term "MRE instrument" means the Gravimetric Dust Sampler with four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(s) The term "District Manager" means the District Manager, Health and Safety of the Bureau.

INSPECTIONS

SEC. 102. (a) For the purpose of determining whether a danger described in section 103 (a) exists in any mine, the

products of which regularly enter commerce or the operations of which substantially affect commerce, or whether any provision of title II or title III is being violated in any such mine, or whether any such mine is a gassy mine as prescribed in section 103 (4), the Director shall cause an inspection of each such mine to be made by a duly authorized representative of the Bureau or authorized State agency at least quarter-annually. The Director shall also make, or cause duly authorized representatives of the Bureau or authorized State agency to make, such special inspections of such mines as may be required by section 103 (c) and (d) and section 106, and such other inspections of such mines as he deems necessary for the proper administration of this Act.

(b) (1) In order to promote sound and effective coordination in Federal and State activities within the field covered by this title, the Director shall cooperate with the official mine inspection or safety agencies of the several States.

(2) Any State desiring to cooperate in making the inspections required under this title may submit, through its official mine inspection or safety agency, a State plan for carrying out the purposes of this subsection. Such State plan shall (A) designate that State mine inspection or safety agency as the sole agency responsible for administering the plan throughout the State and contain satisfactory evidence that such agency will have the authority to carry out the

plan; (B) give assurances that such agency has or will employ an adequate and competent staff of inspectors qualified under the laws of such State to make mine inspections within such State; (C) give assurances that, upon request of the Director or upon request of an operator under section 103 (g) (1), the agency will assign inspectors employed by it to participate in inspections to be made in such State under this title; and (D) provide that the agency will make such reports to the Director, in such form and containing such information, as the Director may from time to time require.

(3) The Director shall approve any State plan or any modification thereof which complies with the provisions of paragraph (2) of this subsection. He shall not finally disapprove of any State plan or modification thereof without first affording the State agency reasonable notice and opportunity for hearing.

(4) Whenever the Director, after reasonable notice and opportunity for hearing to the State agency, finds that in the administration of the State plan there is (A) a failure to comply substantially with any provision of the State plan; or (B) a failure to afford reasonable cooperation in administering the provisions of this title, the Director shall notify such State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect.

(5) No inspection of a mine shall be made by a representative of the Bureau under this Act in any State in which a State plan is in effect unless a State inspector participates in such inspection in accordance with such plan, except where, in the Director's judgment, an inspection is urgently needed to determine whether a danger described in section 103 (a) exists in such mine, and participation by a State inspector would unreasonably delay such inspection.

(c) The Director, any duly authorized representative of the Bureau, any State inspector assigned in accordance with a State plan, and any independent inspector appointed under section 103 (g) (3) shall be entitled to admission to any mine the products of which regularly enter commerce or the operations of which substantially affect commerce, for the purpose of making any inspection authorized under this title.

(d) During an inspection, the inspector shall inspect the surface plant, every working place in the mine, all active haulageways and travelways, entrances to abandoned workings, and accessible old workings, at least one entry of each intake and return airway in its entirety escapeways and other places where men work or travel or where dangerous conditions may exist, electric installations and equipment, haulage facilities, first aid equipment, ventilation facilities, communication installations, roof and rib conditions, roof sup-

port practices, blasting practices, haulage practices and equipment, and any other condition, practice, or equipment pertaining to the health and safety of the employees. The quantity of air passing through the last crosscut between the intake and return in any set of entries shall be not less than six thousand cubic feet of air per minute and shall be as much more as is necessary to direct and render harmless and carry away flammable and harmful gasses: *Provided, however,* That the quantity of air reaching the last crosscut in pillar sections may be less than six thousand cubic feet of air per minute, if six thousand cubic feet of air per minute is being delivered to the intake of the pillar line. He shall make tests for gas and oxygen deficiency in each place which he is required to inspect in the mine. In mines operating more than one shift in a twenty-four-hour period, the inspector shall devote sufficient time on the second and third shifts to determine conditions and practices related to the health and safety of the employees.

(e) Each inspector shall prepare a certificate of inspection showing the date of inspection, the condition in which the mine is found, the extent to which the mining laws are being violated, the progress made in the improvement of the mine as such progress relates to the health and safety of the employees, the number of accidents and injuries occurring in and about the mine since the last previous inspec-

tion, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper. Where any violations of this title exist, the report shall show the specific section or sections violated and recommendations made or action taken to eliminate such violations.

(f) The mine inspector shall deliver one copy of the certificate of inspection to the owner, superintendent, or mine foreman and one copy shall be posted at a prominent place on the premises where it can be read conveniently by the employees.

(g) The mine inspector shall report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident resulting in loss of life, to his superior.

(h) The mine inspector shall proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to the director or authorized State official as soon as practicable. He shall have the power to compel the attendance of witnesses, and to administer

oaths or affirmations; and the cost of such investigation shall be paid by the Bureau or authorized State agency conducting the inspection.

(i) The mine inspector shall take charge of the mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall supervise the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause.

FINDINGS AND ORDERS

SEC. 103. (a) (1) If a duly authorized representative of the Bureau or State inspector, upon making an inspection of a mine as authorized in section 102, finds imminent danger that a mine explosion, mine fire, mine inundation, or man-trip or man-hoist accident will occur in such mine immediately or before the imminent danger can be eliminated, he shall also find the extent of the area of such mine throughout which such danger exists. Thereupon he shall immediately make an order requiring the operator of such mine to cause all persons, excepting persons referred to in paragraph (2) of this subsection, to be withdrawn from, and to be debarred from, entering such area. Such findings and order shall contain a detailed description of the conditions which such representative finds cause and constitute

such danger, and a description of the area of such mine throughout which persons must be withdrawn and debarred.

(2) No order issued under paragraph (1) of this subsection shall require any of the following persons to be withdrawn from, or to be debarred from entering, the area described in the order: (A) any person whose presence in such area is necessary, in the judgment of the operator of the mine, to eliminate the danger described in the order; (B) any public official whose official duties require him to enter such area; or (C) any legal technical consultant, or any representative of the employees of the mine, who is a certified person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(b) If such representative of the Bureau finds that any provision of title II or title III of this Act is being violated and that the conditions created by such violation do not cause imminent danger that a mine explosion, mine fire, mine inundation, or man-trip or man-hoist accident will occur in such mine immediately, or before the imminent danger can be eliminated, and he shall find what would be a reasonable period of time within which such violation should be totally abated. Such findings shall contain the provisions

of title II and/or title III which he finds are being violated and a detailed description of the conditions which cause and constitute such violation.

(c) (1) The period of time so found by such representative to be a reasonable period of time may be extended by a duly authorized representative of the Bureau from time to time upon the making of a special inspection to ascertain whether or not such violation has been totally abated. The District Manager, Health and Safety, of the Bureau, shall promptly cause a special inspection to be made: (A) upon the expiration of such a period of time as originally fixed; (B) upon the expiration of such a period of time as extended; and (C) whenever an operator of a mine, prior to the expiration of any such period of time, requests him to cause such a special inspection to be made at such mine. Upon making such a special inspection, such representative of the Bureau shall find whether or not such violation has been totally abated. If he finds that such violation has not been totally abated, he shall find whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If he finds that such period of time should be extended, he shall find what a reasonable extension would be. If he finds that such violation has not been totally abated, and if such period of time as originally fixed, or as

so fixed and extended, has then expired, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area of such mine which is affected by such violation. Thereupon, he shall promptly make an order requiring the operator of such mine to cause all persons in such area, excepting persons referred to in paragraph (2) of this subsection, to be withdrawn from, and to be debarred from entering, such area. Such finding and order shall contain the provisions of title II and/or title III which are being violated, a detailed description of the conditions which such representative finds cause and constitute such violation, and a description of the area of such mine throughout which persons must be withdrawn and debarred.

(2) No order issued under paragraph (1) of this subsection shall require any of the following persons to be withdrawn from, or to be debarred from entering, the area described in the order: (A) any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order; (B) any public official whose official duties require him to enter such area; or (C) any legal or technical consultant or any representative of the employees of the mine, who is a certified person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the

mine, for the proper investigation of the conditions described in the order.

(d) (1) If a duly authorized representative of the Bureau, upon making an inspection of a mine as authorized in section 102, finds that any provision of title II and/or title III are being violated, and if he also finds that, while the conditions created by such violation do not cause imminent danger that a mine explosion, mine fire, mine inundation, or man-trip or man-hoist accident will occur in such mine immediately or before the imminent danger can be eliminated, such violation is of such nature as could significantly and substantially contribute to the cause or effect of a mine explosion, mine fire, mine inundation, or man-trip or man-hoist accident, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with the provisions of title III, he shall include such finding in the notice given to the operator under subsection (b) of this section. Within ninety days of the time such notice was given to such operator, the Bureau shall cause such mine to be reinspected to determine if any similar such violation exists in such mine. Such reinspection shall be in addition to any special inspection required under section 103 or section 106. If, during any special inspection relating to such violation or during such reinspection, a representative

of the Bureau finds such similar violation does exist, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with the provisions of title II and title III, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in paragraph (3) of this subsection, to be withdrawn from, and to be debarred from entering, such area. Such finding and order shall state the provision or provisions of title II and/or title III which have been violated and shall contain a detailed description of the conditions which such representative finds cause and constitute such violation, and a description of the area from which persons must be withdrawn and debarred. The representative of the Bureau shall promptly thereafter advise the Director in writing of his findings and his action.

(2) If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, thereafter a withdrawal order shall promptly be issued by a duly authorized representative of the Bureau who finds upon any following inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) of this subsection until such time as an inspection of such mine discloses no similar violations. Following an inspection of such

mine which discloses no similar violations, the provisions of paragraph (1) of this subsection shall again be applicable to that mine.

(3) No order issued under paragraphs (1) or (2) of this subsection shall require any of the following persons to be withdrawn from, or to be debarred from entering, the area described in the order: (A) any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order; (B) any public official whose official duties require him to enter such area; or (C) any legal or technical consultant or any representative of the employees of the mine, who is a certified person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Except as provided in subsection (g) of this section, an order issued under subsection (a), (c), or (d) of this section may be annulled, canceled, or revised by the duly authorized representative of the Bureau who issued such order or any other duly authorized representative of the Bureau.

(f) If a duly authorized representative of the Bureau, upon making an inspection of a mine, as authorized in section

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102, finds that methane has been ignited in such mine or finds methane by use of a permissible flame safety lamp or by air analysis in an amount of 0.25 per centum or more in any open working of such mine when tested at a point not less than twelve inches from the roof, face, or rib, he shall make an order requiring the operator of such mine to comply with the provisions of title III which pertain to gassy mines, in the operation of such mine.

(g) (1) If an order is made pursuant to subsection (a) of this section, and a State inspector did not participate in the inspection on which such order is based, the duly authorized representative of the Bureau who issued the order shall notify the State mine inspection or safety agency immediately, but not later than twenty-four hours after the issuance of such order, that such order has been issued. Following such order the operator of the mine may immediately request the State mine inspection or safety agency to assign a State inspector to inspect the mine. The State agency shall then promptly assign a State inspector to inspect the mine affected by such order and file an inspection report with the Bureau and the State agency. The order of the duly authorized representative of the Bureau shall remain in effect, but shall immediately be subject to review as provided in this title.

(2) No order shall be made pursuant to subsection

(c) or (d) of this section with respect to a mine in a State in which a State plan approved under section 102(b) is in effect unless a State inspector participated in the inspection on which such order is based and concurs in such order, or an independent inspector appointed under paragraph (3) of this subsection concurs in such order. If the State inspector does not concur in such order, the operator of the mine, the duly authorized representative of the Bureau who proposes to make such order, or the State inspector may apply, within twenty-four hours after the completion of the inspection involved, for the appointment of an independent inspector under paragraph (3). Within five days after the date of his appointment, the independent inspector shall inspect the mine. The representative of the Bureau and the State inspector shall be given the opportunity to accompany the independent inspector during such inspection. If, after such inspection is completed, either the independent inspector or the State inspector concurs in the order, it shall be issued.

(3) Within five days after the date of receipt of an application under paragraph (2) of this subsection, the chief judge of the United States district court for the district in which the mine involved is located (or in his absence, the clerk of such court) shall appoint a graduate engineer with experience in the coal mining industry to serve as an independent inspector under this subsection. Each independent

inspector so appointed shall be compensated at the rate of $50 for each day of actual service (including each day he is traveling on official business), and shall, notwithstanding the Travel Expense Act of 1949, be fully reimbursed for traveling, subsistence, and related expenses.

(4) An order made pursuant to subsection (a), (c), or (d) of this section may be revoked, annulled, or extended by the mine inspector who issued the order at any time.

(h) Notice of each finding and order made under this section shall promptly be given to the operator of the mine to which it pertains by the person making such finding or order.

NOTICES

SEC. 104. (a) All findings and orders made pursuant to section 103 or section 106, and all notices required to be given of the making of such findings and orders, shall be in writing. All such findings and orders shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice. All such notices shall contain a copy of the findings and orders referred to therein.

(b) Each operator of a mine shall maintain an office on or near the premises of such mine, and shall maintain thereon a conspicuous sign designating it as the office of

such mine. Each operator of a mine shall maintain a bulletin board at such office or at some conspicuous place near an entrance of such mine, in such manner that notices required by law to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. The operator shall maintain on such bulletin board a conspicuous sign designating it as the bulletin board of such mine. Notice of any finding or order required by section 103 or section 106 to be given to an operator shall be given by causing such notice, addressed to the operator of the mine to which it pertains, to be delivered to the office of such mine provided for in the first sentence of this subsection, and by causing a copy of such notice to be posted on the bulletin board of such mine provided for in the second sentence of this subsection. The requirement of the preceding sentence that a notice shall be "addressed to the operator of the mine to which it pertains," shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to "operator of ——— Mine," specifying the mine sufficiently to identify it, shall satisfy such requirement.

(c) The Director shall cause a copy of each such notice to be mailed immediately to a duly designated repre-

sentative of the employees of the mine to which it pertains, and to the public official or agency of the State or territory charged with administering State or territorial laws, if any, relating to mine safety in such mine.

(d) Notices and orders shall be confined to notice of violations of the mine safety provisions of the Act; extension of notices of the Federal Coal Mine Health and Safety Act and closure orders.

THE FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF REVIEW

SEC. 105. (a) The Federal Coal Mine Health and Safety Board of Review is hereby established as an agency of the United States, which shall consist of five members who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The terms of office of members of the Board shall be five years, except that (1) the members of the Federal Coal Mine Safety Board of Review established under the Federal Coal Mine Safety Act, as amended, who are in office as of the effective date of this Act, shall be members of the Board established by this Act, and their terms of office shall expire on the date originally fixed for their expiration, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed, shall be appointed only

for the remainder of such unexpired term. The members of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) Each member of the Board shall be compensated at a rate specified at the time of actual service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime, and shall be allowed travel expenses, including a per diem allowance in accordance with section 5703 (b) of title 5, United States Code, when engaged in the performance of services for the Board. The Board, at all times, shall consist of one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of operators of coal mines employing fourteen or fewer employees (hereinafter referred to as "small mine operators representative"), one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of operators of coal mines employing fifteen or more employees (hereinafter referred to as the "large mine operators representative"), one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers in mines employing fourteen or fewer employees (hereinafter referred to as the "small mine workers representative"), one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal

mine workers in mines employing fifteen or more employees (hereinafter referred to as "the large mine workers representative"), and one person who shall be chairman of the Board, who shall be a graduate engineer with experience in the coal mining industry or shall have had at least five years' experience as a practical mining engineer in the coal mining industry, and who shall not, within one year of his appointment as a member of the Board, have had a pecuniary interest in, or have been regularly employed or engaged in, the mining of coal, or have regularly represented either coal mine operators or coal mine workers, or have been an officer or employee of the Department of the Interior assigned to duty in the Bureau.

(d) The principal office of the Board shall be in the District of Columbia. Whenever the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, the Board may hold hearings or conduct other proceedings at any other place. At the request of an operator of a mine the Board shall hold hearings or conduct other proceedings at the county seat of the county in which the mine is located or at any place mutually agreed to by the chairman of the Board and the operator of the mine involved in the appeal or proceeding. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the secretary of the Board.

(e) The Board shall, without regard to the civil service laws, appoint and prescribe the duties of a secretary of the Board and such legal counsel as it deems necessary. Subject to the civil service laws, the Board shall appoint such other employees as it deems necessary in exercising its powers and duties. The compensation of all employees appointed by the Board shall be fixed in accordance with the Classification Act of 1949, as amended.

(f) Three members of the Board shall constitute a quorum, and official action can be taken only on the affirmative vote of at least three members, except that in any official action involving mines in which no more than fourteen individuals are regularly employed the participation of the small mine operators representative and small mine workers representative shall be required, and in any official action involving mines in which more than fourteen individuals are regularly employed the participation of the large mine operators representative and large mine workers representative shall be required; but a special panel composed of one or more members, upon order of the Board, shall conduct any hearing provided for section 107 of this title and submit the transcript of such hearing to the entire Board of its action thereon. Such transcript shall be made available to the parties prior to any final action of the Board. An opportunity to appear before the Board shall be afforded the parties prior

to any final action and the Board may afford the parties an opportunity to submit additional evidence as may be required for a full and true disclosure of the facts. Every official act of the Board shall be entered of record, and its hearings and records thereof shall be open to the public.

(g) The Board shall hear and determine applications filed pursuant to section 107 for annulment or revision of orders made pursuant to section 103 or section 106. The Board shall not make or cause to be made any inspection of a mine for the purpose of determining any pending application.

(h) The Board is authorized to make such rules as are necessary for the orderly transaction of its proceedings, which shall include requirement for adequate notice of hearings to all parties.

(i) Any member of the Board may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and administer oaths. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(j) The Board may order testimony to be taken by deposition in any proceeding pending before it, at any stage of such proceeding. Reasonable notice must first be given in writing by the party or his attorney proposing to take

such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as provided in subsection (i). Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(k) In case of contumacy by, or refusal to obey a subpena served upon any person under this section, the Federal district court for any district in which such person is found or resides or transacts business, upon application by the United States attorney, and after notice to such person and hearing, shall have jurisdiction to issue an order requiring such person to appear to give testimony before the Board or to appear and produce documents before the Board, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REVIEW BY DIRECTOR

SEC. 106. (a) An operator notified of an order made pursuant to section 103 (a), (c), or (d) may apply to the Director or, where authorized by the Director to the District

Manager, for annulment or revision of such order. Upon receipt of such application the Director or District Manager shall make a special inspection of the mine affected by such order, or cause three duly authorized representatives of the Bureau, other than the representative who made such order, to make such inspection of such mine and to report thereon to him. Upon making such special inspection himself, or upon receiving the report of such inspection made by such representatives, the Director or District Manager shall find whether or not danger throughout the area of such mine as set out in such order existed at the time of making such special inspection.

(1) In the case of an order made pursuant to section 103 (a), if the Director or District Manager finds that such danger did not then exist throughout such area of such mine, he shall make an order, consistent with his findings, revising, or annulling the order under review. If he finds that such danger did then exist throughout such area of such mine, he shall make an order denying such application.

(2) In the case of an order made pursuant to section 103 (c), upon making such special inspection himself, or upon receiving the report of such inspection made by such representatives, the Director or District Manager shall find whether or not there was a violation of title II or title III as described in such order, at the time of making of such

order. If he finds there was no such violation, he shall make an order annulling the order under review. If he finds there was such a violation, he shall also find whether or not such violation was totally abated at the time of the making of such special inspection. If he finds that such violation was totally abated at such time, he shall make an order annulling the order under review. If he finds that such violation was not totally abated at such time, he shall find whether or not the period of time within which such violation should be totally abated, fixed under section 103, should be extended. If he finds that such period of time should be extended, he shall find what a reasonable extension of such period of time would be. Thereupon he shall find the extent of the area of such mine which was affected by such violation at the time such special inspection was made, and then he shall make an order, consistent with his findings, revising the order under review. If he finds that such violation was not totally abated at the time of such special inspection, and that such period of time should not be extended, he shall find the extent of the area of such mine which was affected by such violation at the time such special inspection was made, and he shall then make an order, consistent with his findings, affirming or revising the order under review.

(3) In the case of an order made pursuant to section 103(d), upon making such special inspection himself, or

upon receiving the report of such inspection made by such representatives, the Director or District Manager shall find whether or not there was a violation of title II or title III as described in such order, at the time of the making of such order. If he finds there was no such violation he shall make an order annulling the order under review. If he finds there was such a violation he shall also find whether or not such violation was totally abated at the time of the making of such special inspection. If he finds that such violation was totally abated at such time, he shall make an order annulling the order under review. If he finds that such violation was not totally abated at such time, he shall find the extent of the area of such mine which was affected by such violation at the time such special inspection was made, and he shall then make an order, consistent with his findings, affirming or revising the order under review.

(b) An operator notified of an order made pursuant to section 103 (f) may apply, not later than twenty days after receipt of notice of such order, to the Director or District Manager for annulment of such order. Upon receipt of such application the Director or District Manager shall make or cause to be made such investigation as he deems necessary. Upon concluding his investigation or upon receiving the report of such investigation made at his direction, the Director or District Manager shall find whether or not methane has

been ignited in such mine, or whether or not methane was found in such mine in an amount of 0.25 per centum or more in any open working of such mine, when tested at a point not less than twelve inches from the roof, face, or rib, at the time of the making of such order. If he finds that methane has not been ignited in such mine and was not found in such mine as set out in such order, he shall make an order annulling the order under review. If he finds that methane has been ignited in such mine or was found in such mine as set out in the order under review, he shall make an order denying such application.

(c) The Director shall cause notice of each finding and order made under this section to be given promptly to the operator of the mine to which it pertains.

(d) Except as provided in section 103 (g) (5), at any time while an order made pursuant to section 103 of this section is in effect, or any time during the pendency of a proceeding under section 107 or section 108 seeking annulment or revision of such order, the operator of the mine affected by such order may apply to the Director for annulment or revision of such order. The Director shall thereupon proceed to act upon such application in the manner provided in subsections (a) or (d) of this section.

(e) In view of the urgent need for prompt decision of

matters submitted to the Director under this section, all actions which the Director or his representatives are required to take under this section shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

REVIEW BY BOARD

SEC. 107. (a) An operator notified of an order made pursuant to subsection (a), (c), (d), or (f) of section 103 may apply to the Federal Coal Mine Safety Board of Review for annulment of revision of such order without seeking its annulment or revision under section 106. An operator notified of an order made pursuant to section 106 may apply to the Board for annulment or revision of such order; *Provided, however,* That an operator applying to the Board for annulment of an order made pursuant to subsection (f) of section 103 or pursuant to subection (b) of section 106 shall file such application with the Board not later than twenty days after the receipt of notice of such order.

(b) The operator shall be designated as the applicant in such proceeding, and the application filed by him shall recite the order complained of and other facts sufficient to advise the Board of the nature of the proceeding. He may allege in such application: that danger as set out in such order does not exist at the time of the filing of such application; that violation of title II or title III, as set out in such

order, has not occurred; that such violation has been totally or partially abated; that the period of time within which such violation should be totally abated, as fixed in the findings upon which such order was based, was not reasonable; that the area of the mine described in such order as the area affected by the violation referred to in such order is not so affected at the time of the filing of such application; or that the mine described in such order is not a gassy mine. The Director shall be the respondent in such proceeding, and the applicant shall send a copy of such application by registered mail or by certified mail to the Director at Washington, District of Columbia.

(c) Immediately upon the filing of such an application, the Board shall fix the time for a prompt hearing thereof.

(d) Pending such hearing the applicant may file with the Board a written request that the Board grant such temporary relief from such order as the Board may deem just and proper. Such temporary relief may be granted by the Board only after a hearing by the Board at which both the applicant and the respondent were afforded an opportunity to be heard, and only if respondent was given ample notice of the filing of applicant's request and of the time and place of the hearing thereon as fixed by the Board.

(e) The Board shall not be bound by any previous findings of fact by the respondent or by any other repre-

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sentative of the Bureau. Evidence relating to the making of the order complained of and relating to the questions raised by the allegations of the pleadings or other questions pertinent in the proceeding may be offered by both parties to the proceeding. If the respondent claims that danger or a violation of title II or title III, as set out in such order, existed at the time of the filing of the application, or that methane has been ignited or found in such mine as set out in the order under review, the burden of proving the then existence of such danger or violation, or that methane has been ignited or found in such mine as set out in the order under review, shall be upon the respondent, and the respondent shall present his evidence first to prove the then existence of such danger or violation. Following presentation of respondent's evidence, the applicant may present his evidence, and thereupon respondent may present evidence to rebut the applicant's evidence.

(f) If the proceeding is one in which an operator seeks annulment of revision of an order made pursuant to section 103 (a), the Board, upon conclusion of the hearing, shall find whether or not danger throughout the area of such mine as set out in such order existed at the time of the filing of the operator's application. If the Board finds that such danger did not then exist throughout such area of such mine, the Board shall make an order, consistent with its findings, re-

vising or annulling the order under review. If the Board finds that such danger did then exist throughout such area of such mine, the Board shall make an order denying such application.

(g) If the proceeding is one in which an operator seeks annulment or revision of an order made pursuant to section 103 (c), the Board, upon conclusion of the hearing, shall find whether or not there was a violation of title II or title III as described in such order, at the time of the making of such order. If the Board finds there was no such violation, the Board shall make an order annulling the order under review. If the Board finds there was such a violation, the Board shall also find whether or not such violation was totally abated at the time of the filing of the operator's application. If the Board finds that such violation was totally unabated at such time, the Board shall make an order annulling the order under review. If the Board finds that such violation was not totally abated at such time, the Board shall find whether or not the period of time within which such violation should be totally abated, fixed under section 103 or section 106, should be extended. If the Board finds that such period of time should be extended, the Board shall also find what a reasonable extension of such period of time would be, and shall immediately also find the extent of the area of such mine which was affected by such violation at the time of the filing of such

application, and the Board shall then make an order, consistent with its findings, revising the order under view. If the Board finds that such violation was not totally abated at the time of the filing of the operator's application, and that such period of time should be be extended, the Board shall find the extent of the area of such mine which was affected by such violation at such time, and shall make an order, consistent with its findings, affirming or revising the order under review.

(h) If the proceeding is one in which an operator seeks annulment or revision of an order made pursuant to section 103 (d), the Board, upon conclusion of the hearing, shall find whether or not there was a violation of title II or title III as described in such order, at the time of the making of such order. If the Board finds there was no such violation, the Board shall make an order annulling the order under review. If the Board finds there was such a violation, the Board shall also find whether or not such violation was totally abated at the time of the filing of the operator's application. If the Board finds that such violation was totally abated at such time, the Board shall make an order annulling the order under review. If the Board finds that such violation was not totally abated at such time, the Board shall find the extent of the area of such mine which was affected by such violation at such time, and shall make an order,

consistent with its findings, affirming or revising the order under review.

(i) If the proceeding is one in which an operator seeks annulment of an order made pursuant to section 103 (f) or 106 (b), the Board, upon conclusion of the hearing, shall find whether or not methane has been ignited in such mine or was found in such mine in an amount of 0.25 per centum or more in any open workings of such mine when tested at a point not less than twelve inches from the roof, or rib, as set out in such order. If the Board finds that methane has not been ignited in such mine and was not found in such mine as set out in such order, the Board shall make an order annulling the order under review. If the Board finds that methane has been ignited in such mine or was found in such mine as set out in the order under review, the Board shall make an order denying such application.

(j) Each finding and order made by the Board shall be in writing. It shall show the date on which it is made, and shall bear the signatures of the members of the Board who concur therein. Upon making a finding and order, the Board shall cause a true copy thereof to be sent by registered mail or by certified mail to all parties or their attorneys of record. The Board shall cause each such finding and order to be entered on its official record, together with

any written opinion prepared by any members in support of, or dissenting from, any such finding or order.

In view of the urgent need for prompt decision of matters submitted to the Board under this section, all actions which the Board is required to take under this section shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

JUDICIAL REVIEW

SEC. 108. (a) Any final order issued by the Board under section 107 shall be subject to judicial review by the United States court of appeals for the circuit in which the mine affected is located, upon the filing in such court of a notice of appeal by the Director or the operator aggrieved by such final order within thirty days from the date of the making of such final order.

(b) The party making such appeal shall forthwith send a copy of such notice of appeal, by registered mail or by certified mail, to the other party and to the Board. Upon receipt of such copy of a notice of appeal the Board shall promptly certify and file in such court a complete transcript of the record upon which the order complained of was made. The costs of such transcript shall be paid by the party making the appeal.

(c) The court shall hear such appeal on the record

made before the Board, and shall permit argument, oral or written, or both, by both parties. The court shall permit such pleadings, in addition to the pleadings before the Board, as it deems to be required or as provided for in the Rules of Appellate Procedure governing appeals in such court.

(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the United States court of appeals may, after the due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of the final order of the Board or to grant such other relief as may be appropriate pending final determination of the appeal.

(e) The United States court of appeals may affirm, annul, or revise the final order of the Board, or it may remand the proceedings to the Board for such further action as it directs. The findings of the Board as to facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(f) The decision of a United States court of appeals on an appeal from the Board shall be final, subject only to review by the Supreme Court as provided in section 1254 of title 28 of the United States Code.

DUTY TO COMPLY

SEC. 109. Every operator of a mine, and every person who is on the premises of a mine for any reason whatsoever, shall comply with the provisions of title II and title III of this Act, except those provisions which impose no duty, obligation, or responsibility upon such operator or such person.

REPORTS OF EXPLOSIONS AND MINE FIRES

SEC. 110. (a) If an explosion or mine fire occurs in a mine, the operator shall notify the Director or authorized State official by the quickest available means. All facilities of the mine shall be made available for rescue and recovery operations.

(b) No work other than rescue and recovery work may be attempted or started until and unless it is authorized by the Director or authorized State official or his designated representatives.

(c) If an explosion occurs in a mine, the fan shall not be reversed except by authority of the officials in charge of rescue and recovery work, and then only after a study of the effect of reversing the fan on survivors who are still underground.

(d) The Director and authorized State officials shall make available all the facilities at his disposal in effecting

rescue and recovery work and shall act as consultants, or take personal charge, where the circumstances warrant.

(e) The orders of the official in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

(f) The Director or authorized State official in States having State plans shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any mine covered by this Act. All employees of the Bureau or authorized State agency shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Bureau and authorized State agency's plans shall be published annually and furnished to all operators of mines. Changes in the plan shall be published promptly when made and furnished to all operators of mines.

(g) Every owner, lessee, agent, manager, superintendent, or other person having control or supervision of any coal mine, the products of which regularly enter commerce or the operations of which substantially affect commerce, shall furnish to the Secretary, acting through the Bureau, or to any duly authorized representative of such Bureau, upon request, complete and correct information to the best of his knowledge concerning any or all accidents involving bodily injury or loss of life which occurred in such mine during the

six-month period immediately preceding the date on which the request is made, and the man-hours worked during the period.

ADDITIONAL DUTIES OF OPERATOR

SEC. 111. (a) The operator, or his agent, of every mine shall furnish the Director, authorized State officials, and mine inspectors proper facilities for entering such mine and making examinations or obtaining information, and shall furnish any data or information not of a confidential nature requested by such inspector. The operator, or his agent, shall, when ordered to do so by the Director, authorized State official, or mine inspectors, promptly clear the mine or section thereof of all persons.

(b) Each operator will report promptly to the Director and authorized State official the occurrence at any time of any accident involving serious personal injury or death to any person or persons, whether or not that person is an employee. The scene of the accident will not be disturbed pending an investigation, except to prevent suspension of use of a slope, entry, or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator will secure prior approval from the Director or authorized State official before any changes are made. The Director or authorized State official will go personally or dispatch one or

more mine inspectors to the scene of the accident or accidents, investigate causes, and issue such orders as may be needed to insure safety of other persons. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee designated by the employees of the mine will be notified, and as many as three employees designated as representatives of the employees may be present at the investigation in a consulting capacity. The Bureau or authorized State agency will render a complete report of circumstances and causes of each accident investigated, and make recommendations for the prevention of similar accidents. The Bureau or authorized State agency will furnish one copy of the report to the operator and one copy to the employee representative when he has been present at the investigation. The Director or authorized State official will maintain a complete file of all accident reports, and may give such further publicity as may be ordered by the Secretary in an effort to prevent mine accidents. Each employee shall promptly notify his supervisor of any injury received during the course of his employment.

(c) No operator, or his agent, of any mine worked by shaft, slope, or incline shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine, any but competent and sober engineers or drum

runners; no engineer in charge of such machinery shall allow any person, except such as may be designated for such purpose by the operator, or his agent, to interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his duties.

(d) It shall be the duty of every operator, or his agent, to keep on hand at or within convenient distance of each mine, at all times, a sufficient quantity of all materials and supplies required to preserve the safety of the employees, as ordered by the mine foreman and required by this Act. If for any reason, the superintendent cannot procure the necessary materials or supplies as aforesaid, he shall at once notify the mine foreman, whose duty it shall be to withdraw the men from the mine, or the portion thereof affected, until such material or supplies are received.

(e) The operator and superintendent shall cooperate with the mine foreman and other officials in the discharge of their duties as required by this Act, and shall direct that the mine foreman, and all other employees under his employment, comply with the law in all its provisions, especially when his attention is called, by the Director or authorized State official or his deputies, to any violation of the law.

(f) The operator or superintendent of every mine shall, at least ten days preceding, send to the Director or authorized State official notices of the following occurrences: (1) When a mine is about to be abandoned; (2) when the working of a mine is to be resumed after the abandonment, or a discontinuance for a period exceeding thirty days (said mine shall be inspected and meet the approval of the Director or authorized State official before operations begin); (3) when any change occurs in the name of a mine or in the name of the operation of a mine; and (4) the opening of a new mine.

The name of mine, location of mine, name of operator, and post office address must be given in all written notices.

(g) No person shall be placed in charge of a cutting, loading, drilling, continuous miner, or timbering machine in any mine who is not a competent person capable of determining the safety of the roof and ribs of the working places: *Provided, however,* That if such person be employed in gassy mines he shall also be capable of detecting the presence of explosive gas, and shall be compelled to undergo examination by the mine inspector to determine his fitness to detect explosive gas before being permitted to have charge of machines in such mines, unless the required test has been made by a certified boss or by other persons having passed such examination.

MAPS

SEC. 112. (a) The operator of an active, working, underground coal mine subject to this Act shall have in the mine office an accurate and up-to-date map of such mine drawn on a standard scale. Such map shall show, to the extent possible, the active workings and all worked-out and abandoned areas in such mine, excluding those areas which have been worked out or abandoned before the effective date of this paragraph, which cannot be entered safely and on which no information is otherwise available. Such map shall be made under the direction of a competent engineer or surveyor. Such map shall thereafter be maintained in the mine office. Such map shall be kept up to date by temporary notations, and shall be revised and supplemented semiannually under the direction of a competent engineer or surveyor.

(b) The coal mine map and any revision and supplement thereof shall be available for inspection by the Director or his authorized representatives, by coal mine inspectors of the State in which the mine is located, and by employees working in the mine or by their authorized representatives in the presence of the mine superintendent or mine foreman.

(c) Whenever an operator permanently closes such mine, or temporarily closes such mine for a period of more than ninety days, he shall promptly notify the duly author-

ized representative of the Bureau of such closure. Within sixty days of the permanent closure of the mine, or, when the mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the duly authorized representative of the Director a copy of the mine map revised and supplemented to the date of closure. Such copy of the mine map shall be certified as true and correct by a competent engineer or surveyor.

PENALTIES

SEC. 113. (a) Any operator of a mine, notified of an order made pursuant to section 103 or section 106, requiring him to cause persons to be withdrawn from, and to be debarred from entering, any area of such mine, who willfully fails to comply with such order, shall be fined not more than $2,000.

(b) Any agency of an operator of a mine, knowing of the making of an order requiring such operator to cause persons to be withdrawn from, and to be debarred from entering, any area of such mine, who willfully directs, authorizes, or causes any person, other than one who is lawfully authorized to enter or be in such area, to enter or be in such area while such order is in effect, shall be fined not more than $2,000.

(c) Any person, knowing of the making of an order requiring an operator of a mine to cause persons to be withdrawn from, and to be debarred from entering, any area of such mine, who enters such area or remains therein while such order is in effect, shall, unless he is a person who is lawfully authorized to enter or be in such area, be fined not more than $2,000.

(d) Any owner, lessee, agent, manager, superintendent, or other person having control or supervision of any coal mine subject to section 103 who refuses to admit the Director, any duly authorized representative of the Bureau, any State inspector assigned in accordance with a State plan, or any independent inspector appointed under section 103 (g) (3) to such mine, pursuant to section 102 (c), shall be fined not more than $500.

(e) Any owner, lessee, agent, manager, superintendent, or other person having control of any coal mine subject to this Act who willfully violates section 110 shall be fined not more than $500.

EFFECT ON STATE LAWS

SEC. 114. (a) No State or territorial law in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any provision of this Act, except insofar as such State or territorial law is

in conflict with this Act, or with orders issued pursuant to this Act.

(b) Provisions in any State or territorial law in effect upon the effective date of this Act, or which may become effective thereafter, which provide for greater safety of persons on coal mine premises, in connection with a particular phase of coal mining operations, than do provisions of this Act, which relate to the same phase of such operations, shall not be construed or held to be in conflict with this Act. Provisions in any State or territorial law in effect upon the effective date of this Act, or which may become effective thereafter, which provide for the safety of persons on coal mine premises in connection with phases of coal mining operations concerning which no provision is contained in this Act, shall not be construed or held to be superseded by this Act.

(c) Nothing in this Act shall be construed or held to supersede or in any manner affect the workmen's compensation laws of any State or territory, or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under State or territorial laws in respect of injuries, occupational, or other diseases, or death of employees arising out of or in the course of employment.

(d) Nothing in this Act shall be so construed as to re-

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lieve the mine owner, operator, or employee from seeing that all of the provisions of this Act are strictly complied with, nor from the duty imposed at common law to secure the reasonable safety of the employees and in the performance of those duties that are nonassignable at common law, as well as those duties required by this Act. The mine foreman, assistants, or fire bosses, in all instances, shall be considered as acting for the mine owner or operator.

MISCELLANEOUS

SEC. 115. (a) Whenever the Director determines that the construction of any equipment conforms to specifications prescribed by the Director which are designed to assure that such equipment will not cause a mine explosion or mine fire, he shall issue a certificate to the manufacturer of such equipment (1) stating that such equipment has met such specifications, (2) authorizing such manufacturer to attach an approval plate, label, or other device approved by the Director which indicates that such equipment conforms to such specifications, and (3) authorizing such manufacturer to attach an identical approval plate, label, or other device to all identical equipment.

(b) The Secretary shall have authority to appoint, subject to the civil service laws, such officers and employees as he may deem requisite for the administration of this Act; and to fix, subject to the Classification Act of 1949, as

amended, the compensation of officers and employees so appointed. No person shall be assigned or appointed to perform the duties of a duly authorized representative of the Bureau unless he has the basic qualifications of at least five years' practical experience in the mining of coal, and is recognized by the Bureau as having the training or experience of a practical mining engineer in those essentials necessary for competent coal mine inspection.

(c) The Director shall submit annually to the Congress, as soon as practicable after the beginning of each regular session, a full report of the administration of his functions under this Act during the preceding calendar year. Such report shall include, either in summary or detailed form, the information obtained by him under this Act, together with such findings and comments thereon and such recommendations for legislative action as he may deem proper.

(d) For the promotion of sound and effective coordination of Federal and State activities within the field covered by this Act, to eliminate duplication of effort and expense, and to secure effective enforcement of the coal mine safety requirements established by this Act, the Director shall affirmatively and diligently seek to cooperate with the mine inspection or safety agencies of the several States, through formal agreement or otherwise, in the enforcement of the provisions of this Act.

(e) The Director shall have the authority to make rules and regulations, in writing, not inconsistent with the provisions of this Act, to take care of hazardous conditions, if and when the need arises, and the condition is not covered by the specific provisions of title III.

(f) The Director shall give not less than thirty days' notice of his intentions to make such rules and regulations. Proper opportunity must be afforded all parties concerned to attend the hearing and voice their approval or disapproval of the proposed rules or regulations.

(g) Any operator or other interested person may appeal to the Federal Coal Mine Health and Safety Board of Review for review of the action of the Director in adopting any rule or regulation within twenty days from the date of such adoption. The action of the Board may thereafter be reviewed as set out in section 108 of this Act, providing for judicial review of decisions and orders of the Board.

TITLE II—HEALTH STANDARDS FOR CONTROLLING DUST AT UNDERGROUND MINES

SCOPE OF COVERAGE

SEC. 201. The health standards on dust set forth in this Act, or established by the Secretary pursuant to the provisions set forth herein, shall apply to all underground mines, and shall be enforceable in the same manner, subject to the same provisions for review, as the safety standards set forth in title III of this Act.

INTERIM STANDARD

SEC. 202. Beginning sixty days after the effective date of this Act—

(a) Each operator shall, at intervals prescribed by the Director, cause the mine atmosphere to be sampled by a qualified person to determine if hazardous atmospheric concentrations of respirable dust are present in the mine atmosphere. Samples shall be taken by a device approved by the Director in accordance with methods and at locations prescribed by him.

(b) Where the mine atmosphere in any active working place contains concentrations of respirable dust in excess of four and five-tenths milligrams per cubic meter of air, if measured with an MRE instrument, or in excess of an equivalent amount of dust if measured with another device approved by the Director, corrective action shall immediately be taken to maintain concentrations of respirable dust at or below such limit. If the mine atmosphere contains concentrations of respirable dust in any active working place exceeding five and five-tenths milligrams of dust per cubic meter of air, if measured with an MRE instrument, or in excess of an equivalent amount of dust if measured with another device, all persons, other than a person whose presence is required to take corrective measures, shall be withdrawn from, and prohibited from entering, the active working place having

such concentration until corrective action has been taken to maintain the concentrations at or below the limit prescribed in the first sentence of this subsection.

(c) Respirators approved by the Secretary shall be worn for protection against exposures to concentrations of dust in excess of four and five-tenths milligrams of dust per cubic meter of air, if measured with an MRE instrument, or in excess of an equivalent amount of dust if measured with another device approved by the Secretary. Only miners wearing such a respirator shall enter or be exposed to concentrations in excess of four and five-tenths milligrams of dust per cubic meter of air, if measured with an MRE instrument, or in excess of an equivalent amount of dust if measured with another device approved by the Secretary, and only short-term exposures to such concentrations shall be permitted. Use of respirators shall not be substituted for environmental control measures, unless such use is approved by the Secretary. Each underground mine shall maintain a supply of approved respirators adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the limit prescribed in this subsection.

SUBSEQUENT STANDARD

SEC. 203. (a) As soon as practicable after the date of adoption of this Act, the Director, in coordination with the

Public Health Service, shall undertake research projects designed to accomplish the following:

(1) to determine the maximum atmospheric concentration of respirable dust at the working areas of underground coal mines which is consistent with safeguarding the health of persons working in a mine;

(2) to determine the state of the technology in the coal industry for detecting and controlling the atmospheric concentration of respirable dust in the working areas of underground mines; and

(3) to develop the machinery and/or other technology necessary to control the level of the atmospheric concentration of respirable dust at the level determined in paragraph (1) above to safeguard the health of persons working in underground mines.

(b) When the Director has determined, pursuant to paragraph (1) of section (a) above, the maximum atmospheric concentration of respirable dust which should be permitted to safeguard the health of persons working in underground mines, and that adequate machinery or other technology is available to maintain this level of atmospheric concentration of respirable dust during underground mining operations, then he shall propose regulations to establish the permissible levels of atmospheric concentration of respi-

rable dust to be maintained in each working place in underground coal mines.

(1) The proposed regulations setting forth the permissible levels of atmospheric concentration of respirable dust shall be published in the Federal Register, and shall afford interested persons a period of not less than thirty days after publication to submit written data or comments.

(2) On or before the last day of any period fixed for the submission of written data or comments under paragraph (1) of this paragraph, any interested person may file with the Director written objections to a proposed standard, stating the grounds therefor and requesting a public hearing by the Board on such objections. As soon as practicable after the period for filing such objections has expired, the Director shall publish in the Federal Register a notice specifying the proposed standards to which objections have been filed and that a hearing has been requested, and shall refer such standards and objections to the Board for review in accordance with paragraph (3) of this subsection.

(3) Promptly after any matter is referred to the Board by the Director under paragraph (2) of this subsection, the Board shall issue notice of and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearing, the Board shall issue a report to the Secretary setting forth findings of fact on such matter

and appropriate recommendations thereon, including proposed regulations, and shall make such report public. Upon receipt of such report, the Secretary may, upon consideration of the Board's findings of fact and recommendations, promulgate the proposed regulations with such modifications, or take other action, as he deems appropriate. In any instance in which the Secretary does not adopt the Board's recommendations, he shall publish his reasons therefor, which shall be supported by the weight of the evidence contained in the record. Judicial review of the Secretary's action may be had in the same manner as provided in section 108 for judicial review of any order of the Board.

(c) There is hereby authorized to be appropriated such sums as the Director determines to be necessary, not to exceed $10,000,000 to carry out the research required under subsection (a) of this section.

MEDICAL EXAMINATIONS

SEC. 204. After the effective date of this Act, the operator of an underground coal mine shall cooperate with the Secretary in making arrangements for each miner working in an underground coal mine to be given, at least annually, beginning six months after the effective date of this Act, a chest roentgenogram by a competent radiologist. The films shall be read and classified in a manner to be prescribed by the Secretary of Health, Education, and Wel-

fare, and the results of each reading on each such person shall be submitted to the Director and to the Secretary of Health, Education, and Welfare and, a the request of the miner, to his physician.

ROCK DUST

SEC. 205. The dust resulting from drilling in rock in all underground mines shall be controlled by the use of permissible dust collectors or by water or water with a wetting agent. Persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist shall wear permissible respiratory equipment. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

TITLE III—SAFETY CODE

ADDITIONAL DEFINITIONS

SEC. 301. For the purposes of this title—

(a) "Superintendent" means the person placed in overall charge of the operation of a coal mine or mines.

(b) "Mine foreman"means a person holding a valid certificate of qualification duly issued by the appropriate State agency having jurisdiction over the mine, and also including any person acting in the stead of a mine foreman appointed as provided by State law when a certified mine foreman is unavailable.

(c) "Supervisor" may be used to designate mine fore-

men, assistant section foreman, trafficman, maintenance foreman, and so forth, and is restricted herein to mean that person employed by the operator or superintendent to manage all or a part of the mine operations.

(d) "Fire boss" means a person holding a valid certificate of qualification duly issued pursuant to the provisions of section 303(a), and also including the person acting in the stead of a fire boss appointed as provided in this title when a certified fire boss is unavailable.

(e) "Approved competent person" is a person who has had at least two years of practical experience, has knowledge of mine roof, timbering, and ventilation, and who has demonstrated knowledge of mine gases and the use of permissible flame safety lamps, such demonstration to be given and made of record in a manner prescribed by the Director or authorized State official.

(f) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, and open workings which are not ventilated and inspected regularly.

(g) "Active workings" means all places in a mine that are ventilated and inspected regularly.

(h) "Approved" means a device, apparatus, equipment, condition, method, or practice approved in writing by the Director or authorized State official.

(i) "Armed cable" means a cable provided with a wrapping of metal, plastic, or other approved material.

(j) "Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working face.

(k) "Booster fan" or "diffuser" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more splits.

(l) "Cable" means a stranded conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

(m) "Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

(n) "Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(o) "Main entry" means the principal entry or set of entries driven through the coal bed from which cross entries, room entries, or rooms are turned.

(p) "Room entry" means any entry or set of entries from which rooms are turned, including a panel entry.

(q) "Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

(r) "Fuse" means an overcurrent protective device

with a circuit opening fusible member directly heated and destroyed by the passage of overcurrent through it.

(s) "Gassy mine" means a mine designated as gassy pursuant to the provisions of section 103 (f) and section 305 (j) of this Act.

(t) "Nongassy mine" means any mine which is not classified gassy or gaseous.

(u) "Ground" means a conducting connection between an electric circuit or equipment and earth, or to some connecting body which serves in place of earth.

(v) "Grounded" means connected to earth, or to some connecting body which serves in place of the earth.

(w) "Interested persons" means members of the mine safety committee and other duly authorized representatives of the employees at the mine; Federal and State coal mine inspectors; and, to the extent required by this or any State mining law, any other person.

(x) "Intake air" means air that has not passed through the last working place of the split, or by the unsealed entrances to abandoned workings, and by analysis contains not less than 19½ per centum oxygen nor more than one-half of 1 per centum of carbon dioxide, nor any dangerous quantities of flammable gas, nor any harmful amounts of poisonous gas.

(y) "Return air" means air that has passed through the

last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings. The area within a panel shall not be deemed abandoned until such panel is abandoned.

(z) "Shot firer" means a person employed, or designated by the foreman, to charge, stem, and fire shots.

(aa) "Substation" means an electrical installation containing generating or power conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators, and transformers.

(bb) "Working face" means those areas within a mine from which coal is being extracted or is to be extracted.

(cc) "Well" means a bore hole or excavation for the purpose of producing any liquid or gaseous substance from beneath the surface of the earth.

(dd) "Casing" means a string or strings of pipe commonly placed in wells drilled for petroleum and natural gas.

(ee) "Cement" means hydraulic cement properly mixed with water.

(ff) "Plug" means the stopping of the flow of water, gas, or oil in connection with the abandoning of a producing or nonproductive well.

(gg) "Tubing" means the conduit through which oil or gas is removed from a well.

EMPLOYMENT AND QUALIFICATIONS OF MINE FOREMEN, ASSISTANT FOREMEN, AND SECTION FOREMEN

SEC. 302. (a) In every commercial coal mine where three or more persons work during any part of any period of twenty-four hours, the operator thereof, or the agent of such operator, shall employ a competent inside overseer, to be called mine foreman, who shall hold a certificate of competency for such position issued to him by the State agency authorized by State law to issue such certificates. In the absence of any provision in State law for the issuance of such a certificate by a State agency, the Director may issue a certificate based upon such requirements as he may establish. Every assistant foreman and section foreman, employed to assist the mine foreman in the immediate supervision of a portion or the whole of a mine and the persons employed therein, shall have had five years of practical experience in a coal mine, and shall hold a certificate of competency for such position issued to him by the State agency authorized by State law to issue such certificates. In the absence of any provision in State law for the issuance of such a certificate by a State agency, the Director may issue certificates based upon such requirements as he may establish.

(b) The mine foreman shall comply at all times with the requirements of the mining laws of this Act that pertain

to his duties and to the health and safety of the employees, and shall see that all other persons in or about the mine comply with the provisions of this Act. Where it is necessary that the mine foreman be temporarily absent from the mine, he shall place in charge of the mine a properly certified assistant, or shall have permission from the Director or authorized State personnel to use a competent person.

(c) It shall be the duty of the mine foreman, assistant mine foreman, and section foreman of every coal mine covered by this Act to see that every person employed to work in such mine, before beginning work therein, shall be instructed in all dangers incident to his work in such mine.

(d) Every inexperienced person who goes to work in any mine covered by this Act shall be required to work with, or under the direction of, an experienced person for a period of at least one year following his employment.

(e) The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify every person whose safety is menaced thereby to remain away from the portion where the dangerous condition exists. He or his assistants shall, at least once each week, travel and examine all the air courses, roads, and openings that give access to old workings or falls, and make

a record of the condition in all places where safety hazards are found, with ink or indelible pencil, in a book provided for that purpose. Any dangerous condition that cannot be removed within a reasonable time must be reported to the Director and the authorized State official by the quickest available means.

EMPLOYMENT, DUTIES, AND QUALIFICATIONS OF FIRE BOSSES OR OTHER CERTIFIED PERSONS

SEC. 303. (a) Operators of mines classed as gassy shall employ one or more fire bosses, or other persons, to make examinations prior to the beginning of a coal-producing shift who shall be certified as to his qualifications by the State agency having jurisdiction over coal mines in the State. In the absence of any provisions in State law for such certification, the Director may issue a certificate based upon such requirements as he may establish. The duties of the fire boss or other certified persons are to examine for dangerous conditions all manways, slopes, and entries used by men in traveling to and from work, and to examine for gas and other dangerous conditions all working places, adjoining abandoned places and accessible pillar falls for accumulations of gas.

(b) Each such fire boss, or other certified person, shall have at least five years' experience in mines, and shall have knowledge of fire damp and other dangerous gases

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so as to be able to detect the same with the use of safety lamps. He shall also have a practical knowledge of the subject of ventilation of mines and the machinery and appliances used for that purpose.

(c) It shall be the duty of such fire boss, or bosses, where employed in any gassy mine, or mines, to prepare a danger signal, with suitable color, at each mine entrance, and no persons except the mine owner or operator, or his agent, in cases of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss, and the same, or certain parts thereof, reported by him to be safe.

(d) In the performance of the duties on the part of the fire boss, or bosses, they shall have no superior officer, but all employees working inside the mine, or mines, shall be subordinate to the fire boss, or bosses, in the execution of their duties under this Act.

(e) No person shall enter the mine or mines for any purpose, at the beginning of work upon any shift therein, until such signal or warning has been given by the fire boss, or bosses, as to the safety thereof, as provided by in this Act, except under the direction of the boss, or bosses, and then for the purpose of assisting in making the mine safe: *Provided, however,* That men regularly employed on a shift during which the mine is being preshift examined by a fire

boss or certified person shall be permitted to leave or enter the mine in the performance of their duties.

(f) The fire boss will ascertain that the air is traveling in its proper course and that all ventilation appliances are in good condition and working effectively. The fire boss will indicate his examination of working and abandoned places, pillar falls, and ventilating appliances by marking his initial and the date conspicuously in or at such places.

(g) Whenever gas is detected, or danger exists to men entering any place in the mine, the fire boss shall leave at each entrance to that place a conspicuous "DANGER" sign.

(h) Examination of the first working place in mines classed as gassy shall take place not more than four hours prior to the beginning of a coal production shift, before the men are permitted to enter the mine, or to pass a designated station underground. In such mines, a light or other signal shall be provided at the mine entrance. When the fire boss, or fire bosses, report the mine clear, which they do by telephone or other means, the signal shall be changed to "clear" by the mine foreman or by his designated subordinate. The Director or authorized State official shall have authority in certain mines in his discretion to authorize man-trips, to proceed to a designated station underground which they may

not pass until the fire boss, or fire bosses, report the remainder of the mine clear.

(i) In multiple shift operations, certified supervisors may be used to make the fire boss examination for the next or succeeding shift.

(j) The fire boss shall record the results of his inspection, in ink or indelible pencil, in a book kept on the surface for that purpose. Similar records may be kept at designated stations or offices underground. This book shall be countersigned by the mine foreman.

(k) Idle or abandoned parts of any mine classed as gassy shall be examined by a certified person immediately before other employees are permitted to enter or work in such areas.

(l) Examination for gas and other dangerous conditions shall be made by a certified official, or approved competent person, in mines classed as gassy, before taking loading or cutting machines in by the open breakthrough nearest the face; or before applying power to machinery that remains at or near the face; at not more than thirty-minute intervals during cutting, drilling, or mechanical loading; before drilling with electric drills; before blasting; after blasting; before other work is resumed; and at such other times as may be necessary or designated by the operator or mine inspector for adequate safety.

ROOF, FACE, AND RIBS

SEC. 304. (a) ROOF SUPPORT.—The roof and ribs of all active underground roadways and travelways in a mine shall be adequately supported to protect persons from falls of roofs or ribs.

(1) Adequate minimum standards for systematic support suitable to the roof conditions and mining system of each mine shall be prescribed by the Director or authorized State official, and complied with. Such standards shall show the minimum number and the location of supports, such as posts, crossbars, or bolts, that shall be installed. Irrespective of natural conditions, the plan shall provide for some temporary support at all working faces unless self supporting. Where State inspection agencies are authorized by statute, the Bureau and the State shall agree to a common standard to avoid conflicting requirements.

(2) Such standards shall be posted conspicuously near the main entrance to the mine.

(3) Supports additional to those required by the minimum standards shall be installed as needed to afford adequate protection. Temporary supports shall be installed whenever workmen are required to advance beyond permanent roof supports in the performance of their duties.

(4) Roof bolts shall not be used in lieu of conventional timbering unless a permit has been issued by the Bureau

of authorized State agency. Roof bolts shall not be removed where complete extractions of pillars are attempted, nor shall bolts be removed adjacent to clay veins, nor at the locations of other irregularities that induce abnormal hazards. Where roof bolt recovery is practical, it shall be done only by reasonable methods approved by the Director or authorized State official. Recovery of roof supports shall not be done except by experienced persons, and shall be done only where adequate temporary support is provided.

(5) The method of mining followed shall not expose the workmen to unusual dangers caused by excessive widths of rooms and entries, faulty pillar recovery methods, or other dangerous mining methods.

(b) SUPPLIES.—The operator shall provide at or near the working faces an ample supply of suitable materials of proper size with which to secure all working places in a safe manner.

(1) Safety posts, jacks, or temporary crossbars shall be set close to the face before other operations are begun and as needed thereafter, if men go in by the last permanent roof support.

(2) Safety posts or jacks shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, and when roof bolts are being installed.

(3) All underground working places, travelways, and haulageways shall be secured sufficiently to protect employees from falls of roof, face, or rib. Loose roof and overhanging or loose faces and ribs shall be taken down or supported.

(4) Supports knocked out accidentally shall be replaced promptly. Supports in active workings shall not be removed deliberately unless equivalent protection is provided.

(5) No person shall advance under unsupported roof at working faces except those who are assigned to install supports or to inspect the place.

(6) If roof, face, or rib conditions are found to be unsafe, they shall be corrected by taking down or securely supporting loose material before other work is started.

(c) LOOSE MATERIAL.—The operator shall instruct all workmen in the proper testing of roof, face, and ribs.

(1) Persons exposed to danger from falls of roof, face, and ribs shall examine and test the roof, face, and ribs before starting work, or before starting a machine, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately by taking down the loose material, or by proper timbering before work is continued or any other work is done, or the place shall be vacated.

(2) At least once each shift, or more often if necessary,

and during each visit, a certified official shall examine and test the roof, face, and ribs of each active working place while the men are working therein. Any place in which a dangerous condition is found by the foreman shall be made safe in his presence, or under the direction of a competent person, or the workmen shall be withdrawn.

(3) At least once each day that the mine is in operation, or more often if necessary, a certified official shall examine the room and ribs of each passageway where men work or travel and the supports therein, and a record of such examination shall be made in an official record book of the mine which shall be open for inspection by interested persons. Any dangerous condition found shall be corrected promptly, or traffic thereunder shall be discontinued until the danger has been removed.

(4) When there is danger of coal rolling on a person during or after cutting, it shall be spragged by placing blocks in the cut or by blocking with leaning posts.

(5) A bar of proper length shall be used to pull down loose material.

(6) Installed roof bolts shall be tested by qualified persons designated by the mine foreman.

(d) RECOVERY OF PERMANENT TIMBERS.—Recovery of permanent timbers shall be done only by experienced men

using mechanical means, and persons so engaged shall not be permitted to work alone.

VENTILATION AND MINE GASES

SEC. 305. (a) MAIN FANS IN GASSY AND NONGASSY COAL MINES.—

(1) All gassy mines shall be ventilated by means of main fans installed as follows:

(A) on the surface;

(B) in fireproof housings;

(C) offset not less than fifteen feet from the nearest side of the mine opening: *Provided, however,* That this shall not apply to fans that are offset any distance from the mine opening if they otherwise comply with subparagraph (E) of this section;

(D) equipped with fireproof air ducts and ample means of pressure relief; and

(E) in lieu of requirements for the location of the fan and the pressure relief facilities, the fan may be directly in front of, or over, the mine opening: *Provided, however,* That the opening is not in direct line with possible forces coming out of the mine should an explosion occur: *And provided further,* That there is another opening having a weak wall stopping or explosion doors that would be in direct line with the forces coming out of

the mine should an explosion occur; such opening to be not less than fifteen feet nor more than one hundred feet from the fan opening.

(2) Main mine fans shall be installed to permit the reversal of airflow. Unless such fan is attended constantly, it shall be provided with an automatic device to give an alarm when the fan slows down or stops. This device shall be placed so that it will be seen or heard by a responsible person.

(3) At gassy mines, main fans shall be on separate power circuits, independent of the mine circuit.

(4) The area surrounding main fan installations shall be kept free of combustible material for at least one hundred feet in all directions where physical conditions permit.

(5) A daily inspection shall be made of all main fans and machinery connected therewith by a competent person, and a record kept of the same in a book prescribed for this purpose, or by adequate facilities provided to permanently record the performance of the main fan and to give warning of an interruption to a fan.

(6) When the main fan of a gassy mine fails or stops, the power shall be cut off the mine, and the men shall be withdrawn from the face regions. If ventilation is restored within a reasonable time, the face regions and other places where methane is likely to accumulate shall be examined by

properly certified persons, and if found to be free of explosive or harmful gases, power may be restored and work resumed. If ventilation is not restored within a reasonable time, and in no case more than thirty minutes all persons shall be removed from the mine. The main fan shall be operated for a period of not less than two hours, and thereafter the mine shall be examined by properly certified persons before the men are permitted again underground. The power wires underground shall not be energized until the mine is reported safe following such examination.

(7) When considered necessary by the Director or authorized State official, coal mines classified as nongassy shall be ventilated by main fans offset not less than fifteen feet from the nearest side of the mine opening.

(8) When the main fan of a nongassy mine fails or stops and cannot be started within a reasonable time, the men shall be withdrawn from the face regions. If ventilation is not restored within a reasonable time, to be determined as provided in subsection (6), all persons shall be removed from the mine, and the mine shall be examined by properly certified persons before the men are permitted again underground.

(9) Main fans at nongassy mines shall be operated continuously except when the mine is shut down with all

men out of the mine. If the main fan of a nongassy mine is stopped after all men are out of the mine, the fan shall be operated for a period of at least two hours before any man is allowed underground.

(10) Except for repairs, main fans at gassy mines shall be operated continuously day and night unless written permission is granted by the Director or authorized State official for planned stoppages. If the main fan of a gassy mine is stopped after all men are out of the mine, the fan shall be operated for a period of at least two hours before any man is allowed underground.

(11) Where electric power is available, main mine fans shall not be powered by means of gasoline powered engines: *Provided, however,* That where electric power is not available or for emergency use, main mine fans may be powered with internal combustion engines, but they shall be surrounded with safeguards as follows:

(A) the fan shall be operated exhausting, unless otherwise permitted by the Director or authorized State official;

(B) the engine operating the fan shall be offset at least ten feet from the fan and housed in a separate fireproof structure; and

(C) main fans at gassy mines shall be provided with pressure recording gages.

(b) BOOSTER, AUXILIARY, AND BLOWER FANS.—

(1) The installation or use of booster fans in any mine shall be prohibited, unless prior approval is granted by the Director or authorized State official.

(2) The Director or authorized State official is charged with responsibility to prescribe the safeguards and conditions required for any approval for use of booster, auxiliary, or blower fans with tubing or diffusor, and to make acceptance and compliance with the requirements a condition of the approval. Failure to comply with requirements set forth in the approval will be a violation of this section.

(3) Blower fans with tubing shall not be used underground except to ventilate shaft and slope sinking operations and their underground connections, the faces of fork tunnels driven between two coal beds or through faults and wants, and they shall be surrounded with safeguards as follows:

(A) each fan shall be powered with a permissible driving unit, and shall be installed on the intake air side of the entrance of the place to be ventilated at a distance of not less than sixteen feet from the nearest rib of such entrance;

(B) the volume of air in which the fan is placed shall exceed the manufacturer's maximum rated capacity of the fan;

(C) the fan tubing shall be maintained in good condition. The discharge end of the tubing shall be kept as close to the face as is practical;

(D) places in gassy mines ventilated by means of blower fans shall be examined for methane by a properly certified person before the fan is started at the beginning of the shift and after any interruption of fan operation for five minutes or more during the shift;

(E) except in mines using auxiliary fans for ventilation, accumulation of methane shall not be moved by means of a blower fan and tubing; and

(F) the fan and tubing shall be inspected at least twice during each working shift by a properly certified person.

(c) VOLUME OF AIR AND BLEEDERS.—

(1) The quantity of air passing through the last open crosscut in any pair or set of active entries shall be not less than six thousand cubic feet per minute: *Provided, however,* That the quantity of air reaching the last crosscut in any pair or set of entries in pillar recovery sections may be less than six thousand cubic feet per minute if at least six thousand cubic feet of air per minute is being delivered to the intake end of the pillar line. In anthracite mines the quantity of air reaching the face of each working place shall be at least

two hundred cubic feet a minute for each man working in the place and as much more as may be required to dilute, render harmless, and sweep away noxious or dangerous gases, smoke, and fumes. In robbing areas where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(2) The air current at working faces shall under all conditions have a sufficient volume and velocity to readily dilute and carry away smoke from blasting and any flammable or harmful gases.

(3) At least once each week, a properly certified person shall measure (A) the volume of air entering the main intakes and leaving the main returns, (B) the volume passing through the last open crosscut in each active entry, (C) the volume being delivered to the intake end of each pillar line, and (D) the volume at the intake and return of each split. A record of such measurements shall be kept in a book on the surface, and the record shall be open for inspection by interested persons.

(4) In gassy mines a system of bleeder openings or air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and

to minimize the effect of variations in atmospheric pressure, shall be made a part of pillar recovery plans projected after the effective date of this Act.

(d) COURSING OF AIR.—

(1) The main intake and return air currents of drifts or slope mines opened after the effective date of this Act shall not be in a single partitioned opening.

(2) All entries driven in coal after the effective date of this Act shall be in sets of two or more.

(3) Permanently installed underground stables, battery charging stations, substations, transformer stations, and stations for electrically operated pumps and compressors shall be ventilated by separate splits of air conducted directly to the main return air courses. Portable type substations and battery charging stations shall be in well ventilated places.

(4) Changes in ventilation that materially affect the main air current or any split thereof shall be made when the mine is not in operation and with no men in the mine other than those engaged in changing the ventilation.

(5) The number of men on the same air current or split shall not exceed seventy.

(6) Each section in a gassy mine must be ventilated by a separate split of air, unless permission is granted by the Director, or authorized State official, to ventilate two or more sections with the same split of air.

(e) QUALITY OF AIR.—

(1) Mine air in which men work or travel shall contain at least 19⅝₀ per centum oxygen, not more than 0.5 per centum carbon dioxide, and shall not be contaminated with noxious or poisonous gases.

(2) If the air immediately returning from a split that ventilates any group of active workings contains more than 1 per centum methane, as determined with a permissible flame safety lamp, by air analysis, or by other recognized means of accurate detection, the ventilation shall be improved.

(3) If a split of air returning from active underground working places in a mine contains 1⅝₀ per centum of methane, as determined by a permissible methane detector, a permissible flame safety lamp, air analysis, or other recognized means of accurately detecting such gas, the employees shall be withdrawn from the portion of the mine endangered thereby, and all power shall be cut off from such portion of the mine until the quantity of methane in such split shall be less than 1⅝₀ per centum. However, in virgin territory in mines ventilated by exhaust fans where methane is liberated in large amounts, if the quantity of air in a split ventilating the workings in such territory equals or exceeds twice the minimum volume of air, which is six thousand cubic feet per minute, and only permissible electric equipment is used in such workings and the air in the split

returning from such workings does not pass over trolley or other bare power wires, and if a certified person designated by the mine operator is continually testing the gas content of the air in such split during mining operations in such workings, it shall be necessary to withdraw the employees and cut off all power from the portion of the mine endangered by such methane only when the quantity thereof in the air returning from such workings exceeds 2 per centum, as determined by a permissible methane detector, a permissible flame safety lamp, air analysis, or other recognized means of accurately detecting such gas.

(f) BREAKTHROUGHS AND STOPPINGS.—

(1) Breakthroughs shall be made between entries and between rooms at intervals not to exceed eighty feet. If greater distance is required, prior approval must be obtained from the Director or authorized State official.

(2) Except the one nearest the face, breakthroughs between intake and return air courses shall be closed; breakthroughs between rooms shall be closed where necessary to provide adequate ventilation at the working face.

(3) Where practicable, before the place is abandoned, a breakthrough shall be provided at or near the face of each entry or room.

(4) Entries or rooms shall not be started off an entry beyond the last open breakthrough.

(5) Permanent stoppings between intake and return air courses shall be built of substantial, incombustible material such as concrete, concrete blocks, brick, tile, or other approved material: *Provided, however,* That where physical conditions prohibit the use of such materials, timbers laid longitudinally, "skin to skin" may be used. This does not prohibit the use of a temporary stopping in the second breakthrough out by the face.

(6) Stoppings shall be reasonably airtight.

(g) AIR LOCKS, OVERCASTS, UNDERCASTS, AND DOORS.—

(1) In gassy mines, the ventilation shall be so arranged by means of airlocks, overcasts, or undercasts that the passage of haulage trips or persons along the entries will not cause interruption of the air current: *Provided, however,* That in mines or in developing sections where airlocks are not practical single doors shall be used to course the air, and, unless operating mechanically, shall be attended constantly while the mine is in operation. Airlocks shall be sufficiently ventilated to prevent accumulations therein of methane.

(2) Doors shall be kept closed except when men or equipment are passing through the doorways. Motor crews and other persons who open doors shall see that the doors are closed before leaving them.

(3) Overcasts and undercasts shall be constructed tightly

of incombustible material, such as masonry, concrete, concrete blocks, or prefabricated metal, they shall be of sufficient strength to withstand possible falls from the roof, and shall be of ample area to pass the required quantity of air. They shall be kept clear of obstructions.

(4) In nongaseous mines single doors may be installed. The method of installation shall be subject to the approval of the Director or authorized State official.

(h) LINE BRATTICE.—

(1) Substantially constructed line brattice shall be used from the last open breakthrough of an entry or room when necessary to provide adequate ventilation for the workmen and to remove gases and explosive fumes. When damaged by falls or otherwise, they shall be repaired promptly.

(2) The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

(3) Brattice cloth used underground shall be of flame-resistant material.

(4) Accumulations of methane shall be moved only by means of properly installed line brattice, or other approved method.

(i) ABANDONED WORKINGS.—

(1) The openings to abandoned workings shall be

fenced off so that no person may enter, and danger signs shall be posted upon such fencing.

(2) All abandoned workings shall be either sealed or ventilated.

(3) Where the practice in the mine is to seal abandoned workings, the sealing shall be done in an effective manner with incombustible material. In every sealed area, one or more of the seals shall be fitted with a pipe and cap or valve to permit the gases behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure.

(4) In gassy mines, air that has passed through abandoned workings and pillared out and caved areas, that has passed by the unsealed entrances to abandoned workings, or that has been used to ventilate pillar lines shall not be used to ventilate live face workings: *Provided, however,* That such provisions shall not apply to air which is being used to ventilate an active pillar line and rooms which are necessary to establish and maintain such pillar line. Areas within a panel shall not be deemed abandoned until such panel is abandoned. Where intake air is coursed by seals of abandoned workings, such seals shall be leakproof and shall be inspected by a certified person at least once each shift.

(j) CLASSIFICATION OF MINES, PROCEDURE UPON

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DETECTION OF ACCUMULATION OF GAS, AND FACE EQUIPMENT FOR USE IN GASSY MINES.—

(1) Any mine in which the percentage of explosive gas exceeds one-fourth of 1 per centum when detected twelve inches from the roof, rib, or face in open workings, shall be classified as gassy.

(2) Any mine in which methane has been detected by a flame safety lamp twelve inches from roof, rib, or face, or in which there is a record of methane having been ignited, shall be classified as gassy.

(3) When a mine has been classified as gassy, it may be reclassified by the Director on request of the operator and upon the recommendation by two or more mine inspectors: *Provided further,* That the mine has met the standards for another classification for two years continuously, and there is no reason for the Director to consider the mine potentially gassy to any greater extent than other mines operating in similar seam condition under lower classification.

(4) Face work must be stopped, power to face equipment cut off, and the employees ordered and required to withdraw until ventilation is improved whenever gas in excess of 1 per centum can be detected on a permissible flame safety lamp or approved detectors at any point not less than twelve inches from the roof, face, or ribs. This

does not apply to other faces in the entry or slope in which work can be safely continued.

(5) Until ventilation is improved, only employees designated to work on improving the ventilation under competent direction may be permitted in the affected area, when, because of gas accumulations, work on entries or faces is stopped. Power shall not be restored until ventilation is improved.

(6) Face equipment purchased for use in gassy mines shall be of the permissible type.

(k) FLAME SAFETY LAMPS.—

(1) All flame safety lamps used for examining coal mines or for working therein shall be permissible. When not in use, they shall be in the care of certified officials or other competent designated persons, who will disassemble, examine, clean, fill, and deliver them, locked and in safe condition, to their users before they enter the mine. Flame safety lamps shall not be unlocked or disassembled inside any coal mine.

(2) At least one permissible flame safety lamp shall be kept in safe working condition at each coal mine. Not less than 25 per centum of those in use or one, whichever is greater, shall be kept in reserve at each mine classed as gassy for use in an emergency.

(3) Permissible flame safety lamps shall be entrusted

for use only to certified persons or to approved competent persons.

(4) Every person who knows his flame safety lamp to be injured or defective shall immediately extinguish it and promptly report its condition to his supervisor, the mine foreman, or to the designated lamp attendant. Defective lamps must be kept separate from others until repaired.

(l) EXAMINATION OF MINES FOR GAS AND OTHER DANGERS.—

(1) Officials whose regular duties require them to inspect working places in any mine for dangers shall have in their possession, and shall use, when underground, a suitable permissible device capable of detecting methane and oxygen deficiency.

(2) No person (other than a certified person designated under this subsection) shall enter any underground area in a gassy mine, except during a coal-producing shift, unless an examination of such area as prescribed in this paragraph has been made within twelve hours immediately preceding his entrance into such area.

(3) All gassy mines shall be examined for gas and other dangers by properly certified persons assigned specifically to make fire boss examinations before other men are permitted to enter, irrespective of whether the mine is being operated or is idle. In gassy mines, such certified persons

shall begin their examination in the first working place in their assigned territory not more than four hours before each shift enters the mine; in nongassy mines they shall begin their examination in the first working place in their assigned territory not more than four hours before the first shift enters the mine.

(4) During the preshift examination, the fire boss shall visit every live working place in the mine and inactive places adjacent thereto, and during each visit shall test for methane and oxygen deficiency with a suitable permissible device; examine all seals and doors; test and inspect the roof, face, and rib conditions in all working places visited, inspect active roadways, travelways, approaches to abandoned workings, and accessible falls in active sections for explosive gas and other dangers; be certain that the air is traveling in its regular course and in sufficient volume in each split; and he shall place his initials and the date at or near the face of each place examined.

(5) Where dangerous conditions are found, the fire boss shall danger-off each approach to such place by placing a "danger" sign thereon; no one but an authorized person shall pass such danger sign, and then only for the purpose of examining the place or correcting the condition.

(6) Upon completing his examination, each fire boss shall return to the surface or a designated station under-

ground and report in person to the mine foreman or a designated certified assistant before other men enter the mine; immediately upon reaching the surface, the fire boss shall record, in ink or indelible pencil, the result of his inspection in a regular fire boss book kept on the surface for that purpose.

(7) Idle and abandoned sections shall be inspected for gas and other dangerous conditions by a certified foreman, assistant mine foreman, or fire boss immediately before other employees are permitted to enter or work in such places. A certified official shall supervise the correction of exceptionally dangerous conditions.

(8) The working places in all mines shall be examined for dangers by a certified official at least once during each shift while the men are in the mines, or oftener if necessary, for safety. Such examination shall include tests with a suitable permissible device for detecting methane and oxygen deficiency. Any danger found shall be eliminated promptly, or the men shall be withdrawn and the affected area plainly marked with "danger" signs.

(9) Pillar workings shall be examined by a certified official for methane and other dangers before a fall is made purposely. If methane can be detected with a flame safety lamp, it shall be removed, if possible before the fall is made. Where it is not practicable to remove the gas before such fall

is made, all electric power shall be cut off that portion of the mine that might be affected, and all men except those necessary to complete the fall shall be removed from such area.

(10) Examinations for dangerous conditions, including tests for methane with a permissible flame safety lamp, a permissible methane detector, or by chemical analysis, shall be made at least once each week by the mine foreman or other properly certified person designated by him. Such examinations and tests shall be made in the return of each split where it enters the main return, or pillar falls, at seals, in the main return, at least one entry of each intake and return airway in its entirety, idle workings, and, insofar as conditions permit, abandoned workings. The person who makes such examinations and tests shall mark his initials and the date at the places examined, and if dangerous conditions are found they shall be reported promptly. A record of these examinations and tests shall be kept at the mine.

(11) The mine foreman shall read and countersign promptly the daily reports of the fire bosses and assistant mine foreman, and he shall read and countersign promptly the weekly report covering the examinations for dangerous conditions. Where such reports disclose dangerous conditions, the mine foreman shall take prompt action to have such conditions corrected. The mine superintendent, where such official is in charge at the mine, shall also read

and countersign promptly the daily and weekly reports of the mine officials.

(12) Each day, the mine foreman or each assistant shall enter plainly and sign, with ink or indelible pencil, in a book provided for that purpose a report of the condition of the mine or portion thereof under his supervision, which report shall state clearly the location and nature of any danger observed by them or reported to them during the day, and the report shall state what action, if any, was taken to remedy such danger.

(13) All records of daily and weekly reports shall be open for inspection by interested persons.

COAL DUST AND ROCK DUST

SEC. 306. (a) Coal dust, loose coal, and other combustible materials shall not be permitted to accumulate in dangerous quantities in active underground workings of a mine.

(b) Where underground mining operations raise an excessive amount of dust into the air, water, or water with a wetting agent added to it, or other effective method shall be used to allay such dust at its source.

(c) All underground mines, except those mines or areas of mines in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all faces, and, if open

crosscuts near such faces are less than forty feet therefrom, such crosscuts shall be rock dusted—

(1) in every dusty mine, or any part or section thereof, rock dusting shall be applied to maintain at all times the minimum of 65 per centum of noncombustible matter to within forty feet of the faces. All open breakthroughs within the forty-foot zone shall be rock dusted. Samples taken to determine noncombustible contents shall be taken around the perimeter of the place. The term "dusty mine" shall not include a wet or damp mine, but the provisions hereof relating to rock dusting shall apply to any dusty part or section of a wet or damp mine; and

(2) in all mines accumulations of fine dry coal dust shall, as far as is practicable, be removed from the mine, and all dry and dusty operating sections kept thoroughly watered or rock dusted or the dust allayed by other methods.

(d) In mines partially rock dusted or in mines that are required to start rock dusting, haulageways and parallel entries connected thereto by open crosscuts shall be rock dusted. Back entries shall be rock dusted for at least one thousand feet out by the junction with the first active entry. Inby this junction, the rooms, entries, and crosscuts shall be rock dusted.

(e) Where rock dust is applied, it shall be distributed upon the top, floor, and sides of all open places, and maintained in such quantity that the incombustible content of the combined coal dust, rock dust and other dust will not be less than 65 per centum. Where methane is present in any ventilating current, the 65 per centum of incombustible content of such combined dust shall be increased 1 per centum for each one-tenth of 1 per centum of methane.

(f) Subsections (b), (c), (d), and (e) of this section shall not apply to anthracite mines.

ELECTRICITY AND ELECTRICAL EQUIPMENT

SEC. 307. (a) OUTSIDE OVERHEAD, HIGH POTENTIAL POWERLINES, SURFACE TRANSMISSION LINES, AND ELECTRIC WIRING IN SURFACE BUILDINGS.—

(1) Outside overhead, high potential powerlines shall be placed at least fifteen feet above the ground and twenty feet above driveways and haulageways, shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

(2) Surface transmission lines, including trolley circuits, shall be protected against short circuits and lightning. Each exposed power circuit that leads underground shall be equipped with lightning arresters of approved type at the point where the circuit enters the mine.

(3) Electric wiring in surface buildings shall be installed so as to prevent fire and contact hazards.

(b) TRANSFORMERS.—

(1) Unless surface transformers are isolated by elevation (eight feet or more above the ground), they shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(2) Surface transformers containing flammable oil and installed where they present a fire hazard (near mine openings or in or near combustible buildings) shall be provided with means to drain or to confine the oil in the event of rupture of the transformer casing.

(3) All transformers ordered after the effective date of this Act for use underground shall be air cooled or filled with nonflammable liquid or inert gas.

(4) Permanent underground transformers containing flammable liquid shall be in rooms of fireproof construction. Such rooms shall be provided with automatic fire doors and doorsills or their equivalent that will confine the liquid in event of rupture of the transformer casing.

(5) Portable underground transformers containing flammable liquids shall be in fireproof housing or enclosures, which shall be provided with automatic fire doors, and means shall be provided for confining the liquid in event of rupture of the transformer casing.

(6) Suitable danger signs shall be posted conspicuously at all transformer stations on the surface and underground.

(7) All transformer stations on the surface and underground shall be kept free of nonessential combustible materials and refuse.

(c) BATTERY-CHARGING STATIONS, SUBSTATIONS, AND SO FORTH.—

(1) Battery-charging stations, motor generator sets, rotary converters, and oil filled transformers and switches used underground shall be housed in fireproof buildings ventilated by a separate split of air direct to the main return (rectifiers excepted): *Provided, however,* That portable or semiportable battery-charging units may be operated in intake air if a minimum of fifteen thousand cubic feet of air per minute is circulating for one tray of batteries and an additional five thousand cubic feet of air per minute for each additional tray.

(2) All surface and underground substations, battery-charging stations, pump stations, and compressor stations

shall be kept free of nonessential combustible materials and refuse.

(3) All housing enclosing oil switchgear shall be ventilated effectively.

(4) Reverse-current protection shall be provided at storage-battery-charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

(d) POWER CIRCUITS, TROLLEY WIRES, AND FEEDERS.—

(1) All underground power wires and cables shall have adequate current-carrying capacity, shall be guarded from mechanical injury and installed in a permanent manner.

(2) Wires and cables not encased in armor shall be supported by well-installed insulators and shall not touch combustible materials, roof, or ribs: *Provided, however,* That this shall not apply to ground wires, grounded power conductors, and trailing cables.

(3) Unless encased in armor or otherwise fully protected against mechanical injury, power wires and cables installed in rope-and-belt-haulage slopes shall be adequately insulated and buried in a trench not less than twelve inches below combustible material.

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(4) Splices in power cables shall be made in accordance with the following:

(A) mechanically strong with adequate electrical conductivity;

(B) effectively insulated and sealed so as to exclude moisture; and

(C) if the cable has metallic armor, mechanical protection, an electrical conductivity equivalent to that of the original armor shall be provided.

(5) All underground transmission cables shall be—

(A) installed only in regularly inspected airways;

(B) covered, buried, or placed on insulators so as to afford protection against damage by derailed equipment if installed along the haulage road;

(C) guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, or well insulated;

(D) securely anchored, properly insulated, and guarded at ends; and

(E) covered, insulated or placed to prevent contact with trolley and other low voltage circuits.

(6) All power wires and cables shall be insulated adequately where they pass into or out of electrical compartments, where they pass through doors and stoppings, and where they cross bare power wires.

(7) Where track is used as a power conductor—

(A) both rails of main line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than two hundred feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than one thousand feet;

(B) at least one rail on secondary track haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than two hundred feet;

(C) track switches on entries shall be well bonded; and

(D) in rooms where electric equipment is dependent upon the room track rails as a power conductor, rail joints shall be secured by means of fish plates, angle bars, or the equivalent, and at least one rail shall be bonded at each joint: *Provided, however,* That rails in rooms in gassy mines shall not be used as power conductors.

(8) All power circuits and electric equipment shall be deenergized before repairs are made: *Provided, however,* That employees may, where necessary, repair energized trolley wires if they wear insulated shoes and lineman's gloves.

This provision does not prohibit qualified repairmen from having power on equipment for making checks on such equipment.

(9) Trolley wires and trolley feeder wires shall be installed on the side of the entry opposite the clearance space and shelter holes, except where the wires are guarded or six and one-half feet or more above the top of the rail.

(10) Trolley wire hangers shall be so spaced that the wire may become detached from any one hanger without creating a shock hazard.

(11) Trolley wires shall be alined properly and installed on insulated hangers at least six inches outside the rail.

(12) Trolley wires and trolley feeder wires installed after the effective date of this Act shall be provided with cutout switches at intervals of not more than one thousand five hundred feet and near the beginning of all branch lines.

(13) Trolley wires and trolley feeder wires shall be kept taut and not permitted to touch the roof, ribs, timbers, or any combustible material.

(14) Trolley wires and trolley feeder wires shall be guarded adequately at both sides of doors and at all places where it is necessary to work or pass under them unless they are more than six and one-half feet above the top of the rail.

(15) Trolley wires and trolley feeder wires shall not be installed in rooms in gassy mines.

(16) Trolley wires and trolley feeder wires shall not extend beyond any open breakthrough between intake and return airways, and shall be kept at least one hundred and fifty feet from any active, open pillar workings.

(17) Trolley wires and trolley feeder wires shall be guarded, anchored securely, and insulated properly at the ends.

(18) Trolley wires and trolley feeder wires shall be installed only in intake air in gassy mines.

(19) In any new mine or any old mine that may be reopened and reequipped after the effective date of this Act, trolley wires or other exposed conductors shall not carry more than three hundred volts.

(e) GROUNDING.—

(1) All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded effectively.

(2) Metallic frames, casing, and other enclosures of stationary electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively or equivalent protection shall be provided.

(3) When electric equipment is operated from three-phase alternating current circuits originating in transformers connected to provide a neutral point, a continuous grounding conductor of adequate size shall be installed and connected to the neutral point and to the frames of the power utilizing equipment. Such grounding conductors shall be grounded at the neutral point and at intervals along the conductor if feasible. A suitable circuit breaker or switching device shall be provided having a ground trip coil connected in series with the grounding conductor to provide effective ground-fault tripping.

(f) CIRCUIT BREAKERS AND SWITCHES.—

(1) Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and power circuits against excessive overload: *Provided, however,* That this does not apply to locomotives operated regularly on grades exceeding 5 per centum. Wires or other conducting materials shall not be used as a substitute for properly designed fuses, and circuit breaking devices shall be maintained in good operating condition.

(2) Operating controls, such as switches, starters, and switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

(3) Disconnecting switches shall be installed underground in all main power circuits within approximately five hundred feet of the bottoms of shafts and boreholes, and at other places where main power circuits enter the mine.

(4) Electric equipment and circuits shall be provided with switches or other controls of safe design, construction, and installation.

(5) Dry wooden platforms, insulating mats, or other electrically nonconductive material shall be kept in place at each switchboard, power control switch, and at stationary machinery where shock hazards exist.

(6) Resistors or rheostats shall be installed in such a manner as not to create a fire hazard, and shall be guarded adequately against personal contact.

(7) When not in use, power circuits underground shall be deenergized on idle days and idle shifts or shall be protected against short circuits in accordance with the load on such circuits.

(8) Electric parts such as switches, circuit breakers, rheostats, relays, and fuses shall be installed on switchboards or mounted on incombustible bases of slate or equivalent insulating material.

(9) Switchboards installed after the effective date of this Act shall be located so that ample room will be provided between the switchboard and passageways or lanes of travel

and shall have an entrance at each end to permit authorized persons to inspect, adjust, or repair apparatus back of the board. Switchboards shall have the entrance to the rear guarded against entrance of unauthorized persons unless in a building that is kept locked.

(10) Switchboards shall be well lighted for switch operations in the front and for repair and maintenance in the rear.

(11) Rooms housing switchboards shall not be used for the storage of combustible materials, and shall be kept free of debris and refuse.

(12) Suitable danger signs shall be posted conspicuously at all high potential switchboard installations.

(13) In a gassy mine, permissible junction or distribution boxes shall be used for making multiple power connections inby the last open crosscut: *Provided, however,* That nonpermissible junction or distribution boxes in use in a mine may be continued in use in such mine for one year from the effective date of this amendment or five years from the date on which a mine is classed gassy, whichever is later. All other power connection points such as "nipping stations" and easily detachable cable connections shall be outby the last open crosscut and in intake air.

(g) COMMUNICATION SYSTEMS.—

(1) Telephone service or equivalent two-way communication facilities shall be provided between the top and each

landing of main shafts and slopes. Adequate communication systems shall be provided to other active sections of the mine.

(2) Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately.

(3) Lightning arresters shall be provided at the points where telephone circuits enter the mine and at each telephone on the surface.

(4) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in event the mine electric power fails or is cut off.

(h) SIGNAL WIRES.—

(1) Signal wires shall be supported on insulators where they cross powerlines.

(2) Bare signal wires that are readily accessible to personal contact shall not carry more than thirty volts.

(i) ELECTRIC EQUIPMENT.—

(1) Electric equipment purchased for or transferred to any gassy mine after the effective date of this Act for use in other than intake air shall be permissible equipment, provided that explosion tested cable reel locomotives and shuttle cars, purchased before permissible cable reel locomotives and

shuttle cars become available, may be used in a gassy mine on condition that they are maintained in explosion proof condition.

(2) Permissible equipment used in gassy mines shall be maintained in permissible condition.

(3) Electric equipment shall not be taken into or operated in any place where methane in excess of 1 per centum can be detected with a flame safety lamp.

(4) In all gassy mines, inspections for methane shall be made before any electrically driven equipment is taken or operated in by the last open breakthrough, and tests shall be made for methane at least once every thirty minutes while such equipment is in operation, or more often, if necessary.

(5) Underground installations of electric face equipment shall not exceed three hundred volts direct current. AC installations shall be consistent with advanced technology, and provided with the necessary safety devices and components. The installations of such equipment shall be subject to the approval of the Director or authorized State official.

(j) TRAILING CABLES.—

(1) Trailing cables purchased for or transferred to any mine after the effective date of this Act for use underground shall be flame-resistant cables.

(2) Trailing cables shall be provided with suitable short circuit protection and means of disconnecting power

from the cable. In gassy mines, power connections made in other than intake air shall be by means of permissible connectors.

(3) Temporary splices in trailing cables shall be made in a workmanlike manner, and shall be mechanically strong and well insulated.

(4) The number of temporary, unvulcanized splices shall be limited to six in a trailing cable and three in a hand cable.

(5) Permanent splices in trailing cables shall be made as follows:

(A) mechanically strong with adequate electrical conductivity and flexibility;

(B) effectively insulated and sealed so as to exclude moisture; and

(C) the finished splice shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket.

(6) Trailing cable shall be protected against mechanical injury.

(k) INSPECTION OF ELECTRIC EQUIPMENT AND WIRING.—Electric equipment and wiring shall be inspected by a competent person at least once a month, and more often if necessary, to assure safe operating conditions. Any defect found shall be corrected.

(l) UNDERGROUND ILLUMINATION.—

(1) In mines classed as gassy, all persons underground shall use only permissible electric cap lamps that are worn on the person for portable illumination. This requirement, however, does not preclude the uses of other types of permissible electric lamps, permissible flashlights, permissible safety lamps, or any other portable illumination classed as permissible.

(2) Electric light wires shall be supported by suitable insulators or installed in conduit, fastened securely to the power conductors, and shall not contact combustible materials.

(3) Electric lights shall be installed so that they do not contact combustible materials.

(4) Lamp sockets with exposed metal parts shall not be used underground.

MECHANICAL EQUIPMENT

SEC. 308. (a) FACE EQUIPMENT.—

(1) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or are being trammed.

(b) Drilling in rock shall be done wet, or other means of dust control shall be used.

(c) Electric drills or other electrically operated rotating tools intended to be held in the hands shall have the electric

switch constructed so as to break the circuit when the hand releases the switch, or shall be equipped with properly adjusted friction or safety clutches.

(b) SHOP AND OTHER EQUIPMENT.—

(1) The following shall be guarded adequately:

(A) gears, sprockets, pulleys, fan blades or propellers, friction devices, and couplings with protruding bolts or nuts;

(B) shafting and projecting shaft ends that are within seven feet of floor or platform level;

(C) belt, chain, or rope drives that are within seven feet of floor or platform;

(D) flywheels. Where flywheels extend more than seven feet above the floor, they shall be guarded to a height of at least seven feet;

(E) circular and band saws and planers;

(F) repair pits. Guards shall be kept in place when the pits are not in use;

(G) counterweights; and

(H) mine fans. The approach shall be guarded.

(2) Machinery shall not be repaired or oiled while in motion: *Provided, however,* That this shall not apply where safe remote oiling devices are used.

(3) A guard or safety device removed from any ma-

chine shall be replaced before the machine is put in operation.

(4) Mechanically operated grinding wheels shall be equipped with:

(A) safety washers and tool rests;

(B) substantial retaining hoods, the hood opening of which shall not expose more than a ninety degree sector of the wheel; and

(C) eyeshields, unless goggles are worn by the operators.

FIRE PREVENTION, FIRE CONTROL, AND MINE DISASTERS

SEC. 309. (a) FIREFIGHTING EQUIPMENT AND DUTIES IN CASE OF FIRE AND FIRE PREVENTION.—

(1) Each mine shall be provided with suitable firefighting equipment, adequate for the size of the mine, such as supplies of rock dust at doors and at other strategic places, waterlines and hose, water or chemical trucks, and fire extinguishers.

(2) Clean dry sand, rock dust, or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station such as substations, transformer stations, and permanent pump stations, so as to be out of the smoke in case of a fire in the station, and suitable fire extinguishers shall be provided on all self-propelled mobile equipment, at belt heads, and at the inby end of the belts.

(3) An examination for fire shall be made after every blasting operating underground.

(4) Should a fire occur, the person discovering it and any person in the vicinity of the fire shall make a prompt effort to extinguish it.

(5) When a fire that may endanger the men underground cannot be extinguished immediately, the men shall be withdrawn promptly from the mine.

(6) Immediately upon knowledge of serious fire in or about a mine, the operator shall report by the quickest available means to the appropriate State officials, or, if there is no State plan adopted in conformity with the provisions of this Act, then to the Director. State officials, or the Director, as the case may be, shall take prompt action to go in person or dispatch qualified subordinates to the scene of the fire for consultation, and assist in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the State officials or the Director, as the case may be, or his designated subordinate, shall be final, but must be given to the operator in writing to have the force of an order.

(7) Underground storage places for oil, grease, and flammable hydraulic fluid shall be of fireproof construction.

(8) Oil, grease, and flammable hydraulic fluid stored underground for current use shall be kept in closed metal containers.

(9) Provisions shall be made to prevent accumulation of spilled oil or grease at the storage places or at the locations where such materials are used.

(10) Belt conveyors shall be equipped with control switches to automatically stop the driving motor in the event the belt is stopped by slipping on the driving pulley by breakage, or other accident.

(b) FLAMMABLE OILS AND INTERNAL COMBUSTION ENGINES.—

(1) No gasoline, benzine, kerosene, or other flammable oils shall be used underground in powering machinery, except that equipment powered by diesel engines, approved before installation by the Director or authorized State representative, may be used underground in the operation of other than coal mines, and except as hereinafter provided.

(2) Internal combustion engines shall not be permitted underground in any coal mine except with the written approval of the Director or authorized State official.

The Director or authorized State official may in his discretion approve diesel-powered locomotives, shuttle cars, or other equipment, which may be operated only upon his

written permission and under such rules as he may promulgate.

(c) An accurate map of the mine showing clearly all avenues of ingress and egress in case of emergency shall be posted in a place accessible to all employees.

(d) The drilling and sealing of oil and gas wells penetrating coal beds or open workings of mines shall be done in compliance with section 313 (b) of this Act, or State statutes imposing stricter standards.

(e) Underground structures (transformer stations, battery-charging stations, substations, permanent pumprooms, and so forth), installed in a mine after the effective date of this section shall be of fireproof construction.

(f) When approaching abandoned workings, it shall be the duty of the mine foreman, for which the operator shall also be responsible, to have boreholes kept not less than twenty feet in advance of the face and, where necessary, one each cut on sides of the working places that are being driven toward and are in dangerous proximity to an abandoned mine or part of mine which may contain flammable gas or which is filled with water. These holes shall be drilled whenever any working place in an underground mine approaches within fifty feet of abandoned workings in such mine as shown by surveys made and certified by a com-

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petent engineer or surveyor, or within two hundred feet of any other abandoned workings in such mine, which cannot be inspected. These holes must be drilled in the rib not more than fifteen feet apart.

(g) MINE OUTLETS.—

(1) Two available openings to the surface are required from each seam or stratum of coal worked. In drift or slope mines, the openings provided after the effective date of this Act must be separated by not less than fifty feet of natural strata, and all connections between them not used for the coursing of air, travel, or haulage, shall be closed with stoppings of fireproof material. In shaft mines these openings, provided after the effective date of this Act, must be separated by not less than two hundred feet of natural strata. The second opening may be made through an adjoining mine. Until these provisions are met, not over twenty men shall work in the mine at one time, and no additional development shall be permitted until the connection is made to the second opening. In mines wherein final pillar robbing operations necessitate closing the second opening, the above limitations as to number of men permitted to work will apply until the mine is worked out and abandoned.

(2) Both openings shall be kept in good condition, and shall at all times be reasonably safe and convenient for entering and leaving the mine. At all points where the passage-

way to the escapeway or escapement shaft is intercepted by roadways, entries, or other passageways, conspicuous signboards shall be placed to indicate the direction of the place of exit.

(h) MINE OPENINGS AND ESCAPEWAYS.—

(1) New shafts and partitions therein made after the effective date of this Act shall be as nearly fireproof as is practicable.

(2) Mine openings, where there is danger of fire entering the mine, shall have adequate protection against surface fires or dangerous volume of smoke entering the mine.

(3) There shall be at least two travelable passageways out of each section of each mine, one of which may be the haulage road.

(4) Escapeways shall be equipped where necessary with stairways, ladders, cleated walkways, or other means which may be approved by the Director or authorized State official, installed in such manner that men using them in emergencies may do so quickly and without undue hazard. Direction signs shall be posted conspicuously to indicate manways and designated escapeways.

(5) All unused, abandoned, and isolated surface openings shall be effectively protected against unauthorized entrance.

(i) PORTABLE ILLUMINATION.—

(1) All persons underground shall use only permissible electric lamps for portable illumination.

(2) Light bulbs on extension cables shall be guarded adequately.

(j) Each mine shall have a check-in and check-out system that will provide positive identification upon the person of every individual underground. An accurate record of the men in the mine which shall consist of a written record, check board, lamp check, or a time clock record, shall be kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number identical to the identification check carried by the person underground.

(k) SMOKING, ARCS, SPARKS, AND FLAMES.—

(1) Smoking, the carrying of matches, other flame-making devices and smokers' articles, and the intentional creation of any arc, spark, or open flame, except as provided in the following subsection, shall be prohibited in all mines.

(2) Welding and cutting with arc or flame or soldering underground in other than fireproof enclosure ventilated with intake air shall be done under the direct supervision of a competent person who shall test for methane before and during such operations in gassy mines and shall make a diligent search for fire after such operation in all mines.

Rock dust or suitable fire extinguishers shall be immediately available during such welding or cutting.

(l) SAFETY HATS, SHOES, GOGGLES, AND OTHER PROTECTIVE CLOTHING.—

(1) All persons shall wear protective hats while underground and also while on the surface where falling objects may cause injury.

(2) Protective footwear shall be worn by employees, officials, and others while on duty in and around a mine where falling objects may cause injury.

(3) Where there is a hazard from flying particles, all employees inside or outside of mines shall wear approved-type goggles or shields.

(4) Welders and helpers shall use proper shields or goggles to protect their eyes.

(5) Employees engaged in haulage operations and other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(6) Protective gloves shall be worn when material which may injure the hands is handled, but gloves with gauntlet cuffs shall not be worn around moving equipment.

(7) Men exposed for short periods to gas, dust, fume, and mist-inhalation hazards shall wear permissible respiratory equipment. When the exposure is for prolonged periods,

other measures to protect workmen or to reduce the hazard shall be taken.

(m) Oily rags, oily waste, and wastepaper shall be kept in closed metal containers until removed for disposal.

(n) FIRST AID EQUIPMENT AND MEDICAL CARE.—

(1) Each mine shall have an adequate supply of first aid equipment as determined by the Director or authorized State official and such supplies shall be located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. The first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust tight and moisture proof, and shall be available for the use of all persons employed in the mine. In addition to the material in the cases, blankets, splints, and properly constructed stretchers in good condition shall be provided. No first aid material shall be removed or diverted without authorization except in case of injury in or about the mine.

(2) When an injury occurs underground, the injured person shall be brought promptly to the surface. Prompt medical attention shall be provided in the event of injury, and where necessary, adequate facilities shall be made available for transporting injured persons to a hospital.

EXPLOSIVES AND BLASTING

SEC. 310. (a) SURFACE STORAGE OF EXPLOSIVES, DETONATORS, AND CARDOX HEATER ELEMENTS.—

(1) Separate surface magazines shall be provided for the storage of explosives, detonators, and Cardox heater elements.

(2) Surface magazines for storing and distributing explosives in amounts exceeding one hundred and fifty pounds shall be—

(A) reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground, need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet resistant by material construction, or by a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by other methods;

(B) provided with doors constructed of three-eighths-inch steel plate lined with a two-inch thickness of wood, or the equivalent;

(C) provided with dry floors made of wood or other

nonsparking material, and have no metal exposed inside the magazine;

(D) provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine;

(E) provided with properly screened ventilators;

(F) equipped with no openings except for entrance and ventilation; and

(G) kept locked securely when unattended.

(3) Surface magazines for storing detonators and Cardox heater elements need not be bulletproof, but they shall be in accordance with other provisions for storing explosives.

(4) Explosives or Cardox heater elements in amounts of one hundred and fifty pounds or less, or five thousand detonators or less, shall be stored in accordance with preceding standards or in separate locked box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those set forth above. Box-type magazines shall be strongly constructed of two-inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazine shall be placed in a building containing oil, grease, gasoline, wastepaper, or other highly flammable material; nor shall a magazine be placed within twenty feet of a stove, furnace, open fire, or flame.

(5) The location of magazines shall be not less than three hundred feet from any mine opening, occupied building or public road. However, if sufficiently barricaded and approved by the Director or authorized State official, such magazine may be located less than three hundred feet from any mine opening, occupied building, or public road.

(6) The supply kept in distribution magazines shall be limited to approximately a forty-eight-hour supply and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a four-inch substantially fastened hardwood partition, or the equivalent.

(7) The area surrounding magazines for not less than twenty-five feet in all directions shall be kept free of rubbish, dry grass, or other materials of a combustible nature.

(8) If the explosives magazine is illuminated electrically, the lamps shall be of vapor-proof type, installed and wired so as to present minimum fire and contact hazards.

(9) Only nonmetallic tools shall be used for opening wooden containers. Extraneous materials shall not be stored in an explosives, detonator, or Cardox heater element magazine.

(10) Smoking, carrying smokers' articles, or open flames, shall be prohibited in or near any magazine.

(b) CARDOX CHARGING STATIONS.—

(1) A Cardox charging station shall—

(A) be in a fireproof structure on the surface, or isolated from other operations in the same building, by a substantial fireproof partition; and

(B) be provided with at least two methods of relieving excess pressure in the storage tank, at least one of which shall be automatic. If one of these methods is a valve, the valve shall be tested monthly.

(2) The daily supply of heater elements shall be kept in a box-type magazine.

(c) UNDERGROUND TRANSPORTATION OF EXPLOSIVES.—

(1) Explosives or detonators carried anywhere underground by any person shall be in individual containers. Such containers shall be constructed substantially of nonconductive material maintained in good condition and kept closed.

(2) When explosives or detonators are transported underground in cars moved by means of a locomotive or rope, or in shuttle cars, they shall be in substantially covered cars or in special substantially covered containers used specifically for transporting detonators or explosives—

(A) the bodies and covers of such cars and containers shall be constructed or lined with nonconductive material;

(B) if explosives and detonators are hauled in the same explosive car or in the same special container, they

shall be separated by at least a four-inch, substantially fastened hardwood partition, or the equivalent;

(C) explosives, detonators, Cardox shells, or other blasting devices shall not be transported on the same trip with men;

(D) when explosives or detonators are transported in special cars or containers in cars, they shall be hauled in special trips not connected to any other trip: *Provided, however,* That this shall not prohibit the use of such additional cars as needed to lower a rope trip, or to haul supplies including timbers: *And provided further,* That materials so transported shall not project above the top of the car. In no case shall flammable materials such as hay, oil, or grease be hauled on the same trip with explosives; and

(E) explosives or detonators shall not be hauled into or out of a mine within five minutes preceding or following a man-trip or any other trip. If traveling against the air current, the man-trip shall precede the explosives trips; if traveling with the air current, the man-trip shall follow the explosives trip.

(3) In low coal seams, where it is impractical to comply with paragraph (2), explosives may be transported in the original and unopened case, or in suitable individual containers to the underground distribution magazine.

(4) Explosives may be transported in the original and unopened case, or in suitable individual containers to the underground distribution magazine.

(5) Explosives and detonators shall be transported underground by belt only under the following conditions—

(A) in the original and unopened case, in special closed cases constructed of nonconductive material, or in suitable individual containers;

(B) clearance requirements shall be the same as those for transporting men on belts;

(C) suitable loading and unloading stations shall be provided; and

(D) stop controls shall be provided at loading and unloading points, and attendants shall supervise the loading and unloading of explosives and detonators.

(5) Neither explosives nor detonators shall be transported on flight or shaking conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, drill trucks, or any self-propelled mobile equipment: *Provided, however,* That this shall not prohibit the transportation of explosives or detonators in special closed containers in shuttle cars, or in equipment designed especially to transport such explosives or detonators.

(d) UNDERGROUND STORAGE OF EXPLOSIVES AND SO FORTH.—

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(1) When supplies of explosives and detonators for use in one or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, and shall be located at least twenty-five feet from roadways and power wires, and in a reasonably dry, well rock-dusted location protected from roof falls. In pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

(2) When explosives or detonators are stored in the section, they shall be kept preferably in separate boxes or magazines not less than twelve feet apart; if kept in the same box or magazine, they shall be separated by at least a four-inch, substantially fastened hardwood partition, or the equivalent. Not more than a forty-eight-hour supply of explosives or detonators shall be stored underground in such boxes or magazines.

(3) Explosives and detonators kept near the face for the use of workmen, shall be kept in separate individual closed containers, in niches in the rib, not less than twelve feet apart, at least fifty feet from the working face and out of line of blast. Such containers shall be constructed of substantial material and maintained electrically nonconductive. Where it is physically impracticable to comply with such distance requirements, the explosives and detonator con-

tainers shall be stored in the safest available place not less than fifteen feet from any pipe, rail, conveyor, roadway, or powerline, not less than twelve feet apart and at least fifty feet from the working face and out of line of blast.

(4) Explosives and detonators shall be kept in their containers until immediately before use at the working faces.

(5) Only nonmetallic tools shall be used for opening wooden explosives containers. Tools or other materials shall not be stored with explosives or detonators.

(e) BLASTING PRACTICES.—

(1) Prior to the use of Cardox or air breaking methods, both of which are classed as permissible blasting methods, or any other blasting device or method that may be classed as permissible, the operator must secure written approval from the Director or the authorized State official.

The Director or authorized State official, in granting approval, will issue instructions as to storage, transportation, handling, charging, tamping, detonating, and handling misfires. These instructions will be made conditions of the approval, and violations of any of them shall be considered violations of this section. The Director or authorized State official may, at his discretion, approve the use of delay electric detonators, which may be used upon his written permission and under such rules as he may promulgate.

(2) All explosives used underground in coal mines shall be of the permissible type and shall be used as follows:

(A) fired only with electric detonators of proper strength, unless permission is obtained from the Director or authorized State official to use fuse and caps;

(B) fired with permissible shot-firing units, unless firing is done from the surface when all men are out of the mine, or a permit is secured to use other appropriate devices;

(C) boreholes in coal shall not be drilled beyond the limits of the cut where the coal is cut nor into the roof or floor.

(D) boreholes shall be cleaned, and shall be checked to see that they are placed properly and are of correct depth in relation to the cut before being charged.

(E) all blasting charges in coal shall have a burden of at least eighteen inches in all directions if the height of the coal permits.

(F) boreholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than four feet in depth. The Director

or authorized State official may authorize the use of newly developed stemming devices;

(G) in gassy mines, examinations for gas shall be made immediately before firing each shot or group of multiple shots and after blasting is completed;

(H) shots shall not be fired in any place where methane can be detected with a flame safety lamp;

(I) without permit, charges exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if boreholes are six feet or more in depth; the explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed; with all cartridges in contact with each other, with the end cartridge touching the back of the hole and the stemming, respectively; and class A or class B permissible explosives are used: *Provided, however,* That the three pound limit shall not apply to solid rock work;

(J) in any mine in which solid shooting is done, the Director or authorized State official, shall prescribe the conditions under which such solid shooting may be done. Any operator, or mine foreman, who causes or permits any solid shooting to be done in any mine without first having obtained a written permit from the Director or authorized State official, or any miner therein who shoots coal from the solid, without first having obtained

permission to do so from the operator, or the mine foreman, shall be guilty of a misdemeanor, and upon conviction shall be fined as hereinafter provided;

(K) the operator shall designate competent persons to fire shots;

(L) boreholes shall not be charged while any other work is being done at the face, and the shot or shots shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the employees;

(M) only nonmetallic tamping bars shall be used for charging and tamping boreholes. This does not prohibit the use of metallic tamping bars with a nonsparking metallic scraper on one end;

(N) the leg wires of electric detonators shall be kept shunted until ready to connect to the firing cable;

(O) shots shall not be fired from the power of signal circuit while any men are in the mine;

(P) the roof and faces of working places shall be tested before and after firing each shot or group of multiple shots;

(Q) ample warning shall be given before shots are fired, and care shall be taken to ascertain that all persons are in the clear. Men shall be removed from adjoining

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working places when there is danger of a shot blowing through.

(R) mixed types or brands of explosives shall not be charged or fired in any borehole;

(S) mudcaps (adobes) or other unconfined shots shall not be fired underground in a mine. However, in anthracite mines mudcaps or other open, unconfined shots may be fired, if restricted to battery starting when no gas or fire hazard is present, and if it is otherwise impracticable to start the battery; likewise, in anthracite mines open, unconfined "shake" shots in working places and other places in pitching veins may be fired, when no gas or fire hazard is present, if the taking down of loose, hanging coal by other means is too hazardous for men working in such places. Only permissible explosives shall be used for such open, unconfined shots in anthracite mines; and

(T) power wires and cables that could contact blasting cables or leg wires shall be deenergized during charging and firing.

(f) Blasting cables shall be:

(1) Well insulated and as long as may be necessary to permit the shot firer to get in a safe place around a corner.

(2) Short circuited at the battery ends until ready to be attached to the blasting unit.

(3) Staggered as to length, or the ends kept well separated when attached to the detonator leg wires.

(f) Kept clear of power wires and all other possible sources of active or stray electric currents.

(g) MISFIRES.—

(1) Where misfires occur with electric detonators a waiting period of at least five minutes shall elapse before anyone returns to the shot area. After such a failure the blasting cable shall be disconnected from the source of power and the battery ends short circuited before electric connections are examined.

(2) Explosives shall be removed by firing a separate charge at least two feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

(3) A very careful search of the working place—and if necessary—of the coal after it reaches the tipple, shall be made after blasting a misfired hole to recover any undetonated explosive.

(4) The handling of a misfired shot shall be under the

direct supervision of the mine foreman, or a competent person designated by him.

(5) If fuses or caps are used for blasting, misfires may not be approached by anyone until twenty-four hours have elapsed, and handling of the misfires must be done with due care and under the direction of a supervisor or other competent person. If blasting is on the surface, misfires may not be approached by anyone until six hours have elapsed.

(h) MISCELLANEOUS PROVISIONS.—

(1) When fuses are used, in no case shall such fuses be of less length than the drill hole, and they shall extend not less than four inches outside the hole. In no case shall a fuse less than three and one-half feet in length be used.

(2) Firing shots from a properly installed and protected blasting circuit may be permitted by the Director or authorized State official.

(3) After firing any shot or shots, no workman shall return to the working place until the smoke has reasonably cleared away. Before returning to work, he shall make a careful examination as to the condition of the roof and do what is necessary to make the place safe before beginning to load coal, slate, or refuse.

(4) In no case shall more than one kind of explosive be used in the same drill hole except in strip mining operations.

(i) CARDOX.—

(1) The provisions governing the handling, storage, and transportation of explosives shall apply to the heater elements of Cardox blasting devices prior to their installation in the shells.

(2) Charged Cardox shells shall, except where transported on rubber belts, be transported underground in covered insulated cars or in covered insulated boxes placed in ordinary mine cars or shuttle cars. They shall be stored in wooden racks or in insulated containers in a crosscut or idle room neck at least ten feet from pipelines, powerlines, conveyors, roadways, and haulage tracks, and shall not be removed from such rack or containers or wired until ready to use at the face.

(3) Where Cardox is used for blasting, the following shall apply:

(A) when Cardox is fired, all persons in the vicinity, including the shot firer, shall be around a second corner or in an equally safe place;

(B) blasting cables shall be as long as may be necessary to assure the safety of the shot firer, attached only after the charge has been placed in the borehole, and maintained in good repair;

(C) power wires and cables that could contact

blasting cables or leg wires shall be deenergized during the charging and firing;

(D) the charge shall be detonated with a permissible shot-firing unit.

(E) Cardox shall not be shot off the solid, over heavy rock binders or shale, or in a "tight" shot;

(F) Cardox misfires shall not be approached until after the elapse of fifteen minutes and shall be handled under the supervision of a competent person;

(G) misfired shells shall be bled off before complete removal from the hole and marked conspicuously upon such removal;

(H) all protruding wires shall be removed from shells before the shells are removed from the face;

(I) in gassy mines, examinations for gas shall be made immediately before and after firing each shot or group of multiple shots;

(J) shots shall not be fired where methane can be detected with a flame safety lamp;

(K) Cardox shells shall not be heated. This does not apply to heat generated when the shell is discharged;

(j) where compressed air is used for blasting or breaking down the coal, the following shall apply:

(1) compressed air shall be conducted from the compressor to within a practical working dis-

tance of the face by steel air lines tested to withstand an approximate pressure of twenty thousand pounds per square inch;

(2) air lines shall be grounded at the compressor and, if possible, at other low resistance ground connections along the lines, such as at borehole casing. They shall not be connected in any way to tracks, water lines, or other electric power return conductors, and shall be suitably insulated where they cross electric wires or underneath the track;

(3) unions shall be installed in steel air lines at not more than one thousand foot intervals, and insulated couplings shall be installed at the inby ends of such lines;

(4) shutoff valves shall be installed every one thousand feet in all compressed air blasting lines and in all branch lines at a point near the main lines;

(5) compressed air blasting lines shall be protected at places where equipment passes over, under, or adjacent to them;

(6) steel or copper lines shall not be handled or repaired when air pressure is in the line;

(7) air lines shall be examined periodically for kinks or other weaknesses and replaced immediately when defects are found;

(8) copper tubing shall be coiled and uncoiled properly. The part of the tubing that is effected by frequent coiling and uncoiling shall be renewed periodically because of the dangers from kinks and crystallization;

(9) blow down valves shall not be less than forty-five feet from the face and shall be around a right angle;

(10) holes for compressed air tubes shall be within the limits of the cut, and shall not be drilled until the coal is cut;

(11) the tube shall be pushed to the back of the drill hole and then withdrawn six to twelve inches to form an air cushion;

(12) when blow down valves are opened to discharge the tube, they shall remain open until time to place the tube in the next borehole;

(13) after breaking down the coal in any one place, the tube shall be disconnected at once from the air line and not reconnected until ready to be used in the next place;

(14) when a tube fails to discharge, the line leading to the tube shall be disconnected at the blow down valve, and the tube shall be dragged by means of the line to an abandoned place, marked

with warning signs, and left for 12 hours before any repair work is done thereon; and

(15) all persons shall be removed from adjoining working places where there is danger of breaking through and shall be a safe distance around a right angle while coal breaking is in progress.

TRANSPORTATION

SEC. 311. (a) HOISTING.—

(1) Where men are transported into or out of a mine or underground by hoists, or on surface inclines, a qualified hoisting engineer shall be on duty continuously at each hoist necessary to provide immediate transportation while any person is underground: *Provided, however,* That this shall not apply to automatically operated elevators that can be operated safely by any workman.

(2) A hoist used for handling men shall be equipped with overspeed, overwind, and automatic stop controls, unless a second engineer is on duty, and a stop control is provided for his immediate use.

(3) The hoisting engineer shall operate the empty cages up and down the shaft at least one round trip at the beginning of each shift and after the hoist has been idle for one hour or more before hoisting or lowering men. A similar procedure shall be followed in slope and surface incline hoisting except that an attendant may ride on the trip.

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(4) Slope, shaft, or surface incline hoists shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft, slope, or on the incline.

(5) An accurate and reliable indicator, showing the position of the cage or trip, shall be placed so as to be in clear view of the engineer, unless the position of the car or trip is clearly visible to the engineer at all times.

(6) Hoisting equipment including the headgear, cages, ropes, connections, links and chains, shaft guides, shaft walls, and other facilities shall be inspected daily by a competent person designated by the operator. Such inspector shall report immediately to his superior any defects found, and any such defect shall be corrected promptly. The person making such examination shall make a daily permanent record of such inspection, which shall be open for inspection by interested persons.

(7) Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety. Ropes used to hoist or lower coal and other materials shall have a factor of safety of not less than five to one; ropes used to hoist or lower men shall have a factor of safety of not less than ten to one. The rope shall be replaced as soon as there is evidence of possible failure.

(8) The rope shall have at least three full turns on

the drum when extended to its maximum working length and shall make at least one full turn on the drum shaft or around the spoke of the drum, in case of a free drum, and be fastened securely by means of clamps.

(9) The hoisting rope shall be fastened to its load by a spelter-filled socket or by a thimble and adequate number of clamps properly spaced and installed.

(10) Any rope attached to a cage, man-car, or trip used for hoisting or lowering men shall be provided with two bridle chains or cables connected securely to the rope at least three feet above the socket or thimble and to the crosspiece of the cage or to the man-car or trip.

(b) CAGES, SHAFTS, AND SLOPES.—

(1) Cages used for hoisting men shall be of substantial construction; with adequate steel bonnets, with enclosed sides; with gates, safety chains, or bars across the ends of the cage when men are being hoisted or lowered; and with sufficient handholds or charins for all men on the cage to maintain their balance. A locking device to prevent tilting of the cage shall be used on all self-dumping cages when men are transported thereon.

(2) The floor of the cage shall be constructed so that it will be adequate to carry the load and so that it will be impossible for a workman's foot or body to enter any opening in the bottom of the cage.

(3) Cages used for handling men shall be equipped with safety catches that act quickly and effectively in case of an emergency.

(4) A test of safety catches on cages shall be made at least once each month. A written record shall be kept of such tests, and such record shall be open for inspection by interested persons.

(5) The speed of the cage, car, or trip in shafts, slopes, or on surface inclines shall not exceed one thousand a minute when men are being hoisted or lowered.

(6) Two independent means of signaling shall be provided between the top, bottom, and all intermediate landings of shafts, slopes, and surface inclines and the hoisting station. At least one of these means of signaling shall be audible to the hoisting engineer.

(7) An approved signal code shall be in use at each mine and shall be at the cage station designated by the shaftman.

(8) When men are being hoisted or lowered in shafts, slopes, or on surface inclines, the loading and unloading of men and movement of the cage, car, or trip shall be under the direction of qualified attendants, unless automatic elevator-type hoists are used.

(9) All shafts shall be equipped with safety gates at the top and at each landing. Where possible, such gate shall

be self-closing and shall be kept closed except when the cage is being loaded or unloaded.

(10) Positive stopblocks or derails shall be placed near the top and at intermediate landings or slopes and surface inclines and at the approaches to all shaft landings.

(11) At the bottom of each hoisting shaft and at intermediate landings, a "runaround" shall be provided for safe passage from one side of the shaft to the other. This passageway shall be not less than five feet in height and three feet in width.

(12) Ice shall not be permitted to accumulate excessively in any shaft where men are hoisted or lowered.

(13) No person shall ride on a loaded cage.

(14) The number of persons riding in any cage or car at one time shall be prescribed by the Director or authorized State official.

(c) HAULAGE ROADS AND TRACK.—

(1) The roadbed, rails, joints, switches, frogs, and other elements of the track of all haulage roads shall be constructed, installed, and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

(2) All track switches shall be provided with properly installed throws, latches, and bridle bars.

(3) Track switches, except those in rooms and in

entry development, shall be equipped with properly installed guardrails.

(4) Switch throws and stands shall be on the clearance side.

(5) Haulage tracks shall be kept free of accumulations of coal spillage and debris.

(6) Roadbeds shall be kept well drained.

(7) Rails shall be secured at all joints by means of plates or weld.

(8) Shuttle-car haulage roads shall be maintained reasonably free of bottom irregularities, excess spillage, debris, and wet or muddy conditions that make it difficult to control the shuttle-car.

(d) CLEARANCE AND SHELTER HOLES.—

(1) Track-haulage roads in entries, rooms, and breakthroughs developed after the effective date of this Act shall have a continuous clearance on one side of at least twenty-four inches from the farthest projection of moving traffic and shall be free of any obstruction to a height of six and one-half feet where the height of the coal permits.

(2) Track-haulage roads in entries, rooms, and breakthroughs developed after the effective date of this Act shall have a continuous clearance on the "tight" side of at least six inches from the farthest projection of moving traffic.

(3) On haulage roads where trolley lines are used, the

clearance for traveling shall be on the side opposite the trolley lines, except where such lines are six and one-half feet or more above the rail.

(4) The clearance space on all track-haulage roads shall be kept free of loose rock, loose coal, supplies, and other loose materials: *Provided, however,* That not more than twenty-four inches need be kept free of obstructions.

(5) Parallel tracks installed after the effective date of this Act shall be far enough apart to allow a clearance of at least twenty-four inches between the outermost projections of passing traffic.

(6) Ample clearance shall be provided at conveyor loading heads, at conveyor control panels, and along conveyor lines.

(7) Where it is necessary for men to cross conveyors regularly, suitable crossing facilities shall be provided.

(8) Shelter holes shall be provided at intervals not to exceed the interval permitted for crosscuts.

(9) Shelter holes made after the effective date of this Act shall be at least five feet in depth, not more than four feet in width, and six feet in height, or as high as the traveling space if the traveling space is less than six feet high. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.

(10) Shelter holes shall be kept free of refuse, loose roof, and other obstructions.

(11) Shelter holes shall be provided at manually operated doors and at switch throws, except where more than 6 feet of side clearance is maintained and at room switches. The rail shall be used as a point from which the measurement is to be taken.

(12) At each underground slope landing where men pass and cars are handled, a shelter hole at least ten feet in depth, four feet in width, and six feet in height shall be provided.

(13) Upon the approach of moving traffic, persons not engaged in haulage operations shall take refuge in shelter holes or other places of safety.

(e) HAULAGE EQUIPMENT.—

(1) Locomotives, mine cars, shuttle cars, supply cars, conveyors, and all other haulage equipment shall be maintained in a safe operating condition.

(2) All track-mounted, self-propelled mobile haulage equipment and shuttle cars for use underground and ordered after the effective date of this Act shall be equipped with safe seating facilities for the operator.

(f) SAFETY DEVICES AND PRACTICES.—

(1) Locomotives shall be equipped with proper devices

including lifting jacks, which shall be used for the rerailing of locomotives and cars.

(2) An audible warning device and headlights shall be provided on each locomotive, shuttle car, and any other self-propelled mobile haulage equipment.

(3) A permissible trip light shall be used on the rear of trips pulled and on the front of pushed trips and trips lowered in slopes: *Provided, however,* That trip lights need not be used on cars being shifted to and from loading machines, on cars being handled at loading heads, during gathering operations at working faces, where locomotives are used on each end of a trip, or on trips pulled by animals.

(4) Pushing of cars on main haulage roads shall be prohibited except where necessary to push cars from sidetracks located near the working section to the producing entries and rooms, where necessary to clear switches and sidetracks, and on the approach to cages, slopes, and surface inclines.

(5) Where track haulage is used, sidetrack shall be provided as near as feasible to the working places.

(6) Back poling shall be prohibited except at places where the trolley pole cannot be reversed or when going up extremely steep grades and then only at very slow speed.

(7) Other than the motorman and trip rider, no person shall ride on a locomotive unless authorized by the mine

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foreman, and no person shall ride on loaded cars or between cars of any trip, except that the trip rider may ride on the part of the trip adjudged safest by the mine foreman and concurred in by the mine inspector, preferably the first or the last car. When officials or other persons authorized by the mine foreman, trafficman, haulage boss, or dispatcher, are transported on loaded trips, an empty car will be placed between the locomotive and the first loaded car; or when physical conditions of haulage require it as a safety measure, the mine foreman may designate the rear of trips for the empty car. No brakeman or driver shall ride on the front bumper of any car or trip.

(8) No person shall get on or off moving locomotives or cars being moved by locomotives: *Provided, however,* That the brakeman may get on or off the rear end of a slowly moving trip, or the stirrup of a slowly moving locomotive, to throw a switch, aline a derail, or open or close a door.

(9) Operators of shuttle cars shall face in the direction of travel.

(10) All trips and locomotives shall come to a complete stop before cars are coupled or uncoupled by hand.

(11) Standing cars on any track, unless held effectively by brakes, shall be properly blocked or spragged. Cars shall be secured effectively at working faces.

(12) Positive-acting stopblocks or derails shall be used where necessary to protect persons from danger of moving or runaway haulage equipment.

(13) Timbers and other materials not necessary for the operation of locomotives, cutting machines, loading machines, and coal drilling machines shall not be transported on such equipment.

(14) Slides, skids, or other adequate means shall be used on descending trips on grades where the locomotive is not adequate to control the trip, and where practicable, a drag shall be used on ascending trips on steep grades.

(15) Material being transported shall be loaded so as to protect the motorman or brakeman from sliding equipment and/or material.

(16) Where seating facilities are provided on self-propelled mobile equipment, the operator shall be seated before such equipment is moved.

(17) Operators of self-propelled haulage equipment shall sound a warning before starting such equipment and on approaching curves, sidetracks, doors, curtains, manway crossings, or any other place where persons are or likely to be.

(18) Locomotives following other trips shall maintain a distance of three hundred feet from the rear end of the preceding trip or locomotive.

(19) Brakemen shall always stand in the clear during switching operations.

(20) Where block signals are used, not more than one locomotive, except pushers, shall operate in any signal block at the same time unless by special authority.

(21) Where a dispatcher is employed to control trips, traffic under his jurisdiction shall be moved only at his direction.

(g) TRANSPORTATION OF MEN.—

(1) Man-trips operated by means of locomotives shall be pulled and at safe speeds consistent with the condition of roads and type of equipment used, and shall be so controlled that they can be stopped within the limits of visibility.

(2) Each man-trip shall be under the charge of a certified official, and it shall be operated independently of any loaded trip of coal or other material.

(3) Man-trip cars shall be maintained in safe operating condition, and enough of them shall be provided to prevent their being overloaded.

(4) No person shall ride under the trolley wire unless suitable covered man-cars are used, or unless the trolley wire is properly shielded or guarded.

(5) Other than small handtools carried on the person, supplies or tools shall not be transported in the same car or cage with men on any man-trip, except in special compart-

ments in such cars, and all persons shall ride inside the cars except the motorman and trip rider.

(6) Men shall not board or leave moving man-trip cars; they shall remain seated while in moving cars, and shall proceed in an orderly manner to and from man-trips.

(7) A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man-trips or man-cages, and the men shall remain in such station until the man-trip or man-cage is ready to load. Men shall be permitted to unload from man-trips only at man-trip stations, except that persons assigned to special duties along main haulageways may unload at any point if clearance from moving equipment is provided.

(8) Trolley and power wires shall be guarded effectively at man-trip stations where there is a possibility of any person coming in contact with energized electric wiring while boarding or leaving the man-trip. Deenergizing switches, used in conjunction with signal lights to indicate when such wires have been deenergized, may be used in lieu of guards at man-trip stations.

(9) When belts are used for transporting men, such belts shall be free of loose materials, and a minimum clearance of eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap

pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall be not less than twenty-four inches. Control switches shall be provided at all places were men board or leave belts regularly.

(10) The belt speed shall not exceed two hundred and fifty feet a minute while men are being transported, and such belt shall be stopped while men are boarding or leaving.

(11) The space between men riding on a belt line shall be not less than five feet.

(12) Adequate clearance and proper illumination shall be provided where men board or leave the conveyor belts.

(13) A supervisor or other certified person designated by him shall be in attendance while men are boarding or leaving belts.

SURFACE STRUCTURES AND CONDITIONS

SEC. 312. (a) GENERAL.—

(1) In surface structures at excessively dusty mines electric motors, switches, lighting fixtures, and controls shall be protected by dust tight construction.

(2) Surface structures shall be kept free of coal dust accumulations.

(3) Where repairs are being made to the plant, or where equipment or material is being used or transported overhead, proper scaffolding or proper overhead protection shall be provided.

(4) Welding or cutting with arc or flame shall not be done in excessively dusty atmosphere or dusty locations, and firefighting apparatus shall be readily available.

(b) LAMPHOUSE AND LAMPS.—

(1) Naphtha or other flammable liquids in lamphouses shall be kept in safe containers and safe dispensers.

(2) All lamps used for portable illumination, flame safety lamps, and methane detectors or indicators shall be of permissible type and maintained in permissible condition. Such lamps shall be properly cleaned, assembled, and checked by a qualified lamp attendant or other competent person before each period of use.

(3) It shall be unlawful for unauthorized persons to handle, use, or assemble flame safety lamps which are provided for underground use.

(c) STAIRWAYS, PLATFORMS, RUNWAYS, AND FLOOR OPENINGS.—

(1) Stairways, platforms, and runways shall be provided where men work or travel above ground.

(2) Stairways, elevated platforms, floor openings, and elevated runways shall be equipped with suitable handrails or guardrails.

(3) Elevated platforms, floor openings, stairways, and runways shall be provided with toe boards. Platforms, stair-

ways, and runways shall be kept clear of stumbling and slipping hazards and maintained in good repair.

(d) Good housekeeping shall be practiced in and around mine buildings and yards. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass, and possible falling and rolling materials.

(e) LIGHTING.—

(1) Lights shall be provided as needed in or on surface structures.

(2) Roads, paths, and walks outside of structures shall be kept free from obstructions and shall be well illuminated, if used at night.

(f) FLAMMABLE OR COMBUSTIBLE MATERIAL AND SMOKING.—

(1) Oil, grease, and similar flammable materials shall be kept in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or room in which it is stored shall be of fireproof construction and well ventilated.

(2) Oily rags, oily waste, and wastepaper shall be kept in closed metal containers until removed for disposal.

(3) Smoking shall be prohibited in or around oilhouses.

explosive magazines, tipples, and other places where such practice may cause a fire or explosion.

(4) The area within one hundred feet of all mine openings shall be kept free of combustible materials: *Provided, however,* That this shall not apply to the temporary storage of not more than a one day's supply of such materials.

OIL WELLS DRILLED THROUGH OR NEAR COAL MINES OR BEDS

SEC. 313. (a) A well penetrating one or more workable coalbeds shall be drilled to such depth, and of such size, as will permit the placing of casing and packers in the hole at such points and in such manner as will exclude all fresh or salt water, oil, gas, or gas pressure from the coalbed, except such as may be found in the coalbed itself. Each string of casing run in the hole shall be provided with a steel casing shoe or collar firmly fixed on the bottom of the string of casing. Each string of casing run through a workable bed of coal shall be seated in cement or similar material approved by the Director or authorized State official placed between the casing and the hole, making an effective seal, from a point at least thirty feet below such coalbed to a point at least twenty feet above the same. And after any such string of casing has been so sealed, drilling may proceed forthwith to any required depth. The portion of the outer (that is,

coal protecting) casing so cemented through a coalbed shall be left in place as a permanent opening, and shall not be pulled or removed when the other casing is pulled or removed.

(b) In the event that gas is found beneath a workable coalbed before the hole has been reduced from the size it had at the coalbed, a packer shall be placed below the coalbed, and above the gas horizon, and the gas by this means diverted to the inside of the adjacent string of casing through perforations made in such casing, and through it passed to the surface without contact with the coalbed. Should gas be found between two workable beds of coal, in a hole of the same diameter from bed to bed, two packers shall be placed, with perforations in the casing between them, permitting the gas to pass to the surface inside the adjacent casing. In either of the cases here specified, the strings of casing shall extend from their seats to the top of the well.

(c) In the event that a well becomes productive of oil or gas, all coal protecting strings of casing shall remain in place during the life of the well. During the life of the well the annular spaces between the various strings of casing adjacent to the workable beds of coal shall be kept open, and the top ends of all such strings shall be provided with casing heads, or such other suitable devices approved by the Director or authorized State official as will permit the free passage

of oil and gas and prevent filling of such annular spaces with dirt or debris.

(d) Where or when a well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least 30 feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than 20 feet beneath the horizon of the coalbed and extend not less than 20 feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest sized casing to be used in the well, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of 20 feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, such liner shall be started not less than 20 feet below the lowest such horizon penetrated and shall extend to a point not less than 20 feet above the highest such horizon.

(e) MINING OPERATIONS NEAR WELLS.—

(1) Before removing any coal or other mineral, or extending any mine workings or mining operations within five hundred feet of any well, or under any tract of land in vis-

ible possession of a well operator for the purpose of drilling for oil or gas, the mine operator shall give notice by registered or certified United States mail to the well operator and to the Director or authorized State official and forward therewith an accurate map or maps on a scale, to be stated thereon, of one hundred to four hundred feet to the inch, showing its mine workings and projected mine workings beneath such tract of land or within five hundred feet of such well. Following the giving of such notice and the furnishing of such map or maps, the mine operator may proceed with mining operations as projected on such map or maps, but shall not remove any coal or other mineral or conduct any mining operations nearer than two hundred feet to any completed well or well that is being drilled, or for the purpose of which drilling a derrick is being constructed, without the consent of the Director or authorized State official.

(2) Application may be made at any time to the Director or authorized State official by the mine operator for leave to conduct mining operations within two hundred feet of any such well or projected well and containing such information as the Director or authorized State official may require. Such application shall be accompanied by a map or maps as above specified showing all mining operations or workings projected within two hundred feet of the well or projected well. Notice of such application shall be sent by registered or certi-

fied United States mail to the well operator. The Director or authorized State official, prior to considering the application, may make or cause to be made any inspections or surveys which he deems necessary, and, if no objection is filed by the well operator, may grant the request of the mine operator to conduct the mining operations as projected, or with such modifications as he may deem necessary.

(3) The operator of the well or projected well affected may, within ten days of the filing of such application by the mine operator, file with the Director or authorized State official, his objections to such projected mining operations, in which event the Director or authorized State official shall, not less than twenty days nor more than forty days after the filing of the application, set a time and place for a hearing at which he will consider such application, and the objections thereto, of which at least five days' notice shall be given to the mine operator and the well operator. The Director or authorized State official, after a full hearing at which the well operator and mine operator shall be permitted to offer any competent and relevant evidence, shall grant the request of the mine operator or shall refuse to grant the same, or make such other decision with respect to such proposed further operations in the vicinity of any such well or projected well as in his judgment is just and reasonable under all the cir-

cumstances. The Director, or authorized State official, shall keep a record of all such proceedings.

(4) Review and appeal from the decision of the Director, or authorized State official, in the same manner as provided in title I for other decisions of the Director.

TITLE IV—ADMINISTRATION

RESEARCH

SEC. 401. The Director, in coordination with the Secretary of Health, Education, and Welfare, shall conduct such studies, research, experiments, and demonstrations as may be appropriate—

(a) to improve working conditions and practices, prevent accidents, and control the causes of occupational diseases originating in the coal mining industry;

(b) after an accident, to recover persons in a coal mine and to recover the mine;

(c) to develop new or improved means and methods of communication from the surface to the underground portion of the mine;

(d) for such other purposes as he deems necessary to carry out the purposes of this Act; and

(e) this research shall be in addition to the research required under section 203 (a) of this Act.

TRAINING AND EDUCATION

SEC. 402. The Director shall expand programs for the education and training of coal mine operators, agents thereof, and miners in—

(a) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines; and

(b) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Director for accurately detecting gases.

ASSISTANCE TO STATES

SEC. 403. (a) The Director, in coordination with the Secretaries of Labor and of Health, Education, and Welfare, is authorized to make grants to any State in which coal mining takes place—

(1) to conduct research and planning studies and to carry out plans designed to improve State workmen's compensation and occupations disease laws and programs, as they relate to compensation for pneumoconiosis and injuries in coal mine employment; and

(2) to assist the States in planning and implementing other programs for the advancement of health and safety in coal mines.

(b) Grants under this section shall not extend beyond a period of five years following the effective date of this Act.

(c) Federal grants under this section shall be made to States which have a plan or plans approved by the Director.

(d) The Director shall approve any plan which—

(1) provides that reports will be made to the Director, in such form and containing such information, as may reasonably be necessary to enable him to review the effectiveness of the program or programs involved, and that records will be kept and afford such access thereto as he finds necessary or appropriate to assure the correctness and vertification of such reports;

(2) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State;

(3) contains assurances that the State will not in any way diminish existing State programs or benefits with respect to pneumoconiosis and related conditions; and

(4) meets any additional conditions which the Director may prescribe by rule in furtherance of the provisions of this section.

(e) The Director shall not finally disapprove any State

plan, or modification thereof, without affording the State reasonable notice and opportunity for a hearing.

(f) The amount granted any State for a fiscal year under this section may not exceed 80 per centum of the amount expended by such State in such year for carrying out such programs, studies, and research and no one State may be granted an amount in a fiscal year which exceeds 15 per centum of the aggregate amount granted all States for that year.

(g) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1969, and each of the succeeding fiscal years for carrying out this paragraph, the sum of $5,000,000.

RELATED CONTRACTS AND GRANTS

SEC. 404. In carrying out the activities of section 401 and section 402, the Director may enter into contracts with, and make grants to, public and private agencies and organizations and individuals.

ADMINISTRATIVE PROCEDURES

SEC. 405. The provisions of sections 551–559 and sections 701–706 of title 5 of the United States Code shall not apply to the making of any order or decision made pursuant to this Act, or to any proceeding for the review thereof.

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DATE AND REPEAL

SEC. 406. The provisions of titles I through III of this Act shall become effective sixty days after enactment, except for section 203 (a), which shall become effective on the date of enactment of this law. The provisions of title II of the Federal Coal Mine Safety Act, as amended, are repealed on the effective date of those titles, except that such provisions shall continue to apply to any order, notice, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, or finding. All other provisions of this Act shall be effective on the date of enactment of this Act.

SEPARABILITY

SEC. 407. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORTS

SEC. 408. Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress an annual report upon the subject matter of this Act, the progress con-

cerning the achievement of its purposes, the needs and requirements in the field of coal mine health and safety, and any other relevant information, including any recommendations he deems appropriate.

FEDERAL COAL MINE SAFETY BOARD OF REVIEW,
Washington, D.C., April 17, 1969.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: As requested in your letters concerning S. 355, S. 467, S. 1094, S. 1178 and S. 1300, respectively, the Board has directed that the following report be submitted thereon:

The subject bills relate to the health and safety conditions in the coal mining industry and, with particular reference to the Board, the right of appeal to, and the procedures of, this agency. After careful consideration of the entire matter, including the proposals reflected in the other bills, the Administration, as you know, has recommended the adoption of S. 1300 for the improvement of health and safety conditions in the Nation's coal mines.

S. 1300, insofar as it relates to the Board, would continue the present right of appeal to, and the procedures of, this agency, with the following principal additions: (1) The Board, essentially upon appeal by an interested party, would be empowered to render advisory opinions on health and safety regulations proposed by the Secretary of the Interior and, for this purpose, the Board would be expanded to include four public members, at least one of whom would be required to have a public health background; and (2) an operator who is assessed a civil penalty by the Secretary would be entitled to a hearing and determination by the Board on the propriety of such penalty.

The present system of appeals has worked promptly, fairly, and efficiently under the provisions of Title II of the Federal Coal Mine Safety Act, as substantially amended on March 26, 1966. The proposed additional rights of appeal, under S. 1300, would neither conflict with, nor impede, the continued effective operations of this agency. The regulatory and administrative provisions of S. 1300 are, of course, outside the scope of Board consideration and comment. However, for the reasons indicated above, the Board fully supports the proposals in S. 1300, to the extent that they apply to the conduct of this agency.

The Bureau of the Budget has advised that there is no objecion to the submission of this report to your Committee.

Sincerely yours,

ROBERT J. FREEHLING,
General Counsel
(For the Board).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
April 4, 1969.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests of February 3, 1969, for a report on S. 355, of February 24, 1969, for a report on S. 1094, of March 7, 1969, for a report on S. 1300, bills "To improve the health and safety conditions of persons working in the coal mining industry of the United States," and of February 3, 1969, for a report on S. 467, a bill "For the elimination of health dangers to coal miners resulting from the inhalation of coal dust."

All of these bills make provisions for the protection and improvement of health and safety conditions of workers in the coal mining industry of the United States, except that S. 467 is limited to the health aspects of these problems.

We strongly endorse the objectives of these proposed bills. We believe that S. 1300, the Administration's proposal, is the preferable bill to provide comprehensive health and safety protection for the coal mine workers and urge that the Congress give it favorable consideration as soon as possible.

The views of the Department on S. 1300 were presented by Dr. William H. Stewart, Surgeon General of the Public Health Service before the Subcommittee on Labor of your Committee on March 18, 1969. In Dr. Stewart's testimony we strongly recommended the enactment of S. 1300 as we believe it would bring about substantial improvement in the health and safety of coal miners in the United States.

If we can be of further assistance to your Committee in connection with consideration of this legislation, please advise us.

We are advised by the Bureau of the Budget that the enactment of S. 1300 would be in accord with the program of the President.

Sincerely,

ROBERT H. FINCH, *Secretary.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF SCIENCE AND TECHNOLOGY,
Washington, D.C., April 1, 1969.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN YARBOROUGH: This is in response to your request of February 24, 1969, for a report on S. 1094, cited as the "Federal Coal Mine Safety Act of 1969."

As you know, on March 3, 1969, President Nixon transmitted to the Congress his legislative proposals for a comprehensive new program to attack the health and safety dangers which prevail in the coal mining industry. These proposals, embodied in S. 1300, which we support in lieu of S. 1094, represent the Administration's response to the need for legislation on this subject.

I believe that others who are closer to the operating problems are in a better position to assist the Committee on the detailed provisions of S. 1094 to the extent that it differs from the Administration proposals.

I do note that Section 15 of S. 1094, providing for research and related activities, would assign responsibility for general research policy and other related research activities on coal mine safety to the Office of Science and Technology in the Executive Office of the President. We agree that a coordinated research program that will provide solutions to the interrelated problems of health and safety, productivity and environmental control should be carried on, and we are presently in the process of assisting the Bureau of Mines in formulating such a program. However, we do not believe the specific provisions in Section 15 of S. 1094 are necessary for that purpose because under existing law this Office can, and will, provide whatever assistance and coordination may be required to assure that coal mine safety research moves ahead efficiently and effectively. Since this Office acts on behalf of the President, we do not believe any additional authority to direct the agencies is required.

Sincerely,

LEE A. DUBRIDGE, *Director.*

STATEMENT OF HON. HARRISON A. WILLIAMS, JR., A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator WILLIAMS. In introducing S. 1094 and S. 1178, I stated my belief that all legislative approaches to these important questions should be a part of the hearing record and available to the committee for its consideration. If there are any other bills on this subject, which can be made available to me in the very immediate future, from either coal management or the administration, I intend to make them also a part of these hearings.

The beginnings of coal mining in this country go back to 1730; our Federal Bureau of Mines was established in 1910. Yet, it was not until 1941 that the first Federal coal mine safety legislation was enacted into law. That was the legislation I referred to in introducing Senator Randolph. He was one of the chief architects of that beginning accomplishment.

In 1942, the Russell Sage Foundation published a study regarding the prevention of fatal explosions in coal mines. The authors of that report, commenting on title I of the Federal Coal Mine Safety Act, wrote:

". . . Undoubtedly, the record of explosions in 1940 was influential, if not the determining factor in bringing about this legislation. In this there was no departure from the usual pattern; dead miners

have always been the most powerful influence in securing passage of mining legislation."

I believe the foundation referred to the great difficulty in getting the Bureau of Mines established in 1910, as well as the long history of unsuccessful efforts to enact legislation before the first breakthrough by the 1941 act.

Here we are, 27 years later, and yet another mining disaster has occurred—the Mannington-Farmington, W. Va., No. 9 mine explosions, which killed 78 men in November 1968. The stark reality contained in the Russell Sage Foundation 1942 study is as true today as it was then. Our antidisaster actions are always after the fact.

In a report from the Bureau of Mines, Department of the Interior, called "Coal Mine Fatalities of 1968," there is documented a total of 309 work fatalities in 1968. By dividing 78—the number of men killed in the Mannington explosion disaster—into 309, there was the equivalent of four Mannington disasters that year.

In 1967, the Bureau reported 220 mineworker fatalities. Despite such a large number of fatalities, the report provided the reassuring statement that there were no "major disasters" in coal mines for that year. This is because the legal definition of a major disaster means that five or more men are killed simultaneously.

As far as this Senator is concerned, these hearings must take great care to look behind and deeper than the legal definition. We must come to understand the human definition of a mine disaster. My starting point is that one man killed equals one disaster. And it seems to me that is the only definition we can in good conscience offer the widows and children of the 309 mineworkers killed in 1968.

And again I would like to go back to the work of Senator Randolph in extending the Mine Safety Act to even the smaller mines.

Senator RANDOLPH. Yes, Mr. Chairman; to the mines with 15 workers or less. This was important and has proved to be helpful in improving the safety of the workers in the small mines in West Virginia. Frankly, we have several hundred miners in that category.

Senator WILLIAMS. I believe then, Senator, we certainly agree that one death in the mine is a disaster.

Senator RANDOLPH. Yes, I made that argument, Mr. Chairman. I think it is true. I did so at the time of the passage of the act and I reiterate it here today.

Senator WILLIAMS. The largest number of underground deaths in a year are caused by roof falls in the mines. The second ranking cause is gas and dust explosions; other leading causes are haulage accidents, electrical, and machinery. Deaths from these five ranking causes of fatal accidents made up 93 percent of the total deaths in underground workings in 1968.

We have recently been made aware of the seriousness and the magnitude of the miner's occupational respiratory disease, pneumoconiosis, or "black lung," which is caused by inhalation of coal dust. Dr. Willian Stewart, the Surgeon General of the United States, has said that "black lung" conservatively affects more than 100,000 soft-coal workers.

This information may be news to us but it is an old story to the coalminers. According to Dr. Lorin E. Kerr, assistant to the executive medical officer, United Mine Workers of America welfare and

retirement fund, what we now know as "black lung" was called "miner's con" years ago. The first medical term was "miner's asthma"; the cause of miners' spitting, coughing, and breathlessness was unknown, so doctors used the phrase "miner's asthma" to label the condition.

After years of study and research we now call it pneumoconiosis. But call it what you will—it disables and kills.

Men die from this disease, but before they die they suffer extreme pain and shortness of breath for 15 to 20 years—many continuing to go down to the mines to work with their affliction.

The mechanization of our coal mining industry has increased the miner's chances for contracting the disease. High-powered drills, mechanized loaders, electrical cables—the whole mechanized process—creates more coal dust.

The seriousness of this problem is underscored when we consider the Surgeon General's estimate that as many as 70 percent of the 144,000 coal miners in this country are suffering from "black lung." Furthermore, pneumoconiosis is not recognized as a compensable occupational disease except in the States of Pennsylvania, Virginia, and Alabama. We just heard from Senator Randolph that it appears as though this is going to be increased by West Virginia shortly.

Did I understand you correctly on that?

Senator RANDOLPH. West Virginia is considering increased benefits under our workmen's compensation law which now is in the process of amendment by the State's legislature.

Senator WILLIAMS. I appreciate that. I will say, as I read in the newspapers, there are about 10,000 miners in West Virginia who are expressing their views in united action within your great State at this point, addressing themselves to the State legislature.

Senator RANDOLPH. That is correct. They are very active.

Senator JAVITS. Senator Randolph and I and others are sponsoring a bill to review the workmen's compensation laws of the United States. What the chairman has just said bears very directly and urgently on this.

Senator WILLIAMS. I agree we are. I think maybe later in the morning when we talk to some of our witnesses we might raise that as one of the points of interest.

Senator RANDOLPH. In connection with Senator Javits' remark in reference to workmen's compensation; namely, a review of the State statutes, Senator Javits has been a prime mover in that effort, not only as we begin this 91st Congress but in the 90th Congress, too. We had discussions within this committee. I was gratified to be able to join with him.

Senator WILLIAMS. It is obvious that we must have legislative standards and technical methods for controlling coal dust at safe levels.

In this otherwise dark picture there is one pleasant thought: If I read correctly the coal industry's production and fiscal reports, these hearings will not be complicated by the "bankruptcy" arguments so frequently leveled at this type legislation.

The National Coal Association calls its product "The Fuel of the Future."

In a July 1968 press release, the NCA stated that the bituminous coal industry has recovered from its recent lean years. In 1967 it pro-

duced 551 million tons of coal and prospects were bright. Major research efforts were then underway to convert coal to competitive gasoline and pipeline gas. Major oil companies, seeing their supplies dwindling, are investing heavily in coal. The release concluded: "As America's main reservoir of energy in the years ahead, coal's prospects are glittering."

Just how glittering was described in some detail in an article in Barrons July 1968, which reported the acquisition of the Nation's three largest coal producers by noncoal companies:

In 1966, Continental Oil Co. acquired the No. 2 producer, Consolidation Coal Co., which owns Farmington No. 9 in West Virginia.

Last January, Occidental Petroleum Co. bought the No. 3 coal producer, Island Creek Coal Co.

And in March 1968, Kennecott Copper Co. absorbed the leading coal producer, Peabody Coal Co.

Other statistics on production and profits—from the same article—suggest that the mining industry has never been in better fiscal health. It is, therefore, timely, fitting, and proper that we turn attention to the safety and health of the mine workers themselves.

Finally, we have recently had a case of oil pollution in California that shook the country. Now we are faced with a terrible mining disaster in West Virginia and evidence of lung pollution.

In both cases, at the top of the ownership structure we find big oil companies. This parallel may be trying to tell us something. Are there comments?

Senator RANDOLPH. Mr. Chairman, just a final word before we go down to the auditorium.

I want to reemphasize what I said in my opening statement: My action in introducing S. 335 and S. 467 does not mean that I enter these hearings with a closed mind or a preconceived or fixed opinion. Out of these hearings, as you have said, we should be able to bring legislation which is well reasoned and will improve the mine safety conditions. They should be improved. And, too, these measures should go to the very heart of the health problems of miners.

I think, Mr. Chairman, that the members of this Labor Subcommittee will give perhaps as close attention and support as we have to any other legislation that we have considered in the subcommittee or in the Labor and Public Welfare Committee over a long span of years. So I wish to pledge you, as I earlier said, my utmost cooperation in ferreting out the facts and being constructive in the interest of not only miners, but the public welfare, as well.

Senator WILLIAMS. I certainly appreciate that. I will say that the cooperation of the Senator from West Virginia is indispensable to success in this legislation.

Senator Metcalf.

STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. Mr. Chairman, this is a very special privilege for me to introduce a most distinguished Montanan, a coal miner from Montana who has been an experienced coal miner, who has

worked up through the union, working in the Round-Up at Great Falls, at Stockett-Sand Coulee, and the Red Lodge Fields.

More than 30 years ago when I was running for office in Montana Mr. Boyle and I campaigned those coal mines together. In those days we were working for mine safety, we were working for the security of the miners, we were working for better salaries for the miners, better hours, and benefits. Tony has continued work for those all his life. That is how he has grown up and developed so that he is now the leading and outstanding spokesman for the coal miner and United Mine Workers of America.

We in Montana are very proud of Tony Boyle. We are proud of the fact he came from Montana, we are proud of his achievements. We like to read about him in the paper when he is speaking for and in behalf of the coal miners throughout the United States.

Now we don't have very many coal mines any more. The railroad mines are down. We are using diesel fuel out in that country. But Tony is still speaking for mine safety, for the benefits and the needs of the coal miners with whom he grew up and whom he knows so well.

So I am very proud to present to this committee an old friend, a fighter for the workers, and a distinguished Montanan.

Senator WILLIAMS. We appreciate that very much, Senator Metcalf.

You understand that we will hear your statement when we retire to the new auditorium because of the large crowd that has gathered this morning for this very important hearing.

Mr. BOYLE. I thank you, Senator.

If I am not completely out of order, I would like to reciprocate very briefly that we are very happy and proud that we have representation from the great State of Montana, the Treasure State, by Lee Metcalf, who also came up the hard way in the State of Montana.

Senator WILLIAMS. We share your feelings.

Senator METCALF. Thank you very much, Mr. Chairman.

RESUMING IN SECOND FLOOR AUDITORIUM

Senator WILLIAMS. It appears that everybody is settled and we are ready to convene our hearings in this far more comfortable room. Those who came here did not hear the opening statement upstairs. Senator Metcalf of Montana introduced the president of the United Mine Workers, President Boyle, who will be our first witness.

Mr. Boyle, will you come forward? Would your colleague like to come up to the table with you, Mr. Boyle?

Mr. BOYLE. Senator, if it meets with your approval, I have with me the director of our safety division of the United Mine Workers of America, Lewis Evans, who is an expert in his field of safety. I would like to have him sit with me here during the interrogation, if any.

Senator WILLIAMS. Senator Randolph?

Senator RANDOLPH. I think Mr. Boyle wants to proceed with his testimony and the members of the subcommittee want to listen to his testimony on pending business.

Senator WILLIAMS. You are an indispensable witness, Mr. Boyle. We are delighted to welcome you here.

STATEMENT OF W. A. BOYLE, PRESIDENT, UNITED MINE WORKERS OF AMERICA, ACCOMPANIED BY LOUIS EVANS, DIRECTOR OF THE SAFETY DIVISION, UNITED MINE WORKERS OF AMERICA

Mr. BOYLE. Thank you.

If I may be permitted, Senator, I would like to have the privilege of making a very brief statement before I read my prepared statement. I will be subject to any questions that your subcommittee desires to ask after I have completed my statement.

My prepared statement does not show that I come from a family of coal miners. Both my grandfathers on both sides of my family were coal miners. All of my uncles on both sides of my family were coal miners. My father was a coal miner. And both my brothers—the oldest now deceased—were coal miners. With his exception, those who have passed on to their reward in my family, died from the results of working in coal mines of this country. So I speak, I believe, with some authority of what black lung might be, because my father died from black lung long before I ever heard anything about these overnight experts on black lung. I held him in my arms while he died.

My mother's two brothers died from black lung. They did not call it black lung in those days. They called it the miner's con. Anyone who had miner's con had some kind of contagious disease, no one wanted to be associated with him. So they were ostracized. Then the medical profession, or someone, came up with a new term and they called it miner's asthma. Well, that was fine, that got by for a while. Then people got familiar with miner's asthma to the point that they looked upon it and frowned upon it as being some kind of disease that was contagious. So then they came up with the great name of silicosis. They used that.

Now the medical profession, or someone, has come up with a new name for it called pneumoconiosis. Pneumoconiosis, silicosis, miner's con, miner's asthma, to this individual who represents the United Mine Workers of America, it is all black lung. It was killing these people long before this President was born.

I feel quite keen about these instant experts who now tell this President and who now tell the public, and who now rant and rave around the country, and these do-gooders that cry from Congress and where have you, about how sympathetic they are. Where were they when I needed them? Where were they when my predecessors needed them? Where were they when we were begging Congress and pleading with Congress in both Houses to pass legislation? And if it had not been for the friends we did have over here, we would not have a Federal Mine Safety Act now.

The Federal Mine Safety Act that was passed in 1941 at the insistence of the senior Senator of West Virginia, and people like him, what happened? We had to take it. It was a watered-down version of what the United Mine Workers wanted. And we accepted the 1941 law because it was better than no law at all. We had no law. And that law, Mr. Chairman, if you care to review it, provides that the Federal coal mine inspectors under the direction of the Secretary of Interior——

Senator WILLIAMS. Parenthetically, Mr. Boyle, I reviewed the debate on the 1941 act this morning. That is why I referred to the leading role that Senator Randolph played in that debate back then.

Mr. BOYLE. And the inspectors had no authority whatsoever under the 1941 act except to go in and find, if the coal operator would let him go in, violations of the law, and make recommendations.

And then in 1952 we came to the Congress session after session after session during the interim period, and in 1952, after the disasters occurred in the State of Illinois and elsewhere, the Congress of the United States said it was high time that we gave these Federal inspectors some authority. They vested their men with the authority in 1952 to not only make inspections and recommendations, but to close mines and withdraw men if imminent danger existed. So we had been living with those things.

Then year after year we tried to get all mines in the United States covered by some legislation. Union mines and nonunion mines. Mines that employed from one man to 15 men were excluded. We tried to get them covered. We failed, miserably failed, before the Congress of the United States to get any consideration on that until 1966, when I appeared before both Houses.

They passed legislation then that included and protected those men who worked in mines employing less than 15 men, and it has eliminated and cut down the accident rate in coal mines.

Contrary to what the coal operators who opposed that legislation at that time, contrary to what they had to say, and they tried to impress upon the Congress of the United States that the mines would close down because they were in no position to operate under those restrictive laws—I am happy to relate to you that I know of no coal mines that have been closed down because of the passage of that law. But to the contrary, new mines have been opened up, both large and small.

Mr. Chairman, I am now ready to give you my prepared statement.

Senator WILLIAMS. Thank you.

Mr. BOYLE. My name is W. A. Boyle. I have the proud and happy experience of being president of the United Mine Workers of America, one of the greatest labor organizations in the history of the labor movement in the United States of America.

On behalf of that union, which had its beginning in 1890, I wish to express my deepest appreciation to this committee for the opportunity of appearing here today. I am here to present the views of our membership on questions regarding health and safety in the coal mines of this Nation. My appearance is neither unique nor unusual. Year after year, my great predecessors and I have appeared before congressional committees and, in the strongest possible language, have expressed the views of America's coal miners on the very issues you are going to discuss in your subcommittee hearings beginning today.

There is nothing new about those who try to jump on the bandwagon or those who attempt to carry the flag when it presents an opportunity for personal publicity or to become a Pied Piper. Such false prophets lead people astray by distorting the truth, indulging in falsification, and distorting every facet of the truth in order to create evidence of self-importance. Where were these modernday prophets of doom when the chips were down? For years, it has required guts, and plenty of guts, in order to speak up for the maimed, the broken, and the deceased coal

miners who have gone to other fields long before the time of those publicity seeking, self-appointed saviors who would mislead and deceive the membership of the United Mine Workers of America. I use this strong language, not because it provides any pleasure or delight for myself, but in order to place the engine on the track and remove the wreckers who would destroy the efforts to improve the lot of the workingman.

I know my words have been harsh, but I make no apologies because my record and that of my predecessors has been precise, clear, and self-evident to those who have followed the efforts of the United Mine Workers of America to improve both the safety and the economic status of the men who have toiled in the mines.

I appear here today to support, on behalf of the United Mine Workers of America, S. 467 and S. 1178, as well as their companion bills in the House of Representatives. S. 467, as you know deals with the establishment of standards and procedures which will protect the health of workers involved in coal mining, and S. 1178 has its relevancy in coal mine safety and related matters. The draftsmanship of these bills was the work of representatives of the United Mine Workers of America and presented to these various committees at our behest.

It is our matured and considered judgment that the bills we espouse are the best to improve both the health and safety conditions in the coal mining industry. There are those who question why these bills are introduced separately as to health and safety. One has the right to question anything he so desires, but, after a long period of experience in the legislative halls, the United Mine Workers of America, after prolonged and deliberate judgment, determined that the best strategy was to proceed with separate bills because of the greater prospect of success of each if this procedure was followed. We make no apology for this manner of proceeding.

It is not strange that for many years we have always been alone in the fight to improve the workers' interest, both as to health and safety in the coal mines of the United States. In fact, we have always been alone, and always were opposed most vigorously by those resisting better working conditions both as to health and safety in the coal mines.

Most departments of mines in the various States, many organizations and, specifically, on one occasion, the Director of the Bureau of Mines opposed legislation which would inure to the benefit of the coal miner. During that long and lonesome struggle, from the creation of the union in 1890, until 1966, we did not receive any support from anyone until one coal company, of the coal companies in the United States, was found to be in our corner in the strategy to improve the health and safety of the coal miners.

You may wonder why we speak harshly and vigorously, but it is most aggravating, to say the least, to find that we have now spewing from all sources around the country alleged experts on coal mine disasters, following the disaster which occurred in Mannington, W. Va. Now we find those who were silent are coming out and criticizing us, criticizing the only people who demonstrated any interest in the coal miners of America.

Let me further suggest that our interest was compelled by both a

sense of duty as officers of the United Mine Workers of America and by our deep faith and affection for our fellow men. Where were these so-called experts whom we now find running to the TV, radio and newspapers with old information—not with anything new, anything novel, or anything ingenious on their part.

Several months ago I had occasion to testify before a committee, a group under the chairmanship of Secretary of Interior Udall and Secretary of Labor Wirtz and, at that time, I said we always get a great deal of sympathy when a tragedy occurs involving a number of men in the coal mines.

Senator PROUTY. Mr. Boyle, I wonder if you would care to identify some of these so-called experts you have been referring to thus far in your statement.

Mr. BOYLE. I will be very happy to as soon as I conclude my statement. I will give you all of them.

Senator PROUTY. Fine.

Mr. BOYLE. I will be delighted.

But, after the publicity has subsided and things have returned to a calmer atmosphere, we find that those people who protested so loudly are nowhere to be found, but are hiding in the air raid shelters. Where are those people today? Where were they in all the years gone by? These newly discovered friends of the coal miners are not children. They are not people who have suddenly reached the majority age of 21. They are people who are 50 and 60 years of age. Coal mining was a problem as to health hazards 40 years ago. Coal mining, with its health and safety hazards, was a hazard in 1940. Where were these adults of 40, 50, and 60, and some who have reached the biblical age of 70, when we were agitating for improved safety and health conditions?

The reason I concentrate in my opening remarks on these people whose names appear in the press, who are calling mass meetings, who are speaking on the radio, who are writing articles, who have been in Congress for several terms, is because they have suddenly awakened to the fact there is danger in working in the coal mines. Why this prolonged muteness? Why this prolonged silence? Why this prolonged quietness? Why all this inactivity or lack of any interest in the coal miners until the present day? I hope it it quite apparent by now through my remarks that I hold in disdain and contempt those who provided not one significant bit of aid to the United Mine Workers of America during its long and tortuous struggle to improve health and safety in the coal mines.

As I indicated earlier, we have exercised our judgment and concluded that, if both health and safety standards are included in one bill, there will be no bill. Why do I say this? Because there are opponents who are opposed to some features of the health bill, and there are opponents who are opposed to some features of the safety bill, and, if you allow your opposition to concentrate against one bill, your prospects of success are diminished, if not completely destroyed. For these reasons, we proceeded in two directions, both with the same basic motivation, to improve the health and safety of the coal miners of the United States.

We believe that we have proposed a vigorous and strong health bill and a vigorous and strong safety bill. It is our purpose to proceed

with all the strength that we can summon in order to assure the passage of both of these bills as quickly as such can be done.

I direct my remarks to S. 467, the health bill pending before your committee. Before I discuss the specifics of the bill, I think it advisable to provide a historical background, particularly with comments involving coal miners' chest diseases, in general. The medical profession had concluded that, in its opinion, coal dust was not harmful to the lungs. It was their view that only exposure to silica dust was damaging to the lungs. However, in recent years, medical evidence has revealed that coal dust in the lungs does cause a major disabling disease. In fact, in recent years, there has been a rapid rise in the incidence of chest disease among coal miners and, more importantly, this incidence has developed in greater percentage among men in their forties and fifties, a most unhappy situation.

In our opinion, the increasing incidence of coal miners' dust disease has developed because of the introduction of mechanical machinery in the mines. This is particularly true when one is aware of the fact that more than 50 percent of the underground coal produced in the United States is mined by continuous-mining machinery. The coal industry was one of the first basic industries in the United States to be completely mechanized.

The union did not oppose mechanization. It recognized the industry was undergoing a serious economic depression and, in fact, its very existence was at stake. The union subscribed to the philosophy that it was much better to have fewer coal miners working in the industry, with mechanization, since it would provide full-time work and better working conditions, as contrasted to the most difficult situations which existed in the industry prior to mechanization. It was the consensus of those, both on management's and on labor's side, that if there were not mechanization, there would be total elimination of coal mining in America.

However, we were not fortunetellers, nor could we look through crystal balls to realize that the introduction of machinery would increase the innumerable dust diseases which now exist. Nor did our crystal ball or our fortunetellers inform us of the other problems which would come into play, particularly involving ventilation, roof control, and methane emissions. These are things which result from experience, and it is very similar to the Monday morning quarterback who criticizes, with the advantage of hindsight, the mistakes which occurred on Sunday afternoon.

We proceeded with the information and experience at our command, and we did not foresee the many problems which would arise from the mechanization of the coal industry. In fact, it is much akin to the industrial revolution which occurred in the 19th century. Who could foresee or anticipate the many problems the industrial revolution would cause in our modern civilization?

We plead, we demand, and we implore the coal industry to join with us in supporting a strong and effective health bill. We plead, we demand, and we implore that the manufacturers of coal mining equipment give priority to developing dust-collecting apparatus. Dust-collecting apparatus should have the highest priority in any research which is done by the manufacturing companies.

Fortunately, the coal industry and the manufacturers of coal mining equipment are financially and structurally sound, and we see no reason why both of these groups cannot make a reappraisal and come to a conclusion that something must be done now.

I do not attempt to pose as an environmental scientist or a mining engineer. I am a practical coal miner who worked in the coal mines for many years, and I don't have to be an expert to know coal dust when I see it and, particularly, when I see it in heavy concentrations in the mine. I further know the resulting and destroying effect that dust has upon coal miners of America. The health bill which we offered set standards of 3 milligrams of respirable dust in a cubic meter of air. Under its provisions, the Bureau of Mines would be empowered to close a mine, or a section of a mine, where the 3 milligrams standard was being exceeded. The Bureau would inspect these mines at least once each 60 days and would take samples of the atmosphere at various locations with an instrument approved by the Bureau. The coal operators would be required to continuously monitor the coal dust levels in their mines. A permanent record of such tests would be kept for the information of the Bureau inspector.

Further, and of greatest importance, the bill sponsored by the United Mine Workers of America imposes penalties for operators who exceed the dust standards, or who fail to maintain accurate records.

Our health bill provides that all coal mined underground must be undercut, centercut, topcut, or sheared, except where it can be proven that other mining methods can reasonably be expected to meet the 3 milligrams standard. That section is in our bill because we want to highlight the tremendous adverse effect of mechanized mining equipment upon the health of coal miners. It is there also because the manufacturers of equipment and the operators of coal mines have not seen fit to concern themselves with the problem of dust disease. Finally, if the conditions continue to exist, we can expect a great increase in the incidence of dust disease caused by the use of mechanical mining equipment.

The effective date of our health bill would be 1 year after its passage.

I am sure there are those who will say the standards are too restrictive. We recognize there is a great engineering skill in the coal mining industry, and there is no doubt in my mind that, if the industry applies this skill properly and is willing to assume the financial burden of providing collection equipment, our standards can be met at a cost which represents only a small percentage of the cost of continuous-mining machinery.

Information has been reported to us that the industry is now working vigorously on the problem of perfecting dust-collection apparatus and, further, we have been informed that one of the large manufacturers has a machine already built which will be used at a large mine in the Midwest within several weeks. We optimistically hope that this problem will be solved more quickly than any of us now foresee.

Our safety bill was introduced in the Senate and the House of Representatives within the last several days. Thirty days after its enactment, it would go into effect and would repeal the present coal

mine safety act, except that the present act would apply to any order, notice or finding issued under the existing statute.

As many of you know, the Federal Mine Safety Act was first passed in 1952. I need not tell any of you gentlemen of the technological changes which have taken place in all industries, particularly in the coal industry in the United States. It is obviously necessary to upgrade the safety standards, but it is vitally important that it should be done without fear or favor by the Congress charged with that responsibility. Of equal importance to new legislation is the absolute necessity of enforcing whatever legislation is on the books. Such enforcement would, in our opinion, substantially reduce injuries and fatalities in the coal mines of America. To our delight, we have observed that the Federal mine safety law has been enforced more effectively in the past several months than ever before in the history of the act. The credit for such enforcement belongs to the Director of the Bureau of Mines, Mr. John O'Leary. It is our fervent prayer that President Nixon will continue his appointment as Director, so that his services which he has so capably demonstrated in a short time will be continued.

May I digress for just a second.

Senator WILLIAMS. Certainly.

Mr. BOYLE. While I speak of Mr. O'Leary, I would like to state this very briefly, and then continue on with my prepared statement, that the former Secretary of the Interior, Mr. Udall, made a statement that I was not knocking on his door every day asking for safety. The president of the United Mine Workers of America is without authority by law, or any other means to tell the Director of the Bureau of Mines or the Secretary of the Interior to enforce the present statute which is there for him to enforce. It is there for him to enforce. It needs no knocking on the door by me.

Let me call to the attention of this subcommittee what happened to this coal industry of recent days. You confirmed the appointment of a director by the name of Dr. Hibbard. He served for a short period of time with an expert on safety by the name of James Westfield—the only man in my judgment in the U.S. Bureau of Mines who was qualified on these explosions and these hazards that are found in these coal mines. To lead these rescue crews into these mines it required James Westfield.

What happened? The family became disturbed in the Department of the Interior for some reason or other. Dr. Hibbard could take it no longer, Jim Westfield could take it no longer, and they both resigned. And I was knocking on the Secretary's door repeatedly, by telephone and otherwise, asking him to appoint a new director of the Bureau of Mines. And let him tell me that I wasn't knocking on his door asking him to get a head of that department because of the condition in the coal mines of this country. And what did he do? Seven months elapsed before we had a head of that department down there. Seven months went by without a head.

What condition do you suppose these coal mines got into in that period of 7 months without a head of the department? And then we found or someone found John O'Leary. John O'Leary was on the job a very short time before the Mannington disaster. I was at the Mannington disaster along with many others. When John O'Leary's at-

tention was called, certainly he built for himself a record, an enviable record, in a period of 4 months. What did he do? He was told by the United Mine Workers of America that these Federal mine inspectors were notifying the coal operators 1 week, 2 weeks, 3 weeks in advance that they were coming in to make an inspection of their mine, that when the Federal mine inspector appeared at those properties, why, certainly the house-cleaning job was taken care of and the mines were put in order and the Federal mine inspector found no violations. I said at the hearing in the auditorium, at the Secretary of Interior's call, that I was not concerned when the Federal mine inspectors were inspecting the mines or just immediately prior to it. I was concerned after they left because of the fact that when those Federal mine inspectors left the coal operators of this country knew that they were not going to return for 3 or 4 months and the sloppy housekeeping started all over again.

Senator RANDOLPH. Mr. Boyle, will you allow me to interrupt you at this point.

Mr. BOYLE. Certainly, Senator.

Senator RANDOLPH. I would like, Mr. Chairman, the privilege of inserting in the record at this point my very strong endorsement of the continuance of Mr. O'Leary in his position. That was included in a telegram to the Secretary of the Interior.

Senator PROUTY. Mr. Chairman, I think it should be pointed out that as the law now stands, Mr. O'Leary's nomination would not come before this committee but before the Interior Committee. I believe I am correct on that.

Mr. BOYLE. I believe that is so.

Senator WILLIAMS. That is correct. But the statement, without objection, of Senator Randolph will be included.

(The material referred to above follows:)

WASHINGTON, D.C., *February 20, 1969.*

Hon. WALTER J. HICKEL,
Secretary of the Interior,
U.S. Department of the Interior,
Washington, D.C.:

The incumbent Director of the U.S. Bureau of Mines, John J. O'Leary, is competent, capable, and diligent in the performance of the duties of that office. Under his direction, legislative proposals for recodification and modernization of coal mine safety and health laws have been prepared and presented to the Congress. I have confidence in Mr. O'Leary and in his proposals. Hence, I introduced S. 355, and I request that you make Mr. O'Leary available as an official witness when hearings on the substantive language of S. 355 and other measures are held. This would be subsequent to the opening hearing by the Senate Subcommittee on Labor on February 27 when these measures will be brought formally to the attention of the subcommittee. Your cooperation and understanding will be appreciated.

JENNINGS RANDOLPH, *U.S. Senator.*

Mr. BOYLE. When I spoke to the new director of the Bureau of Mines I told him he should have spot inspections. He asked what did I mean by that, and I told him that these coal operators should not be notified in advance that a Federal mine inspector was coming in to make an inspection, that he could carry a cold lunch rather than have the operators provide a hot one for him. He could carry a cold lunch just as I carried when I worked in the coal mines. I wanted those hot lunches discontinued and I wanted no notification that the Federal

mine inspector would arrive on an x date to inspect x mine, and find no violations.

This is similar to an untidy housewife who does not wash her dishes, sweep her floor or clean her house until she expects company, then she cleans it all up, but as soon as company leaves the dishes pile up again in the sink, the floors go unswept until new company arrives. As a result of our demands Mr. O'Leary has caused, since that conversation, 600 spot inspections to be made, and he has closed 200 mines because of violations at those spot inspections.

Senator WILLIAMS. Senator Bellmon.

Senator BELLMON. Let me ask if the information available shows that the Mannington disaster occurred because of violation of existing law, or because of a lack of law?

Mr. BOYLE. Senator, that has not been determined because we will have to wait until we can open up the mine. The experts that go in there will make a finding and determine, the best they can, and I am not an expert. I will not be one that goes in there. But the company examiner, the Federal experts, the State experts will all go in there and try to arrive at a conclusion on what brought about this disaster.

I don't know. No one now knows what caused it until we open up that mine again and go in there and try to determine what caused it.

Senator WILLIAMS. When will that be?

Mr. BOYLE. I have heard different estimates. The coal company has said it will take 6 or 7 months. The reason they can make a judgment on that is that they have test holes down there and they test through these holes with mechanical devices and monitors and things of that nature. When they in their judgment decide—they have had explosions at this property before, you know—it is safe to unseal the mine and the Federal inspector decides it is safe to unseal the mine, they will unseal it and go in and make an investigation.

Senator BELLMON. The reason I ask the question, is that you are being very critical of the enforcement of your present law. I wondered if what we needed was stronger enforcement or new legislation.

Mr. BOYLE. We need both, Senator Bellmon. In addition to that we need the mine workers bill that is now before you. Our experience goes far beyond these other experts in coal mining and we know what will be best for the coal miners that we are paid to represent.

Now in addition to that, if the Federal Coal Mine Safety Act that is now on the statute books as weak as it is, had been properly enforced and if the department had enforced the statute on the books, certainly it would have eliminated a great deal of the injuries and the accidents and explosions that have occurred in the coal mines of this country.

That is why I keep emphasizing, there is no need of writing new laws if they are not going to be enforced. The present law was not being enforced. It wasn't until John O'Leary was appointed director.

The safety bill, which we suggest be enacted, applies to all coal mines and to all mine workers. It would provide for inspection and investigations for all purposes by authorized personnel. In addition, the Secretary of Interior would be empowered to appoint an advisory committee if he considered it essential to fulfilling his responsibilities under the coal mine safety act.

Our bill would provide that, after an accident, the coal operator would preserve the evidence necessary to assist in determining the cause of the accident.

Under our bill, Federal inspectors would be empowered to issue withdrawal orders in all cases of imminent danger. The present act, in contrast, limits this authority to mine explosions, mine fires, mine inundations and man-trip and man-hoist accidents.

Our bill would require an inspector to issue an order where there is a violation of safety standards which would not result in an imminent danger. Failure to comply with this order could result in a withdrawal order being issued.

Under our bill, withdrawal orders would remain in effect until repealed or modified by a Federal inspector. Contrasted with this, the present mine safety act in certain instances, requires a three-man team of inspectors to do that.

S. 1178 provides for a new Federal Coal Mine Safety Board of Review, with the same makeup as the present board.

The bill provides that an appeal taken by the operator from the Federal inspector would go first to the Secretary. We believe this to be desirable because the full responsibility of administering the coal mine safety act is vested with the Secretary of the Interior. Further, the operator has the right of appeal from a decision of the Secretary to the board of review and, additionally, both the Secretary and the coal operators are entitled to judicial appeals.

Penalties provided against the coal operators for violations of safety standards range between the figure of $500 and not more than $10,000 for each violation.

Our bill does not impose penalties on coal miners like other bills we have had the opportunity to see. Our opposition to such penalties is based on the fact that:

(1) The management of the mines rests exclusively with the coal operator. Such is contained in our collective bargaining agreement, and many State laws provide the same responsibility.

(2) Coal miners are under the working supervision of the coal operator and, if they violate any safety laws or reasonable standards, they may be subject to discharge from their employment.

(3) Several States do provide for penalties against coal operators and miners. However, our research has determined that the penalties are invariably applied against the coal miner, but rarely against the coal operator. For these reasons, we reiterate our opposition to financial penalties being imposed upon coal miners.

In contrast some of these overnight experts on safety in coal mines want to go further than the former President Johnson's bill which had a fine in there for coal miners and these overnight experts in the other House have doubled that fine on coal miners. Let it be known that I have consulted with the head of the Coal Operators Association and when he testifies before you today or whenever he testifies, he concurs, and the industry concurs that the penalty should be imposed upon the coal operators, and not the coal miner. Yet we have these overnight experts in the other House telling us that they ought to fine the coal miners, not what the Johnson bill provides or the Udall bill provides, but twice the amount.

At that hearing in the auditorium of the Department of the Interior when I was asked by the Secretary of Labor if I did not believe that coal miners should be equally responsible for violations and penalized for violations of the act, my simple answer to that was a very abrupt no.

I said, "I will tell you one or a dozen reasons why. First of all, let me tell you that the coal miner of this country, if he violates a law or any portion of the law, pays a penalty by losing his livelihood, the only livelihood he knows. He knows no other work. He can't find employment anywhere else. So he pays with his job because he is fired.

"Then in addition to that if he causes or brings about an accident that causes injury to himself or death to himself, he pays the supreme sacrifice.

"Do you want me to fine dead men?"

I said, "I am not going down to fine dead men after they paid the supreme penalty because of neglect on the part of the coal operators or the coal miner." The coal miner does what he is told to do in these coal mines. These operators have, and boastfully have said that they run these coal mines, they own these mines and the United Mine Worker membership will not abridge the right or the authority of the coal operator in running those properties.

Senator PROUTY. Mr. Boyle, just what procedure is followed if a miner violates some safety regulation? What procedure is followed when that occurs?

Mr. BOYLE. What follows?

Senator PROUTY. What procedure?

Mr. BOYLE. If in the judgment of the coal operator, right or wrong, but in the judgment of the coal operator or the boss underground, says he violated a safety provision, he fires him, he discharges him.

Senator PROUTY. Doesn't the union have any voice in that matter at all?

Mr. BOYLE. Yes, they take it up. If they find he violated it they agree with the company and he is discharged.

Senator PROUTY. Do you have any figures to indicate how many miners have lost their jobs because of violations of safety regulations?

Mr. BOYLE. Not only do I lack those figures, but I also lack the knowledge of any incident called to my attention by any coal operator or the Government where a coal miner violated the statutes of safety in coal mines.

Senator PROUTY. I am asking these questions not to embarrass you——

Mr. BOYLE. I am not embarrassed, Senator. I have answered these questions for 21 years trying to get safety legislation.

Senator PROUTY. Normally a union is going to protect its members to the best of its ability.

Mr. BOYLE. Yes, and if they violate safety standards as prescribed by law the boss fires him and the committee intercedes for him. If the committee finds that the boss was absolutely right and it was not because of some personal thing, then he loses his job. But I am a believer, Senator, that if a foreman or a boss in a coal mine stands aside and watches a man who is willfully or ignorantly or unjustly in any way, shape or form about to commit a violation, he should call it to his attention rather than wait until he commits the violation and fire him.

I am a believer in that. Sometimes the bosses ought to be fired instead of the coal miner because they permit these things to go on.

Mr. EVANS. Mr. Chairman and members of the subcommittee, addressing myself to this question, and especially to the question asked by Senator Prouty, of course the United Mine Workers under their collective-bargaining agreement give protection to their membership against discharge. No matter what the reason for discharge might be. We have never countenanced or protected anyone who flagrantly violates coal mining laws. We teach our people or attempt to teach our people to work safely. Our argument with respect to penalties against coal miners for violations of laws are set forth here as President Boyle has said. We must understand, I believe, that coal operators own and operate these properties. The coal miners don't own them. Coal miners work under the direction of mine officials. Coal operators have the full right of management. They have that under our collective bargaining agreement, they have it under various State mining laws. Coal miners are constantly under the direction and supervision of coal mine officials.

Now these are people who are hired by coal operators, who possess mining certificates granted by the various State mining departments. They are supposedly the experts in coal mines. They direct coal miners in the performance of their duties.

Now, sadly, of course, when their judgment is bad or when they are neglectful, very often coal miners lose their lives as a result of this. And we have never attempted to protect any coal miner who is a flagrant violator of the law. We don't do that. We look into the thing and determine the facts. But if those are the facts we don't try to protect them.

You will find out that coal miners will obey the law. They must obey the law. If they don't obey the law the record shows, and I am not prepared here today to say how many, but the record shows that there have been cases where coal miners have lost their jobs for their failure to comply with the law, and this is the supreme sacrifice. We don't think a Federal mine safety act needs to impose fines on coal miners when they are working under the direction of people who own and operate these mines.

Senator WILLIAMS. Could I just ask there, has the union established by contract the procedures that will be followed in the event of a discharge for violation of safety standards?

Mr. BOYLE. Senator Williams, the contract provides for the orderly procedure of handling all disputes that arise, discharge included, for any reason whatsoever. The man has the right to make a case and he takes it up in the proper procedure prescribed by the contract and it is adjudicated under those provisions of the contract. In some instances it is necessary for it to go to arbitration as provided for by the contract. The testimony in some instances that have been submitted in these hearings, the arbiter, a neutral man, he may be a U.S. Senator, he may be a doctor, he may be a lawyer, he is a neutral individual who reads the briefs and hears the testimony, and finds perhaps that it is an injustice to discharge this man and he puts him back to work.

On the other hand, it is quite possible that he says it is a justifiable discharge and he is discharged for any violation, whether it is safety

or whatever it may be. Those are the orderly procedures that are provided for in our contract.

Now, if the man is discharged tomorrow because he violated this act he has the right under our contract to take it up and have it adjudicated and have it settled, whether it is for or against him.

Senator BELLMON. Mr. Chairman, may I ask Mr. Boyle a question?

Senator WILLIAMS. Yes.

Senator BELLMON. On this subject, does the United Mine Workers Union have safety teams or inspectors that work with the operators?

Mr. BOYLE. What we have, Senator, is that each and every mine we have under our contract, and it took some doing to get that into the contract, the operators vigorously opposed that section of the contract, but it is in there now and it is effective and we have mine safety committeemen at these mines, not paid for by the coal company when they make their inspections and we don't want it otherwise. They make these inspections of these coal mines when called upon by individuals that there is some hazard or some danger. If there is imminent danger existing then the committee is empowered to withdraw those men from that hazardous area until such time as it is corrected.

Now we have had the sad experience where safety committees under the terms of the contract have exercised that authority, withdrew men and they found themselves discharged by the company the next day and I have sat in on several of those cases. I can name the places and the times if you are interested where men were discharged, and I insisted that that safety committee be reinstated because of the fact that they withdrew them from an unsafe area. And they were reinstated, because I threw all of the power at the command of the United Mine Workers of America to have them reinstated because they have the right under the contract.

Now that is not true that they inspect the mines every day. That is why when I come further along in my prepared statement you are going to find something that does not appear in any of these so-called bills that are before you, something that we think will eliminate a great deal of the hazards that exist in these mines.

Senator BELLMON. Mr. Boyle, my question was whether or not the Mine Workers' organization has teams that are paid for by your money that could not be fired by the operators.

Mr. BOYLE. Pardon me, Senator.

Senator BELLMON. I am asking if the United Mine Workers organization has inspectors on its payroll that could not be controlled or removed by the operators.

Mr. BOYLE. No. We have what is known as a safety division and Mr. Lewis Evans, our safety director, located here in Washington, is an expert in his field, and his staff and his assistants are called upon when necessary to go in there to make these inspections. He spent every day in Mannington until they sealed the mine. He was one of the first from outside the area on the ground. He was in constant contact with me as the chief executive officer of this union as to what was going on and keeping me advised. Also I spent some time at the disaster site. We couldn't determine at that time when I was there whether the mines should be sealed or not. That followed later.

But each mine under the terms of the contract, and signatories to that contract, is privileged to have a safety committee and they do

have safety comittees. These men are not expected to be experts, either in their field of endeavor. That is why we are going to ask the Federal Government to do something about these mines where these hazards exist where inexperienced men or men who are not schooled or educated as these Federal inspectors are supposed to be, in the act of eliminating the hazards in these coal mines.

Our safety committees go in and make their findings on what they can observe and on what they see is unsafe to them. But let it be known that in many instances the safety committeeman locally selected is not in a position by training or otherwise to determine the things that a Federal mine inspector or Mr. Evans or people of that expert caliber would be able to find.

But they do a good job at that. They do the best they can. But my point is that if they withdraw the men because they think there is a hazard occurring they have lost their jobs and then the president of this international union has to threaten, intimidate, coerce and do all kinds of things that he doesn't like to do in order to get them their jobs back, because the greatest offense they have committed is to try to save somebody's life by withdrawing them from what he considers a dangerous place.

Then the boss comes along and says it is not dangerous.

Senator BELLMON. If these men were on your payroll they could not lose their job?

Mr. BOYLE. I am not so sure. The law would have to be changed so that men on my payroll could go in there. These are employees of the coal company. I am not so sure they would let me put people on the payroll to go in these mines for many reasons, including workmen's compensation coverage. These employees of theirs are covered by workmen's compensation. A lot of coal companies you know, Senator, would not allow the mine inspectors in their mines until 1952 even though you gentlemen passed a law in 1941 that set up the right for a Federal inspector to inspect mines.

We have had Federal inspectors that have gone into mines to my knowledge and said, "Please, Mister, won't you let me inspect your mine, I just want to look at it? There is nothing I can do about it, I can make recommendations but I can't do anything about it. Won't you let me please look at it?"

Sometimes they have said "No, get out of here." Sometimes they have said yes. In most instances they have said yes, and they go in and they find these hazards, they find these dangers, they find these possible explosion hazards. And they come out and they make recommendations that if you don't do this, or you don't do that, your mine will blow up. What happened? Nothing happened until 1952 when you put some teeth in the law to give the Federal inspector authority to close down the area. From 1941 until 1952 the only right and privilege he had was to say, "Please let me look at your mine." We don't think that that is very strong legislation.

Senator WILLIAMS. Mr. Boyle, you are dealing with situations where mine workers who are part of a safety committee feeling a mine was unsafe, have withdrawn their fellow workers, is that right?

Mr. BOYLE. And they were fired.

Senator WILLIAMS. You went in to protect them?

Mr. BOYLE. I put them back to work.

Senator WILLIAMS. Right now there are men, in analogy or parity, who are expressing the fact that the health standards are not adequate and sufficient and they are petitioning for better conditions, as I understand it, and workmen's compensation for black lung. Now there is no hazard here that those men have in getting discharged for that, is there?

Mr. BOYLE. They can't withdraw them for that, either, no.

Senator WILLIAMS. That is right, at this point. But those who are demonstrating they don't have to worry about their jobs, do they?

Mr. BOYLE. You mean presently demonstrating?

Senator WILLIAMS. Yes.

Mr. BOYLE. I wouldn't think so. I would hope not. If I thought that a national strike would bring about the legislation that these united mine workers who go down into the bowels of the earth and produce the basic commodity for the economy of this country, if I entertained the thought that I could blackjack Congress and the Senate of the United States into passing the legislation that would be helpful to these people I would leave here now and call a strike, I don't think that is the answer to it. I don't think you will pass legislation because I have shut every coal mine down in the United States and have blackouts here and there.

I think we can ask you people to do these things for us and then on failure to do it maybe I will take some other avenues of approach, but I am not taking those avenues now, trying to blackjack Congress into passing the buck like they have in some other States.

Senator WILLIAMS. That is another issue. I was wondering about these men who are now expressing themselves on black lung and trying to get in on the State workmen's compensation act. Isn't that their request?

Mr. BOYLE. That is right. They are rightfully entitled and should have been covered under workmen's compensation before I was born. If they had been maybe my dad, my grandfathers and my uncles before would have had something to live off of rather than coughing up their lungs.

Senator PROUTY. Mr. Boyle, I have heard somewhere that the present Republican Governor of West Virginia has indicated his support for legislation of this nature, but before he can do anything it has to be approved by the State legislature. Is that correct?

Mr. BOYLE. That is absolutely correct. We have the sympathetic ear of the Governor who is now serving the great State of West Virginia with respect to compensation applicable to this lung disease and things of that nature. The United Mine Workers of America was the first to contact him.

Senator PROUTY. As the legislature is now constituted, the majority are not members of the same party as the Governor?

Mr. BOYLE. That is right. Notwithstanding his party affiliation he is sympathetic to placing black lung in a workmen's compensation arrangement down there. I think it is to his credit.

I don't know what your party belief is but I know what his is. I am telling you it makes no difference to me whether a man is a Democrat

or a Republican, if he is in sympathy with the United Mine Workers in the protection of these coal miners I don't care what his party affiliation is. I will say one thing for Arch Moore, as the Governor of the State of West Virginia presently he has been as good up to date as any Governor they have had, as far as the coal miners are concerned. He is going to continue to get our support in that respect.

Senator WILLIAMS. That was not the reception he got yesterday in West Virginia.

Mr. BOYLE. No, it was not the reception that some of these ballyhooers gave me down there, either, but I can tell you who they were. I didn't have a bologna to wave around my head, you know.

Senator WILLIAMS. This is an agreeable dissent. The workers are with Governor Moore, and I gather with you, too?

Mr. BOYLE. As long as he continues to work with the United Mine Workers in an endeavor to protect the health and the life and the limbs and the well-being of the coal miners that I so proudly represent, and I have no other ambition in life but to protect the underdog coal miners of this country.

Senator PROUTY. How effective have the State mining agencies been?

Mr. BOYLE. Here is a former director of a State bureau of mines. Maybe he can answer. I refer the question to him. He will tell you.

Mr. EVANS. Senator, what I am going to say I don't mean to be an indictment of every State mining department in the United States, because there are some good State mining departments in the United States. But by and large they are under the complete domination of the coal industry.

Senator PROUTY. Thank you.

Senator BELLMON. Do you mean to imply that the mine operators do not want safety?

Mr. EVANS. I did not say that, Senator. I haven't indicted every coal operator in the United States. There are coal operators in the United States who are vitally interested in safety. But I am afraid that there are far too many who are not interested to the extent that they should be interested. I think that many coal miners are injured and die in mine accidents and die in mine explosions through carelessness, through neglect of mine officials, through greed, through the operators paying too much attention to production and not enough to mine safety, the general welfare of the people who work for him. I don't mean that to be an indictment of every coal company in this country.

I reiterate that there are coal companies and there are mine officials who are sincere and dedicated people and do the best job they can to protect the general welfare of the people who work for them, but I think in too many instances there are people who don't make safety in coal mines the top priority ahead of production in their operations.

Mr. BOYLE. In support of what our director has just said, certainly it was a sad affair that 78 men died in the Mannington disaster. I have made this statement on several occasions and I will say it again. I will say it anywhere, that company that had that unfortunate disaster down there was the only coal company that came to my assistance, or to the assistance of the United Mine Workers in 1966 to try to get safety legislation passed, and they had a failure or they had a

disaster, or whatever you want to term it. But let us give credit where credit is due.

After my soliciting the coal industry they were the only ones that came to my assistance in strengthening the law in 1966, and they made no bones about it. They helped me and they assisted me and I appreciated it. Sure, it is sad that that company had that disaster, of all companies that are not complying with the law. Imagine what shape the other coal mines are in if they don't believe in safety, if that one had a disaster. I came from a State where we only lost three less than the Mannington disaster; we lost 75. Seventy-four men died in that explosion. I went in on the rescue operations in that mine, and one died on rescue operations from a heart attack. I went in there. Seventy-four men died and they died horrible deaths. As far as I recall, there wasn't a casket that was not a sealed casket, it was that bad. And it didn't get into an eastern newspaper. Why? Because we didn't have any of those so-called saviors out in our country at that time who were running politically, who had political aspirations, and things of that nature, for other jobs. So it didn't get into the Eastern newspapers.

I will get a bologna too and I will stuff it down somebody's throat if necessary, if they keep on.

Senator RANDOLPH. Mr. Chairman, may I make a very brief comment at this point?

I want the record to reflect that to my personal knowledge, as one who was very vigorous and active in 1965 and 1966 in the passage of the legislation to strengthen the act which has been referred to by Mr. Boyle, there was a considerable support for that legislation by coal operators in the State of West Virginia. My files reflect that endorsement of the legislation.

Mr. BOYLE. And this company that had this explosion was one of them.

Senator RANDOLPH. That is correct.

Consolidation Coal Co. was one of those that did support the legislation to which reference has been made.

Mr. BOYLE. The point I am trying to make, Senator Randolph, is that these overnight experts in mine safety who have never seen a coal mine, never worked a day in the coal mine, never been around a coal mine, have all the answers to coal mine safety now.

But where were they in 1966? Where were they in every year pursuant to 1966? I didn't learn of these experts until the Mannington disaster. The first time I ever heard their names mentioned.

We will have something to say in West Virginia on that, too.

It is quite clear that the responsibility for running the mine is that of the coal operator. To divide it by making the worker equally responsible with management beclouds the establishment of a clear responsibility for adherence to the Coal Mine Safety Act.

Senator PROUTY. I am sorry to interrupt you again, but I would like to refer back to your statement. You say:

> Several States do provide for penalties against coal operators and miners. However, our research has determined that the penalties are invariably applied against the coal miner but rarely against the coal operator.

Then you go on to say for these reasons you reiterate your opposition to financial penalties against the miners.

Can you give us statistics from your research to support that statement?

Mr. BOYLE. Yes. Because some of the bills now before Congress introduced by experts of recent date provide four different outs for the coal operator, if he violates the law, four different outs in the so-called bills that have been in the House of Representatives.

There are no outs, none whatsoever for the coal miner. If he violates it he is fired, discharged, or is killed during an accident or an explosion. There is no out for him.

Senator PROUTY. I wonder if we can't get these figures. If you don't have them with you this morning could you have Mr. Evans or someone submit them to the subcommittee later on? I want to find out in terms of cold statistics how many cases there are where the mine operators have been let go free but penalties have been imposed against other workers themselves.

I think this is important to the consideration of this question.

Mr. BOYLE. I think it is important myself, to the question of whether the coal miner loses his job and we can't get him back to work because the mine boss ordered him to do something.

Senator PROUTY. You refer to research which has been conducted by the United Mine Workers.

Mr. BOYLE. That is right.

Senator PROUTY. I would just like to have you submit your statistical data to justify that statement.

I ask unanimous consent that Mr. Boyle or Mr. Evans or the union be permitted to submit these figures from their research and have this information appear in the record.

Senator WILLIAMS. I gather you said that that is available. Certainly there is no objection to including that material.

Mr. BOYLE. No, it is not available, for several reasons. Because these have been oral things which have taken place in these coal mines, where we go in and we find that the operator is excused.

Senator PROUTY. Mr. Boyle, I don't want to keep pressing this, but you refer to your research, and you say as a result of that research you have made certain determinations.

It ought to be something more than just a general statement. Let us get the facts from your research if they are available.

Mr. BOYLE. On the basis of our research, we have found exactly what we say here, but it is never committed to writing.

They go in there, the safety committee, the safety inspector, the State inspector and others, and the penalties are applied only against the coal miner, and very rarely against the coal operator.

Those are oral things that happened. Those are day-to-day happenings in the coal mines of the country. Those are things that are happening right now, while you and I are discussing it.

I would not necessarily have a record of that, until somebody calls it to my attention, and perhaps they would not even call it to my attention.

Senator WILLIAMS. Would you not have a record of grievances in those States where the penalties are applied against the coal miner, the worker?

Mr. BOYLE. We have cases, if that is what you have in mind, Senator, where men have been discharged.

Senator WILLIAMS. What are the penalties? Only discharge?

Mr. BOYLE. That is right.

Senator WILLIAMS. Only discharge?

Mr. BOYLE. That is right.

Sometimes a record is made of them when we put them back to work, and sometimes it is oral in the discussion, and they are put back to work because the operator finds it has been unjust and unfair.

I was in on a case one time, when I was on the local level, where a boss stood and watched a man commit a violation that was set down by the State mine inspector, agreed to by the Federal mine inspector, and everyone else.

The boss that was standing there fired that man, and I went to the general manager, and I said, "You fired the wrong man."

"What do you mean, I fired the wrong man? I fired the man who committed the violation, didn't I?"

I said, "No, you should have fired that boss who stood there and watched him do it. He should have told him he was going to commit a violation, and he had plenty of time to tell him."

There was no record made of that. The man got his job back because the general manager of the mine said, "I can't help but agree with you, Mr. Boyle. Perhaps the wrong man was discharged."

We don't make records of those things.

Senator PROUTY. In that particular instance it seems to me that that boss was the representative of the operator, obviously employed by the operator and representing the operator. He was not a member of the union, I assume.

Mr. BOYLE. No.

Senator PROUTY. Is he not faced with the problem that, "If I fire this man, perhaps the union is going to pull these people out on a strike or create a labor problem of some nature"? He might think, "This is too serious. I had better overlook it."

I am not from a coal mining State. I want to find out what the facts are. We are all concerned with the safety of the miners. We want to do everything possible to expand that.

Mr. BOYLE. I believe that this committee, of all the committees that I have appeared before in the years that I have had the pleasure of appearing before the committees, is sincere in trying to work out something and trying to adjust in their mind the proper legislation that should be passed.

I believe that. I am going to continue to believe it unless you fail to pass some legislation.

I am not making any promises as to what we are going to do—I don't know what we are going to do—but we are not going to take this dust, and we are not going to take these unsafe conditions for the next 10 years or the next 20 years in the coal mining industry, if they listen to this president.

Senator PROUTY. Certainly if I were a mineworker myself, if I noticed one of my fellow workers was committing some act that would endanger my life and the lives of the other workers in that mine, I would be the first to want him discharged, and to pay a severe penalty.

Mr. BOYLE. That is what happens, and they don't have any other livelihood to go to, either.

That is what happens. We don't think there should be divided responsibility or divided authority. We think it is the responsibility of management to have a safe mine. We don't think it is the responsibility of the worker who goes in there, who goes to work. It is not his responsibility to see that the mine is safe.

Certainly he is told by us to work safely. If the operator is interested in production, and not safety, and a man goes in there and goes to work, I cannot police 8,000 or 9,000 coal mines every day on two and three shift operations; not from Washington.

In making these observations, let it not be assumed that the coal miners bear no responsibility for mining safety. Such could not be further from the truth.

The United Mine Workers of America expects the coal miner to fulfill his responsibility because if he fails to discharge that responsibility, it is the coal miner upon whom the greatest penalty can be imposed, either through injury or death itself.

And, incidentally, one of our union's major objectives for many years has been to educate our coal miners in the fundamentals of safety, and we shall continue to educate them.

Our bill makes no distinction between gassy and nongassy mines, because over the years many explosions have occurred in so-called nongassy mines, and many coal miners have been killed or injured in those mines.

It would seem to be foolish to subject men in nongassy mines to the hazards of an explosion when such hazards can be reduced by the proper use of equipment throughout the coal industry.

Some of you gentlemen may not know it, but every coal mine is a potentially gassy mine, and the operator must make the assumption that dangerous quantities of gas are or can be present at any time.

Further, our bill would require the operator to submit a roof control plan for face workings and for travelways and roadways, subject to the approval of the Secretary.

One of the greatest causes for loss of lives and injuries in coal mines has been roof falls. For instance, in 1968, 99 men were killed by roof falls, as opposed to 88 men who were killed in major accidents such as occurred in Mannington, W. Va.

Death to a coal miner, no matter how it occurs, is death, and death is never pleasant.

Our safety bill would require preshift examinations of all coal mines.

S. 1178 would require in all bituminous and lignite mines that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be 9,000 cubic feet a minute.

This contrasts with the present law, which requires 6,000 cubic feet a minute. We have increased these requirements because we believe that the most important factor in the safe operation of a coal mine is adequate ventilation.

Our bill requires that an examination be made for methane at least every 20 minutes in face areas where electrically driven equipment is

used. The Secretary can require that methane monitors be installed on certain types of mining machinery.

Our bill makes mandatory the drawing up of accurate and up-to-date maps of all coal mines. These mines would show all active workers, all worked out and abandoned areas, all elevations, escapeways, adjacent mine workings, mines above and below, water pools above, and oil and gas wells in such mines.

Our bill prohibits smoking and the use of open lights underground.

Our bill requires the operator to develop an expeditious plan to withdraw the men from the mines when the power supply is terminated and the mine ventilating fan ceases to function.

Our bill requires that a coal mine operator shall report to the Secretary or a duly authorized representative any fatal accident, serious nonfatal accident, explosion, ignition, mine fire, or any other unusual occurrence.

Senator PROUTY. Mr. Boyle, is that permitted now, smoking and open lights?

Mr. BOYLE. It is in mines that are not declared gassy, in some instances, in most instances I should say, in mines that have not been declared gassy.

We say that all mines are potentially gaseous, because some of our largest explosions occurred in mines that they said were not gassy mines. Smoking is permitted in those mines, and we want it stopped, both by our people and the bosses. Both of them are smoking.

Senator JAVITS. Mr. Boyle, you could do this now, could you not, by agreement with the employees?

You don't need a law. In other words, if the collective bargaining agreements provide no smoking or open lights, would not that do the job?

Mr. BOYLE. Senator, I know that with your experience and your background as a Senator, you realize that it is physically impossible when we sit down in negotiations to try to write Federal restrictions into a collective bargaining agreement, because they tell us at the bargaining table those are matters for the Congress to decide.

Now, you cannot say to me, "Put it in the collective bargaining agreement," and then have the operators say to me, "Go to the Congress and get it put into the law."

That is why we are here, because we think that the coal operators and the coal miners who smoke underground, and there are some that do, we think that the coal operator who has cigarettes in his pocket and gives the worker a cigarette to smoke ought to be stopped equally as much as the miners.

How can I stop that boss from smoking in the mine, because he is not covered by collective bargaining agreements?

Senator JAVITS. You could conceivably stop it by that being one of the conditions of work, as you do with the other conditions of work.

I say "conceivably." What you are telling us really is that for practical purposes it cannot be worked out with adequate penalties, et cetera, in respect of collective bargaining. You have to have Federal law. That is what you are testifying.

Mr. BOYLE. You see, it took us many years and a long struggle in negotiations by my predecessors in this office to write into the collec-

tive bargaining agreement a code, a Federal code, so to speak, that the Congress of the United States would not pass.

We were successful in getting some of those, but they are not binding by law. If they violate them, there is nothing we can do unless we call a strike.

When we call a strike, those same people, not you, Senator, not this committee, but there are certain Congressmen over here who say, "Get the Taft-Hartley Act after him. Let him cool off for 80 days."

What happened to us, and where were these experts during the Truman administration, when we cried and begged and pleaded with the coal operators of this country to protect the lives and limbs and well-being of these coal miners?

What happened to us? The very prominent and illustrious president of the United Mine Workers of America at that time, none other that John L. Lewis, set out to set up a welfare and retirement fund to take care of these people the best they could, and to provide pensions for them, and benefits, and things of that nature.

So what did we find? We found miners up in the hollows of Kentucky and Tennessee, Virginia, West Virginia, and other places, who were bedridden for a period of 20 years, bedsores on them that would drive you out of their domicile.

So what did we do? John Lewis said at that time, as president of the organization, "We are going to have a welfare and retirement fund," so he set out to do that.

What was the result? He called a strike. The Truman administration that some people brag about, being connected with it in the White House, advising them at that time, went to the court and Judge Goldsborough fined the United Mine Workers of America $3 million and some hundred thousand plus, and they fined the president of the United Mine Workers personally $10,000, and we got no welfare fund.

Then he made another try at it, after the Supreme Court of the United States said that the fine was excessive, and cut it down to $700,000.

Then we made another try through that great leader of this organization.

What did they do on the second go-around? Goldsborough doubled the fine, and the United Mine Workers of America paid double that fine, and never recovered a nickel from it other than we did establish a welfare and retirement fund that takes care of these people who were crippled and maimed and disabled in this coal industry.

These experts were not around in those days saying that fines were excessive, that you people should have some help. Those people were dying. What did the welfare fund do? They carried them out on litters, on stretchers, in baskets. They took them out of those hills of the great State of West Virginia and the great State of Kentucky and they sent them to California, to Kabat-Kaiser Institute and other hospitals. They sent them up to your State, Senator, and they were rehabilitated at the expense of that fund. And they are now, some of them—who were paraplegic—upright citizens and working and earning a living, all because of what the United Mine Workers of America is doing, nothing, so to speak, by these so-called experts.

How many dollars have we spent? Over $2 billion to rehabilitate these people. I didn't say millions, I said billions of dollars to rehabilitate these people.

Then we are characterized as doing nothing. We didn't get any donations, we didn't get any help, we didn't get any assistance from these bologna experts.

I didn't know he was a bologna expert until the other day, didn't know he existed. But that was under the Truman administration that this union paid out all of that money. The Congressional Directory—you are all required, as I understand it, to put your biographical sketch in there—shows he was there as an expert on other matters advising Truman. He never advised him on anything according to the sketch in there about safety at that time, because I looked for it. Not one word is there mentioned on safety.

Our bill provides for the establishment of safety chambers. These chambers, properly sealed and ventilated, would provide a place where men could go to be protected from the deadly carbon monoxide in the event of a mine explosion. Plans for such chambers would be submitted to and approved by the Secretary.

Now here we come to the question that Senator Prouty was asking me about.

In our bill we ask that the Secretary place a mine inspector permanently at any mine which, in his opinion, liberates excessive quantities of methane. This provision has been included because we believe that many mines in the United States do need this type of close inspection.

And we want the Congress of the United States to tell them so. We want you to tell these people that a Federal mine inspector should be stationed at these mines like the Mannington No. 9 mine and at all these other mines that are liberating this amount of gas, and let him be there constantly and continuously in the protection of those men who are required to mine the basic commodity of this country.

Don't tell me they don't have the money or that it will be excessive. If it is, then let them call off a few of the game wardens that they have out here in the Department of the Interior and put them in the coal mines to protect the lives of the coal miners instead of jackrabbits.

We think the life of a coal miner is more important than whether or not the elk herd out in Yellowstone Park, or the elk herd or the antelope or what have you, up in Alaska, those reindeer, whatever they are, whether they be protected or not.

If I can get this Secretary of the Interior—I haven't had the pleasure of meeting him—but if I can get this Secretary of the Interior, Mr. Hickel, to go along, that he will take coal mine inspectors and put them in coal mines to protect the lives and limbs and well-being of coal miners, and he has to do it at the expense of reindeer, he can do it for me, I will agree with him.

I would rather have coal miners than reindeer protected, or jackrabbits, or game wardens, what have you. We have more game wardens, you know, in these United States than we have Federal coal mine inspectors.

We want a Federal coal mine inspector stationed at every mine that liberates a quantity of gas that in the judgment of the Secretary of the Interior and the Director of the Mines is a danger and hazard,

so that that man experienced along those lines can withdraw those men, shut that mine down or correct the evil that exists.

Senator RANDOLPH. Mr. Chairman, I would like to refer to Mr. Boyle's figure of something in excess of $2 billion fund which was created.

Mr. Boyle, how was that money secured?

Mr. BOYLE. That money was secured by an obligation on the part of the coal operator to pay now presently 40 cents a ton on all coal mined for use or sale. We started out with a nickel and that didn't do a job. Then it was elevated to 10 cents, 20 cents, 30 cents, and it is now 40 cents. That comes on a royalty basis on coal that the public pays for because they pass it on to the public, you see.

Senator RANDOLPH. Surely. Mr. Boyle, I do not diminish the contribution of the United Mine Workers in this effort, it was very creative and resourceful and it was enlightened. I also asked the question for the purpose of bringing the record to a point of clarity that there was the cooperation of the coal operator as well as the United Mine Workers in this matter.

Mr. BOYLE. Senator, I only want to disagree to this extent. Far be it from being cooperative on the part of the coal operator. The coal operator fought it with everything he had at his command to the extent that the United Mine Workers of America paid $3 million and some hundred thousand in fines to create this out of the Treasury of the United Mine Workers Union. Not out of this welfare fund because there was no welfare fund. The United Mine Workers in fighting the coal operators of this country to establish a welfare and retirement fund paid the penalty under Judge Goldsboro's findings of close to $4 million fine. Then we established a welfare and retirement fund and then and only then was it done because the Government seized the mines because of a strike and, lo and behold, out of all the mines in the United States 518 mines, as I recall, were examined during this period of time and only two mines were found by the Government to be in a safe condition to work. We wanted that taken care of along with the welfare and retirement fund, and we were fined for it.

So, we got the welfare and retirement fund because the President of the United States told his Secretary of the Interior to sit down and make some kind of agreement. Under the watchful eye of President Truman the great leader of this organization, John Lewis, and Secretary Krug, signed a contract that provided for a nickel to set up a welfare and retirement fund which was far from being adequate but it was a step in the right direction. Then we got it into the contract and each succeeding contract negotiations the operators fought the fact that they had to pay any additional moneys into the welfare and retirement fund.

I went through those negotiations, Senator, and it wasn't easy. If it had not been for the ingenuity, the ability and the knowledge of that great leader in those days, I don't hesitate to say that there wouldn't be a welfare and retirement fund because the operators didn't want a welfare and retirement fund. Neither did Judge Goldsborough.

Finally, our bill requires that the coal miner be paid for any time lost because his mine was closed for a violation of the safety law. We

do not feel that the coal miner should suffer economic loss because a coal operator has been negligent in his responsibility in safety matters.

These are the bills that we feel should be enacted into law if the health and safety of the coal miner is to be fully protected. They represent the considered judgment of the United Mine Workers of America of what is needed today to carry on the fight against death, injury and disease in the coal mines.

I have presented the position of the United Mine Workers of America on the two bills, one involving safety and one involving health standards. These bills have been the product of much thought, much study, much research, and much investigation. If these bills can be achieved, then it is our belief that a long step has been taken for greater protection for the men for whom we are responsible.

It is easy to stand on the sidelines, second-guess the manager, call the play after it has been concluded, or give a better speech on your way home at night after you have concluded your remarks at an earlier meeting. These are the results of afterthought.

Now, we may agree that there have been mistakes made, but we do not agree to the false and malicious charge of inaction on the part of this great union. Let anyone interested in health and safety look to the Congressional Record which has contained, thorough the years, page after page and volume after volume of evidence of aggressive and determined activity by the United Mine Workers of America to provide for better and safer coal mines.

There are those who can talk and rant and rave, but none of those who rant and rave can I identify as having done any ranting and raving in the past.

This is no time for the demagogue, the cheap politician, the professional fakers and those who would grab a headline in order to see their names in the paper or their picture on the TV. Those ambitions are not mine. My ambition is to see strong health and safety legislation enacted in this session of Congress.

It took us years to secure the benefits we now have, but we are far from the desired goal. So let us go forward with progressive thinking, with the expectation that this Congress will see fit to make the coal miner reach the position to which he is entitled because of his rough and dangerous occupation.

Now I would like to tell you a little bit about the administration's bill. I am talking about the previous administration.

The administration bill sets interim standards and gives the Secretary of the Interior the right to change these standards at any time that he would see fit to do so.

The standards set out in our bill are not interim standards. They would be the law on both health and safety until such time as they would be changed by the Congress.

We prefer to take our chances with Congress rather than with a Secretary of the Interior, past, present, or future. Standards that can be improved can also be eroded.

The administration bill, better known as the Johnson bill, Udall bill, combines health and safety in one bill. We have treated each of these important subjects in separate bills.

We are fearful that the combining of these two basic questions would very well cause a weakened bill to be voted upon and to conceivably result in no bill at all.

The administration bill does not set a standard in the amount of dust in a cubic meter of air. The Johnson bill, which was introduced in September, and which was reintroduced when Congress returned the first of the year, and also their second bill, which was introduced January 14, would give the Secretary of the Interior the right to set standards 60 days after enactment, with no indication as to what the standards may be or when they would be effective.

Our bill on health sets a standard of 3 milligrams of respiratory dust in a cubic meter of air. The bill gives the Federal Bureau of Mines the right to close mines or sections of mines where its standard was not being met. The effective date of our health bill is 1 year after its enactment.

Our safety bill follows very closely the safety provisions of the administration's bill, with several additions which we have added, and which improve safety in coal mines.

They are as follows:

The establishment of safety chambers; a requirement requiring that operators report immediately to the Bureau the occurences of mine explosions, mine fires, ignitions, and any other unusual occurrences.

Our bill does not provide for fines against coal miners. Our bill would require that the Director of the Bureau of Mines keep a Federal mine inspector at every mine which in his judgment he deems to be highly gaseous and the potential for an explosion is in existence.

Mr. Chairman, that concludes my prepared statement.

Senator WILLIAMS. Thank you very much, Mr. Boyle. We have certainly learned a great deal both from your prepared statement which you were kind enough to supply us even before the hearing and the other illuminating comments that were made both in response to questions and without questions. Senator Randolph.

Senator RANDOLPH. Mr. Chairman, at the Conference on Coal Mine Safety on December 12, 1968, called by the then Secretary of the Interior, Stewart L. Udall, to which reference has been made by President Boyle to that conference, I filed a statement.

I ask consent, Mr. Chairman, that it be included at this point in the hearing record.

Senator WILLIAMS. Without objection, it will be included.

(The statement referred to follows:)

STATEMENT BY SENATOR RANDOLPH TO SPONSOR LEGISLATION IN 91ST CONGRESS DEDICATED TO IMPROVEMENT OF COAL MINE SAFETY AND FEDERAL ENFORCEMENT

U.S. SENATE,
Washington, D.C., December 10, 1968.

HON. STEWART L. UDALL,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: Thanks for your telegram of November 29, 1968 and your December 4 letter concerning the conference on coal mine safety to be held December 12, 1968. I will be present during the morning session, accompanied by James W. Harris, my executive assistant, who will represent me at subsequent sessions.

In response to your December 4 policy statement concerning the handling of participants' views at the conference, please know that I recognize it is im-

possible to schedule all persons to be heard personally. I will cooperate by not having a prepared statement and by not requesting time to speak. Instead, I will include some personal and official observations in this communication, copies of which will be made available to your department's Robert O. Swenarton at the conference press table prior to the opening session.

I stated recently, on the sad occasion of the mine disaster near Mannington, West Virginia, that I believe the Nation's coal mine safety laws and programs need to be reevaluated. And I agree with you that it is essential now to reexamine the full range of Federal and state programs for protection of miners and to reevaluate the effectiveness of discharge of responsibilities by government, management, and labor.

And there is, as expressed in your call for the conference, a necessity for looking into ways in which there can be better discharge of responsibilities under existing law, as well as consideration of the additional legislation that is needed in the interest of reducing the hazards to which coal miners are exposed.

Coal mine safety is a subject of vital concern to Senators and Representatives from West Virginia, as it is to those from other coal producing states. During my 14 years of service in the House of Representatives, in the 1930s and 1940s, I remember the difficulties experienced in formulating, through legislation, Federal policy and programs for safety in coal and other mines. The measure we passed and which became law on May 7, 1941 established the first Federal coal mine inspection program. I was one of the managers of that legislation.

Under that initial Federal law, from 1941 until the comprehensive Federal Coal Mine Safety Act of 1952 was passed by Congress and signed by President Truman, the Federal role was mostly advisory. Passage of the 1952 Act marked the establishment of a Federal policy which brought the Federal government actively into the effort to prevent major disasters in mines. But is was a policy and a program that did not apply to the small coal mines—those employing less than 15 miners. It was not until March 26, 1966 that these small mines were brought within the scope and jurisdiction of Title II of the Federal Coal Mine Safety Act. We passed such a bill in the Senate during the 88th Congress, only to have it die in the House with the expiration of that Congress in 1964. I worked vigorously for its revival and passage by the 89th Congress in 1966.

So, in the 27 years since Congress decreed a partial role for the Federal government in coal mine safety under the 1941 Act, we have had the 1952 major Federal participation role enactment providing a safety program for the larger mines, and the 1966 amendment which covers the smaller mines. Coal mining mechanization and modernization have moved mining practices so far since 1952 that it is inded time for a revaluation of safety in the light of current mining methods.

Coal continues to be a vital requirement in the making of steel, and still is needed in very great quantities to help produce the ever-expanding requirements for electric energy. We are on the threshold of even broader production requirements as the feasibility of coal gasification and coal's conversion to liquid fuels become more real in fruition of years of research with which I am gratified to have had an early association as the House sponsor during the early 1940s. So, coal as a basic fuel and as an ingredient of sophisticated new fuels and related products, and coal as an industry, have the prospects of a greater future.

Consequently, with coal production surely to grow—rather than diminish, as has been erroneously predicted in some recent newspapers and periodicals—there is a greater obligation on the industry, on the union of miners, and on government to make sure that safety in the mines is enhanced.

Then, too, there is no escaping the fact that even without the fatalities and the handicaps of recent major coal mine disasters, the labor force available to the production-expanding coal industry has reached a critically short-supply condition. I have been working with the industry and the miners' union and officials in the executive development and training program in the interest of expanding the trained labor force to be available to the coal mining industry. If such tragic events as the recent disaster near Mannington, West Virginia, are not to cast doubts on coal mine safety and the legal and administrative capacity to stimulate and enforce the best and the necessary in safety practices, there must be prompt and unified action—cooperative action—by the coal industry, the coal miners' union, and governments.

Additional proposed safety legislation was developed in your department, Mr. Secretary, but too late to receive attention by the 90th Congress before its ad-

journment. It embraced a degree of the cooperative effort and some consensus on the part of industry, union, and government administrators—but, obviously, did not have the complete stamp of acceptability of all. There probably is not any measure that can be fashioned to achieve total acceptability. Even so, I give assurance that I will sponsor legislation in the 91st Congress dedicated to improvement of coal mine safety and Federal enforcement. Any measure I may introduce will be one which I would endorse in principle, but probably not in all of its provisions and details. Such a bill, in company with those which I presume will be introduced by other Senators and Representatives, will form the basis for what I hope will be thorough hearings. As a senior majority member of the Senate Labor Committee, I will insist on, work for, and participate diligently in thorough hearings on coal mining practices and safety procedures and on the legislation that may be needed to strengthen them.

I believe the Congress and the incoming national administration, as well as the legislatures and the executive establishments of the coal producing states, will give to coal mine safety legislation in the coming year the high priority consideration which has been accentuated by the recent disaster.

Truly,

JENNINGS RANDOLPH, *U.S. Senator.*

Senator RANDOLPH. Mr. Boyle, I am sure you and Mr. Evans and others of your organization will desire to be cooperative with the subcommittee under the chairmanship of Senator Williams if called again as witnesses, if it is necessary, for clarification and counseling with us in composing viewpoints in reference to the pending legislation.

Mr. BOYLE. Senator, with all due respect and apologies to you, I am not trying to be facetious in any respect, but that is an understatement.

The United Mine Workers will more than willingly cooperate with you and your committee and the subcommittee of Senator Williams in any respect, at any time, to bring about greater safety for the coal miners of this country.

It is long over due. It is a sad commentary that this country is so dependent upon coal in order to keep the economy running, and fails to fully protect the lives of coal miners. We have been crying in the wilderness, begging and pleading for such protection. The last time I appeared in the House of Representatives before a committee, one Congressman from a State where they don't produce a pound of coal, said to me, along with other things, "Mr. Boyle, don't be so dramatic about these people who work in coal mines."

I said, "While you and I are talking, Congressman, let me say this to you, men are dying in coil mines right now. When I come back to testify tomorrow, I will prove to you that men are dying."

Sure enough—I was not happy about it—but on that particular date, three men had died in a coal mine while he and I were arguing the point about dramatics.

Dramatic or otherwise, the coal miners of this country expect this president to take a firm and vigorous position in protecting their well-being.

Then what do we find? We find in the great State of West Virginia, where you hail from, men who have been suffering for 20 and 30 years with black lung, who are not now employed in the coal mines, who have been agitated by others, by outsiders, so to speak, to lead a fight against this union, and lead a fight against anyone for their own political expediency.

And we will correct that. Don't think we won't. We are not forgetting it overnight. And they won't say, like they did yesterday, that

the baloney, and I am talking about one of your Congressmen who has never been in a coal mine, who said that, "The baloney can go for Tony Boyle, up there."

Sure, he had a crowd of listeners. Do you know who they were? People who had contracted black lung disease before I was born.

And I am responsible for it? I am responsible for it because they got black lung?

Where was he when I was trying to get it corrected a few years ago, down in the Truman administration, getting me fined or getting my union fined $4 million?

I will tell him when I meet up with him. Don't think I won't.

Senator WILLIAMS. I gather you have answered Senator Prouty's first question, and I think we can leave that.

Mr. BOYLE. I will meet these other overnight experts, too, who never saw a coal mine, and know everything.

I want to say this. He wanted to know who these experts are. These experts who are running around, who are not dry behind the ears yet, who know all the answers to automobiles, they know all the answers to the Food and Drug Administration bills.

The other day I listened to him on the TV. I took time out to listen to him. Now he accuses the medical profession and the surgeons of this country of electrocuting their patients. He wants something done about it.

I will tell him, too, when I see him, physically, mentally, in the alley, or anywhere he wants to see me.

Senator WILLIAMS. I will say in all fairness, not as a committee, but as the chairman, I concluded the last described individual is Mr. Nader. Am I right?

Mr. BOYLE. Absolutely. I guess that is his name. I don't know him. I have never met him. He has never been in a coal mine. He has never come to see me. He has not asked me anything about coal mines. He is not an expert.

Senator WILLIAMS. I, too, concluded he was not knowledgable about mines. But now you have put us in a position where, in equity, we should bring him on and compare decibels.

Mr. BOYLE. Bring him on. Give me the opportunity to tell him.

Senator WILLIAMS. Senator Randolph.

Senator RANDOLPH. Mr. Chairman, I want to add this further word.

This subcommittee is very much in earnest in writing good legislation, strong legislation, effective legislation. We are going to need the help of you, Mr. Boyle, and others.

I am sure we will have it.

Mr. BOYLE. You will. Senator, if you will just bear with me for 1 minute, I want to tell you something.

According to a newspaper article that I read, and I have the article, Congressman Hechler read a letter to the black lung people, that contracted black lung before I was born, not knowing that my father died, my uncle also died, my grandfathers died from black lung, and I have a special interest in black lung; he reads a letter from Mr. Nader that says that the coal miners of this country should replace this President Boyle.

Let me tell him I have news for him. Out in our Denver convention in September, last September, over 2,000 delegates in attendance

elected by the rank and file membership to represent them at that convention, and it is more democratic than the Congress of the United States, because every resolution comes to the floor of that convention, they are never killed in committee, they are discussed on the floor of the convention, and that is why I say it is more democratic than the Congress of the United States, we discussed every resolution and every man has a right to protect his resolution.

And there was a bushel basket full of resolutions out there wanting this president to violate the constitution of his union by having the delegates at that convention elect him for life.

Maybe Mr. Hechler would like to read that to the black lung people down there. If he wants a copy of the proceedings of our convention, we will give it to him.

I rose and said to that delegation:

I don't want this delegation to elect me here for life. I want to face the rank and file in every State and every county and every hamlet in this country from Alaska to Alabama and from New Mexico to the State of Pennsylvaania. I will meet them, and I will face them.

Then, Mr. Nader thinks I ought to be replaced.

In addition to that, I did something else, for your edification, Mr. Chairman.

This same group of over 2,000 delegates were insistent that this president's salary be doubled over what was paid to my great predecessor and myself. I again rose and objected, and told them I would not accept it.

Senator WILLIAMS. We would do the same, if that should arise in our situation.

Mr. BOYLE. I know you would. President Nixon did the other day, too.

Senator WILLIAMS. Thank you very much, Mr. Boyle.

Mr. Stephen Dunn, president of the National Coal Association.

I know you have been here with us all morning, Mr. Dunn.

We welcome you before our subcommittee.

STATEMENT OF STEPHEN F. DUNN, PRESIDENT, NATIONAL COAL ASSOCIATION, ACCOMPANIED BY REX CHANEY, VICE PRESIDENT, PUBLIC RELATIONS

Mr. DUNN. Thank you very much, Mr. Chairman and gentlemen.

My name is Stephen F. Dunn. I am president of the National Coal Association. Our headquarters are in the Coal Building at 1130 17th Street NW., in Washington. The National Coal Association was founded in 1917 and represents the major commercial bituminous coal producers and coal sales companies in the United States.

I want to thank you for inviting me.

I have shortened my statement, but I do ask that the complete version be part of the record.

Senator WILLIAMS. Certainly it will be included.

Mr. DUNN. Thank you, sir. At the outset, Mr. Chairman, I want to state as emphatically as I can that the coal industry regards the safety and health of coal miners as paramount.

As John Corcoran, president of Consolidation Coal Co. and chairman of the board of National Coal Association, said at the hearing

called by former Secretary of the Interior Stewart L. Udall last December: "There can be no question that the health and safety of employees in the coal mining industry must be given first priority."

And, at the time the pending legislation was introduced, I said that when hearings are held, it will be made clear that mine operators are sincerely concerned about the safety and health of coal miners.

There may be differences of opinion over specific provisions, but we believe such differences can be resolved. Our common objective is to make coal mining safer.

The coal industry strongly favors strengthening the present Coal Mine Safety Act wherever the changes will make mining safer and protect the health of coal miners.

While in pursuit of this common goal, differences of opinion may develop over some proposed changes in the law. We will have alternatives to offer to some sections of the bills that have been introduced.

In all cases, however, we submit alternatives in an effort to be helpful, to give you the benefit of the guidance of those who are experienced in coal mining, and who must deal with the practical problems.

In behalf of National Coal Association, as well as other mining organizations, we are asking for time to present a panel of expert witnesses, when the committee gets into substantive hearings. They will be:

Mr. John Corcoran, chairman of National Coal Association and president of Consolidation Coal Co.

Mr. Woods C. Talman, chief inspector, coal, U.S. Steel Corporation, who will appear for the American Mining Congress.

Mr. James R. Garvey, president of Bituminous Coal Research, Inc., which is the research affiliate of National Coal Association.

Mr. Guy Farmer, a Washington, D.C., lawyer, who formerly was chairman of the National Labor Relations Board. He understands the coal industry and is an expert in administrative law.

At the same time, we hope that you will view the 10-minute version of our coal movie, which contains footage on both health and safety.

When you reconvene, I think it would be very helpful if you could see what is done for safety in this field.

Senator WILLIAMS. We will look forward to that presentation.

Mr. DUNN. Thank you very much.

We also would like to invite you and your staff to visit the mines, so that you can see for yourselves how much emphasis is placed on health and safety.

We offer you and your committee— and all those interested—our complete cooperation. In this brief statement today, I shall do only what I was asked to do: lay the foundation for the presentation our qualified witnesses will make at the time you determine.

They will cover general observations about the best approach to the most effective legislation, what should be done about safety and health standards (including dust), and what is the best administrative and legal procedure.

Here are some of the points the experts will make (these remarks now are directed primarily to S. 355, known as the Udall bill):

(1) The industry's safety record has improved, but we want it to improve faster. We will endorse much of the pending legislation—including burdensome and expensive provisions—if they might increase safety.

In fact, many of the proposals in the legislation originated with industry. We will suggest that some of the proposed standards be made even stronger. And, regardless of what happens to the legislation, the industry pledges to continue its own best efforts.

(2) The industry will oppose only those provisions which might leave room for arbitrary action or poor administration—or because they are not likely to improve safety or health—and will suggest constructive alternatives.

Reasonable men may differ as to the best means to a common goal. We propose together to find the facts, as well as the goals that are attainable.

(3) We emphasize that safety standards should continue to be in the law. But if it is decided to delegate rulemaking to the Secretary, such authority should be subject to proper review.

(4) Changes should be made in the provisions dealing with fines or penalties. They should be subject to proper review, and, if assessed at all, and I raise a question whether they should be, but if assessed at all, should be assessed against the corporate operators only, and not against mineworkers or supervisors.

This suggestion—coming from the operators—might surprise you, but it demonstrates that they are really trying to be completely fair.

And I might add, while this is not in my statement, I am not a safety expert. We understand from the experts that they achieve much more through voluntary cooperation and education methods than they do through fines and penalties.

(5) Section 104 should be strengthened to require strict qualifications for mine inspectors.

This is very important.

(6) Our experts will suggest strengthening provisions also as to equipment, detection devices, application of standards and inspections.

In fact, you will be interested to know that in conferences with Government and labor—prior to introduction of the legislation—industry also agreed to at least 20 changes in the law to strengthen safety practices.

(7) Our experts will bring out the facts about coal workers' pneumonoconiosis (CWP), and they will correct misunderstandings that exist. Their testimony will define respirable dust, will analyze the study by the Public Health Service, will emphasize that we do not minimize the problem.

The industry hopes to attain conditions where no one can get CWP. They will explain some of the practical problems, such as measuring devices and the need for standardization, the need for research on methods to minimize dust, the need for additional programs by the Bureau of Mines, the use of respirators and other devices by miners, the reasons why any numerical standard should be an interim and attainable standard, the need for an advisory committee so the Secretary can modify standards as technology permits.

You will find our witnesses very well prepared to help you. I believe you will conclude that their testimony is only some evidence of the industry's great concern for safety and health.

Gentlemen, coal is mined because coal is vitally needed to meet demands for energy—and this demand is growing fast. Coal makes a

tremendous contribution to our domestic economy, also to our balance of payments through annual exports of about $500 million.

American coal miners are among the highest paid workers in the world. The industry does not believe profits should be put ahead of the health and safety of mineworkers.

Our members pledge their best efforts to make the coal mines so safe that young men will want to work there and help meet the Nation's great demand for energy.

Thank you for listening to my abbreviated statement.

Senator WILLIAMS. We appreciate that statement, which is preparatory to later testimony from the association with experts in the field. Thank you very much. At this point we will include the full statement of Mr. Dunn.

(The prepared statement of Mr. Dunn follows:)

PREPARED STATEMENT OF STEPHEN F. DUNN, PRESIDENT, NATIONAL COAL ASSOCIATION

Mr. Chairman and members of the subcommittee: My name is Stephen F. Dunn. I am president of the National Coal Association. Our headquarters are in the Coal Building at 1130 17th Street, N.W., in Washington. The National Coal Association was founded in 1917 and represents the major commercial bituminous coal producers and coal sales companies in the United States.

At the outset, Mr. Chairman, I want to state as emphatically as I can that the coal industry regards the safety and health of coal miners as paramount. As John Corcoran, president of Consolidation Coal Company and chairman of the Board of National Coal Association, said at the hearing called by former Secretary of the Interior Stewart L. Udall last December: "There can be no question that the health and safety of employes in the coal mining industry must be given first priority."

And, at the time the pending legislation was introduced, I said that when hearings are held, it will be made clear that mine operators are sincerely concerned about the safety and health of coal miners. There may be differences of opinion over specific provisions, but we believe such differences can be resolved. Our common objective is to make coal mining safer.

The coal industry strongly favors strengthening the present Coal Mine Safety Act wherever the changes will make mining safer and protect the health of coal miners. While in pursuit of this common goal, differences of opinion may develop over some proposed changes in the law. We will have alternatives to offer to some sections of the bills that have been introduced. In all cases, however, we submit alternatives in an effort to be helpful; to give you the benefit of the guidance of those who are experienced in coal mining and who must deal with the practical problems.

In behalf of National Coal Association, as well as other mining organizations, we are asking for time to present a panel of expert witnesses, when the Committee gets into substantive hearings. They will be:

Mr. John Corcoran, chairman of National Coal Association and president of Consolidation Coal Company.

Mr. Woods C. Talman, Chief-Inspector-Coal, U.S. Steel Corporation, who will appear for the American Mining Congress.

Mr. James R. Garvey, president of Bituminous Coal Research, Inc., which is the research affiliate of National Coal Association.

Mr. Guy Farmer, a Washington, D.C. lawyer, who formerly was chairman of the National Labor Relations Board. He understands the coal industry and is an expert in administrative law.

At the same time, we hope that you will view the 10-minute version of our coal movie which contains footage on both health and safety. We also invite you and your staff to visit the mines so you can see for yourselves how much emphasis is placed on health and safety.

We offer you and your Committee—and all those interested—our complete cooperation. In this brief statement today, I shall do only what I was asked to do: lay the foundation for the presentation our qualified witnesses will make at the time you determine.

They will cover general observations about the best approach to the most effective legislation. What should be done about safety and health standards (including dust) and what is the best administrative and legal procedure. Here are some of the points the experts will make (these remarks now are directed primarily to S. 355—known as the "Udall Bill") :

(1) The industry's safety record has improved, but we want it to improve faster. We will endorse much of the pending legislation—including burdensome and expensive provisions—if they might increase safety. In fact, many of the proposals in the legislation originated with industry. We will suggest that some of the proposed standards be made even stronger. And, regardless of what happens to the legislation, the industry pledges to continue its own best efforts.

(2) The industry will oppose only those provisions which might leave room for arbitrary action or poor administration—or because they are not likely to improve safety or health—and will suggest constructive alternatives. Reasonable men may differ as to the best means to a common goal. We propose together to find the facts, as well as the goals that are attainable.

(3) We emphasize that safety standards should continue to be in the law. But if it is decided to delegate rule making to the Secretary, such authority should be subject to proper review.

(4) Changes should be made in the provisions dealing with fines or penalties. They should be subject to proper review and, if assessed at all, should be assessed against the corporate operators only, and not against mine workers or supervisors. This suggestion—coming from the operators—might surprise you, but it demonstrates they are really trying to be completely fair.

(5) Section 104 should be strengthened to require strict qualifications for mine inspectors.

(6) Our experts will suggest strengthening provisions also as to equipment, detection devices, application of standards and inspections. In fact, you will be interested to know that in conferences with government and labor—prior to introduction of the legislation—industry also agreed to at least 20 changes in the law to strengthen safety practices.

(7) Our experts will bring out the facts about coal workers' pneumoconiosis (CWP) and they will correct misunderstandings that exist. Their testimony will define respirable dust; will analyze the study by the Public Health Service; will emphasize that we do not minimize the problem. The industry hopes to attain conditions where no one can get CWP; they will explain some of the practical problems (such as measuring devices and the need for standardization) ; the need for reasearch on methods to minimize dust; the need for additional programs by the Bureau of Mines; the use of respirators and other devices by miners; the reasons why any numerical standard should be an interim and attainable standard; the need for an advisory committee so the Secretary can modify standards as technology permits.

You will find our witnesses very well prepared to help you. I believe you will conclude that their testimony is only some evidence of the industry's great concern for safety and health.

Gentlemen, coal is mined because coal is vitally needed to meet demands for energy—and this demand is growing fast. Coal makes a tremendous contribution to our domestic economy; also to our balance of payments through annual exports of about $500,000,000. American coal miners are among the highest paid workers in the world. The industry does not believe profits should be put ahead of the health and safety of mine workers. Our members pledge their best efforts to make the coal mines so safe that young men will want to work there and help meet the nation's great demand for energy.

Thank you very much. Senator Randolph.

Senator RANDOLPH. Mr. Dunn, how many coal operations are there in the United States?

Mr. DUNN. There are some 6,000 mines, I understand.

Senator RANDOLPH. That is what I refer to.

Mr. DUNN. There are a large number of mines and a large number of operators who do not belong to the National Coal Association. We do, however, represent the largest of the commercial producers, as well as the distributors of coal, and the exporters of coal abroad.

Senator RANDOLPH. What is the investment of the industry?

Mr. DUNN. I will get that figure for you very readily and put it in the record. I don't have it with me. But it runs into billions.

(This information was furnished for the record in a letter addressed to Senator Williams as follows:)

NATIONAL COAL ASSOCIATION,
Washington, D.C., February 28, 1969.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Senate Labor Subcommittee,
Washington, D.C.

DEAR MR. CHAIRMAN: At the coal mine safety hearing yesterday (February 27) I said, in reply to questions by you and Senator Randolph, that I would supply additional information about the investment of the bituminous coal industry in coal mines and also about the number of mines and miners.

(1) The actual total investment in bituminous coal is not available from any known source. However, on the basis of estimates made by our staff of average investment per ton of annual capacity, coupled with the annual production capacity estimates made by the U.S. Bureau of Mines, the total investment of some 5,100 bituminous coal companies is between $4 and $5 billion. This includes new mines now under development.

For 1965 the Internal Revenue Service reported returns from 2,159 active coal mining corporations, both bituminous and anthracite, with aggregate assets of $2.9 billion. These are the latest detailed figures available.

(2) McGraw-Hill Inc., in its 1968 Keystone Coal Buyers Manual, states that there were 5,100 bituminous coal mining companies and 412 anthracite companies in 1967. Of these, 59 bituminous coal operators produced more than 3 million tons each in 1967, and 122 more than 1 million tons each. Of the total of 5,100 companies, 4,507 were listed as producing less than 100,000 tons per year each.

(3) Bureau of Mines' figures show 5,873 bituminous coal mines in operation in 1967 and 830 anthracite mines in operation for the year 1966, the latest available figures.

(4) Bureau of Mines' figures for 1967 show 131,523 men working daily in bituminous coal mining, and 7,750 working daily in anthracite.

If we can be of further assistance in any way, please call on us.

Sincerely,

STEPHEN F. DUNN.

Senator RANDOLPH. Mr. Dunn, as I earlier said to Mr. Boyle, I now say to you, that we have a considerable task, here. We must approach it constructively and effectively, not with a timid approach, but a frontal approach.

You have said that yourself, in other words.

If we do this job, it must be well reasoned. We must work together. We will need the value of your counsel.

Those witnesses who will come before us will be ready to discuss the definitive measure, as to the provisions, the proposed legislation in the areas of health and safety.

I want to indicate my belief that your counseling, your help, will assist the members of this subcommittee in doing this job, and a very necessary job.

Mr. DUNN. We certainly want to help, Senator Randolph. We really want a good law.

I might say I am not just up here expressing personal opinions. The experts who are on the safety committee of the Bituminous Coal Operators Association all concur, of course, with these views, and the National Coal Association heard my preliminary draft of this statement only a few days ago through their executive and finance committees, and they concur in these views.

The industry is wholehearted in wanting to work with you in getting a good law.

Senator WILLIAMS. You gave the figure 6,000 coal operators in the country.

Mr. DUNN. I think there are 6,000 mines. We will be happy to send to your subcommittee the exact count, as well as the amount invested, Mr. Chairman.

Senator WILLIAMS. Does the association include most of the operators of that number of mines within its membership?

Mr. DUNN. We include over 50 percent of the total coal production. Our membership is composed of operators who produce coal for the commercial market, as well as the sales companies and the exporters.

There is a great amount of production also among the so-called captive operators, the steel companies, some utilities who produce coal for their own use, and our panel of witnesses and I might say, Senator, we would like very much to have them all appear as a group, so that you can get the benefit of the overall picture—they will include both the captive producers and the commercial producers.

Senator WILLIAMS. We will do it that way. If we find it more efficient that way, we will do it.

We have had some disparity of estimates on the number of coal miners there are in the country. What is your working figure on the number of working miners?

Mr. DUNN. Our public relations vice president is here, I don't know whether he has those figures with him.

Mr. Chaney, do you happen to know offhand?

We will be happy to send you the information, unless we have it with us.

This is Mr. Rex Chaney, vice president, public relations, of the National Coal Association.

Why don't you give it to them, Rex?

Mr. CHANEY. The latest figures of men employed—these are Bureau of Mines figures—is 131,000.

Senator WILLIAMS. How does that divide between bituminous and anthracite?

Mr. CHANEY. I do not have it broken down, Senator, but there are far more bituminous coal miners, because the anthracite production is not a substantial part of total coal production.

Senator WILLIAMS. The safety and health factors are about the same in either bituminous or anthracite, are they not?

Mr. DUNN. I would say they would be very similar, Senator.

In that connection, I saw the president of the Anthracite Institute quite recently. He said undoubtedly he would want our witnesses to speak for them as well as the bituminous part of the industry.

Senator WILLIAMS. That is one of the things I wanted to establish. Thank you very much.

Senator RANDOLPH. Mr. Chairman, I want to say, regardless of the exact figure, that about one-third of the total are miners in West Virginia.

Mr. DUNN. Yes, indeed. West Virginia is by far the No. 1 coal producing State.

This of course means coal not only for the domestic economy, but for export. Much of your State's coal, Senator, goes abroad, as you well know.

Senator WILLIAMS. Will you be back with your experts?

Mr. DUNN. I will certainly be back to hear them, although I do not intend to testify.

Senator WILLIAMS. We want to move along as rapidly as we can to the conclusion of these hearings. Would the end of next week be too early to contemplate their arrival?

Mr. DUNN. I think that would be all right, Senator.

Senator WILLIAMS. We will work that out with you.

Mr. DUNN. Yes. They are scheduled to appear on the House side on March 19, but our witnesses will be available at your pleasure.

Senator WILLIAMS. We can be contacting you in Washington.

Senator RANDOLPH (presiding pro tempore). Senator Schweiker, you are a member of the subcommittee, and are intensely interested, as you indicated earlier, in effective legislation in the area of coal mine health and safety. You referred to the people who will now appear, those coming from the Commonwealth of Pennsylvania.

It would be appropriate if you would present these men who will testify.

Will you do that, sir?

Senator SCHWEIKER. Thank you very much, Mr. Chairman.

I want to say that I am delighted to have the privilege to do this, because several of these men have done a great deal of outstanding work in this field, and I would like to introduce them at this time.

Mr. Creany, who is an attorney from Ebensburg, Cambria County, who has examined very closely the problems of the miners in an attempt to solve the health and safety problems; Dr. Goldman, expert in medicine, and who works out of the Johnstown area medical office of the United Mine Workers of America. He has brought along two of the disabled miners, a Mr. Curry and Mr. Michelbacher.

The third one who was scheduled to be here, frankly, is too ill to come today.

I am delighted to have them here. I feel it is extremely helpful to the subcommittee to have this kind of firsthand experience as to what is happening in our coal mines.

I think the story they have to tell will be educational and beneficial to the committee, and I know will guide us very intelligently in our legislative work.

Thank you, Mr. Chairman.

STATEMENT OF EUGENE A. CREANY, ATTORNEY, EBENSBURG, PA.

Mr. CREANY. Senator Randolph and members of the subcommittee, first of all I would like to briefly outline the program which the United Mine Workers have, particularly within the last 10 years, undertaken in our area, which comprises the central area of Pennsylvania, dealing with the coal miners in the soft or bituminous coal field as far north as St. Mary's in Elk County, which borders the State of New York, and as far south as Somerset, which borders the State of Maryland and West Virginia, as far west as New Kensington and Armstrong County, which again go down to your State, and as far east as over in Clarion, or near Harrisburg.

We have recognized—when I say "we," the United Mine Workers of America have recognized that, contrary to previous medical con-

cepts, that soft coal workers were exposed to the same deleterious conditions related to lungs as the anthracite workers, who were exposed to a greater concentrated silicone dioxide hazard.

We have, and I am proud that Senator Schweiker and I are both from the State of Pennsylvania, I believe one of the best occupational disease acts presently, and this has been over many, many years.

The most recent amendment to the act was that on December 1, 1965, which has taken care of a lot of the old coal miners, which prior to that date had not had the benefits of compensation, because of the fact that our act requires, or required prior to that time, that any individual exposed to coal or silica particles had to become totally disabled within 4 years of the date of his last exposure.

Immediately, this has been shown to be practically impossible, since not everyone working in a coal mine, because of his physical ability to withstand the effects of the concentration, becomes totally disabled within this period.

We did find that with the mechanization of the coal industry, there were greater and greater concentrations of coal dust, and the individuals themselves becoming totally disabled and seriously affected with what you have been referring to here in the hearing as black lung.

We have by statute defined it in Pennsylvania as pneumoconiosis, which is a generic term: Coal miner asthma, coal miner's pneumoconiosis, to distinguish from pneumoconiosis which comes from smoking, from inhalation of other deleterious particles.

When the act went into effect on December 1, as a service to all coal miners, and with the permission of President Boyle and the officials of the United Mine Workers, and in an effort to be of service not only to the members of the United Mine Workers, but any prior employees or any aged coal miners who were either not members or had been at some time in the past, for some reason or other no longer members of the United Mine Workers, we filed in our district alone 13,000 claims in the period of 90 days, all of which now either have been decided or are in the process of being decided.

Our process is that initially we have our doctor—when I say "our doctor," I mean a participating doctor of the United Mine Workers Union—examine the individual.

I have today with me Doctor Goldman, whom I brought along as probably the person who might be able to be most expert in this matter, since through the efforts of the United Mine Workers, we have a participating clinic which we call the Ebandjieff Clinic, which services an area comprising perhaps a hundred miles in radius.

He also services and participates in the clinic, which is not maintained but financially supported by the United Mine Workers at Centerville, which is on the West Virginia border, as Senator Randolph knows.

Dr. Goldman has, and has a practice in order to be of service to these individuals, that is, the employees and members of our union particularly at this time, periodically checked these miners from time to time.

When we find that an individual has progressed—and I am sure that Dr. Goldman will explain to you that this is not a type of disease, it is a condition which occurs as a result of the inhalation of these particles, it is progressive in nature—and when the man's lung condi-

tion by X-ray or by ventilation study or exercise tolerance test, reaches a point where physical exertion begins to tell on him, we then advise the man to get out of the mine, and we try to have him apply for benefits.

Unfortunately, some of these individuals are getting younger and younger. They are not able to receive the benefits of the United Mine Workers insofar as pensions yet.

The pension term has been set down to 55, and a lot of them will, of necessity, work until they just cannot go any further.

I would like at this time first to have Dr. Goldman explain to you the progressiveness of this disease.

STATEMENT OF DR. JOEL GOLDMAN, JOHNSTOWN, PA.

Dr. GOLDMAN. Senator Williams and members of the subcommittee, coal worker's pneumoconiosis and silicosis is a progressive disease.

The moment the worker is exposed in a mine until the end of his life, his condition will continue to progress, and finally deteriorate.

Now, this does not mean that all coal workers, miners, cannot go through a full lifetime of working in mines, but it does mean that healthwise they will continue to show ill effects of being a coal miner.

Many of them will go through their time in the mines until they retire, and perhaps go into their 80's and even 90's, in spite of their pneumoconiosis. The presence of pneumoconiosis of course is there.

In working with large numbers of these men, one cannot help but be impressed at the slow, gradual deterioration, healthwise, in a large percentage of them.

The type of mined coal is such that it is almost impossible, at least up to this point, not to have some dust. Of course this is inhaled.

Now I will show you first some pictures of actual lungs from the autopsy table, that is, sections of them.

The first picture in the upper row to my left is a healthy lung. This person probably was not ever a coal miner, or perhaps was one of the fortunate ones early in the game.

Senator RANDOLPH. Or he did not smoke cigarettes. Is that right?

Dr. GOLDMAN. Cigarette smoking would not give you dust. It will give you emphysema, and don't feel so smug. You should not smoke cigarettes.

The second picture in the top row, to my right, shows the dark discoloration of the tissue, which is of course, coal dust.

Once more, this does not of necessity prevent him from mining coal, but the dust is there.

In the second row, below, we see an advanced stage of the pneumoconiosis, and in the fourth picture we show that the entire upper half of the lung has been replaced by scar tissue with coal dust in it.

This is not a reversible process. Once it starts, it does not stop, and it cannot be removed by any manner that we know.

Now, as a corollary, I will show you what it looks like on X-ray.

Mr. CREANY. Before you do that, Doctor, will you please explain the effect on the breathing, or ability of the man to perform in the various stages of his development?

Dr. GOLDMAN. Of course, above, in the first row to the left, he should breathe normally, because it is normal lung. The second one on the

left, once more, he may breathe normally, because the lung does not appear to be breaking down.

But in the second row, the bottom row, I see numerous areas where the air sacs have become so inelastic with coal dust and scar tissue that they have broken and have joined, and they are starting to form what we call emphysema blebs, or just emphysema. So here we have a lung that is becoming rigid with dust and scar tissue and not as much space left to properly cleanse the blood as it goes through the lung.

Now this, of course, will make more work on the heart, so here comes the heart entering the picture, and it is very prevalent that heart disease will accompany the lung disease.

In the last picture in the second row there, we have destruction of at least a third of the lung, and the breathing is extremely difficult, and the heart action is extremely difficult, and this patient is truly an invalid.

I say "patient," because now he is sick and should not be working at all.

Senator BELLMON. Dr. Goldman, assuming a patient is in the condition you show in the upper right-hand photograph, if he were to leave the coal mine at that point, would this condition continue to deteriorate?

Dr. GOLDMAN. This will continue to progress, perhaps not as rapidly, since he is not in a dusty atmosphere, but it will progress until he dies. It cannot be undone.

Senator SCHWEIKER. Doctor, about what length of time? I guess it depends on the exposure. In what length of time does that triggering mechanism begin?

I guess that is pretty hard to define.

Dr. GOLDMAN. That, of course, is impossible to answer. It varies with the individual. Two men can work in adjacent chambers with the same concentration of dust, both coal and silica, and one will be far advanced and one will have very little.

There are many things that have not been explained. I think ventilation may be a factor.

Senator SCHWEIKER. If he left the coal mine in the second stage, as Senator Bellmon asked, could it eventually deteriorate to the last stage there?

Dr. GOLDMAN. It may, or may not, but if he were to get work in some other field, with good fortune it may go no further, with good fortune.

Now I am going to show you a perfectly normal lung.

Mr. CREANY. This is by X-ray.

Dr. GOLDMAN. This lung has no dust. He is not a coal miner. There is nothing there but normal-appearing lung.

I will leave that on for a comparison.

This lung shows far advanced pneumoconiosis, with large lesions in the upper part of each lung, with overt span of the lung at the bottom, emphysema trying to take up the load.

This man, of course, is a pulmonary invalid as a result of his exposure to coal and silica dust.

This gentleman here has not nearly as much involvement on X-ray, yet he was too short of breath to continue working as a coal miner.

So, you see, we have to add all factors together, exposure, breathing test, called pulmonary function, and an X-ray examination.

The great tragedy is this, that lungs like these do not fight infection well. When they get pneumoconiosis, it is very common to all adults, especially the pneumonias, they have quite a problem.

This winter with the Hong Kong flu, so called, followed by pneumonia, lost so many of these men that I was extremely morbid, because I felt helpless.

So there are many facets to the whole problem.

These miners cannot continue to work, no one will hire them, because every industry has its own health service, including an X-ray of the chest, and once these changes are found, they don't have a chance to work. So actually, they are unemployed and unemployable.

I will be glad to answer any questions.

Mr. CREANY. At this time, if the subcommittee would allow me, I would like to introduce the two gentlemen I brought with me.

The gentleman on the end is Elmer Curry. His employment record shows continued employment in the coal industry, bituminous coal industry, from 1921 to November 13, 1965. Originally, his early employment in the earlier years was that of a hand loader, and toward the end of his working career was in transportation, all of his employment being underground.

At the time of our initial interview with this man, he was 59 years of age, and was very reluctant—actually he was 57—we did not file until 2 years later, when Dr. Goldman insisted on his getting out of the mine—he wanted to continue to work. However, as another service of our office, again I speak of the United Mine Workers, the minute we get the report from our doctors that a man is on the borderline or on the brink of becoming totally disabled, as an additional service, at no cost to him, either of legal services or medical services, this is paid for by the United Mine Workers, we try to find and have him evaluated for rehabilitation purposes, to see if we could at this point get this man out of the coal mine and into some work that will best suit him, and he would still have a normal life expectancy, as normal as he possibly could.

In Elmer's case, we were unable. He also has been declared totally disabled for social security purposes. We have the progressive X-rays, and they will match those that Dr. Goldman has placed on the view box.

The other gentleman, next to me, is Carl Michelbacher. At the time of his case coming up, and he had spent from 1925 to 1964 as an underground coal miner, primarily as a rock driller, running a joy or a cutting machine, all of his employment was underground, we found the same condition progressively in his case.

The unfortunate part with this gentleman was that he had at the time of our hearing in March 1965, five children under 18 years of age.

To take a man out of the industry at a point where economically he should be most productive for himself and his family is, as Dr. Goldman put it, very discouraging at times in our office.

However, because of the progressiveness again of the radiological evidence of his lung condition, we did implore upon him to get out of the coal mines. We filed his claim.

It is not merely our doctor's word that is taken for it. Under the Pennsylvania law, the company has its own doctor, and they examine him, also. If there is a disagreement between the doctors, then there is

an impartial examination requested by the Workman's Compensation Board, and the impartial doctor will examine him.

In both these cases, and the reason we selected these cases, both the company doctor and Dr. Goldman, who examined both these gentlemen, found that the condition of these lungs had progressed to the point that they were both totally disabled for industrial purposes.

Again, in Curry's case, he also was found to be totally disabled for social security disability.

As you well know, under the Social Security Act, one particular disability does not render a man totally disabled for all purposes. They have a different standard, but in this case these lungs had progressed to the point that both the compensation agency in Pennsylvania, as well as the Federal agency, have found them totally disabled.

Now, this is small compensation. That is, the payment of compensation is small compared to what these men could earn during their actual employment.

At that time, back in 1964 and 1966, they were averaging approximately $158 a week. When this income is reduced to $47.50, under their act—it is now $60 in Pennsylvania—you can see that financially these men and their families are very seriously affected, particularly when there is no possibility of rehabilitation.

My only purpose here, at the request of Senator Williams' office, I was to graphically present to you the effects, the serious effects of bituminous coal mining.

Strangely enough, in Wales they have been studying this back in the 1800's, and we have not really concentrated on this. Everybody has written it off as one of the hazards that a man takes upon himself when he enters a mine, which really is not so.

I think that the legislation which has been proposed and adequately described and set forth by President Boyle and the others of the United Mine Workers, will at least to some extent reduce the age at which these individuals become totally disabled, if we are able to adequately control this dust, so that with the mechanization we can at least expect these individuals to work a normal life, and have a normal life expectancy.

Senator RANDOLPH. Mr. Chairman, I do not believe that Mr. Creany has mentioned the age of either individual who is here with him today. I think the record should have it.

Mr. CREANY. Mr. Michelbacher is 59 next week. Mr. Curry is 63 now. At the time of their disability they were 56 and 59, respectively.

Dr. GOLDMAN. I should like to add one more thought about dust.

In Wales, where they ship a great deal of coal, the men in the holds of ships, who never were near a coal mine in their lives, have the same changes as these cases that I have presented, as soft coal miners.

In other words, to me there is absolutely no question as to the cause and effect.

Senator WILLIAMS (presiding). Is the dust generated in the holds of the ships as in the coal mines?

Dr. GOLDMAN. It is coal dust.

Senator WILLIAMS. There is no doubt as to the causative agent. It is coal dust?

Dr. GOLDMAN. That is right.

Secondly, the men I am seeing now are younger and younger men, who are becoming disabled.

Unfortunately, when a man is in his early 50's, it is extremely difficult for him to get social security for any reason. He gets a request to try for rehabilitation. Most of these men have not gone beyond the eighth grade. They can qualify for almost no form of rehabilitation. They have no special skill, and it is getting to be a greater and greater problem.

Senator WILLIAMS. Mr. Creany, on the period of time within the Pennsylvania State law, what is the period of time a man must file for workman's compensation after he has left employment and discovered that he has this disease?

Mr. CREANY. Senator, we have what we call the basic claim, which requires a man to become totally disabled within 4 years of his last exposure. That would pay him the maximum award of $12,750, payable at the present rate of $60 per week.

If during this period of time he does not become totally disabled, or doctors do not feel that he has progressed to that point of total disability, we have amended our act by section 301(I), which has no statute of limitation, so that he can become totally disabled at any period after 4 years. However, he receives benefits only presently at the rate of $75 per month, so if he has been out of the mine 10 years, let us say, and he has been classified totally disabled because of pneumoconiosis, he qualifies for a benefit of $75 per month, but he still must be totally and permanently disabled. We have no partial disability in Pennsylvania.

Somebody I believe asked a question about exposure. Under the act, they must have at least 5 years of exposure for the basic claim, and 2 years for the other, the $75.

Senator WILLIAMS. There are only three States, my information is, that have this workman's compensation coverage for this disease.

Mr. CREANY. That is right, for occupational disease. That is right, sir.

Senator WILLIAMS. Senator Saxbe.

Senator SAXBE. These gentlemen both worked in the days when coal mining was much less advanced than it is today, but I gather from your statement, from the doctor's statement, that as the machinery has increased, the dust has increased.

Am I right in assuming this, that as the bigger machines are working on the face and the complete mining operation, that the dust has increased, and, therefore, the younger people are getting it?

Mr. CREANY. That is right, sir.

In that respect, we have, and Dr. Goldman has seen—I have sent him between 3,000–5,000 of these claimants, these miners, over the last few years. We have set up a system; that is, the United Mine Workers has set up a system in our area where we examine these men once a year. They are entitled to one complete examination per year.

We afford this to them at no expense to them, and we are finding that because of the increased mechanization, we are finding a younger and younger man.

When a man comes into our office at 45, and he tells me that he is unable to work any more, and I send him down to Dr. Goldman, it is

pathetic to see anybody at such a young age, to feel that he cannot produce any longer.

This has happened in many cases.

Senator SAXBE. Now, dust has been controlled in the past as a safety measure, has it not?

Mr. CREANY. It has. This is one of the points that I had prepared in a prepared statement, but with the discussion that has gone on, I felt that the committee had had it adequately covered, and particularly Senator Randolph is knowledgeable in that respect.

Dust has primarily, that is, engineeringwise, has always been considered, from what I have been able to read, as a potential for an explosion.

Controls, if any, were always directed toward that phase of mining. It is more dramatic, and it will cause a committee such as this to make considerations, as you are now, and I am sure it will be a benefit to a lot of miners.

But the same dust is producing a slow death to many, many individuals; although it may not be dramatic, it is just as deadly as it is when it is concentrated in a possible explosion area.

Senator SAXBE. Now, these suggested levels of coal dust are they from experiments in this country, or do we have enough experience to set these milligrams, or do we have to get them from some place else?

Mr. CREANY. We have had studies. I think President Boyle's recommendation of 3 milligrams per cubic meter is an acceptable tolerance.

I have made a few studies in the Pittsburgh area, and ours run 2.5, anywhere from 2.5 to as high as 12, in certain areas. Some United States Steel mines and Bethlehem mines have those.

Senator SAXBE. Is that the constant level throughout the mine?

Mr. CREANY. Not necessarily.

Senator SAXBE. Or is that a composite?

Mr. CREANY. Not necessarily, Senator. The higher concentration, of course, will be in the area at the face, where the machine is in actual operation.

But the difficulty that comes in from the experience that I have had, and discussions with these men, is that in certain areas the ventilation is not as good as in others.

Sometimes there is a rockfall in there, so that the concentration is still in the main hallage ways, and you still have this dust in suspension.

Senator SCHWEIKER. I just want to thank the gentlemen for coming and telling their story. I think it is very helpful.

You have done an excellent job in a field which has been much neglected. I think the committee will profit from your testimony.

Senator RANDOLPH. Mr. Chairman, I would like to ask one question of Mr. Creany.

I am not sure that he has the knowledge in this area to discuss it. We can bring it to the subcommittee's attention at a later date.

But I believe, Mr. Creany, that the industry and the union both have estimated that there is a shortage, there is a need today for approximately an additional 5,000–7,000 coal miners. How that is to be met, or at what rate it is being met, I do not know, but do you have a feeling that perhaps the figure I have given, the need for this increase, that we are not reaching the people because of their fear of

the health and safety conditions in the mines, or are there other reasons as well?

Mr. CREANY. That is my feeling, Senator. In fact, in our area, the coal company, in an effort to attract the boys leaving high school, actually goes into the school to try to encourage them to come into the mines.

Because of the effect they have seen, perhaps in their father, and so on, they are leaving our area, and it is harder and harder for us to find a young man going in, or if he goes in, he will not stay there very long.

Senator WILLIAMS. Thank you very much.

I wonder if we could hear from your two friends here, who are on disability.

One of the questions I would like to ask: Now, you gentlemen, because of the illness and disability, are compensated both under the Pennsylvania workman's compensation law and under social security for the disability?

STATEMENT OF CARL MICHELBACHER

Mr. MICHELBACHER. Yes, sir.

Senator WILLIAMS. Would you mind if I ask what the two total areas of compensation come to?

Mr. MICHELBACHER. Social security is $337, and my pension is $115.

Senator RANDOLPH. Is that from the pension system of the United Mine Workers?

Mr. MICHELBACHER. Yes; and $95 every 2 weeks because of silicosis.

Senator WILLIAMS. How many dependents do you have, Mr. Michelbacher?

Mr. MICHELBACHER. A wife and five children.

Senator WILLIAMS. I did not add that up as a total.

Senator EAGLETON. That is $642 a month. Is that right?

Mr. MICHELBACHER. That is right.

Senator WILLIAMS. That, of course, is some degree less, quite a bit less than what your wages would be if you were employed in the mines?

Mr. MICHELBACHER. To be honest, that is more, because there is no tax taken off.

Senator WILLIAMS. That is a hard way to get an advantage.

Mr. CREANY. So that his statement is not misleading, Senator, there was an amendment to the Social Security Act which became effective July 1, 1965, if any State had not an act, taking credit for compensation payments.

Now these two, fortunately, became disabled in 1964, but if any of our men become totally disabled now, the $60 per week is deducted from the social security benefits until they have exhausted their workman's compensation payments. So that in effect they are not getting any social security disability, or very little.

Do you follow?

Senator WILLIAMS. I follow it.

Mr. CREANY. He happened to have been declared totally disabled prior to the amendment of the act.

Senator WILLIAMS. Here, in effect, a worker is penalized, who works in an enlightened State that has a compensation law.

Mr. CREANY. That is correct.

Senator WILLIAMS. They frequently say, "Congress, in its wisdom." I wonder if that was wise.

I am glad to have your statement, and yours, too, Mr. Creany.

Senator SAXBE. I would like to point out that this is a rather unusual case, where you have four children as dependents.

This other gentleman, I would guess, gets substantially less, because he does not have children under 18.

Senator WILLIAMS. We are coming to Mr. Curry next.

Senator RANDOLPH. Mr. Chairman, so that the record at this point will indicate the scope that is embraced in the legislation of Senator Javits to establish a commission to study workmen's compensation laws, which I have cosponsored, this intergovernmental relationship is a matter that we want to look into.

That is inquiring into what is being done in the States, and where are we to go in the way of recommendation at the Federal level for the meeting of the very problem that you have discussed here with Mr. Creany and the other gentlemen.

Senator WILLIAMS. Could we ask you, Mr. Curry, what your return is under the two programs of compensation, and disability under social security?

STATEMENT OF ELMER CURRY

Mr. CURRY. My compensation is $195 every two weeks, that is, workman's compensation. My social security is $145.

Senator EAGLETON. How much is your pension?

Mr. CURRY. $115.

Senator EAGLETON. About $460 a month.

Senator WILLIAMS. How many dependents do you have?

Mr. CURRY. I have no dependents. I am in single status. My wife is dead.

Senator WILLIAMS. What would the situation be here, of Mr. Curry's, if he had not come prior to the changes in social security?

Mr. CREANY. The same thing. They would take credit.

Again, sir, so that this is not misleading, the basic amount of $12,000 in each of these two cases pays out in approximately 7 years. Then they revert to the $75 per month for total disability. So he is going to lose $190 less the $75, or he will lose $115 per month.

Senator WILLIAMS. When the statutory $12,000 is paid out?

Mr. CREANY. That is correct.

Mr. CURRY. Might I say a word at this point?

Senator WILLIAMS. Certainly.

Mr. CURRY. What I think, or what I try to think, is not important, of course——

Senator WILLIAMS. Very important to us.

Mr. CURRY. Regardless of what a man gets, or gets otherwise, I do not think that social security should be sliced like they do in these cases, as he has explained, because it is something you have paid for. You paid for it out of your own money. It is not a hand-out.

Senator WILLIAMS. Do you have any other observation or any personal observations beyond this, Mr. Michelbacher?

Mr. MICHELBACHER. No, I am just one of the lucky ones.

Senator WILLIAMS. I beg your pardon?

Mr. MICHELBACHER. I get along real well. I am O.K. financially. I am one of the lucky ones.

Senator WILLIAMS. Do you have anything else, gentlemen?

Senator SCHWEIKER. I have no further questions, Mr. Chairman. I would only like to commend these witnesses for their initiative and leadership in attacking the problems confronting the coal miner, and thank all four of these gentlemen for being with us today. They will be of very great assistance to our committee in its work on coal mine safety legislation.

Senator WILLIAMS. We are most grateful to all of you for coming here to be with us. It is very helpful to the deliberations to have people who are right where the disease happens that we are going to deal with as one of the aspects of bringing greater health to the people working in the mines.

Mr. CREANY. I don't know whether I made it clear to the subcommittee, but the mere fact that they get occupational disease payments does not automatically give them social security disability payments.

Senator WILLIAMS. That has to be established separately?

Mr. CREANY. Right.

Senator WILLIAMS. As a matter of total disability.

Mr. CREANY. Yes.

Senator WILLIAMS. As a compensation lawyer, did you ever win a case before the Pennsylvania statute on pneumoconiosis as an occupationally related disease?

Mr. CREANY. Before the statutes?

Senator WILLIAMS. Yes.

Mr. CREANY. No.

Senator WILLIAMS. Now, there are cancer cases that have been established as occupationally-related, yet there are no statutes that say the occupation did it.

Mr. CREANY. In the cancer case, the only example that I can think of is—I can think of the name because it was the first one that went up to the Superior Court in Pennsylvania—is Rose Rebar. Her husband had died. We had established total disability as a result of silicosis during his lifetime. The pathologist was able to causally relate death, and there were no areas of cancer in any other organ except the lung.

In that case, we did win the continued benefits for the widow, but in no other case that I can think of.

Senator WILLIAMS. This was prior to the statute on pneumoconiosis?

Mr. CREANY. Yes.

Senator RANDOLPH. Mr. Chairman, as we conclude the hearing today, I want to express my commendation to you for arranging hearings so that we will be hearing from the parties at issue.

These men and others who will come before us, the members of the medical profession, like Dr. Goldman, are important participants in the hearing, as are the union representatives and the industry representatives.

But I can assure those who are following that we shall be hearing from everyone who feels he can make a contribution to the passage of effective legislation. Thank you.

(The following material was subsequently supplied for the record:)

ENGLEHART, CREANY, ENGLEHART & LEAHEY,
Ebensburg, Pa., March 5, 1969.

Senator HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Labor and Welfare,
Washington, D.C.

DEAR SENATOR WILLIAMS: I acknowledge receipt of your kind letter of February 28, 1969, and am appreciative again of the opportunity of appearing before the Committee and the kind consideration that was given to myself, Doctor Goldman, Mr. Curry and Mr. Michelbacher.

At the close of the session, Mr. Boyd had requested that I prepare a statement to submit to you as an informative measure following closely the testimony that I had presented.

I am therefore enclosing the same for your consideration and request the same be made part of the record in this matter.

Very truly yours,

EUGENE A. CREANY.

Enclosures.

STATEMENT RELATING TO PNEUMOCONIOSIS (COAL WORKER'S PNEUMOCONIOSIS) AS A DISABLING FACTOR OF MEN EMPLOYED IN THE SOFT COAL INDUSTRY

Over the years it had been accepted as a fact by the medical profession that individuals exposed to a silicon dioxide hazard acquired lung conditions which, upon continued exposure, evidenced itself in the eventual complete destruction of the pulmonary process because of a condition they described as silicosis. This was recognized in the quarries and later in the hard coal mining areas, and hence, the term "anthraco-silicosis".

In the State of Pennsylvania the Occupational Disease Act and the decisions of the Courts did not recognize as a hazard employment in the soft coal industry except in those instances where we were able to prove that a coal worker, while removing coal also during a considerable portion of his time would be removing rock or slate, and individuals working in transportation underground and using white sand, or silica sand, for traction, would likely be subject to the same hazards as workers in the hard coal regions.

The first Occupational Disease Act in Pennsylvania was enacted in 1937 as a supplement to the Workmen's Compansation Act. However, the coal industry rejected the Act and questioned its constitutionality and, because of this, a more acceptable Act was adopted in 1939 and this, too, was rejected by anthracite coal operators. In 1946 the United Mine Workers of America and its operator signatories entered into an amended Agreement which included the general acceptance of provisions of the Occupational Disease Act by the operators. Since that time the Act has been amended in various particulars and the Courts in liberally interpreting the effects of exposure, both in the hard coal and soft coal regions, have finally, by enactment of legislation, given the employees the benefit of the doubt by creating a presumption of exposure so long as they could show employment in the coal industry.

Recent cases have expanded on this to the point where we, in December of 1965, have amended the Act so that there would be no confusion to include pneumoconiosis as it applies to inhalation of coal dust as a definite hazard, and it is no longer necessary to show that silicon dioxide is required to cause the conditions which we find in the soft coal industry. The present Pennsylvania Act requires that a claimant, in order to avail himself of the payment of $12,750.00, which is the "basic" claim, must become totally disabled within four years of his last exposure.

As indicated by Doctor Goldman in his testimony, co-workers in the same area are not, or do not necessarily become affected at the same time or to the same extent. Therefore, the four year statute of limitations was in many cases a bar to recovery of any compensation by an affected coal miner.

With the advent of automation and the increased production of coal, the United Mine Workers, through its various agencies, found that more and more a younger man was disabled and coming to our office seeking assistance. Through the use of its facilities, the United Mine Workers of America were able to further amend the present Occupational Disease Act to obtain benefits for those individuals who could not qualify under the "basic" Act, that is, to become totally disabled within four years of their last exposure. This is an amendment designated as 301(i) of the Occupational Disease Act. Under this section, although the employee does

not receive the weekly payments based on his earnings to the exhaustion of the initial award, that is, $12,750.00, he does receive presently, if he is totally disabled from this disease, $75.00 per month for the rest of his life. This was an accomplishment which the United Mine Workers felt was necessary to protect those individuals who, although having been exposed for many years, did not become totally disabled until some period beyond the statutory limit.

As the Subcommittee no doubt realizes, although we called pneumoconiosis a disease, this is not, in fact, so! Pneumoconiosis is a generic term applied to many types of lung conditions. As this relates to coal miners employed in the soft coal industry, it is called "coal workers' pneumoconiosis".

Again, as an elementary statement, the function of the lung, of course, is to aid in the process of exchange of gases by the lung method; that is, to inhale oxygen and exhale carbon dioxide. In this process there are small air sacs which take in oxygen and through the various capillaries related to the heart, supply oxygen to all parts of the body and then in the exhaling process remove the used gases in the form of carbon dioxide.

With the mechanization we have found an increase in coal dust in suspension at the face, or working area of the mines. The United Mine Workers as a service to its members, has set up clinics in various areas so as to periodically, by x-ray, check on the progression of the lung condition of the coal miner.

Doctor Goldman is associated with the clinic which is in the heart of District 2, United Mine Workers of America, located at Nanty Glo, and called the Ebandjieff Clinic. He will x-ray the worker periodically and when he moves from the second to the third or advanced stage, in most cases he advises the coal worker to remove himself from this hazard. We find, of course, that many of our members are reluctant to leave the coal mine because of their inability to obtain employment in other industries, particularly if the same requires a physical examination which includes x-rays. We also find that because of the notoriety given this lung condition, the younger men are not following in the footsteps of their father as they had done at the turn of the century.

As graphic demonstration we presented, and I am including in this report, four x-ray plates which were obtained from Professor J. Gough of The Welsh National School of Medicine, a school which has had extensive experience in the effects of coal dust per se on the lungs. We obtained this at a Seminar which was held at Pittsburgh.

The plates are sections of lungs taken at various stages of coal miners. Plate No. 57/466 indicates an early stage of deposits of coal dust. Plate No. 65/225 shows a more advanced stage where emphysema has developed in and around the coal foci. Plate No. 59/95 is a severe coal worker's emphysema with areas of fibrosis. Incidentally, when the coal miner's lung reaches this stage, he is already affected to the point where the lung is working harder to supply oxygen to the various body organs and tissues. Plate No. 66/610 is a characteristic example of progressive massive fibrosis which is the form which causes the greatest disability and is frequently the cause of death. At this point it has been our experience that the heart now has become taxed in its effort to supply the oxygen required by the body because of the inability of the lung to adequately furnish oxygen. The reason, of course, is obvious that instead of air sacs, we have now a condition existing in the lung whereby the air sacs are filled with dust thereby destroying the elasticity of the lung and breathing becomes heavy and taxed.

At this stage, that is the last stage, we also find the workers, through the assistance of the United Mine Workers, being supplied with tanks of oxygen in their homes so as to supply the necessary oxygen for survival. At this stage also we find that the coal worker has acquired what is known as a heart condition "cor pulmonale". This condition is a taxing of the right side of the heart as opposed to the left side where we find generally other heart conditions such as arteriosclerosis, etc. This indivilual, then, is in his last stages of life.

All through the history in Pennsylvania, both in Workmen's Compensation as the same relates to accidents as well as that relating to the health in the form of silicosis, or coal workers' pneumoconiosis, the United Mine Workers has spearheaded legislation toward effective dust control, or at least standards which would lengthen the productive life of the coal workers.

As testified to, the condition that we presented, although not as emotional or as catastrophic as an explosion, is nevertheless as dramatic in that it does produce a slow death, and the United Mine Workers have consistently by the efforts briefly described above spearheaded legislation to protect the worker. It is a sad commentary both to industry and to union that a major catastrophy

must occur before acknowledgment is given to conditions affecting both life and limb.

Mr. Curry, when he became totally disabled, was 58 years of age, and Mr. Michelbacher was 55 years of age. Both of these individuals at that age should have been at their highest productive life. As I had indicated, the process of determining total disability is not only by the Union—affiliated doctor, but also the result of a second examination by a Company selected doctor, and if there is a conflict, an impartial doctor is selected by the Workmen's Compensation Board. So that you can be sure that when this health problem exists to the point that an individual is declared totally disabled for employment in the coal industry, that his lung condition has in fact progressed to the point which we graphically have presented to you.

I trust that this brief excerpt of the condition and graphical examples of the lung will serve to benefit the Subcommittee in considering legislation toward effective dust control in the industry.

I can assure you that the National Office and all of its facilities will cooperate if and when a request is made.

Respectfully submitted.

EUGENE A. CREANY, Esq.

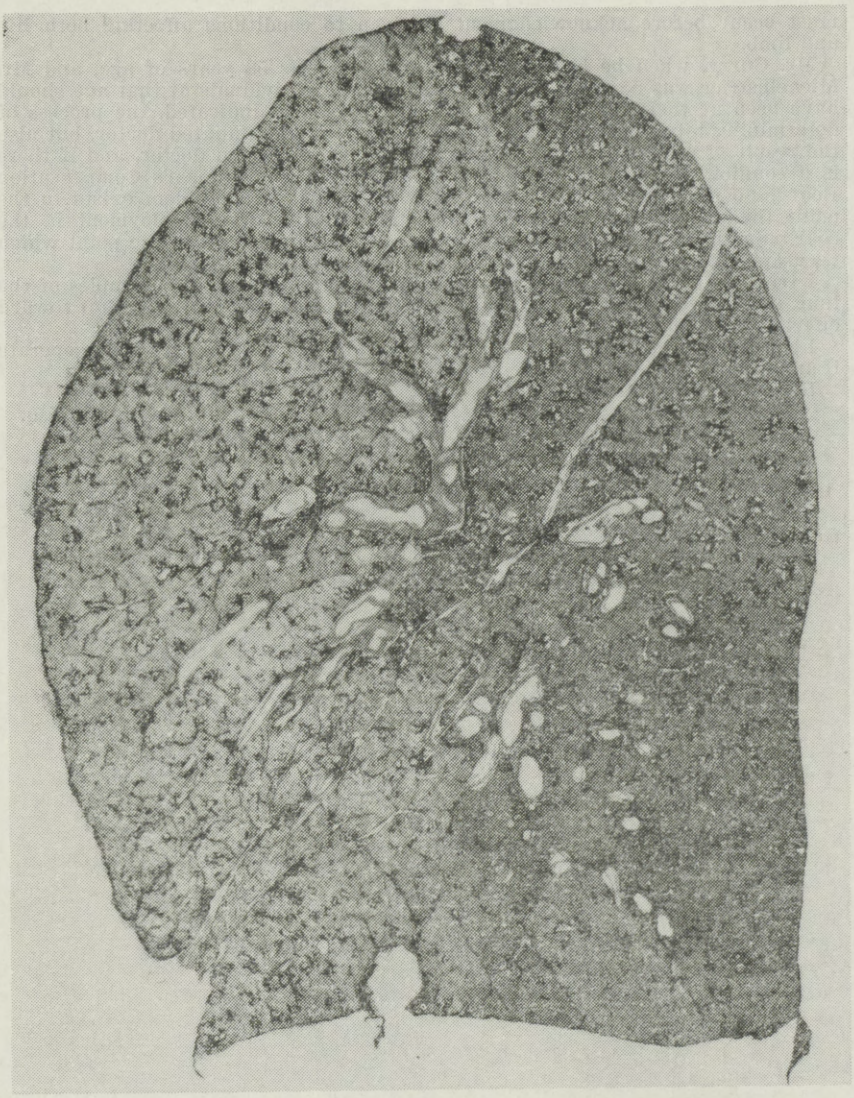

PLATE No. 57/466

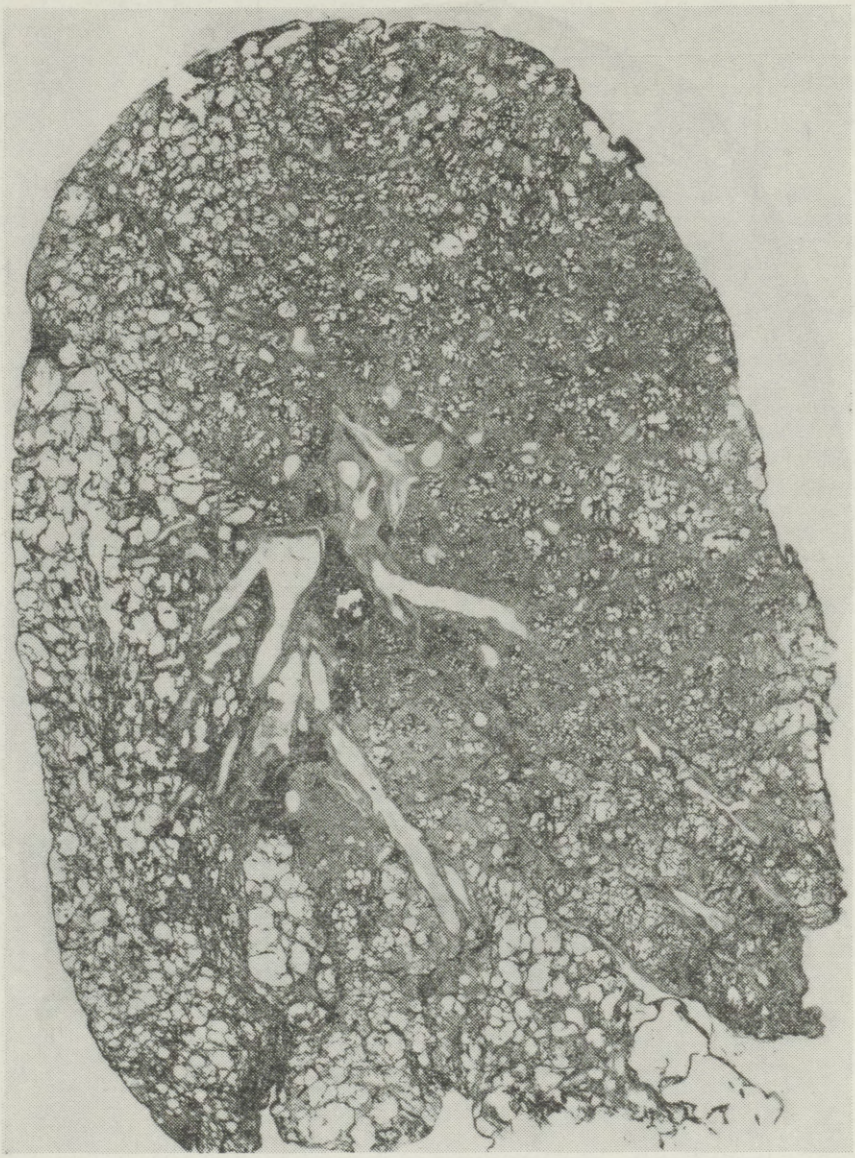

PLATE No. 65/225



PLATE No. 59/95



PLATE No. 66/610

Senator WILLIAMS. Thank you very much, gentlemen.

The subcommittee will now recess to a date to be announced by the chairman.

(Whereupon, at 2 p.m., the subcommittee recessed, to reconvene at the call of the chair.)

COAL MINE HEALTH AND SAFETY

FRIDAY, MARCH 7, 1969

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senators Williams, Randolph, Cranston, Javits, Prouty, and Schweiker.

Committee staff members present: Robert O. Harris, staff director; Frederick R. Blackwell, counsel to the subcommittee; Eugene Mittelman, minority counsel; and Peter C. Benedict, minority counsel to the subcommittee.

Senator WILLIAMS. The continuation of hearings on the coal mine safety and health bills that are before the subcommittee will begin now.

We are honored to have Secretary Hickel here this morning as our first witness. We also have Mr. O'Leary, of the Bureau of Mines.

Our hearings last week started with an opening statement of the Member of Congress who is probably longest in the service in the Congress for coal mine safety and better health conditions, Senator Randolph, of West Virginia.

I think we will stay in that pattern. If you don't mind, Senator Randolph, will you open with your statement.

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Thank you, Mr. Chairman.

Mr. Secretary, perhaps you are aware that I initiated coal mine health and safety legislation in the 91st Congress by introducing the measure that had been recommended by your predecessor and by the able incumbent, the Director of Mines, John O'Leary. It was introduced on January 16, 1969, and received No. S. 355, and would be known as the Federal Coal Mine Health and Safety Act.

I said then and emphasized again at our opening hearing on February 27 that I feel we have an obligation to move with all deliberate speed on coal mine safety legislation keyed to the avoidance, indeed the prevention, of coal mine disasters such as the terrible one near Farmington, W. Va., last November.

But I agree with Secretary Hickel and others, including our subcommittee chairman, who have said that every coal mine fatality is

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a disaster, and that every effort must be made by law and administration and in day-by-day coal mining operations to prevent accidents and fatalities.

Occupational health in coal mining is not likely to be as readily improvable as is the safety of operations. But in this area of concern we must make an all-out effort to find ways to prevent diseases growing out of exposure to the pollution that is an inescapable part of the industry of coal mining, at least as of the present.

We can dictate standards by law, but achieving them in practice, Mr. Secretary, will not be easy. In fact, I am not sure that the difficulties of achievement of substantially better occupational health conditions in coal mines and the cost thereof will permit coal to stay competitive in some of its present markets.

I qualify that statement—I say I am not sure. This, however, is not a reason in itself for timid or time-consuming approaches to the search for effective disease-preventing practices and equipment in the business of coal mining and in the writing of laws to require their use.

But we must look at the broad picture of humanity, technological feasibility, and economics in all of these measures. Mr. Secretary, I say to you, as I have said to others on numerous occasions, the safest coal mine and the disease-free coal mine is the one that is closed. But it is not a producer for the economy or a source of payrolls to sustain miners and their families.

How to serve humanity and economics in a technologically feasible way must be determined and delineated. This subcommittee, under the able chairmanship of Senator Williams, insofar as possible, and with the help of our colleagues and the administration leadership, will seek to achieve that goal.

I have a report on the recent trend in the coal mining industry by B. C. Thompson, who is an economist for the National Coal Policy Conference. It is an informative article from the February 1969 issue of the American Mining Congress Journal.

I ask, Mr. Chairman, that I be privileged to include that article in full in the record of the hearing.

Senator Williams. It may be included, without objection.

(The article referred to follows:)

[From Mining Congress Journal, February 1969]

Recent Trends in the Coal Mining Industry

(By B. C. Thompson, Economist, National Coal Policy Conference) [1]

Any year end analysis of the coal industry is hampered by the current unavailability of certain all important statistics formerly published in the Bureau of Mine's "Weekly Coal Report." To be specific, as of mid-January 1969, the Bureau has not yet released data for 1967 on the number of men employed in coal mining, the number of days worked or the tons produced per man per day. Until this year, these figures relating to any specific year had always been available as of the fall of the following year and as recently as 1965, a preliminary figure was available in the spring. It is therefore hoped that this new situation is of a temporary nature and that a return to the former time schedules will soon be possible.

[1] B. C. Thompson has been concerned with the economics of the energy field since 1946, when he prepared a report for Texaco on the prospects for conversion from coal to fuel oil in major foreign countries. After completing this project, he spent 12 years with Mobil Oil Co., first in the international end of the oil business followed by a switch to domestic operations, where his main area of interest was the long range outlook. In 1961 he became staff economist for the National Coal Policy Conference, where the emphasis has been upon the performance of coal relative to the other fossil fuels and nuclear power.

PITHEAD AND WELLHEAD VALUE UP

Unlike the situation on productivity, the Bureau of Mines has just released data which show, for 1968, both production and pithead and/or wellhead value for each of the fossil fuels. Table 1 sets forth the figures for 1967 and 1968.

TABLE 1.—PRODUCTION AND PITHEAD/WELLHEAD VALUE OF FOSSIL FUELS IN 1967 AND 1968

[Dollar amounts in millions]

	1967		1968	
	Production	Total value	Production	Total value
Coal	[1] 552,626	$2,553	[1] 545,000	$2,570
Percent change			−1.4	+0.7
Crude petroleum	[2] 3,216	$9,391	[2] 3,340	$9,780
Percent change			+3.9	+4.1
Natural gas	[3] 18,171	$2,899	[3] 19,300	$3,100
Percent change			+6.2	+6.9
Total		$14,843		$15,450
Percent change				+4.1

[1] Tons times 10^3.
[2] Barrels times 10^6.
[3] Cubic feet times 10^9.

For coal, pithead value showed a gain of ten cents from $4.62 per ton in 1967 to $4.72 per ton in 1968. This factor, combined with the indicated drop of 1.4 percent in production in 1968 resulted in coal's share of the total pithead/wellhead value of fossil fuels falling from 17.2 percent in 1967 to 16.6 percent in 1968. The share of crude petroleum at 63.3 percent in 1968 was exactly the same as in the previous year. Only natural gas—based on a 6.2 percent increase in production—managed to register a gain in its share of total pithead/wellhead value, that is, from 19.5 percent in 1967 to 20.1 percent in 1968. In this regard it should especially be noted that although natural gas (on a Btu basis) accounted for 37.3 percent of the production of fossil fuels in 1968, its share, on a value basis came to only 20.1 percent. This, of course, again points up the relative under-valuation of gas at the wellhead vis-a-vis the other fossil fuels and the attendant longer range implications for the gasification of coal.

TREND TO LARGE MINES CONTINUES

In 1967, coal production in mines producing 500,000 tons and over amounted to 326.6 million tons—a gain of 17.7 million tons or 5.7 percent versus the previous year. By comparison, total coal produced from all mines in 1967 showed a gain of only 3.5 percent. Production from large mines in 1967 accounted for 59.1 percent of total production in the United States as compared with 57.9 percent in 1966.

In the case of the seven major coal producing states, production from large mines reached 60 percent of total production for the first time in 1967, compared with 53 percent five years earlier. For 1967, the share of large mines production in the total production of each of the seven major coal producing states ranged from a minimum of 29.7 percent for Virginia to a maximum of 94.3 percent for Illinois.

NUMBER OF MINES AND AVERAGE PRODUCTION PER MINE

The year 1967 saw an unusually large drop in the number of coal mines; that is, 876 mines or 13.0 percent. This is more than twice as large as the average decline in the three previous years, which was not quite 400 mines per year. For the major coal producing states, the changes in the number of coal mines ranged from a minimum decline of 5.9 percent in both Indiana and Ohio to a maximum decline of 19.0 percent for Virginia.

The factors cited herein have, of course, also contributed to a continuing growth in the average production of coal per mine. As recently as 1962, this came to 55,000 tons whereas in 1967 the average production of coal from all mines in the United States came to 94,000 tons. This amounted to a total gain of 70.9 percent or an annual compound growth of slightly more than 11 percent.

PRODUCTIVITY UP RELATIVELY LITTLE

Since, as noted above, the Bureau of Mines has not yet published figures on productivity for 1967, the monthly reports of the Accident Analysis Branch of the Bureau were consulted in an attempt to get some line on this situation. Although these reports include the cautioning statement that the working time and production statistics are derived from different sources and hence should not be used as the basis for productivity calculations, it was nevertheless decided to check productivity figures developed on this basis against those published in the Weekly Coal Report. For this analysis, the years 1960–1966 were chosen.

The Weekly Coal Report statistics showed an increase from 12.83 tons per man per day in 1960 to 18.52 tons in 1966—a gain of 5.69 tons. Figures in the Coal Mine Injuries report worked out to a gain in productivity from 12.83 tons per man per day in 1960 to 18.41 tons in 1966 or a total growth of 5.57 tons. The close agreement between these two series—when looking at a period of several years—would seem to clearly indicate that data in the Coal Mine Injuries Reports may very well represent a close approximation of the actual productivity figures subsequently published by the Bureau of Mines. Accordingly, data in the December 1967 issue permit calculations that show a productivity figure for the year 1967 of 18.69 tons per man per day. When compared with the figures for 1966—also derived from Coal Mine Injuries—this represented a gain of only 1.5 percent.

In an effort to check further, the author turned to the individual state reports but limited the analysis to the ten largest underground mines in Illinois, West Virginia and Pennsylvania. Interestingly enough, exactly half of these very large underground mines in 1967 had a productivity figure in excess of 30 tons per man per day. The overall average, however, worked out to 25.61 tons per man per day, which represented a gain over the comparable figure in 1966 of only 0.2 percent.

Thus, based on the information available to date, it would appear that in 1967 gains in productivity were significantly reduced.

ADDITIONS TO ELECTRIC GENERATING CAPACITY

The year 1968 witnessed a significant slowdown in orders for nuclear power plants. In that year, orders were placed for 17 plants with a total capacity of 15 million kilowatts. By comparison, in 1967, orders were placed for a record of 31 units with a combined capacity of 26 million kilowatts. Including all announcements that have been made to date, the latest Status Report issued by the Atomic Energy Commission shows that a total of 73 million kilowatts of nuclear power capacity will be placed on line in the United States over the next several years.

Unfortunately, comparable figures with respect to coal-fired generating capacity are not readily available from a published report and hence must be developed on a bits and pieces basis. Your author maintains such a study as part of his work at NCPC. In 1968, according to figures developed in this regard, announcements were made covering orders for 11 coal-fired plants with a combined capacity of 8.4 million kilowatts. Prior to that, new coal plants announced, but still to go in service, totaled 52.6 million kilowatts, bringing the total of new coal-fired plants to date, under construction or announced, to 61.0 million kilowatts with an anticipated coal requirement of roughly 150 million tons a year. It should also be realized that in the past four years approximately 28.5 million kilowatts of new coal-fired capacity have gone on line.

COSTS OF NUCLEAR POWER VERSUS COAL

The question of the cost of nuclear power, and hence its competitive position vis-a-vis coal, continues to be a matter of debate. There is, of course, little question that nuclear power plants have been beset by rising costs. Of these, undoubtedly the most famous example is the Bolsa Island project in California which was to combine desalting and the production of electricity, both based on nuclear power. As of December 19, 1968, the Water Desalination Report said that this project was to be postponed for several years.

As for the four mill per kw (or less) power costs which the advocates of atomic energy began claiming via the announcement of the Oyster Creek reactor in 1964, it is still far from proven. The recently received 44th Semi-Annual Electric Power Survey of the Edison Electric Institute shows that in 1968, one large nuclear power plant—namely Haddam #1—went on line. Thus 1969 would be the first year when we would have full operation of a large nuclear power plant. Operating costs on this plant will not be available from the FPC's Form Number One until

the spring of 1970. Obviously those that go on line in 1969 will not have a full year of operation until 1970 and these operating costs will not be reported by the FPC until the spring of 1971. Thus, the question of the actual operating costs of large nuclear power plants and their resultant competitive position with coal will not be answered until 1971 at the earliest.

Coal-fired plants have likewise recently exhibited rising construction costs. Also, it is still too early to put a price tag on the higher costs that will result from measures designed to alleviate air pollution.

On the basis of these considerations, it would seem quite likely that we are still in a period wherein a definitive answer to the question of electric generating costs from nuclear reactors versus coal-fired plants is not possible.

LONGER RANGE TRENDS

The table following sets forth salient statistics for the United States bituminous coal industry covering the past ten years.

TABLE 2.—TOTAL U.S. BITUMINOUS COAL INDUSTRY—1968 VERSUS 1958

	1958	1968	Percent change
Production (1,000 tons)	410,446	545,000	+32.8
Average value per ton (pithead)	$4.86	$4.72	−2.9
Total pithead value (millions of dollars)	$1,996	$2,570	+28.8
Production per mine	49,667	[1] 94,096	+89.5
Production from 500,000 tons and over mines (1,000 tons)	187,917	[1] 326,578	+73.8
Tons per man per day	[2] 11.49	[1 2] 18.69	+62.7
Number of mines	8,264	[1] 5,873	−28.9

[1] 1967 data.
[2] Coal mine injuries, monthly reports.

The increasing concentration of the coal industry in larger units, with a resulting increase in efficiency, is strikingly brought out in this table. In the case of total production, the average annual compound rate of growth from all mines was slightly below three percent. However, production from mines of 500,000 tons and over showed an average annual compound rate of growth in this same period of roughly 6.5 percent while production per mine showed a growth rate of almost 7.5 percent each year.

Bearing in mind the previous qualifying remarks with respect to the data from the Coal Mine Injuries Reports, it is nevertheless significant to note that productivity showed an annual compound rate of growth between the years 1956 and 1967 of 5.5 percent. In the light of this longer range rate of growth, 1967's indicated much smaller increase in productivity takes on added significance.

It is especially important to note that, during the period 1958–1968, wholesale prices increased by 9.1 percent, while the average pithead value of a ton of bituminous coal declined from $4.86 to $4.72, a drop of 2.9 percent, during the same time period.

WHAT OF THE FUTURE?

For the first time in more than a decade, the Economics Committee of the National Coal Association—of which the author is a member—has made public its latest five year forecast which is shown below.

The projections are based on a detailed analysis of each end-use category. As NCA points out in *Coal News* of January 3, in order to be conservative, the committee took the minimum estimates for the electric utility market. Also, it is to be noted, the forecasts do not encompass any impact on consumption resulting from the liquification or gasification of coal.

As might be anticipated with respect to the individual end-use categories, the largest gain, amounting to 20.2 percent, is shown by electric utilities. The committee visualized a growth in this category from 312 million tons in 1969 to 375 million tons in 1973. At the other end of the spectrum, the retail deliveries category shows a decline from 15 million tons in 1969 to 13 million tons in 1973.

TABLE 3.—ESTIMATED COAL CONSUMPTION IN THE UNITED STATES

[In millions of tons]

	1969	1970	1971	1972	1973
Electric utilities	312	332	349	364	375
Coking coal	93	94	95	96	97
General industry	99	100	101	101	102
Domestic industry	504	526	545	561	574
Retail deliveries	15	15	14	13	13
Domestic consumption	519	541	559	574	587
Canada	17	17	18	19	20
Overseas	35	36	36	37	37
Total consumption	571	594	613	630	644

The final result of each of the end use forecasts is that total coal consumption is expected to increase from an estimated 571 million tons in 1969 to 644 million tons in 1973, a gain of 73 million tons or 12.8 percent. If this rate of growth continues, it would mean that by 1975 the consumption of bituminous coal in the United States would exceed the level expected this year by more than 100 million tons.

Senator RANDOLPH. I shall take time for only a 2- or 3-minute quote from Mr. Thompson's report, as follows:

"The year 1967 saw an unusually large drop in the number of coal mines; that is, 876 mines, or 13 percent (having dropped out of the list of producing mines). This is more than twice as large as the average decline in the 3 previous years, which was not quite 400 mines (dropping out of production per year). * * * The factors cited * * * have, of course, also contributed to the continuing growth in the average production of coal per mine.

"In the case of the seven major coal-producing States, production from large mines reached 60 percent of total production for the first time in 1967, compared with 53 percent 5 years earlier * * *"

That is the end of the quote that I desire to discuss. So, Mr. Chairman and Mr. Secretary and colleagues of the subcommittee, we do see the number of coal mines diminishing and the trend is toward the larger, more productive ones. This means fewer places for men to work and it means more production by more mechanization, which we are told on good authority exposes miners to more occupational pollution.

I presume that Secretary Hickel or Mr. O'Leary will tell the members of this subcommittee how there can be achieved technologically the dust control that practically all the bills pending in the Congress would require—perhaps at different levels, Mr. Secretary, and with different time targets.

Such answers and their viability are vital to us.

We seek to solve a real problem in the legislative area and I want to say this morning that in addition to the bill that I mentioned, S. 355, which, for the purpose of the record, I shall call the Johnson administration proposal, there are others that come to us under the auspices of the United Mine Workers of America.

Also, our subcommittee chairman has contributed to the legislative introduction. Now, Mr. Secretary, we have a proposed measure from the Nixon administration and, of course, you speak for that legislation today.

So, as the sponsor of the Johnson administration measure, I am glad to recognize the other proposals, because it is well that they be on the legislative desk before us. There are estimates of the relative degrees of so-called hardline provisions in these several approaches.

Now I do not induge—I repeat I do not indulge—in these evaluations. I consider all of the measures to be useful.

We will have much more testimony to hear and to evaluate as relates to coal mine safety and coal mine occupational health problems. Then, Mr. Chairman, as you know, you and members of the subcommittee, will come to that crucial time when we must make the evaluations of all the provisions of all the bills and then carefully and earnestly formulate specific recommendations to report to our full Committee on Labor and Public Welfare.

So, as members not of this subcommittee alone, but also as members of the parent committee, we will have additional responsibilities in preparing the report and filing the bill, which will go from the committee to the Senate for action. I think we will meet these responsibilities and I think we are going to be aided today by the proposals and the testimony that we will receive from Secretary Hickel and Mr. O'Leary and by the additional witnesses to follow.

I think we received valuable testimony useful to us in our first hearing. Now, Mr. Secretary and Mr. O'Leary, what are the areas that bring into being a Nixon administration bill? What are the improvements in that bill over the measure which was recommended so very recently by the Johnson administration and approved, at least in purpose, by Mr. O'Leary?

We will have, as we know—and I want the record to be made very clear—another side. It will not be a competitive side, it will not be an opposition side. Yes, there will be testimony presented by the representatives of the coal industry.

Then we will have safety and health experts. Some will come as individuals, and some as members of organizations, certainly some from the United Mine Workers of America. The miners, through their union and other of their advocates, to use a phrase which I think perhaps is appropriate as we think of spring training for baseball, must have their innings before this subcommittee.

I know that at times, and I am very frank to indicate it, I will be confused by testimony we receive. I think perhaps some of the members of the subcommittee will have that problem. But, in the main, I know we are going to be helped by testimony, even though we are going to hear many divergent opinions.

I have faith that this subcommittee and the full committee and, ultimately, the Senate itself will report, will debate, and will pass workable, useful, well-reasoned, and helpful legislation.

We must meet more adequately the conditions of change in a rapidly changing era and, especially, during this swiftly changing and hazardous era in the life of the coal mine industry.

Thank you very much, Mr. Chairman.

Senator WILLIAMS. Thank you very much, Senator Randolph.

I would like to put your forceful and eloquent statement somewhat in the frame of history.

In January 1952, President Harry S. Truman urged congressional action on mine safety legislation to "help prevent the shocking fatalities in the coal mines in this country." In documenting his case for

mine safety, Mr. Truman recited the major disasters of that period, and I quote:

> On December 21, 1951, 119 miners were killed in a single mine disaster at West Frankfort, Ill. Four years ago, 111 men lost their lives in a similar disaster at Centralia, Ill. In the year between, thousands have been killed or injured in less spectacular mine tragedies throughout the country.

The Congress, in response to President Truman's urging, enacted the Coal Mine Safety Act in July 1952. Apparently, in terms of reducing the death toll from major disasters, the 1952 act did achieve significant progress. But significant progress is not enough.

Seventeen years later, nine Congresses later and four Presidents later, the crisis of survival in the mines is still with us.

President Nixon's March 3, 1969 message urging action on mine health and safety stated the case for legislation in these words:

> Death in the mines can be as sudden as an explosion or a collapse of a roof and ribs, or it comes insidiously from pneumoconiosis or "black lung" disease. When a miner leaves his home for work, he and his family must live with the unspoken but always present fear that before the working day is over, he may be crushed or burned to death or suffocated. This acceptance of the possibility of death in the mines has become almost as much a part of the job as the tools and the tunnels.

Mr. Nixon's words differ from those of President Truman, but it is in essence the same need that was talked about 17 years ago.

In signing the 1952 act President Truman called attention to several major deficiencies in the legislation. Some of these deficiencies have been remedied by the 1966 act; some of the most critical defects remain to be corrected by the legislation before the subcommittee.

Mr. Truman's final words in signing the 1952 legislation gave clear warning that the Congress would have to take action, as we are doing here today, to finish the job of writing strong adequate health and safety legislation. Though phrased more than 17 years ago, these prophetic words of Mr. Truman seem to be addressed directly to those of us gathered in the hearing chamber today, and I quote:

> We will do our very best to prevent mining disasters with the authority granted in this bill, but the Congress eventually will have to meet its responsibility for enacting legislation which provides tools fully adequate to prevent the great loss of life and the thousands of crippling injuries due to mine accidents.

(The complete text of President Truman's statement follows:)

LETTER TO THE PRESIDENT OF THE SENATE AND TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES URGING ACTION ON MINE SAFETY LEGISLATION. JANUARY 22, 1952

My dear ——————:

I am writing to urge that the Congress take prompt and effective action to help prevent the shocking fatalities in the coal mines of this country.

On December 21, 1951, one hundred and nineteen miners were killed in a single mine disaster at West Frankfort, Illinois. Four years ago, one hundred and eleven men lost their lives in a similar disaster at Centralia, Illinois. In the years between, thousands have been killed or injured, in less spectacular mine tragedies throughout the country.

Yet little or none of this was necessary. Most of it could surely have been avoided if the Department of the Interior had had authority to enforce compliance with Federal standards of mine safety. I urge the Congress to lose no more time in enacting legislation which will give the Department the powers it needs to save the lives of men who work in coal mines.

I have received from the Secretary of the Interior a special report on the West Frankfort disaster. This report explains very clearly and concisely why we must

have Federal legislation to deal with the safety situation in the coal mines. I hope all Members of Congress will read this report. I am sure it will make the urgent need for action plain to everyone.

Bills are now pending before the Congress to grant enforcement powers to the Interior Department. The Secretary of the Interior indicates in his report that he believes the provisions of these bills should be strengthened in some respects, to make sure the enforcement job can be done right.

I cannot urge too strongly that the Congress take action on these bills at once. Almost every day, miners are being killed needlessly, somewhere in this country. We have got to put a stop to it. The miners and their families are entitled to protection by their Government. It is our plain duty to keep the coal mines just as safe as human skill and effort can make them.

Sincerely yours,

HARRY S. TRUMAN

NOTE: This is the text of identical letters addressed to the Honorable Alben W. Barkley, President of the Senate, and to the Honorable Sam Rayburn, Speaker of the House of Representatives.

The report by the Secretary of the Interior, dated January 22, 1952, is published in the Congressional Record (vol. 98, p. 362).

STATEMENT BY THE PRESIDENT UPON SIGNING AN AMENDMENT TO THE FEDERAL COAL MINE SAFETY ACT. JULY 16, 1952

I have today signed S. 1310, a bill relating to the prevention of major disasters in coal mines.

This measure is a significant step in the direction of preventing the appalling toll of death and injury to miners in underground mines. These totally unnecessary and preventable accidents result in grief-stricken families as well as a shocking loss and waste of skilled manpower.

Under Public Law 49, 77th Congress, the Secretary of the Interior has been authorized to inspect coal mines to the end of making them safer places in which to work. In reporting on their inspections of coal mines, the Federal coal mine inspectors have recommended measures to correct unsafe conditions and practices, but there has been no authority to enforce these recommendations. Disaster has, in many instances, followed in the wake of repeated and unheeded warnings of impending danger.

S. 1310 will, in part, correct this situation. The measure seeks to help prevent major disasters in coal mines from five causes—explosion, fire, inundation, mantrip, or manhoist acidents. Nevertheless, the legislation falls short of the recommendation I submitted to the Congress to meet the urgent problems in this field. In particular, the bill has the following deficiencies:

1. Coal mines in which less than 15 persons are regularly employed underground are exempted from compliance with any of the mine safety provisions regardless of whether a major disaster might be imminent. This exempts a large group of mines, many of which are hazardous and need a great deal of safety improvement. Inspections of these mines will continue under the earlier statute, but compliance with recommendations of the Federal inspectors will be on a purely voluntary basis.

2. The provisions of the legislation are directed solely toward the prevention of major disasters from the five causes mentioned heretofore. Such disasters accounted for only approximately 7 percent of the coal mine fatalities during the last 20 years. The broad phase of accident prevention in general remains the responsibility of the States in which coal is mined, despite the record to date indicating either the inability or unwillingness of the States to meet this responsibility.

3. The legislation contains several exemptions to the safety provisions particularly with regard to replacement of dangerous electrical equipment and faulty ventilation systems which have been the causes of most recent major disasters. I am advised that these exemptions were provided to avoid any economic impact on the coal mining industry, but they are so worded that the unsafe conditions and practices could continue for years before the mines would be required to comply with the law.

4. The measure contains complex procedural provisions relating to inspections, appeals, and the postponing of orders which I believe will make it exceed-

ingly difficult if not impossible for those charged with the administration of the act to carry out an effective enforcement program. I believe that it is possible to draft simpler and more effective procedural provisions which would not adversely affect the rights of any of the parties concerned with the prevention of mine injuries and deaths.

5. The measure vests the mine safety enforcement functions directly in the Director of the Bureau of Mines. This violates the principle now established for most executive departments that functions should be vested in the department head in order to provide the flexibility of organization and clear lines of authority and accountability essential for effective administration.

I consider it my duty to point out these defects so that the public will not be misled into believing that this legislation is a broad gauge accident prevention measure. We will do our very best to prevent mining disasters with the authority granted in this bill but the Congress eventually will have to meet its responsibility for enacting legislation which provides tools fully adequate to prevent the great loss of life and the thousands of crippling injuries due to mine accidents.

NOTE: As enacted, S. 1310 is Public Law 552, 82d Congress (66 Stat. 692).

Senator WILLIAMS. That is why we are gathered here. The eventuality, the inevitability expressed by President Truman is before this subcommittee here.

Are there other statements from other members at this time?

Senator Prouty?

Senator PROUTY. Mr. Chairman, I have no prepared statement but I think the fact that the chairman quoted statements made by President Nixon, that a bill has been introduced in behalf of the administration, and the fact that Secretary Hickel is here this morning indicates very clearly the determination of the administration to bring about conditions in our coal mines which will assure the people working in them much greater protection against health and other hazards.

I want to commend the administration.

I think the statements made by Senator Randolph and the chairman are very appropriate, and emphasizing that we are going to approach this matter not on a partisan basis, but in a way which will produce the most desirable results.

I am delighted at the cooperative spirit with which we are starting these hearings.

Senator WILLIAMS We are very grateful for that statement. Certainly I am in agreement with the feeling of broad cooperation throughout this committee.

Senator Cranston, do you have a statement?

Senator CRANSTON. I have no statement.

Senator WILLIAMS We are honored to have Secretary Hickel of the Department of Interior here. Before you begin, Mr. Secretary, of course, the administration bill, which is S. 1300, is now part of the hearing record before this subcommittee.

You may proceed, Mr. Secretary.

STATEMENT OF HON. WALTER J. HICKEL, SECRETARY OF THE INTERIOR ACCOMPANIED BY RUSSELL TRAIN, UNDER SECRETARY OF THE INTERIOR; AND JOHN O'LEARY, DIRECTOR, BUREAU OF MINES

Secretary HICKEL. Thank you, Mr. Chairman and members of the subcommittee.

Before I read my prepared statement, and before I answer the Senator's questions as to the difference in the two bills, I would like to formally introduce the two people with me, the Director of Mines, Mr. O'Leary, and my Under Secretary, Russell Train.

Mr. Chairman, members of the subcommittee, we appreciate the opportunity of appearing before you in support of President Nixon's legislative proposal for a comprehensive new program to improve the health and safety conditions of persons working in the coal mining industry of the United States.

The President has taken a personal interest in this legislative proposal, as have I. We are determined to move in every expedient manner to improve the working environment and conditions of the Nation's coal mines.

Recently, the Department of the Interior has taken action to review, evaluate, and improve the administration and management of existing mine safety programs. In this continuing process we will be relying upon the cooperation and advice of the coal industry, the mine workers, and those officials from the national and State governments who are deeply involved and interested in coal mining activities.

This administration will continue to upgrade and improve the inspection procedures and the administration of the Bureau of Mine health and safety operations. Every effort will be made to fully utilize the authority that presently exists under law to assure the proper health and safety conditions in our coal mines. However, we recognize that new legislative authority is needed if we are to significantly improve the health and safety conditions.

The President has asked that a bill be introduced in Congress, which I understand has been identified as S. 1300. This bill would help us meet the requirements not only of today, but would give us the flexibility to take advantage of the new technologies needed to solve the problems of tomorrow. The bill differs from the existing law in a number of ways.

Briefly, it would—

Apply to all underground and surface coal mines;

Require at least three times a year the inspection of every portion of every underground coal mine;

Extend the Secretary's authority over all types of accidents, not just the disaster type such as fire, explosions, floods, et cetera;

Authorize the Secretary to propose mandatory health and safety standards for all coal mines;

Provide for review of the standards by an expanded Coal Mine Health and Safety Board;

Provide civil penalties for the violation of a mandatory standard;

Require immediate evacuation of all persons in the case of an imminent danger;

Provide for the immediate withdrawal of persons, after notice, in cases of an unwarrantable failure to comply with a mandatory health or safety standard;

Provide that all withdrawal orders remain in effect until modified or terminated by the inspector; and

Expand our research activities and capabilities.

The need for this type of legislation is unmistakable. The present law is aimed exclusively at those types of accidents in which five or more persons might die as a result of fire, explosion, flood, or other such major disaster. Statistics show that, since this law was enacted, the fatality rate for major disasters has been cut by about 50 percent. However, the statistics indicate that there has been no change in the fatality or injury rates from the day-to-day type of accidents over the past 20 years.

In 1968, 221 of the 309 fatalities were recorded as being caused by accidents not covered by the provisions of existing law. The proposal that this administration is urging Congress to approve is designed to reduce all accidents that may cause injury or death in our coal mines.

If the day-to-day accidents that cause most of our coal mine injuries and deaths are to be reduced or eliminated, we need a law that gives broad enforcement powers to the inspectors and provides stronger incentives for management and labor to improve the working conditions of the mine. We must concern ourselves with the conditions that may cause an accident that injures or kills a single miner, as well as the accidents which are classified as "disastrous" because they kill five or more.

In our opinion, the single most important feature of this bill is the provision that would require the Secretary of the Interior to develop mandatory health and safety standards for all coal mines.

The precedents for such authority are many, and I know of no instance in which the granting of it by Congress to a regulatory agency has proved anything but highly successful. In my view, the great speed with which technology advances makes it essential that in administering coal mine health and safety laws the Secretary of the Interior has a flexibility of response to rapidly changing conditions.

Many of the interim standards contained in the administration's proposal have long been recognized as needed and desirable by industry, labor, and the Department of the Interior. They have not, however, been implemented because the authority for setting standards rests with Congress and has not been delegated to the Secretary of the Interior.

It is not practicable to expect Congress to enact specific and detailed health and safety standards. The fact that Congress has changed the coal mine safety standards only three times in the last 30 years demonstrates the inadequacy of the legislative route for establishing mine health and safety standards. We must allow sufficient flexibility in the setting of standards so that new technology can be utilized for the benefit of the miners.

There is another important safety provision in the bill which we want to call to your attention. This bill, if enacted, would eliminate the "nongassy" classification for underground mines. Since the early 1920's, stricter safety precautions have been required for the so-called gassy mines. However, experience has shown on numerous occasions the so-called nongassy mines have had gas ignitions killing and injuring miners. We believe that the distinction should be eliminated.

The elimination of this classification will, however, have far-reaching economic implications. Approximately 85 percent of the Nation's underground mines are now classified "nongassy." These mines produce about 39 percent of underground production. Their reclassification would require that they obtain certain equipment and maintain it in a satisfactory manner. This will require large new investments and increased operating costs.

In addition to the safety features, S. 1300, in an effort to combat the "black lung" disease, would establish a dust standard for underground coal mines. The legislation would, within 6 months after enactment, require that each opeartor maintain the atmosphere in each active working place in the mine at or below 4.5 milligrams of dust per cubic meter of air.

In those individual mines where engineering technology requires more time, the Secretary could grant, under our proposal an extension—not to exceed 6 months. We want to point out three things with regard to the short-term dust standard of 4.5 milligrams per cubic meter of air:

First, we are advised by the Bureau of Mines that the state of the art of dust control technology is not sufficiently advanced to permit an immediate industrywide imposition of a 3 standard.

Second, none of the other bills pending in the Congress establish a date certain for effectuating any dust standard.

Third, known technology can now be applied so as to achieve the recommended 4.5 standard in a relatively short period of time. The subcommittee should note, based on preliminary tests in about 20 mines, that moving to a 4.5 standard will require a reduction in dust counts in approximately 50 percent of the mines in the United States.

We have also directed the Bureau of Mines to start immediately to work with industry, equipment manufacturers, and labor to accelerate and expand research for the purpose of developing new technology which would permit a standard of 3 or lower. I am sure that the industry, the equipment manufacturers, and labor will cooperate fully with the Bureau in this endeavor.

This bill would also require the operator to arrange for each miner to be given an annual chest X-ray. This is the only practical method of detecting the "black lung" disease. The X-ray, of course, can only show evidence of the disease. The new clinical data derived from this X-ray program, along with data obtained on exposure levels, will allow the Public Health Service to determine more accurately the effect of dust concentration levels.

Any miner who shows substantial evidence of the development of "black lung" disease must, at the miner's option, wear a respirator or be assigned to an area of the mine where the inhalable dust concentrations do not exceed 2 milligrams per cubic meter of air.

In your letter of March 4, Mr. Chairman, you asked about the extent of occupational lung damage among former coal miners. Some statistical information is available, but the data is not really adequate. In order to develop such information, a systematic X-ray program to determine the number affected would be needed.

In addition to the safety features of S. 1300 in an effort to combat the black lung disease you, Mr. Chairman, recognized in the March 4 letter that only a few States recognized black lung as an occupational disease, and provided compensation. As a result, those miners living in States where the disease is not recognized cannot receive any compensation for that disability.

In this regard, S. 1300 authorizes the Secretary of the Interior, in coordination with the Secretaries of Labor and Health, Education, and Welfare, to make grants to the States to develop State workmen's compensation laws and programs to cover occupational diseases in the coal mining industry. We believe that the compensation of the miner for disability resulting from such disease is primarily the responsibility of the operators and the States.

We recognize, however, the serious economic condition of some of those former miners who are disabled and who are not now compensated for this disability. We are concerned about the plight of these people. However, at this stage we are not in a position to give even a reasonably accurate estimate of the extent of the problem or the potential costs involved. The problem must be considered in the broader context of other industries where workers may also be affected by an occupational disease that may or may not be compensable under State law. In short, we do not believe a definite answer can be given until the problem receives further careful consideration. Much more information will be needed than is now available.

Let me at this point make this administration's position very clear on the subject of a single health and safety bill versus two bills—one on health and one on safety. We recommend and strongly urge one bill covering both subjects. The health and safety of the coal miner are so closely interwoven that it is inappropriate to even contemplate their consideration as separate issues. Miners are dying from accidents in the mines and from occupationally caused disease. In our opinion, those who oppose health legislation are the same people who oppose safety legislation. We firmly believe that the Congress, like the executive branch, can consider subjects simultaneously, one bill covering health and safety. In the past it has frequently taken a terrible disaster or series of disasters before the necessary reform was brought into being. Fortunately, times have changed. There is strong evidence that all concerned parties are now agreed that conditions in coal mines can and must be improved. Such an attitude of the public is a good thing. It augurs well for a successful conclusion to your deliberations.

Coal is our most abundant fuel resource. Right now, it supplies nearly a fourth of our total energy demand. Every forecast, whether by Government or the private sector, indicates that coal must continue to play a significant role if this country's future energy requirements are to be satisfied. At the same time, it is clear that our society can no longer tolerate the cost in human life and human misery that is exacted in the mining of this essential fuel. Unless we find ways to eliminate that intolerable cost, we must inevitably limit our mining of

coal, which has almost inexhaustible potential for industrial, economic, and social good.

The adequacy of a major industry's work force is at stake. If we cannot assure coal miners a safe and healthy working environment, industry will be unable to attract the workers they need. Already, as you know, real difficulties are being encountered in recruiting young men as coal miners.

The technology of coal mining, already complex and sophisticated, will become even more so in the years ahead. Government, industry, and labor must perform research to assure that safety and health features are designed into the coal mining equipment of the future—not merely built on as afterthoughts. As the industry goes into deeper and doubtless gassier seams for our fuel supplies, the safety and health of our miners will pose constantly greater challenges for technology. Environmental problems—such as subsidence and water pollution—also will become more serious, unless the ways in which we mine coal are carefully calculated to minimize them.

The 1970 Bureau of Mines budget increases are directed toward improving the effectiveness of the overall health and safety effort. Part of the funds will be used for increasing the health and safety inspector force. Some of the money will be used to step up the health research activities of the Bureau. Another large increase has been requested for research on method for the removal of methane in advance of mining. The occurrence of gas in mines is one of the most hazardous of the underground mine safety problems. Methods of controlling it and even for recovering some of the values contained in the gas offer a challenging and promising research opportunity.

As our mining methods and equipment grow more sophisticated we must see to it that the men who practice those methods and operate that equipment are more expertly trained in safe and healthful procedures. We must provide for the trained coal mining technicians we will need in the future. We must think just as seriously about the educational measures that are needed to assure an adequate corps of scientists and engineers that will be essential to making and keeping our mining industry the safest, the most healthful, and most productive in the world.

The trend toward technological complexity also has implications, for the Interior Department's own force of inspectors. We must start now to devise ways of attracting the very best people we can get to perform the physically and mentally demanding duties of mine inspection. Because inspecting a coal mine is as exacting and as crucial a job as a man can have, we must devise far more effective training programs. The Federal coal mine inspectors now employed by the Department are as a group as dedicated as you will find anywhere in this country. Yet, our avearage coal mine inspector has the equivalent of less than a high school education. We will have to see that he is much better equipped in the future.

Mr. Chairman, your March 4 letter also requested our views on your proposal to require by statute that the coal mine industry set

aside certain funds to conduct a health and safety research and development program. Before coming to any final conclusion on the merits of your proposal, we would want to thoroughly study it. At this time, however, we believe it poses some difficult problems. Some of these are:

First, this approach would probably be regarded as an indirect tax on the industry and one which, unlike other taxes, does not appear to be enforceable. It raises several questions, for example, what are the special or unique circumstances that warrant such a requirement on this industry and not on others where health and safety is of national interest.

Second, there is the inherent difficulty of segregating the health and safety research of the industry from those other forms of research aimed primarily at increasing productivity.

Another problem would be in determining how the many small mines with their very limited financial capability could be required to carry out research and development programs. If they are included an uncoordinated number of small very ineffective programs could result. If these mines are to be excluded some rules would have to be established to determine the proper cutoff point. Would large mines operating at a deficit be expected to contribute? Would the Government have to examine company books to make this determination?

Moreover, I think it is fair to say that the industry, as a whole, does not have the finanical capability to undertake such research initiatives as the methane drainage program which the Department will initiate in the next fiscal year.

Lastly, there is the question of proprietary rights resulting from such research expenditures. It would seem difficult to deny companies that paid for a technical innovation affecting coal mine health and safety the right to patent such an innovation and to require payment for the use of the innovation by other companies.

Our concern is meeting the urgent needs of today and tomorrow. Even with the technology now in place, we are convinced that safety in our coal mines can be markedly improved. We know that there are specific segments of our coal mining industry that have injury and fatality rates much lower than the industry average. With the additional incentives provided by a stronger law, we are sure that the overall injury and fatality rates can be reduced dramatically.

In closing, I think President Nixon summed up the need for this legislation very well when he said:

> This acceptance of the possibility of death in the mines has become almost as much a part of the job as the tools and the tunnels.
>
> The time has come to replace this fatalism with hope by substituting action for words. Catastrophies in the coal mines are not inevitable. They can be prevented, and they must be prevented.
>
> These legislative proposals, together with other steps already taken or to be taken are essential to meet our obligation to the Nation's coal miners, and to accomplish our mission of eliminating the tragedies which have occurred in the mines.
>
> These proposals are not intended to replace the voluntary and enlightened efforts of management and labor to reduce coal mine hazards, which efforts are the touchstone to any successful health and safety program. Rather, these measures would expand and render uniform by enforceable authority the most advanced of the health and safety precautions undertaken and potentially available in the coal mining industry.

Thank you, Mr. Chairman.

(Appendix to Secretary Hickel's statement follows:)

APPENDIX

The Chairman's questions of March 5 and the answers thereto are as follows:

(1) From 1952 to present, what has been the dollar amount expended in research and development in coal mine health and safety by respectively, the coal industry, the coal mine equipment manufacturers, and the Department of the Interior?

(2) For the same period, what has been the dollar investment in health and safety education and training programs, as distinguished from research, by the industry and by the Department?

(3) For the same period, what has been the monetary investment in research and development respecting (a) increased coal production and (b) conversion of coal to other products by the coal industry and by the Department of the Interior?

The answers to questions 1, 2, and 3 regarding funds expended on various research activities are shown in the table attached and this is footnoted to indicate how the estimates were made. There are several problems involved in making these estimates: (1) the term research and development is used differently by the respondents to surveys estimating research and development expenditures; (2) the distinction between health and safety research and other research is not sharp so that classification problems arise; and (3) there can be large unreported activities in the private sector that may be classified as research, but about which we have no knowledge. Nonetheless, we are fairly certain that the monetary figures reported in the attached table are sufficiently accurate to provide your committee with an order of magnitude estimate that will be useful.

(4) When occupational damage (either injury or disease) requires a mine worker to be shifted from a hazardous job to a non-hazardous job, do you favor saving the worker harmless from wage reductions, if any, that would otherwise result?

Question 4 relating to saving the worker harmless from wage reductions on transfer to a new position as a result of injury or disease is a problem inherent in all industrial activities. Accordingly, we would defer to the views of the Department of Labor on this question.

(5) How many mines can presently meet the standard of 3.0 milligrams of respirable dust per cubic meter of air? How many can comply with the 4.5 standard? What number of miners work in the 3.0 category and how many in 4.5? What are the production statistics for the respective categories?

Relative to question 5, until now the Bureau of Mines has only preliminary and unevaluated data on dust concentrations in 20 mines of the United States. The mines were selected because 20 men or more were employed underground, the mines have reserves sufficient for 10 years of operation, and because of their geographic location.

Ultimately it is expected that approximately 350 mines will be sampled. Recognizing the very incomplete nature of the sample and the possible bias imposed by the limiting conditions mentioned above, we found that about 40 percent of the sections, when sampled at the mining machine (some continuous and some conventional) had dust concentrations of less than 4.5 milligrams per cubic meter of air and 22 percent were less than 3.0. Although dust concentrations were sampled for other occupations underground, the data have not yet been analyzed. We believe, however, that most of these occupations would be expected to show lower dust concentrations than those measured at the mining machine. Other than the above, we are unable to provide an answer to the questions relating to the number of miners presently exposed to these two dust concentration levels or the amount of production associated with their employment.

(6) Regarding the 4.5 level of dust, what period of time is involved for the typical miner to have incipient lung damage?

Relative to question 6, although the Public Health Service x-rayed a number of active and former miners and, from the data, developed the figure attached, the data does not indicate the onset of lung damage to the miner. In addition, the data could not be related in any way to the dust concentration levels to which these miners were exposed. A proposed joint survey by the Bureau of Mines and Health, Education, and Welfare has been designed to develop just this type of information. You may wish to refer this question to HEW for additional comment.

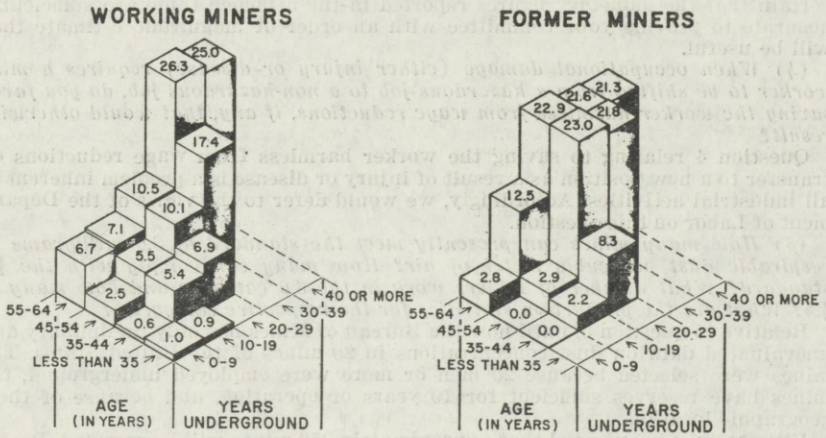
RESEARCH AND DEVELOPMENT EXPENDITURES, 1952–68

[In millions of dollars]

	Health and safety research	Education and training	Other research and development
Coal industry Equipment manufacturer	Not available [1]	Not available [2]	[3] 195
Department of the Interior	[4] 20	22	[5] 168

[1] No systematic survey has been conducted, but it is estimated that the expenditures are less than $15,000,000.
[2] No systematic survey has been conducted, but it is believed that expenditures are less than $5,000,000.
[3] Based on extrapolation of a systematic survey by BCR and BM in 1955, and 1 by the Bureau of Mines in 1963.
[4] Includes approximately $5,000,000 for testing permissible equipment.
[5] In the 1955 survey, equipment manufacture expenditures were approximately 40 percent of the private sector expenditures.

INCIDENCE OF PNEUMOCONIOSIS AMONG COAL MINERS*



*PERCENTAGES IN EACH GROUP DERIVED ON THE BASIS OF DEFINITE DIAGNOSIS BY X-RAY.
Data obtained by Public Health Service

MAJOR DIFFERENCES AMONG PROPOSED SENATE BILLS, 1952 ACT, AND INTERIOR'S PROPOSED BILL

	1952 act, as amended	S. 355	S. 1094	S. 1178	Administration proposal
Authority in Director rather than Secretary of Interior.	Yes	No—authority in Secretary of Interior.	No—authority in Secretary of Labor.	No—authority in Secretary of Interior.	No—authority in Secretary of Interior.
"Imminent danger" definition	Limited to major disasters (5 persons or more).	Any condition or practice leading to death or serious injury.	Any condition or practice leading to death or serious injury.	Any condition or practice leading to death or serious injury.	Any condition or practice leading to death or serious injury.
Qualifications of inspectors	5 years practical experience in mine.	Leaves to discretion of Secretary.	Leaves to discretion of Secretary.	Leaves to discretion of Secretary.	Establishes minimum qualifications.
Advisory committees	Mandatory advisory committee	Permissive—silent on membership qualifications.	Permissive—silent on membership qualifications.	Permissive—silent on membership qualifications.	Permissive—silent on membership qualifications.
Issuance of notices and orders for—					
(a) imminent danger	Immediate withdrawal	Immediate withdrawal	Immediate withdrawal	Immediate withdrawal	Immediate withdrawal.
(b) standards	Issue notice and could withdraw if did not act in time fixed by notice.	Issue notice and could withdraw if did not act in time fixed by notice.	Issue notice and could withdraw if did not act in time fixed by notice.	Issue notice and could withdraw if did not act in time fixed by notice.	Issue notice and could withdraw if did not act in time fixed by notice.
Gassy, nongassy classification	Distinguishes between types of mines.	No distinction	No distinction	No distinction	No distinction.
Civil penalty:					
(a) Amount (operators)	None	$500 minimum, $10,000 maximum.	$1,000 minimum, $20,000 maximum.	$500 minimum, $10,000 maximum.	No minimum, $10,000 maximum.
(b) Amount (labor)	do	$25 minimum, $500 maximum	$50 minimum, $1,000 maximum	None	None.
(c) Unwarrantable failure violation.	Yes—could withdraw	None	None	do	Yes—could withdraw after notice and reinspection.
Mandatory health standard	None	Standard 3 milligrams per cubic meter of air. No date specified to reach.	Standard 3 milligrams per cubic meter of air. No date specified to reach.	do	Standard 4.5 milligrams per cubic meter of air 60 days after operative date of act and 3 as soon as possible.
Review of orders	Provides for review by Director of Bureau of Mines and Board and court.	Provides for review by Secretary and then by Board and court.	Eliminates review by Board	Provides for review by Secretary and then by Board and court.	Provides for review by Secretary or Board except where State plan review is by Board, not Secretary. Court review.
Health X-rays	None	Yes	Yes	None	Yes.
Secretary has authority to issue mandatory health and safety standards.	No	Yes	Yes	No—except surface mines which must be issued 1 year after enactment.	Yes.
Review of Secretary's standards by Board.	No	No	No	No	Yes—on objections of interested persons to Secretary's proposed standards, Board shall review and make recommendations to Secretary.

MAJOR DIFFERENCES AMONG PROPOSED SENATE BILLS, 1952 ACT, AND INTERIOR'S PROPOSED BILL—Continued

	1952 act, as amended	S. 355	S. 1094	S. 1178	Administration proposal
State plan	Yes	No	No	No	Yes.
Criminal penalties for violation of orders.	Yes	Yes—$5,000 and 6 months for 1st offense, $10,000 and 1 year for 2d offense.	Yes—$10,000 and 6 months for 1st offense, $20,000 and 1 year for 2d offense.	Yes—$5,000 and 6 months for 1st offense, $10,000 and 1 year for 2d offense.	Yes—$10,000 and 6 monhs for 1st offense, $20,000 and tl year for 2d offense.
Number of inspections per year	1	None specified	None specified	4	Minimum of 3 per year for each underground mine.
Surface mines	Excluded	Included	Included	Included	Included.
Expanded Board for review of standards.	None	None	None	None	Yes—to 8 members, 1 of which must be a health member.
Right to sue operator in Federal court for death or injury.	No	No	Yes	No	No.
Require all accidents be reported and investigated by operator.	No	No	No	No	Yes.
Financial assistance to States and miners re health and safety payments.	No	No	Yes	No	No.
Coal Mine Disaster Evaluation Center.	No	No	Yes	No	No.

Note: S. 467 is a bill covering just coal mine health.

S. 467 provides that the Director of the Bureau of Mines administer a coal mine health program which would establish a dust standard of 3 milligrams of respirable dust per cubic meter of air. The bill would direct that a health danger exists if the dust level in any part of the mine exceeds the 3.0 standard and require the inspector to issue an order causing all persons to be withdrawn from the area. The order shall be subject to review by the Director and the Board in much the same way as orders are subject to review under the present safety act. Court review is also provided

The bill requires that each operator monitor coal dust level with an approved means and keep records thereof. In bituminous and lignite underground coal mines procedures must be adopted to assure that all coal mined must first be undercut, centercut, topcut, or sheared. The bill would establish criminal penalties. The bill would also establish an X-ray program.

Secretary HICKEL. Mr. Chairman, I thank you for the opportunity to read this into the record.

Senator WILLIAMS. Thank you very much, Mr. Secretary.

Mr. O'Leary, do you have a prepared statement?

Mr. O'LEARY. I do not, Mr. Chairman.

Senator WILLIAMS. How do you want to proceed, after we finish inquiring of Mr. Hickel?

Mr. O'LEARY. I will simply be here to assist in any questions that the subcommittee may have, Mr. Chairman.

Senator WILLIAMS. Senator Randolph, do you have any questions?

Senator RANDOLPH. Secretary Hickel, Under Secretary Train, and Director O'Leary, this was a comprehensive statement and one which I shall read carefully. I did not have the opportunity to read and study your statement prior to the hearing today. I am not critical of the time of its arrival on Capitol Hill, but there was no opportunity, as you understand, for us to go into it.

Sometimes, as we listen and observe under the glare of lights we can't always make up our mind on something too quickly, and we should not.

I have noted, however, that the so-called Johnson administration proposal which I have introduced, the bills introduced by Chairman Williams, and now the introduction of the Nixon administration measure by Senator Javits and Senator Cooper do not create an overabundance of conflicting provisions.

I observe that of 23 provisions in S. 355, and in the proposal for which you speak, there is agreement, Mr. Secretary, on at least 15 of the provisions out of the 23. This is a rough check, quickly made. So, we are better than 65 percent in agreement as we begin.

Now, I would like to check just a few of these agreements.

The authority in the directorate: Am I correct that there is no disagreement on this point, that it would be within the Secretary of the Interior?

Secretary HICKEL. That is right.

Senator RANDOLPH. Then we come to the imminent danger definition. S. 355 and the administration proposal for which you speak are exactly the same; is that right?

Secretary HICKEL. They are.

Senator RANDOLPH. Then we come to the qualifications of inspectors. You have very properly discussed that subject, the need for education, the need for certain types of specialized study and preparation.

In S. 355, we would leave this to the discretion of the Secretary.

In your bill, you would have minimum qualifications. Please explain.

Secretary HICKEL. Would you like to answer that, Mr. O'Leary?

Mr. O'LEARY. Thank you, Mr. Secretary.

We are not asking for the rigid requirement for preservice in the mines that is contained in the 1952 act, that is the current law.

Senator RANDOLPH. The 1952 act, as amended.

Mr. O'LEARY. Yes. We are simply saying here that they must be qualified, and leaving the decision on what the qualifications are to the Secretary.

Senator RANDOLPH. Really, this is not a disagreement then. So there will be 14 points of agreement rather than the 13 I indicated earlier.

Now as to the mandatory advisory commitee, I understand the two bills are in agreement. Is that correct?

Secretary HICKEL. That is correct.

Senator RANDOLPH. Concerning the immediate withdrawal notices: These are the same in both bills, the one I introduced and the one you speak for today.

Secretary HICKEL. Yes.

Senator RANDOLPH. Then we come to the matter of standards and we have the same language. Is that correct?

Secretary HICKEL. That is correct.

Senator RANDOLPH. Then we come to distinguishing between types of mines and we are in agreement on that point. Is that right, sir?

Secretary HICKEL. Yes.

Senator RANDOLPH. Now we come to the matter of civil penalties. In S. 335, there are spelled out some dollar figures, $500 minimum. You have no minimum. I wish you would speak to that point.

Mr. O'LEARY. We thought it was unduly binding on the Secretary, Senator Randolph, to have a minimum. There might be an unintentional and inadvertent violation of a relatively minor standard. It seems to me that we have to leave with the Secretary discretion to set fines that are in accordance with the violation. I think that that discretion was not in the previous measure.

Senator RANDOLPH. That is right. You believe, then, that an exact figure could be a straitjacketed mandate which might not be feasible in all cases?

Mr. O'LEARY. I think, going further, that if an inspector realized that a relatively minor violation, for example, a danger sign being down, would result in a $500 fine to the management, he might not report the violation at all.

Senator RANDOLPH. Director O'Leary, both measures are in agreement on the $10,000 maximum. Is that right?

Mr. O'LEARY. Yes.

Senator RANDOLPH. So, really, then, we come to 15 points of agreement rather than 13 that I had earlier indicated.

We come to the matter of fines on labor, and the $25 minimum and the $500 maximum included in S. 355. No figures in this category appear in the Javits-Cooper bill. Would you explain why you believe that perhaps we should not include dollar figures?

Mr. O'LEARY. On reflection, Senator Randolph, this imposed the Secretary or his representative in the actual management chain in the mines. It put us really into a supervisory position in regard to the worker.

Let me take a specific example. If our inspector, and I think this is really unlikely, but if our inspector were to detect a worker smoking he would have to move against the worker under the older bill. Under this bill the recourse would be to move against management.

I believe that probably from the standpoint of getting the job done, management then will have to take whatever action it must take against the worker in order to get him in compliance with the standard.

Senator JAVITS. Mr. Chairman, would the Senator yield momentarily?

Senator RANDOLPH. Yes, indeed.

Senator JAVITS. Mr. Secretary, I would like to join my colleagues in

welcoming you here and to explain that we have a very important hearing on confirmation in the Foreign Relations Committee which I must personally attend. Senator Prouty, who is here, will handle the case for the minority. As I am the principal sponsor of the administration's bill, I just wanted to be sure to at least appear and explain my inability to be here throughout the hearing, but I will most carefully read what I know will be the extremely competent examination of my colleague.

Senator RANDOLPH. Mr. Chairman, I wish to address Senator Javits before he leaves the hearing. Senator, mention has been made of your sponsorship of the Nixon administration proposal. Secretary Hickel has directed part of his testimony to compensation in three Sates for the disease known as black lung and, of course, there is no such workman's compensation coverage in the other States.

Is that right, Mr. Secretary?

Secretary HICKEL. That is right.

Senator RANDOLPH. He indicated that there was a concern on the part of the administration with the workmen's compensation laws within the States.

I have joined you, Senator Javits, and did also in the 90th Congress, in sponsoring legislation for review of the compensation laws within the States.

I want the record to indicate that you have been a leader in this regard.

Senator JAVITS. I am very grateful to my colleague. It is a fact that the laws with respect to workmen's compensation are State laws but it is not beyond the realm of possibility that we can somehow raise the level of the standard through action of the Federal Establishment very much like you are considering mine safety here, which is in many States also a matter of State concern.

I am very grateful to Senator Randolph for that; and your testimony, Mr. Secretary, will buttress our efforts to bring about the workmen's compensation reform. Thank you.

Senator RANDOLPH. Thank you, Senator Javits.

Mr. Chairman, if I may continue with the differences in S. 355 and the administration proposal.

I believe you had concluded, Director O'Leary, with the point in reference to the amounts of fines for operators and labor.

Mr. O'LEARY. Yes, I had.

Senator RANDOLPH. However, I want to go a little further. You have a figure on fines against the operators but you have no figure on labor. I think you would want to follow through and explain this.

Mr. O'LEARY. Senator Randolph, in the administration bill there is no penalty with regard to a worker. The penalty would apply only to management.

Senator RANDOLPH. I understand, but why would you have a maximum for the operator and no figure as to the worker? You said there is none.

Mr. O'LEARY. There is no fine, no minimum or maximum. No fine at all.

Senator RANDOLPH. I understand. You place the whole burden on management.

Now we come to the unwarrantable failure violation. In both bills we are in agreement, is that correct?

Secretary HICKEL. No, sir.

Senator RANDOLPH. I beg your pardon. There is a difference. You could withdraw after notice and inspection; is that right?

Mr. O'LEARY. Yes.

Senator RANDOLPH. It would really be a reinspection, would it?

Mr. O'LEARY. It is.

Senator RANDOLPH. Now we come to the health standard.

In S. 355, the bill I introduced, it would be 3.0 milligrams per cubic meter of air, and no date specified to reach that standard. You have the standard of 4.5 milligrams per cubic meter of air 60 days after the operative date of the act and 3.0 as soon as possible.

Would you tell us why that deescalation, let us say?

Mr. O'LEARY. That is not a deescalation at all. As a matter of fact, I regard this as a very substantial strengthening over the provisions of the previous regulation.

Senator RANDOLPH. I meant a 4.5 in the beginning and then 3.0 as soon as possible. The 4.5 figure would be a deescalation.

Mr. O'LEARY. We actually are moving up the timetable on bringing remedial measures to the mines by adopting this new provision. The Secretary wanted to have a provision here which would move just as rapidly as technically feasible to reduce dust counts. This will, as he pointed out in his testimony, result within 6 months in a reduction in 50 to 60 percent of all mines in the United States, based on a very narrow sample. I might caution. And we, of course, would attain the 3.0 standard, which is in the earlier measure, by the same time. But in the interim we will have the advantage of going to the 4.5.

Senator RANDOLPH. Yes, we understand. Now, let us come to the provision for review by the Director of the Bureau of Mines, and Board and Court. S. 355 provides for review by the Secretary and then by the Board and the Court. You provide for review by the Secretary or Board.

It is almost the same, only slightly different.

Mr. O'LEARY. Very slight.

Senator RANDOLPH. You might say we are together, so that would bring us to 16 points of agreement out of 23.

Then we come to the health X-ray program and we are in agreement there, is that correct?

Mr. O'LEARY. Yes, sir.

Secretary HICKEL. But there is a difference here.

Mr. O'LEARY. There is one point with regard to the X-ray. Under the new bill, in the event that the X-ray provides an indication that the miner does have the pneumoconiosis he would be required to be moved to a lower dust count atmosphere of not more than 2.0 but, at the miner's option, the miner could remain in the higher dust count atmosphere by wearing a respirator.

I regard this as a very significant improvement.

Senator RANDOLPH. I am inclined to believe in this matter that there is possibly an improvement over S. 355. I appreciate your discussion on that point.

Now in connection with the authority of the Secretary to issue mandatory health and safety standards, we are in agreement, are we not?

Mr. O'LEARY. Yes.

Senator RANDOLPH. This is something that we must not pass over lightly. Here is what we are talking about, and what I underscored earlier when I said there is no reason for timidity here.

Secretary HICKEL. I think that is of the utmost importance, Senator.

Senator RANDOLPH. Thank you, sir. Then we come to the review of the Secretary's standards by the Board. S. 355 has nothing on that. You say on objections of interested persons to the Secretary's proposed standards the Board shall review and make recommendations to the Secretary. You might cover that.

Mr. TRAIN. Could I comment on that?

Senator RANDOLPH. Yes, Secretary Train.

Mr. TRAIN. The provision does not take away the authority of the Secretary to promulgate standards by regulation. It does provide for an advisory review by the Board in the event that there is an objection by an interested party. The Board is directed to hold hearings within, I believe it is 60 days from the time it is referred to the Board and if the Board disagrees with the Secretary's proposed standard it so advises the Secretary. He is not required to follow this advisory opinion of the Board but if he does not he must publish in the Federal Register his reasons for not following the recommendations of the Board.

It is our feeling that the Secretary's regulatory authority must be certain and that this can not be delegated to some other body. But we also feel that this procedure I have described, of full public disclosure both of the Board's recommendations and the Secretary's reasons for not following the Board's recommendations give very adequate protection against any sort of arbitrary action.

Senator RANDOLPH. Secretary Train, I am inclined to agree as I did on the prior point. This seems to me to have merit. Perhaps in the proposal now being discussed as against S. 355 this may be something that is desirable.

Now we come to State plan. Will you discuss that, Director O'Leary?

Mr. O'LEARY. Senator Randolph, under the existing legislation we have a provision for a State plan. That was omitted from S. 355.

Senator RANDOLPH. That is right. S. 355 does not cover this point.

Mr. O'LEARY. Largely because the States have been relatively disinterested in this. We have seven State plans. Only one of the States is extremely active with this. I look upon this as useful to the extent that we can share some of the burden of inspection with the State authorities.

Mr. TRAIN. Could I again comment on that, Senator?

Senator RANDOLPH. Yes, sir.

Mr. TRAIN. I believe that the provision of the bill requires, where there is a State plan, that there be regular inspections of every mine in the country, and I might comment that this bill requires three regular inspections of every coal mine in the country during each year; that these must be made jointly with the State where there is a plan.

However, the bill also provides, and we feel that this is a very important protection, that even where there is such a State plan that the Federal Government can make spot inspections of any mine at any time without notice to the State.

Now I do not know whether that was in the previous legislation or not.

Mr. O'LEARY. It was not.

Senator RANDOLPH. I appreciate the comments on this matter. This is an area of concern to all of us. This is something that is worthy of careful consideration.

When we come to criminal penalties for violation of the orders, I note the figures $5,000 and $10,000 in S. 355 have been raised to $10,000 and $20,000. Will you comment on those increases?

Secretary HICKEL. Senator Randolph, those are for willful and knowing violations. All we did was raise the amount of money because we thought it would be a deterrent to a willful and knowing violation.

Senator RANDOLPH. It would be a stiffer penalty.

Now we come over to the number of inspections. S. 355 has not covered it with a particular figure. You have a minimum of three per year for each underground mine. Is there any comment you want to make?

Secretary HICKEL. Better safety precaution, and also to keep everyone on their toes.

Senator RANDOLPH. Yes. We are trying to spell out here a clear indication that the job is to be done. This is a matter that we could well check into.

When we amended the 1952 act in 1966 we did not include the surface mines. They have been included in S. 355 and you have included them. Although we are in agreement, it might be important here, Director O'Leary, to discuss the surface mine inclusion.

Mr. O'LEARY. Senator Randolph, the inclusion of surface mines in this act will close the circuit and provide for some measure of Federal responsibility for health and safety in all mining situations in the United States.

You will recall that in 1966 Congress passed a metal and nonmetalic mine safety act which covers underground metal and nonmetalic mines and surface mining and sand and gravel operations. The 1952 act and amendment in 1966 were directed solely at underground coal operations. This will complete the circuit, not simply for purposes of symmetry, Senator, but because again there is room for substantial improvement in the health and safety, particularly of surface coal operations.

Senator RANDOLPH. I appreciate your reference to the earlier act which we passed. That was a matter of very careful consideration here in our committee, because we did feel the need. It seems to me that it is very important that there be inclusion of the surface mines.

As to the right to sue the operator in Federal court for death or injury, we are in agreement on that point. Do you want to discuss it?

Then we come to the requirement that all accidents shall be reported, and investigated by the operator. S. 355 says no, and you have said yes. So let us check it.

Mr. O'LEARY. S. 355 didn't say no, sir. You simply didn't cover it.

Senator RANDOLPH. I know there is no coverage on it in S. 355. The new bill covers it.

Mr. O'LEARY. We do. We affirmatively feel that we have insufficient statistical data that is only acquired in this area by systematic report-

ing of accidents to provide us with the keys of how you prevent accidents. This would expand our capability of requiring reporting from today's standard which requires reporting only on lost time accidents. It would require reporting any incident of an accidental nature in the mine.

Senator RANDOLPH. On the matter of financial assistance to States and miners relative to health and safety payments, we are in agreement on that matter, is that correct?

Mr. O'LEARY. Yes, sir.

Senator RANDOLPH. And, also, as to a coal mine disaster evaluation center being established, we are in agreement.

Mr. TRAIN. Senator, before you leave that page, I believe you didn't refer to the expanded Board. This is the Coal Mine Safety Board.

Senator RANDOLPH. That is right. You would go up to eight members.

Mr. TRAIN. That is right. The bill recommends changing the name of the Board to the Coal Mine Health and Safety Board to reflect the broadened concern and jurisdiction.

Senator RANDOLPH. You would include one health member?

Mr. TRAIN. It adds three members to the present five-man Board for the purpose of review of health and safety standards, questions, one of whom must be a man trained in public health. The other two, as I recall, being men trained in mining technology.

Senator RANDOLPH. Mining technology?

Mr. TRAIN. Right. We believe this is an important strengthening element here in the bill.

Senator RANDOLPH. I am sorry that I overlooked that point as I ran through the list here. I have a feeling that perhaps there should be done that which you have included here, as more or less a standard by which persons would be chosen. Nothing hard and fast, but certainly requirements that they be knowledgeable. Is that right?

Mr. TRAIN. That is correct, sir. The present five-member Board is made up, as I am sure you know better than I do, of one representative of the large mine operators, one representative of small mine operators, one representative of the workers in large mines, one representative of workers in small mines, and then one Chairman, who has a background of knowledge of the coal mining industry generally.

Senator RANDOLPH. I feel that there is reason for the administration's proposal in this regard.

That brings us to the conclusion of the checking of the points in agreement and at difference. I am not certain, Mr. Chairman, but I believe as we ran through it that we are perhaps in agreement on about 15 or 16 of the 23 major points in the two bills. This is considerable, Mr. Secretary. I am sure we can discuss and reach agreements on points of difference of opinion.

While you are here, Mr. Secretary, at this hearing I want to reiterate what I have earlier expressed, and that is my complete confidence in Director John O'Leary. I have placed this opinion in the record, you know, Mr. Secretary, in a communication to you. I have felt very strongly, as one of the Senators from the leading bituminous coal producing State in the Nation that I was in nowise acting improperly, in nowise—pressuring, by calling to your attention the able stewardship of Mr. O'Leary. I have worked with him and I think the people of our State in West Virginia who have worked with him, the miners'

representatives as well as operators' representatives, appreciate his creative and his resourceful efforts.

I want this to be part of the record.

Before I close, Mr. Chairman—I regret talking too long, but I felt it important to be definitive on these points of agreement as well as disagreement in the bills we have compared. As we discuss coal mine safety legislation, we should note that the Congress in 1941 enacted the first law on this subject. We talk about the 1950's, the 1960's, but let us remember also we made a start in 1941 and we made it under Franklin Roosevelt.

I remember the very difficult days during which we labored to have that legislation enacted into law.

Thank you, Mr. Chairman.

Senator WILLIAMS. Thank you, Senator Randolph.

Far from talking too long, I am sure the other members are grateful, as I am, that you bring all of your background of knowledge and experience to a very complicated industrial situation, safety and health in the coal mines. I do not come from a coal mining State. Senator Prouty doesn't, although he mines marble.

Senator PROUTY. We don't mine it, we quarry it. We quarry marble, slate, and granite.

Senator WILLIAMS. I don't believe we have a member from a coal mining State except West Virginia, which is helpful to us. Which brings me to another observation.

Mr. Secretary, we have your statement this morning. The administration bill as introduced, I believe, on Tuesday of this week. Is that right?

Secretary HICKEL. That is right.

Senator WILLIAMS. Now after your statement you have an appendix that responds to certain questions the committee did raise with you.

Coming back to Senator Randolph, it is remarkable in my judgment, that you could follow the statement that you had not seen before this morning, and for good reason, I recognize that, and still intelligently inquire on the appendix material. You heard the statement and at the same time you got the full grasp of the appendix material.

This leads me to my observation. I think that probably we would like to suggest that there will be an adjourned date for future discussions with you, Mr. Secretary, Mr. O'Leary, after we have had more testimony before the committee, after we have undivided time to examine your appendix material. Does that suggestion overwhelm you or is that all right?

Secretary HICKEL. It does not overwhelm me, Mr. Chairman.

Senator WILLIAMS. Senator Prouty.

Senator PROUTY. Mr. Chairman, as you have expressed so well, Senator Randolph is the only one on our subcommittee who possesses any expertise in this particular field. I, too, am very grateful to him for his interrogation. It has been illuminating to me, and I am sure, to other members of the committee.

I have been particularly impressed at the agreement between Senator Randolph and Secretary Hickel on the provisions of this legislation. That is most helpful to me, and it indicates that a great deal of thought and consideration has been given to this proposal by the administration.

With respect to what the chairman has just said, I have been quite insistent for a long time that statements, particularly those coming from the heads of Federal departments or agencies, be presented to the members of the committee in advance of their appearance. We have a committee rule which requires that they be submitted 72 hours before the witnesses appear. Mr. Secretary, I realize how busy you have been in the last few weeks. You haven't had an opportunity to get these things done as rapidly as will probably be the case later on. I haven't always been very successful with prior administrations but I hope that the new one is going to, insofar as it is humanly possible, make these statements available to members of the committee so that we will have an opportunity to read them and perhaps ask intelligent questions. Particularly when they are so involved and so complex; matters about which many of us have little knowledge. We would like to do a little studying and thinking before witnesses testify before our committee.

I will be as insistent this year with the new administration, as I tried to be with previous administrations. I think you will find that in the end it will be more productive if we have the opportunity—I am not referring to you alone, Mr. Secretary, but to the heads of all the departments and agencies in the Government—it will be tremendously helpful to us if we have an opportunity to study the statements ahead of your appearance.

So I think the suggestion of Senator Randolph is perfectly proper. After we have heard other witnesses and some of us have become better informed, perhaps we can ask questions then which will clarify some doubts and provide an opportunity to resolve any differences which may seem to be present. We can then bring out a bill that will do an outstanding job in making real progress in the field of coal mine health and safety.

I will reserve any questions that I may have until a later date.

Senator WILLIAMS. Senator Cranston.

Senator CRANSTON. I am not ready to ask questions yet. I thank all of you for your illuminating remarks.

Senator WILLIAMS. We are going to have next week, I believe it is, medical testimony on pneumoconiosis.

Could I just ask this. In coming to your conclusions on levels of dust that present hazards and levels which bring forth the control, which are medical matters, on whom does the Department rely?

Secretary HICKEL. The Public Health Service, Senator Williams. I might add that we have asked for a separate committee with HEW. We will appoint a chairman to hold hearings just on this subject.

Senator WILLIAMS. I think we have a common source of reliability, the Surgeon General, that is whom you are talking about, to be definitive for the medical findings that will lead to standards of dust control.

Secretary HICKEL. That is correct.

Senator WILLIAMS. Dr. Stewart will be in here next week, I believe, or the week after next.

Senator RANDOLPH. Mr. Chairman, I think it is very important that you do bring out the value of these experts in the area of setting standards and criteria. One of the most perplexing problems that we had in the Public Works Committee and in our subcommittee on Air

and Water Pollution was in the matter of the criteria, of the standards. This was very, very difficult. It took perhaps half the time of the subcommittee.

Senator WILLIAMS. Just one further observation, although at a later date we will want to get into more of your appendix material.

For example, I think it important for us to develop the history of the research and development and who has done it and how much resource has been put into this very necessary background for developing our law and standards.

Senator RANDOLPH. I would like to add there I only wish we had been as successful, as we tried to get more money for coal research, as those who have tried to get money for atomic research have been successful.

Secretary HICKEL. I concur with you wholeheartedly that this is many years behind. As I advised my science adviser yesterday, this is one of the directions that we are going to step into in my department. I think it is long overdue.

Senator RANDOLPH. Thank you, Mr. Secretary. I addressed myself to that last year. Thank you very much for agreement.

Senator WILLIAMS. Thank you very much, Senator.

I have one further observation. In your statement you state an objective in making the mining industry the safest, the most healthful, and the most productive in the world. I wonder if the Department has engaged in any comparative studies in terms of safety of the mining industry in our country and the coal mining industry, say, in Great Britain, Germany, Poland, and other countries that are known to be major coal producers. And, of course, when I say safety, I mean, of course, in terms of physical safety, both the structure and in the dust and health aspects.

Mr. O'LEARY. Mr. Chairman, we are aware of the data with regard to all activity and with regard to health and safety experience in foreign mines. I think we find two things that are significant. The productivity is perhaps a third to a fourth of that of the United States on the average in Europe and Great Britain, for example.

At the same time the safety records are significantly better than those in the United States.

Senator WILLIAMS. The productivity is down. Is it measured in man-hours?

Mr. O'LEARY. Tons per man-hour.

Senator WILLIAMS. Production relatively down, safety conditions better.

Mr. O'LEARY. Better.

Senator RANDOLPH. Mr. Chairman, I would like to pursue that just a moment. I am not trying to draw a difference here, but I want to bring out that it is a fact, Director O'Leary, that those mines in the countries of central Europe and Great Britain which you have mentioned are not mechanized to the degree that the mines in the United States are mechanized.

Is it not true that perhaps that record in part for safety might be occasioned by what we are now discussing?

Mr. O'LEARY. I think there are two factors there. They are not mechanized, and they do not have thereby the inherent hazards that highly mechanized, very rapidly moving mining equipment has.

Senator RANDOLPH. That is exactly right.

Mr. O'LEARY. At the same time, I think it is also fair to say when we were at that stage in development, that is, when we were on conventional mining techniques, that our accident rates were significantly higher than the current European experience. I think it is undeniable that there has been more attention to health and to safety in Europe.

We are finding now, however, a trend which is just beginning to appear as Europe mechanizes; the safety records are beginning to deteriorate a bit and perhaps the health records as well. This is very, very preliminary.

Senator RANDOLPH. Thank you, sir.

Senator WILLIAMS. Could I be permitted one diversion here following that?

One of the things I remember way back when Senator Prouty and I served in the House Foreign Affairs Committee over there, one of the things I remember about Harold Stassen was the great contribution be made in coal mining. As a matter of fact when he was head of the Foreign Operations Administration, we discovered in Austria that they had one-handed miners, because with one hand they would hold the light and with the other they would chop the coal.

The Foreign Operations Administration, under Mr. Stassen, under his administration, did bring the cap and the light to the mines of Austria. That is very significant.

That follows what you say, that mechanization has advanced here well beyond those countries.

Is there anything else, Senator?

Senator PROUTY. Mr. Chairman, I have just one question.

Let us take a situation where an operator has complied fully with the mandatory standards of health and safety. He has issued all necessary work rules for their implementation. Then a violation occurs by a crew foreman or union steward or a mine employee. That individual would not be liable for any civil penalty under the administration's bill; is that correct?

Secretary HICKEL. That is correct.

Senator PROUTY. How is that justified?

Secretary HICKEL. We would fine the management. We think the management has the responsibility to then take care of the employee.

Senator PROUTY. If the employee is discharged, for example, isn't the union then going to take some action to protect the employee?

Secretary HICKEL. We think that that is a matter between the employer and the employee, or the union and the employer.

Senator PROUTY. You are expressing the same view as the president of the United Mine Workers. It is quite interesting that that seems to be the general opinion among experts in the field. Thank you very much.

Senator RANDOLPH. Mr. Secretary, you will recall that when you were before the Interior and Insular Affairs Committee for confirmation consideration hearings, I specifically asked you about your interest in coal mine safety.

You did give me your assurance at that time, and I am glad today to see and hear you reaffirming it here in an affirmative way.

Secretary HICKEL. Yes, sir.

Senator WILLIAMS. Will you as a final observation give us the conclusion that we can draw from your appendix, a comparison of the

dollars spent for health and safety research and other research and development in the final column in your appendix page?

You say other research and development. What does that mean? Does that mean commercial development in the mine?

Mr. O'LEARY. Mr. Chairman, this is the development that is aimed at extracting coal and finding better ways to utilize it. I think the inescapable conclusion from this is that the Department of the Interior which, after all, has the final responsibility for health and safety, has not applied sufficient priority to this problem over the years. That is something that I am sure will be remedied immediately.

Senator WILLIAMS. Can we deal with that later?

I see that you do suggest that the figures are not available under the heading "Health and Safety Research," and I will confess that the request for that went forward to the Department just earlier this week. There have been late notices—we, of course, are responsible for that—and that is why we as a mutuality feel, I gather, it would be best to come back again on another day after more of our record is complete.

I haven't anything further.

Mr. TRAIN. Mr. Chairman, could I just comment on the appendix?

As you have mentioned, this was in reply to your letter of March 5. This obviously has been put together quite hastily. I only saw the data late last night. The Secretary only saw it this morning. I would hope that, if in the course of our review of this data we should wish to amend it, expand it, otherwise modify it, that the subcommittee would grant us that privilege.

Senator WILLIAMS. There certainly will be no objection to that. We edit the record for grammatical errors, not for substantive errors.

Mr. TRAIN. If I can volunteer a word in defense of the Secretary's statement only arriving this morning, which I don't think he would make, as the chairman mentioned, the President's message came up on Monday. The legislation was introduced on Tuesday; the Department had four simultaneous hearings on Wednesday; the Secretary has been testifying constantly. He endeavored to be available for this hearing at the chairman's request at the earliest practicable date following the introduction of the legislation.

I think that explains, I hope, the reason why there has been some difficulty in getting the statement together in advance.

Senator PROUTY. Judge Train, I certainly want to assure you and the Secretary that I was not being critical, because I realize your problems. However, in order to maintain a position which I have taken over the years, I thought I should comment on our general approach to this problem.

Senator CRANSTON. He should have said a word about Santa Barbara.

Senator WILLIAMS. There is a sort of relevancy here.

Thank you very much, gentlemen.

(Whereupon, at 11:30 a.m., the subcommittee recessed, to reconvene Wednesday, March 12, 1969.)

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