

BLACK LUNG AMENDMENTS

Federal Coal Mine Health And Safety Act of 1969 (Public Law 91-173)

Volume 1

Black Lung Benefits Act of 1972 (Public Law 92-303)

Volume 1

Black Lung Benefits Reform Act of 1977 (Public Law 95-239)

Volume 2

Black Lung Benefits Reform Act of 1975 (H.R. 10760 — Not Enacted)

Volume 2

BLACK LUNG AMENDMENTS

Federal Coal Mine Health And Safety Act of 1969

S. 2917
PUBLIC LAW 91-173 — 91st Congress

Volume 1

Black Lung Benefits Act of 1972

H.R. 9212
PUBLIC LAW 92-303 — 92nd Congress

Volume 1

Black Lung Benefits Reform Act of 1977

H.R. 4544
PUBLIC LAW 95-239 — 95th Congress

Volume 2

Black Lung Benefits Reform Act of 1975

H.R. 10760 — Not Enacted

Volume 2

**REPORTS, BILLS,
DEBATES, AND ACTS**

PREFACE

This two-volume historical compilation covers amendments establishing the Black Lung program and subsequent amendments affecting the SSA-related aspects of the program. The books contain congressional debate, a chronological compilation of documents pertinent to the legislative history of the legislation and listings of relevant reference materials. Documents include:

- Committee Reports and Selected Prints
- Differing Versions of Key Bills
- Summaries
- Acts

The books are prepared by the Office of Legislative and Regulatory Policy, Legislative Reference Office, and are designed to serve as helpful resource tools for those charged with interpreting the Social Security law.

Gilbert Fisher, Acting Director
Office of Legislative
and Regulatory Policy

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statute and the enactment of new comprehensive coal mine health and safety legislation.

The primary objective of this legislation is to bring the health and safety aspects of the coal mining industry into the modern industrial age.

The purpose of this bill is to:

Improve the health and safety conditions and practices at underground coal mines and to provide protection in all other coal mines, including surface coal mines, not now covered by the Federal Coal Mine Safety Act as amended:

Provide authority for the Surgeon General to establish health standards for all coal mines and to study the health needs of all persons who work with coal:

Provide authority for the Department of the Interior to promulgate improved mandatory health and safety standards for all coal mines by regulation:

Provide improved means of enforcement in order to prevent accidents in all coal mines:

Provide a more extensive and accelerated research program in the field of coal mine health and safety:

Assist the States in their efforts to protect coal miners: and Establish a Coal Mine Health and Safety Research Trust Fund.

The bill repeals the 1952 Federal Coal Mine Safety Act, as amended. The new Federal Coal Mine Health and Safety Act would continue the best features of the 1952 act while adding a number of new features designed to overcome the shortcomings of the act and improve upon some of the existing features of that act. The highlights of some of the new and improved features follow. It would

- Authorize the promulgation of mandatory health and safety standards for all coal mines:
- Establish a standard to control respirable dust in the atmosphere of underground coal mines for each miner and prevent the development of pneumoconiosis or black lung and provide a regular program of chest X-rays and medical examinations for the miners;
- Include health and safety protection for miners in surface or strip mines, as well as for underground miners:
- Require a minimum of 4 inspections per year with advance notice of such inspections prohibited;
- Require the reporting of all accidents, unintentional roof falls, and ignitions whether or not death or injury results;
- Provide for civil penalties against the operator for violation of health or safety standards and against the miner for willfully violating the standard prohibiting smoking or carrying of smoking materials underground;
- Provide expanded criminal penalties and injunctions to enforce various orders:
- Expand the coverage of the act to afford safety protection against the accidents which account for 90 percent of the fatal and nonfatal injuries in this industry in addition to the disaster-type accidents;
- Expand the scope of imminent danger closing orders to cover any condition or practice that may cause immediately death or injury before abatement is possible;

- Expand and accelerate health and safety research authority and provide funds for such research :
- Require that inspectors be stationed full time at mines most likely to present explosion hazards :
- Require the Secretary to provide operators with the assistance of persons knowledgeable in dust control :
- Streamline the procedures for review of closing orders :
- Provide for the control of roof falls in the working faces where 70 percent of roof-fall fatalities occurred in the last 2 years, and require the adoption and approval of roof control plans :
- Prohibit smoking and the use of open flames in all mines :
- Provide improved methods of controlling methane through better ventilation, more frequent testing, use of bleeders, brattice cloth, and methane monitors, and improved methane control research ;
- Provide improvements in rock dusting to prevent propagation of ignitions and explosions :
- Expand and modernize means and measures to prevent arcs and sparks, burns, and electrocutions from unsafe or improperly protected electrical equipment, power wires, and trailing cables :
- Expand and improve present provisions on the use, storage, and transportation of explosives, on fire suppression, on preventing ignition and fires in welding :
- Require that each mine have an accurate and up-to-date detailed map of the mine :
- Provide that every underground mine furnish at a minimum two separate escapeways adequately ventilated and marked, one of which must be separated from haulage entries where many mine fires start :
- Require protection by the operator from accidental penetration of oil and gas wells during mining : and
- Provide for the installation of better communications to the surface, use of emergency shelters, and illumination of the mine.

The health and safety of the miners, and the effect of the provisions of this bill on the economic well-being of this industry, including the demands for coal in this country, have been thoroughly considered during extensive hearings and the committee's deliberations on the bill.

* * * * *

The Need for New Legislation

Public awareness has recently been focused on the disastrous health hazards in coal mining and the lack of action by the Federal Government on this problem. Coal workers' pneumoconiosis, known more familiarly as "black lung" is believed to have afflicted 100,000 of the Nation's active and retired miners. This dreadful disease causes many years of breathlessness and ultimately, death.

In September 1968, President Johnson proposed a new Federal Coal Mine Health and Safety Act. The proposal, however, was not acted upon during the final months of the second session of the 90th Congress.

Then, on November 20, 1968, a mine explosion at Consolidation Coal Co.'s No. 9 mine at Farmington, W. Va., killed 78 men.

This disaster led the Department of the Interior to convene a Mine Safety Conference in December 1968, to refine President Johnson's legislative proposal. In opening the Conference, Secretary of the Interior Udall said:

The tragedy that occurred at Farmington, W. Va., last month is the catalyst that has brought us together. What we say and do here, however, must be in a larger context than that of a coal mine disaster. Our deliberations must embrace all of the measures and all of the responsibilities that have to be adopted and assumed if we hope ever to banish death and disease from our coal mines. And this we must do. For let me assure you, the people of this country no longer will accept the disgraceful health and safety record that has characterized this major industry.

As President Nixon said, in his March 1969 message calling on the Congress to enact a new Federal Coal Mine Health and Safety Act: "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."

Once again, the adage is being proved that "dead miners have always been the most powerful influence in securing passage of mining legislation."

Health

Coal workers' pneumoconiosis is a chronic respiratory disease for which there is no known treatment. It is irreversible once contracted. X-ray examinations reveal that 10 percent of the Nation's active coal miners and 20 percent of the inactive miners suffer from the disease. According to the Surgeon General, however, "data from postmortem examinations would indicate an even higher prevalence of this disease."

The Surgeon General has described the disease in the following manner:

Coal miners' pneumoconiosis is a chronic chest disease, caused by the accumulation of fine coal dust particles in the human lung. In its advanced form, it leads to severe disability and premature death.

* * * * *

Coal miners' pneumoconiosis is a distinct clinical entity, resulting from inhalation of coal dust.

Physicians classify coal miners' pneumoconiosis as simple or complicated, depending on the degree of evidence in the X-ray picture. In the simple form, pinpoint, micronodular or nodular lesions distributed throughout the lungs show up in the X-ray picture. The physician decides the so-called radiological category of simple pneumoconiosis on the basis of the extent of the opacities.

There are no specific symptoms and pulmonary function tests seldom enable the physician to say whether or not the patient has the disease. It is generally accepted by physicians that simple pneumoconiosis seldom produces significant ventilatory impairment, but, the pinpoint type may reduce the diffusing capacity, the ability to transfer oxygen from the lung into the blood.

Complicated pneumoconiosis is a more serious disease. The patient incurs progressive massive fibrosis as a complex reaction to dust and other factors, which may include tuber-

culosis and other infections. The disease in this form usually produces marked pulmonary impairment and considerable respiratory disability. Such respiratory disability severely limits the physical capabilities of the individual, can induce death by cardiac failure, and may contribute to other causes of death.

Medical researchers in both Britain and the United States have repeatedly shown that coal miners suffer from more respiratory impairment and respiratory disability than does the general population.

* * * * *

There is no specific therapy for pneumoconiosis in either its simple or complicated form.

Coal workers' pneumoconiosis was first recognized as a separate disease entity in Great Britain, in 1943. It was not generally recognized in the United States as a separate disease entity until the 1950's. However, its prevalence has now been documented by studies conducted by the Pennsylvania Department of Health (1959-61) and the U.S. Public Health Service (1963-65).

The prevalence study by the Public Health Service demonstrated that coal workers' pneumoconiosis was an occupational respiratory disease of serious and previously unrecognized magnitude.

Yet, according to the Department of Health, Education, and Welfare, the United States remains the only major coal-producing Nation in the world which does not have an official industry-wide government standard for coal mine dust. Furthermore, the average level of dust in coal mines recently surveyed by the Bureau of Mines is more than twice as high as the level recommended by the Public Health Service in December 1968.

It is clear that a properly enforced official governmental standard for respirable coal dust would make a significant reduction in new cases of coal workers' pneumoconiosis and hopefully would reduce the rate of progression in miners who have already contracted the disease.

* * * * *

Committee Consideration

On February 27, 1969, the Subcommittee on Labor began its hearings on coal mine health and safety legislation. By that date, four bills had been introduced: S. 355 (Senator Randolph, D., West Virginia), embodying the proposals of the outgoing administration; S. 467 (Senator Randolph, D., West Virginia), and S. 1178 (Senator Williams, D., New Jersey), embodying the views of the United Mine Workers of America; and S. 1094 (Senator Williams, D., New Jersey), a companion measure to H.R. 6504 (Mr. Hechler, D., West Virginia). At the first day of hearings, all interested persons were invited to bring their views to the attention of the committee, so that all legislative approaches to these problems could be made a part of the hearing record and available to the committee for its consideration.

The new administration's proposal was introduced as S. 1300 (Senator Javits, R., New York). S. 1907 (Senator Cook, R., Kentucky) was introduced at the request of the State mine inspectors and small coal mine operators. After 9 days of hearings, on February 27, March 7, 12, 13, 14, 18, 20, 26, and May 2, 1969, three new bills, S. 2118 (Senator Randolph, D., West Virginia), S. 2284 (Senator Williams, D., New Jersey), and S. 2405 (Senator Javits, R., New York) were introduced. This legislation reflected additional dimensions of the problems which had evolved from the entire record of the hearings.

Over 40 witnesses representing the administration, operators of large and small mines, and coal miners, as well as experts from this country and Europe, and other interested persons appeared before the subcommittee to offer testimony and respond to interrogation. In addition, many statements and supplementary materials were submitted for consideration and insertion in the official record of the hearings. The record covers over 1,500 pages in four parts.

The Subcommittee on Labor devoted 3 days to executive consideration of the legislation before reporting its recommendations to the full Committee on Labor and Public Welfare. After 10 additional days of executive consideration, on July 31, 1969, the full committee, by a unanimous rollcall vote, ordered this legislation reported to the Senate.

Summary of Major Provisions

TITLE I—HEALTH STANDARDS

Part A of this title provides that 6 months after enactment, each operator of an underground coal mine, shall continuously maintain during each shift, a respirable coal dust level at or below 3.0 milligrams per cubic meter of air (milligrams per cubic meter of air as measured by the Mining Research Establishment (MRE) horizontal elutriator instrument, is hereinafter referred to as mg/m³). Operators who cannot comply with this requirement may obtain permits for non-compliance from an Interim Compliance Panel, established by section 5 of the bill, for an aggregate period not exceeding 3 years from the date of enactment. During the period of time covered by such permits, the operator must continuously maintain the respirable dust at the level specified in the permit (the lowest level attainable in the mine), but in no event greater than 4.5 mg/m³.

At the end of the 3-year period, the bill prescribes a dust level of 2.0 mg/m^3 . Operators who cannot comply with this requirement may obtain permits for noncompliance again for an aggregate period not exceeding 3 years from the date the 2.0 mg/m^3 standard becomes effective. During the period of time covered by such permits, the operator must continuously maintain the respirable dust at the level specified in the permit (the lowest level attainable in the mine), but in no event greater than 3.0 mg/m^3 .

Six years from the date of enactment, all underground coal mines would be required to be at the 2.0 mg/m^3 level unless the Secretary of the Interior determines that the technology, or other effective control techniques or methods, are not yet available for all mines to comply with the 2.0 mg/m^3 standard. If he so finds, he may extend the period of time during which the Interim Compliance Panel may grant permits for noncompliance, by filing an extension plan with Congress. If neither body of the Congress disapproves the extension plan, within 60 days of its submission, it will become effective. A permit for noncompliance issued during the period covered by any proposed extension plan may permit the operator to maintain the dust at the lowest level attainable in the mine but in no event greater than 3.0 mg/m^3 .

Part A also prohibits the use of respirators as substitutes for environmental control techniques, and permits their use only in limited circumstances of short duration, such as when miners are required to do corrective work to reduce the dust level.

In addition, part A provides for annual X-ray examinations and such other medical examinations as the Surgeon General prescribes to determine, among other things, the scope of pneumoconiosis and its effect on miners, as well as to determine the extent and effects of other occupation-related diseases.

Part A also directs the Surgeon General to establish improved health standards. The committee bill expressly provides that the health standards, to "the greatest extent possible," should "permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period." The Secretary of the Interior would be required to promulgate mandatory standards in accordance with the health standards established by the Surgeon General.

Standards for Respirable Coal Dust

When the Surgeon General of the Public Health Service testified at the hearings before the Subcommittee on Labor, he estimated that pneumoconiosis affects more than 100,000 soft coal workers. That estimate was based on projections of the prevalence percentages found by the Public Health Service in the 1963-65 study of active and inactive coal miners nationally and on recent information as to coal miners in Pennsylvania receiving compensation for pneumoconiosis.

Since Great Britain began requiring dust control efforts in the coal mines, there has been a substantial reduction in the prevalence of coal workers' pneumoconiosis among British miners. Thus, the overall prevalence of coal workers' pneumoconiosis has decreased from 12.5 percent in 1959-62 to 10.9 in 1962-64. Also, the incidence of new cases in miners has decreased from 8.1 new cases per 1,000 miners in 1955 to 1.9 new cases per 1,000 miners in 1967.

Last year, the Public Health Service concluded that sufficient data were available to recommend the adoption of an interim coal dust exposure standard for miners of 3.0 mg/m^3 . After careful analysis of the British and Pennsylvania experiences, and after consultation with many authorities, the Service concluded that:

An interim standard should represent no more than a reasonable degree of risk to our miners, given our present technology, and be one that would significantly reduce the rate at which new cases would progress.

On the basis of those conclusions, last December, the Secretary of Health, Education, and Welfare recommended to the Department of the Interior a 3.0 mg/m^3 Federal standard to require lower respirable dust levels in coal mines.

The committee's suggested interim standard of 3.0 mg/m^3 for the first 3 years after enactment is consistent, according to the Surgeon General, with the data from the British pneumoconiosis field research project in which dust concentrations in 24 mines ranged from 1.0 mg/m^3 to 8.9 mg/m^3 (average of 3.8 mg/m^3) and with the standard used since 1966 by the Pennsylvania Department of Mines and Mineral Industries to evaluate dust exposures in coal mines in that State.

THE IMPACT OF THE STANDARDS ON THE PREVALENCE OF THE DISEASE

According to a report submitted to the committee by the Department of the Interior, on June 16, 1969, the coal dust standards in the bill will substantially reduce the prevalence of the disease, both simple pneumoconiosis and progressive massive fibrosis (complicated pneumoconiosis). The Department's report on the effect of reducing the dust levels to 4.5 mg/m^3 , 3.0 mg/m^3 , and 2.0 mg/m^3 is based on British data.

The probability of developing simple pneumoconiosis decreases with decreasing dust concentrations.

At 7.0 mg/m^3 (the current average dust level in mines surveyed by the Bureau of Mines) the rate per 1,000 miners, after 35 years exposure, would be 360 (36 percent):

At 4.5 mg/m^3 , the expected rate would be 150 per 1,000 miners (15 percent):

At 3.0 mg/m^3 , the expected rate would be 50 per 1,000 miners (5 percent):

And at 2.0 mg/m^3 , the expected rate would be 20 per 1,000 miners (2 percent).

The probability of developing progressive massive fibrosis (complicated pneumoconiosis) also significantly decreases with reduced dust exposures.

For example, at 7.0 mg/m^3 , about 130 miners per 1,000, after 35 years exposure, would be affected (13 percent):

At 4.5 mg/m^3 , the rate would be about 40 miners per 1,000 (4 percent):

And at 3.0 mg/m^3 , the rate would be about 20 miners per 1,000 (2 percent).

The dust standard of 3.0 mg/m^3 in the bill would reduce the probability of contracting simple pneumoconiosis from 36 percent to 5 per-

cent or a reduction to about 1/7th the probability of contracting the disease at the average dust concentrations now found in U.S. mines. At the 2.0 mg/m³ level, to be in effect in 3 years, the probability of contracting simple pneumoconiosis would be reduced by another 60 percent to an absolute rate of only 2 percent. It is for this reason that the bill requires that an operator attain the lowest possible level and permits waiver to a higher level only when the standards cannot be met because of the lack of technology for a particular mining condition.

SIGNIFICANCE OF THE PROBLEM IN TERMS OF HUMAN WELL-BEING AND ECONOMIC IMPACT

In the United States, it is difficult to obtain accurate data on the compensation costs for coal workers' pneumoconiosis. Reasonably accurate figures are available from only two States. Since the enactment of the Pennsylvania law in January 1966, the State has compensated over 25,000 cases of coal workers' pneumoconiosis from anthracite and bituminous mines. For fiscal year 1968, the reported cost was \$32 million, according to the Pennsylvania Department of Mines and Mineral Industries. In Alabama, there were 1,318 fatal and nonfatal cases of pneumoconiosis representing a compensation cost of \$3,579,000 for the period 1962-66. West Virginia for the same period reported 3,132 cases of silicosis. Based on a prevalence rate of 10 percent with an average compensation cost of \$5,000 to \$7,000, the potential compensation cost among presently employed miners is in the range of \$64 million to \$90 million.

Compensation costs do not reflect the total economic loss, since there are other costs which have not been estimated with any degree of accuracy such as medical and hospital, loss of earning power, welfare, rehabilitation, job retraining, and above all, the economic deprivation of the families of affected workers. If the estimate is accepted that compensation cost reflects about one-third of the total costs, then it is evident that the present reservoir of disease in the industry represents a potential cost in the magnitude of \$300 million.

The United States has lagged behind other industrialized nations in recognizing that coal workers' pneumoconiosis is an industrial disease problem of major proportions. The money costs of the disease represent a staggering economic burden far outweighing any increased production costs necessitated by the health standards of this bill.

And these costs, of course, do not take into account the immeasurable cost of human pain and suffering. Nor do they take into account the incidence of heart disease caused by coal workers' pneumoconiosis.

DUST LEVELS IN U.S. COAL MINES

During 1968 and early 1969, the Bureau of Mines investigated respirable dust concentrations in 29 selected large mines. In this investigation, a total of 280 working sections were sampled. The original objective of the study was to obtain data on dust concentrations in the environment and by the occupational classifications to serve as a basis of correlation with the X-ray and medical study proposed by the Public Health Service. Essential engineering data which related to dust concentrations in the mines were also obtained.

Due to the long range nature of the proposed medical study, the criteria for selecting most of the mines were (a) the mine must employ more than 20 men underground, and (b) the mine should have sufficient coal reserves to last at least 10 years. As a result, it cannot be presumed that the data are representative of the entire industry. Care, however, was taken to select mines with typical mining methods and machines, employing a total of more than 6,000 miners in a wide range of coal seams and in a number of different States.

In addition, data were also acquired in 12 small mines (those employing 14 men or less), employing a total of approximately 150 miners, so that information on dust levels in small mines would be available.

The major findings of the study were:

(a) A significant portion of the underground occupations in U.S. mines are exposed to dust concentrations in excess of the recommended standards.

(b) The mining machine operators and helpers, loading machine operators, and roof bolters, generally have the highest dust exposure. All these occupations have about the same average dust exposures.

(c) The primary purpose of ventilation in the face areas of coal mines is to maintain an adequate supply of fresh air to dilute the methane concentration and to remove airborne dust. In some mines this ventilating air was dust-laden.

(d) Dust levels in small mines for comparable occupational categories were generally higher than in the large mines. This, however, was due largely to poor ventilation practices. Some small mines were not mechanically ventilated.

MEETING THE HEALTH STANDARDS

When the present administration proposed a coal mine health and safety bill in March 1969, it provided that operators would be required to maintain continuously the dust level at no greater than 4.5 mg/m^3 and that miners would be withdrawn when the level exceeded 5.5 mg/m^3 . Other legislation pending before the committee at that time would have required a 3.0 mg/m^3 standard.

The Bureau of Mines Survey of dust in U.S. mines was then conducted in April. The percentage of shifts during which the six occupations generally exposed to the highest dust concentrations met various dust standards, according to the survey, is shown in the following table:

FULL SHIFT EQUIVALENT "MRE" DUST LEVELS FOR SPECIFIC MINING OCCUPATIONS

	Percent of shifts meeting a given standard		
	Less than 3.0	3.1-4.5	+4.5
Continuous mining machine operator.....	25	16	59
Mining machine helper.....	29	22	49
Cutting machine operator.....	25	21	54
Cutting machine helper.....	22	13	65
Loading machine operator.....	18	19	63
Coal driller.....	39	9	52

The survey data demonstrated that a number of shifts were already meeting the dust standard of 3.0 mg/m³ even for the dustiest occupation.

Yet, in May, in response to the Labor Subcommittee's request for the Administration's views on the propriety of a 3.0 mg/m³ standard, the Secretary of the Interior wrote:

We continue to view the 4.5 standard established in S. 1300 to be effective 6 months after enactment as being the proper first step in reducing the dust problem in the mines. It is attainable now, given the present state of technology. Based on present technology, the 3 standard is not now generally attainable. We do not, however, consider the 4.5 standard as a floor. Our objective is to move to a lower standard of 3 or less as soon as possible. We believe that technology will be available to permit the industry to reach the 3 standard within 3 years after the 4.5 standard is effective, and would not object to including such a schedule in the bill so long as the flexibility is retained in the Secretary to lower the standard later below 3.

The Subcommittee on Labor recommended to the full Labor and Public Welfare Committee, however, that since a significant proportion of mines could now achieve the 3.0 mg/m³ standard, the bill should provide for such a standard within 6 months after enactment, coupled with authority in an interim compliance panel to grant permits for noncompliance for those mines which can achieve a level of 4.5 mg/m³ or less, but not 3.0 mg/m³.

The administration's current position is that it would be in the best interests of the miners to require the 3.0 mg/m³ standard now. As it stated in a June 16 letter:

Despite the fact that we are certain that a substantial percentage of the working faces in U.S. mines cannot with existing technology meet a 3 standard, we believe it is appropriate to establish a 3 standard now. Where the 3 standard is attainable now, we believe it is in the best interests of the employees of such mines to require such a standard.

This is what the bill does.

It is the opinion of the Department of the Interior that, without any reduction in production, virtually all U.S. mines can meet a 4.5 mg/m³ standard within 6 months after enactment of the bill using available technology, and that almost all U.S. mines can attain the 3.0 mg/m³ standard within 3 years after enactment. The Department also concludes that a significant percentage can meet a 3.0 mg/m³ standard within 6 months after enactment.

The Surgeon General testified that the best medical information available indicates a direct correlation between the amount of dust breathed by miners and the progression of coal miners' pneumoconiosis. This means that the committee's recommended interim standards will not prevent the disease, and that some new disease will develop and the disease will become more severe in some miners already afflicted.

In addition, the committee was impressed with the point emphasized

by the Department of the Interior and the Surgeon General that a 3.0 mg/m³ standard is not a good medical standard. As the Surgeon General testified, the ideal standard is 0.

It was clear that the dust levels must be reduced even further quickly. Accordingly, the committee adopted a 2.0 mg/m³ standard as the next interim level effective 3 years after enactment. Testimony indicated that research to reach this level should be completed within this period. If not, however, provision is made to extend the time, after notice to the Congress. The committee believes that the bill's timetable can be achieved and, accordingly, the committee expresses its firm intention that the Department of the Interior immediately undertake all research necessary to achieve the timetable.

The committee in arriving at these conclusions was keenly aware the inaction by this industry in initiating steps immediately after the Surgeon General's recommendation was made public, and even now, to accelerate its own research efforts to control the dust problem. The industry has been strangely reluctant to act to solve its problems on this issue, despite the clear and unmistakable evidence that pneumoconiosis is a serious problem in the mines and that the miners themselves are deeply and seriously concerned. The committee hopes that the industry will realize that the miners, the public, and the Congress are serious about this problem.

Measuring the dust level

The bill provides that the dust standard shall be continuously maintained during each shift. The phrase "during each shift" was included by the Subcommittee on Labor in its recommendations to the full Labor and Public Welfare Committee. The committee in adopting the subcommittee's recommendations, intends that the dust level not exceed the specified standard during any shift.

It is the committee's intention that the average dust level at any job, for any miner, in any active working place during each and every shift, shall be no greater than the standard. Since some mine operations involve a varying pace of activity, the dust level could significantly differ from one shift to another. It is expressly noted, therefore, that the bill does not allow multiple shift averaging.

The Use of Respirators

The committee bill expressly prohibits, as a general policy, the use of personal protective devices, including respirators, as a substitute for environmental control measures. Both the Public Health Service and the Bureau of Mines consider such devices to be neither desirable nor practical for the rigorous physical operations involved in coal mining. Admittedly, certain types of respirators (such as those with built-in air supplies or attached to a source of filtered fresh air, commonly called supplied air respirators) can provide virtually 100 percent protection of the respiratory tract. But these types of devices present weight and other problems which limit the user's working efficiency, and may cause increased accident hazards in the confined environment of a coal mine.

Use of this equipment has been for emergency situations where personnel are exposed to contaminants which have a rapid effect on life or health after comparatively short periods, and for nonemergency situations in which engineering control measures or other means of minimizing the exposure are not practical.

The mechanical filter respirators—the more common type of device which might be used in a coal mine situation—present special problems. First, the weight of medical testimony raised serious doubt as to the ability of these filters to trap the fine particles of the respirable coal dust which cause pneumoconiosis. Secondly, the Department of the Interior reported that the use of such devices significantly reduces the ability of miners afflicted with pneumoconiosis to breathe.

The ability of air to pass through the filter decreases with the increase of contaminants trapped. There is a resulting possibility that the worker will remove the filter and not replace it, thereby negating the protection provided. In the case of supplied air respirators, the possibility of carbon monoxide being drawn into the supply line also cannot be overlooked.

The record demonstrates that there are extreme difficulties in obtaining cooperation from workers asked to utilize personal protective equipment. It also should be noted with regard to respirators and similar devices, that a comprehensive maintenance program is necessary to keep them effective. Unlike the miner's helmet and his safety goggles, respiratory protective equipment may be defective, although there is no obvious external indication. Respiratory equipment requires careful fitting, and there must be a continuous technical effort for cleaning, inspection, and maintenance.

Accordingly, it was the view of the committee that this type of equipment cannot be used as a substitute for environmental control measures, but rather should be used only in those specialized occasional situations specifically authorized in the bill.

Medical examinations

The committee agrees with the administration's proposal to require each operator to establish a program for annual X-rays of the miners. The Surgeon General may also require such program to include other tests. He may require further that miners be given additional medical examinations. The results of the X-ray, other tests and medical examinations shall be available to the Surgeon General, and, if the miner consents, to his physician and other appropriate persons. In no event, however, may a miner be compelled by the operator or any other person to submit to an X-ray, other test or medical examination.

The committee heard testimony to the effect the X-ray examinations alone could not always establish the existence of pneumoconiosis. As the Surgeon General testified, frequently miners who have shown no X-ray evidence of the disease are found, in an autopsy, to have contracted the disease. Therefore, the committee is authorizing the Surgeon General to require any medical examinations which, in his judgment, are necessary both to establish the extent and severity of the disease and otherwise to promote the health of miners.

* * * * *

TITLES IV AND V—RESEARCH

The Department of the Interior estimates that within 3 years the administrative cost for coal mine safety, including health and safety research, will attain a level of at least \$30 million annually, and remain there for the foreseeable years. Interior expects this \$30 million plateau to be reached even if no new legislation is enacted.

These prospective costs are about three times greater than the current level of expenditures. In fiscal year 1969, for example, only \$11 million was appropriated for the Bureau of Mines health and safety program for all mineral industries; less than \$2 million of these funds was for health and safety research. Therefore, in absolute arithmetical terms, for health and safety for coal mines alone, the Department contemplates an additional need of at least \$19 million a year.

There is no doubt that comprehensive and costly health and safety research is necessary. Nonetheless, the cost problem presented here squarely raises the question of who should pay; the already overburdened taxpayer or the industry whose inattention and failure to address itself adequately to health and safety is primarily responsible for the serious health and safety problems confronting the Nation's coal miners.

To assure that the industry itself bears in some measure the increased costs caused by the health and safety problems, title V of the committee bill establishes a coal mine health and safety research trust fund in the Treasury. Under this title, there would be a research assessment on each ton of coal sold or used, beginning with 1 cent in the first year, and increasing a penny a year until it reaches a level of 4 cents per ton in the fourth year. This research assessment is expected to yield, by the fourth year, a minimum of \$20 million annually for health and safety research.

It should be made clear that the research assessment should be not viewed as a method of full funding for this legislation. It simply assures that a contribution will be made by the coal industry to the costs of a large effort necessitated by its health and safety problem.

INTERIOR DEPARTMENT OPPOSES RESEARCH ASSESSMENT

The Department of the Interior opposes the research assessment. As stated in a May 22 letter from Under Secretary Train, the Department's position is:

We recognize that there is a need for more health and safety research for this industry, but we doubt that a system which taxes the production of coal and earmarks the revenues for health and safety research is the most appropriate method to supply this need.

Experience has shown to us that coal mining, indeed all mining, is a complex system, all parts of which must be considered simultaneously—health, safety, productivity, environmental control, and so forth. The effect of some improved mining technique on productivity cannot be considered apart from its effect on the health and safety of the miner or on its effect on environmental pollution. Our research program must therefore, be designed to study the entire mining operation. The proposed user tax, in contrast, would tend to separate the health and safety function into a separate category which would be artificial.

Under the bill, the levy would apply to all coal mining firms without regard for the method of mining or for their past safety record. The question you have asked raises the issue whether such a tax should be established on only one commodity or one industry.

For example, other dangerous industries, such as the nuclear industry which is a competitor of the coal industry, are not required to pay directly for health and safety research. The proposal might tend to confine the entire research and development effort to the Government. The future research and development effort should, in our opinion, not be carried out by the Government alone. Industry should be encouraged to assume, on an industrywide basis, a greater role in this area.

Further, we believe that tax on the coal industry for health and safety research and development purposes should not be imposed without thorough study of its impact on the industry and the consideration of alternative approaches. To our knowledge, this has not been done to date.

For the above reasons, it is our view at this time that a tax should not be imposed in the coal industry for health and safety research and development purposes.

NEED FOR RESEARCH ASSESSMENT

The basis of the Department's position is narrow and does not reflect adequate concern for the public equities. A fair balance of the public interest requires careful attention to the question of the indus-

tries' responsibility for the problem and its ability to contribute to the costs entailed to resolve it.

By these criteria the facts clearly validate the reasonableness of requiring a significant contribution by the industry.

In recent years, there has been a change in the ownership of U.S. coal mines. Over 40 percent of our Nation's coal is now produced by companies owned or controlled by the giants of the oil and metals industries. The three largest coal companies (Peabody Coal, Consolidation Coal, and Island Creek Coal) are now owned by Kennecott Copper Co., Continental Oil Co., and Occidental Petroleum Co., respectively. Other major U.S. corporations owning large coal interests include Eastern Gas & Fuel Associates, Standard Oil (Ohio), Humble Oil & Refining Co. (affiliated with Standard Oil of New Jersey), Gulf Oil, United States Steel, Jones & McLaughlin Steel, and Bethlehem Steel. One of the major defense and space contractors, General Dynamics, prides itself on being one of the Nation's 10 largest coal producers.

Over the past 10 years, during which the corporate ownership of the coal industry has been radically changed, the methods of production have also been dramatically changed, yielding as previously noted, vastly increasing profits, from \$56 million in 1959 to \$130 million in 1965.

During the past 16 years, according to Secretary of the Interior Hickel, the coal industry has spent \$195 million on commercial research and development. Though exact figures were not available, he estimated that less than \$15 million was spent by the industry on health and safety research.

It is no wonder that the Department of the Interior concluded that—

While the coal mining industry has made giant strides in its ability to extract the natural resource coal from the depths of the earth, it has lagged behind other industries in protecting its most valuable resource—the miner.

Yet, during the 16 years that the industry has invested \$195 million on commercial research, the Government has given the industry subsidies amounting to \$168 million of the taxpayers' funds for production research and development.

The health and safety hazards imposed upon workers in this industry are directly attributable to developments in the technology of mining coal. For example, the dreadfully high incidence of black lung is an immediate consequence of the coal dust created by the increased production rates which this industry has achieved in recent years. Despite this obvious fact, however, a fatalistic attitude regarding the inevitability of coal mining hazards appears to have permeated the industry and to have anesthetized it from the shocking reality: men are maimed and killed in mine accidents, or their lives are slowly ground out in the struggle with black lung, because the industry has not been willing to spend the funds necessary to protect the workers from such fates.

We know that 309 U.S. miners lost their lives in the mines in 1968. We know that 100,000 U.S. miners are afflicted with pneumoconiosis. But we also know that in this age of space exploration the incidence

of this disease can be completely prevented by implementing existing technology and undertaking the research necessary to reduce the level of respirable dust.

The problem lies not in the lack of technical competence, but in the lack of will to invest in health and safety. While we have been willing to spend money on developing techniques to increase production, we have not been willing to spend money to apply and improve even known techniques for reducing the hazards of mining.

It is only proper that this industry, which has not met its health and safety problems, but which has enjoyed substantial financial benefits through the commercial research paid for by the U.S. taxpayers, should now be required to share in the costs of research necessary to protect the health and safety of the miners.

RESEARCH

The bill directs the Secretary and the Surgeon General to conduct comprehensive studies, experiments, and demonstrations in their respective areas of expertise in the field of coal mine health and safety. Special efforts are to be made to find improved methods for the recovery of persons from a mine after an accident, to solve the problem of underground-to-surface communications, to find improved and safer sources of power to haul men and coal underground, and to illuminate active working places. In addition, section 201(b) requires research in connection with hazards from trolley wires and trolley feeder wires, signal wires, the splicing and use of trailing cables, and in connection with improvements in vulcanizing of electric conductors, improvement in roof control measures, methane drainage in advance of mining, where such drainage relates to safety, improved methods of measuring methane and oxygen concentrations and the use of improved underground power equipment.

The Surgeon General and the Secretary will conduct an accelerated program to reduce dust concentrations underground. This section also would direct the Surgeon General to conduct research and studies on the health conditions of nonminers working with or around coal products in areas outside coal mines.

The committee intends the Secretary and Surgeon General to initiate studies with the goal of eliminating all health and safety hazards in mining. The committee expects that the Secretary and the Surgeon General will look to scientific and engineering knowledge, not just in the mining industry, but in all fields offering promise of new methods to protect health and safety.

ADMINISTRATION

Prior to the Farmington disaster of last November 20, there was a notably unimpressive record by the Department of the Interior and its Bureau of Mines in respect to improving the health and safety of miners.

Many of the deficiencies of the 1952 Act were known years ago, yet little effort has, in the past, been made by the Bureau or the Department to correct them. Similarly, the advisory code has not been revised since 1953, despite significant changes in coal mining since then.

In the 17 years since the enactment of the Federal Coal Mine Safety Act, as amended, health and safety has been the stepchild of the

Bureau. The primary interest of the Bureau during this period has been mineral production, including coal. In some cases, the people involved in the direction of health and safety have been lethargic and more industry production oriented than miner health and safety oriented. Considering the accidental death and injury record of this industry, it is astounding to note the Bureau's budget for this period has been approximately \$10 million for all mine health and safety annually until this fiscal year, as compared to the Bureau's total annual budget of approximately \$80 million.

As in the case of this legislation, the catalyst for action to change the Bureau's complacent attitude was the Farmington disaster. That fateful event has caused the Bureau to undertake a number of changes, considered drastic by many in the industry, but quite elementary considering the health and safety record of the industry. Some evidence of this improved attitude can be found in the fact that since January 1 through August 30, 1969, there have been 914 spot inspections, as compared to 808 in all of 1968. In addition, there have been 1,262 closing orders issued during this period, as compared to 612 such orders in 1968.

Despite this evidence the committee is still concerned that not enough attention is given by the officials of the Department to insuring that the health and safety functions of the Bureau will be buttressed. The expanded authority and responsibility found in this bill demands that these functions be substantially expanded and improved. The committee intends to exercise its legislative review responsibilities respecting this program in the future with great care. The committee intends to do whatever it can to assure that greater efforts will be made to bring redirection to those in the Bureau who are more production oriented than health and safety oriented. The committee's bill, as effective as it may be, will never achieve adequate health and safety for the miner unless the Department acquires new perspective and focus concerning the importance of the miner and unless there is strong and vigorous administration by the Department.

Section-by-Section Analysis

The following analysis discusses all the provisions of the bill.

Section 1

This section cites the act as the "Federal Coal Mine Health and Safety Act of 1969."

Section 2. Findings and purpose

This section makes certain congressional findings relative to the need for, and desirability of, legislation to improve the health and safety of the Nation's coal miners. It emphasizes the fact that the operators of coal mines, with the assistance of the miners, have the primary responsibility to remove the causes of accidents and occupational disease. It declares that the purpose of the act is to establish immediately comprehensive interim mandatory health and safety standards, to require that improved standards be developed, to require compliance by the operators and the miners, to aid the States in developing State health and safety programs, and to improve present research and training programs in this field.

Section 3. Mines subject to act

This section establishes that all coal mines the operations or products of which affect commerce are subject to this act, and each operator and every miner of such mine must comply with its provisions. It applies to surface, as well as underground coal mines which affect commerce, including those coal mines which provide coal to the United States under contract or other agreement and to coal mines located on Federal lands.

Section 4. Definitions

This section defines various terms used in the act.

The definition of an "operator" is designed to be as broad as possible to include any individual, organization, or agency, whether owner, lessee or otherwise, that operates, controls, or supervises a coal mine, either directly or indirectly. It does not, however, include persons whose primary responsibility is to run the mine or supervise employees such as a superintendent or foreman unless such person meets the statutory definition of operator. These are the agents of the operator.

The definition of an "imminent danger" is broadened from that in the 1952 act in recognition of the need to be concerned with any condition or practice, naturally or otherwise caused, which may lead to sudden death or injury before the danger can be abated. It is not limited to just disastrous type accidents, as in the past, but all accidents which could be fatal or nonfatal to one or more persons before abatement of the condition or practice can be achieved.

The definition of an "accident" includes, but is not limited to, such

occurrences as mine fires, ignitions, explosions, roof falls, or inundations. It also includes any other occurrence which causes injury, whether or not lost time results, or death to one or more persons.

Section 5. Interim compliance panel

This section establishes a five-member Government panel to consider applications for noncompliance permits under sections 102 and 206(1) of the act. The section authorizes the Panel to utilize the services, personnel and other assistance of the Departments of Health, Education, and Welfare, Interior, Commerce, and Labor in carrying out its functions without regard to any limitations in other statutes relative to providing such services, personnel, or other assistance or the funding of such assistance and to appoint hearing examiners to carry out hearings under those sections. The Panel will continue in existence until completion of its functions under those two sections and then will terminate automatically. The Panel shall make annual reports to the Secretary for the Congress.

Title I

PART A—INTERIM MANDATORY HEALTH STANDARDS FOR CONTROLLING
DUST AT UNDERGROUND COAL MINES

Section 101. Scope of coverage

Section 101(a)

This section establishes that the health standards set forth in sections 102 and 103 of this title for underground coal mines are to be considered the interim, not permanent standards, for all underground coal mines. Such standards may be changed or revised by the Secretary, in accordance with health standards established by the Surgeon General, by improved health standards promulgated by him under the procedures of this title. These interim standards will be immediately effective after the operative date of the title, except where a later date is specified in the act, and will be enforced in accordance with the procedures of title III of the act. It is intended that any later change or revision of, or addition to, such interim standards will provide improved protection to the health of the miners.

Section 101(b)

This section establishes that the objective of the health standards, both the statutory standards and those promulgated by the Surgeon General and the Secretary, is to make the atmosphere of the active workings of underground coal mines sufficiently free from respirable dust so that each miner can work an entire life without being disabled by pneumoconiosis or other occupation-related disease.

Section 101(c)

This section directs the Surgeon General to develop and submit to the Secretary and the Congress within 1 year after enactment recommendations on the maximum personal exposure of dust that can be permitted in any shift without leading to a disability. Three years after enactment the Secretary must publish a schedule when all coal mines must reduce personal exposure in the mine atmosphere in a shift to the Surgeon General's recommended levels. The schedule will be based on technological feasibility and availability of equipment. The schedule will be adopted after following the procedures set forth in section 105.

Section 102. Dust standard and respirators

Section 102(a)

This section establishes that 6 months after enactment each coal mine operator must maintain the concentrations of respirable dust in the atmosphere for each miner in all the active workings of the mine during each shift at or below 3.0 milligrams per cubic meter of air. If a noncompliance permit is obtained under section 102(b) for any mine, this level may be set by the Panel at between 3.0 and 4.5 milligrams for any active working place in that mine.

Three years after enactment, this section establishes for all mines the level of respirable dust concentrations in the atmosphere for each miner in all active workings of the mine during each shift at or below 2.0 milligrams, but where a noncompliance permit is granted for any mine, the level for any active working place in that mine may be set by the Panel at between 2.0 and 3.0 milligrams.

In all cases, the dust standard is keyed to each individual miner. The air he breathes, wherever he works in the mine, must not contain more respirable dust during any working shift than the standard permits.

Since high quartz content in coal dust, such as might be encountered in drilling for roof bolts and in advancing tunnels, presents a greater health hazard, the Surgeon General is directed to prescribe the formula to be used in arriving at a dust standard for dust containing more than 5 percent quartz which offers comparable protection to the statutory standards for dust containing 5 percent or less quartz.

Section 102(b)

This section establishes a procedure for obtaining noncompliance permits.

A mine operator who determines that he cannot comply with the applicable standard in specified active working places on the effective date of such standard may seek an extension of time to comply by filing an application with the Interim Compliance Panel for a noncompliance permit. If the application satisfies the requirements of section 102(c), the Panel, in the case of the 3.0 standard, shall issue such a permit which will be effective for a period of up to 12 months, as determined by the Panel, and which shall permit the operator to maintain the respirable dust concentrations in the active working place for which the permit is issued at the lowest level possible, but, in no event, at more than a 4.5 level. If the application is for an extension of time to comply with the 2.0 standard, the Panel shall issue the permit if the application satisfies the requirements of section 102(c) and if, after there has been an opportunity for a public hearing on the application, it determines that the operator cannot comply with the standard on its effective date. As in the previous case, the maximum term of the permit is 12 months. The maximum dust level permitted would be 3.0.

This section also provides a procedure for renewals of such permits after a hearing and a finding by the Panel that the applicant is still unable to comply with the appropriate standard. Such renewals shall be for a maximum of 6 months each. In the case of the 3.0 standard, the total period of extension under the initial and renewal permits shall not exceed 36 months from the date of enactment of this act. In the case of the 2.0 standard, this total period of extensions shall not exceed 72 months from the date of enactment of this act.

Section 102(c)

This section specifies the information needed in each application for an initial or renewal permit, including a representation in such application by the operator and a certified engineer that the extension is needed because the technology is not yet available to reduce the dust concentrations at those active working places for which an extension is requested, or because of a lack of other effective control techniques or methods, or because of a combination of these reasons.

Section 102(d)

This section requires that the Secretary conduct spot inspections to insure compliance with the dust standards at all underground mines, with specific emphasis on those where permits have been issued.

Section 102(e)

This section provides for judicial review of any decision of the Panel by the operator or the miner's representative.

Section 102(f)

This section provides specific procedures for enforcement of the dust standard, in lieu of the enforcement provisions of section 302(a) and (b) of this act.

Under this section, each underground coal mine operator must take samples of the atmosphere of the active workings of the mine to determine the respirable dust concentrations. The samples will be taken by devices approved by the Secretary and in accordance with the Secretary's requirements concerning method, location, and interval. Each sample will be sent to the Secretary after each shift, probably by the miner himself in properly provided envelopes, and analyzed and recorded by the Secretary. The objective of this sampling will be to provide an accurate basis for determining if the dust standard is being exceeded on any shift and to issue a notice of violation thereof if it is exceeded.

If, based on a sample taken by the operator or by an inspector, the applicable dust level is exceeded on any shift, the Secretary or the inspector must issue a notice of violation identifying the area of the mine affected and fixing a reasonable time to comply with such level which time cannot be more than 72 hours and the operator must begin immediately to take corrective action. If, at the end of such time, the violation is still not abated in the affected area of the mine, the Secretary or his inspector must issue an order requiring that while corrective action continues no work other than that which is necessary to take corrective action and to obtain valid samples to determine if such action is effective will be permitted until the dust is reduced to the required level. The order may be appealed under title III of the act.

Once an order is issued, the Secretary, on request of the operator, must dispatch knowledgeable employees of the Department of the Interior to assist the operator in reducing the dust level, if such knowledgeable persons are available. Such persons may require the operator to take such actions as they deem appropriate to reach the objective of controlling the dust.

Section 102(g)

This section requires that dust resulting from drilling in rock be controlled by dust collectors, water or water with a wetting agent, or by ventilation, or other means approved by the Secretary. It also provides protection against the hazards of short-term exposures to gas, dust, fumes, or mist for the miners engaged in such activity through the use of respiratory equipment.

Section 102(h)

This section requires that respirators be worn by all persons exposed to dust in excess of levels established or permitted under section 102 (a) through (c) of this act, such as miners required to take corrective action, but such respirators must not be used as a substitute for environmental controls. The operators must keep a supply of respirators available to the miners which are properly maintained.

Section 102 (i) and (j)

These sections require that respirators, dust collectors, and respiratory equipment be approved by the Secretary in accordance with health standards established by the Surgeon General, and define the term "MRE instrument."

Section 102 (k), (l), and (m)

These sections establish procedures for extending the time to comply with the 2.0 standard where the Secretary finds that technology or other control techniques or methods are unavailable.

Section 102(n)

This section provides for semiannual reporting to Congress by the Secretary and the Surgeon General on the progress in achieving compliance with the applicable dust standards.

Section 102(o)

This section authorizes inspectors to require greater quantities of air to reach face areas to protect miner's health, and it requires that sufficient space be provided between the line brattice or other approved device, where required, and the rib to permit air to reach the face workings to control respirable dust.

*Section 103. Medical examinations**Section 103(a)*

This subsection requires each operator to establish a program for annual chest roentgenograms of the miners. The Surgeon General may also require such program to include other tests. And he may require that miners be given additional medical examinations. The results of the chest roentgenogram, other tests and medical examinations shall be available to the Surgeon General, and, if the miner consents, to his physician and other appropriate persons. In no event, however, may a miner be compelled by the operator or any other person to submit to a chest roentgenogram, other test or medical examination.

Section 103(b)

This subsection provides that if, in the course of the period during which the statutory 3.0 standard is in effect, a miner, in the judgment

of the Surgeon General, shows evidence of the development of pneumoconiosis, he shall be assigned by the operator to any working section or other area of the mine, at the miner's option, where the dust level does not exceed 2.0 mg/m^3 . The same provision applies during the period in which the statutory 2.0 standard is in effect except that the respirable dust in the place to which the miner is assigned must be at a level, below 2.0 mg/m^3 , as prescribed by the Secretary in accordance with health standards established by the Surgeon General.

The Surgeon General, in determining whether there is evidence of the development of pneumoconiosis, is not restricted to the results of chest roentgenograms. He may use such other examinations as he determines will permit a diagnosis of the disease.

In order to insure that miners who are afflicted with pneumoconiosis suffer no loss in compensation, the committee has included a provision entitling a miner who is transferred to another job pursuant to this subsection to receive his old or new rate of pay, whichever is greater.

PART B—PROMULGATION OF MANDATORY HEALTH STANDARDS

Section 105. Health standards review

Section 105(a)

This section requires the Secretary to promulgate mandatory health standards, in accordance with health standards established from time to time by the Surgeon General. This section gives the flexibility necessary to achieve the ultimate goal of complete prevention of occupational diseases in coal mines.

Section 105(b)

This section requires that the Surgeon General consult with other Federal agencies, State agencies, operators and miners, advisory committees, and other persons and organizations in developing health standards.

Section 105(c)

This section provides for publication of proposed standards and the schedule provided for in subsection 101(c)(2) and a period of not less than 30 days for comment. At the end of such period, and after considering any comments, the Secretary may promulgate the standards with such modifications as he and the Surgeon General deem appropriate, except in the case of the standard to which an objection has been filed and a hearing has been requested.

This section also requires that the Secretary, in accordance with health standards established by the Surgeon General, publish proposed mandatory health standards for surface coal mines and for surface work areas of underground coal mines as soon as possible, but not later than 12 months after enactment.

Section 105(d)

This section requires that if anyone files written objection to a proposed standard with the Secretary within the period established for comment under section 104(c) and states the grounds therefor and requests a hearing on the objection, the Secretary must publish a notice of the standard objected to and the hearing on the objection. Any standard not objected to may be finally promulgated, without awaiting the results of the request for a hearing.

Section 105(e)

This section provides for the holding of a public hearing on the objections raised to receive relevant evidence. Within 60 days after a hearing is completed, the Secretary must make public findings of fact, and may promulgate the standards with such modifications, or take other appropriate action, as he and the Surgeon General deem appropriate.

Section 105(f)

This section makes standards finally promulgated effective on publication, unless a different effective date is specified at the time of publication.

Section 105(g)

This section requires the publication of all health standards established by the Surgeon General at the time of their transmittal by him to the Secretary.

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Title IV—Administration

Section 401. Research

Section 401(a)

This section directs the Secretary and the Surgeon General to conduct comprehensive studies, experiments, and demonstrations in their respective areas of expertise in the field of coal mine health and safety. Specific reference is made to research in the safety field for the Secretary to undertake in addition to the research items referred to in section 201(b) of this act, to recovery of persons in a mine after an accident, the problem of underground-to-surface communications, improved and safer sources of power to haul men and coal underground, and to illumination of active working places. The Surgeon General and the Secretary will conduct an accelerated program to reduce dust concentrations underground.

Section 401(b)

This section directs the Surgeon General to conduct research and studies on the health conditions of nonminers working with or around coal products in areas outside coal mines.

Section 401(c)

This section permits exceptions to any requirement under this act to experiment with new techniques and equipment to improve health and safety. Any exception granted under this subsection would be subject to judicial review.

Section 401(d)

This section authorizes grants by the Surgeon General for research and experiments on respiratory and similar devices.

Section 402. Training and education

This section directs the Secretary to expand programs to educate and train operators and miners relative to health and safety, and it would direct that the Secretary provide technical assistance to coal mine operators in meeting the requirements of this act.

Section 403. State plans

This section provides for the approval of State plans to promote Federal-State coordination and cooperation in improving health and safety conditions in coal mines in accordance with certain criteria. It would also provide for the disapproval of such plans and for the withdrawal of approval thereof. In the latter case, provision is made for review by the Court of Appeals of the District of Columbia of the Secretary's decision to withdraw.

These State plans form a basis for making grants to the State to carry out the plan, including the training of State inspectors, and to assist the States in planning and implementing other programs to advance health and safety in coal mines. These grants may not be used to supplant State funds, but only to supplement such funds. The amount of the grant to a State shall not exceed 80 percent of the sum expended by the State in carrying out its enforcement program, and the appropriation authorized for these grants must be distributed to the States on an equitable basis where there is an approved plan.

This section directs the Secretary to cooperate with the State in carrying out a plan and, where appropriate, to develop and finance a program of training Federal and State inspectors jointly. The Secretary would also cooperate with the State in establishing a system of exchanging Federal and State inspection reports for the purposes of improving health and safety conditions in the mines of that State.

This section also authorizes an appropriation of \$3 million for fiscal year 1970, and \$5 million annually thereafter for grants to the States and to train inspectors jointly, including the development of one or more facilities for this purpose.

Section 404. Related contracts and grants

This section authorizes grants and contracts in carrying out the provisions of specified sections of the act.

Section 405. Inspectors; qualifications; training

This section gives the Secretary authority to appoint qualified people as inspectors. They must, in general, have practical experience in the mining of coal or as a practical mining engineer, or a good educational background. The details of the person's qualifications would be developed by the Secretary in an effort to get the most qualified people. It would authorize the Secretary to work with educational institutions and the operators and the States in developing and financing cooperative programs to train selected persons as inspectors and to train others for possible selection as inspectors. Because of the immediate need to hire qualified persons as inspectors, the statutory limitations on personnel would not apply to persons needed to carry out the provisions of this act.

The committee has intentionally rejected the provisions of the 1952 act with regard to inspectors' qualifications as being too restrictive. The Department should undertake immediately to recruit a vigorous and vitalized inspection force.

Section 406. Advisory committees

This section establishes two mandatory advisory committees in the fields of coal mine health and safety to help the Secretary and the Surgeon General in research in this area. Both committees would have Government, as well as, non-Government members. It would also authorize the appointment of other advisory committees on other matters.

Section 407. Effect on State laws

This section provides that only State laws less stringent than this act or those in conflict with this act shall be superseded.

Section 408. Administrative procedures

This section provides that certain procedures in title 5 of the United States Code would not apply to orders or decisions issued under this act because the act prescribes the procedures to be followed.

Section 409. Regulations

This section authorizes the issuance of regulations to carry out the act.

Section 410. Economic assistance

This section amends section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)) to permit loans to assist coal mine operators who qualify under that act as small business concerns in the purchasing, rebuilding, or conversion of equipment and other facilities to comply with the standards established or promulgated under this act. Loans may also be made or guaranteed for such purposes under section 202 of the Public Works and Economic Development Act of 1965, as amended.

Title V—Coal Mine Health and Safety

Research Trust Fund

Section 501. Establishment of trust fund

This section establishes a Coal Mine Health and Safety Research Trust Fund in the Treasury. It appropriates to the trust fund amounts equivalent to 100 percent of the assessments received in the Treasury under section 502. It also would make such amounts, as are provided by appropriation acts, available to the Secretary and Surgeon General to carry out the research required by sections 210(b), 401 and 402.

Section 502. Assessments on coal mine operators and importers of coal

This section requires operators and importers to pay an assessment ranging from 1 cent per ton to 4 cents per ton of coal sold or used in accordance with the schedule in the section. It authorizes the Secretary to enter into an agreement with the Secretary of the Treasury for the collection of the assessments in the same manner and with the same powers as if such assessments were excise taxes, in the case of operators, or customs duties, in the case of importers.

Title VI—Miscellaneous

Section 601. Jurisdiction; limitation

This section prohibits the temporary enjoining of any statutory health or safety standard in any proceeding in which the standard's validity is in issue.

Section 602. Operative date and repeal

This section establishes the operative date of the various titles of the act and provides for the repeal of the Federal Coal Mine Safety Act, as amended.

Section 603. Separability

This section assures the continued effectiveness of the remainder of the act in the event any of its provisions are held invalid.

Section 604. Reports

This section provides for separate annual reports and recommendations to the Congress by the Secretary and the Surgeon General.

Changes in Existing Law

In regard to the repeal of the Federal Coal Mine Safety Act, as amended, and the enactment of new legislation entitled "Federal Coal Mine Health and Safety Act of 1969," it is the opinion of the committee that it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate to expedite the business of the Senate.

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, other changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *

SEC. 4. (a) * * *

(b) * * *

(c) (1) There are hereby established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 7(b)(1), 7(b)(2), 7(b)(4), 7(b)(5), and 7(c)(2) of this Act, including administrative expenses in connection with such functions; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 7(a), 7(b)(3), 7(e), and 8(a) of this Act, titles III and V of the Small Business Investment Act of 1958, and title IV of the Economic Opportunity Act of 1964, including administrative expenses in connection with such functions.

* * * * *

SEC. 7. (a) * * *

(b) (1) * * *

(2) * * *

(3) * * *

(4) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in reestablishing its business if the Administration determines that such concern has suffered substantial economic injury as a result of the inability of such concern to process or market a product for human consumption because of disease or toxicity occurring in such product through natural or undetermined causes[.]; *and*

(5) *to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern operating a coal mine in effecting additions to or alterations in the equipment,*

facilities, or methods of operation of such mine to meet requirements imposed by the Federal Coal Mine Health and Safety Act of 1969, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period of not to exceed five years, if (A) the borrower under such loan is a homeowner or a small-business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (c) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. The interest rate on the Administration's share of any loan made under this subsection shall not exceed 3 per centum per annum, except that in the case of a loan made pursuant to paragraph (3) *or* (5), the rate of interest on the Administration's share of such loan shall not be more than the higher of (A) $2\frac{3}{4}$ per centum per annum; or (B) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum, plus one-quarter of 1 per centum per annum. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

* * * * *

INDIVIDUAL VIEWS OF MESSRS. PROUTY AND DOMINICK

The need for a new law to further safeguard the health and safety of coal miners is clear. Our hearings revealed that the present Federal Coal Mine Safety Act is inadequate in many respects for some States. It is indeed unfortunate that few States have strong and effective mine health and safety laws such as those in Colorado.

Our committee is unanimous in the view that the Federal law must be broadened and strengthened. This is apparent from the fact that not a single vote was cast against reporting this bill favorably.

This does not mean, however, that there is also unanimity concerning all the provisions contained in this bill, or over the omission of other provisions.

We all desire a strong bill. But a strong bill must be workable to be effective. To be workable means more than merely the inclusion of tough standards. It requires the inclusion of the best administrative procedures we can devise to permit the most effective operation and implementation of this legislation. It means the establishment of realistic timetables for the adoption of mandatory standards dependent upon new technology. Above all, it is of vital importance that the legislation which we enact to strengthen the present law, with regard to the health and safety of our coal miners, not also include requirements that may well endanger the productive capacity of the coal industry or otherwise threaten the well-being of other segments of our economy.

We believe that the major issues which should be scrutinized closely when this bill is debated in the Senate include the following:

1. Establishment of a mandatory standard of 4.5 milligrams of respirable coal dust per cubic meter of air for all coal mines 6 months from the date of enactment of this legislation, rather than giving the Secretary of Interior discretion to extend the time to meet this standard for up to an additional 6 months on a mine-by-mine basis.
2. Establishment of a mandatory standard of 2.0 milligrams of respirable coal dust per cubic meter of air for all coal mines 6 years after enactment, rather than requiring the Secretary of Interior to establish a 2.0-dust standard as soon as technology based on present and future research makes such a mandatory standard possible.
3. Omission of provisions providing for an independent Coal Mine Board of Review to review the promulgation of standards, mine closing orders, and assessment of the civil penalties authorized in the bill.
4. Imposition of a Federal royalty or user tax upon every ton of coal produced in or imported into the United States to be used for coal mine health and safety research, rather than using general tax revenues for this purpose.
5. Inclusion of provisions severely restricting the Secretary of the Interior's authority to exercise independent thought and judgment in promulgating health standards, rather than giving the Secretary dis-

cretionary authority to promulgate health standards he deems appropriate based on criteria developed and submitted by the Surgeon General.

6. The imposition of statutory requirements to pay miners for time not worked and to pay a miner his former rate of pay if higher when he is transferred to another type of work in a mine because of developing pneumoconiosis, rather than leaving these matters to be resolved through the processes of free collective bargaining.

7. Requiring the use of permissible heavy equipment in all coal mines based on elimination of the distinction between gassy and nongassy mines, without considering whether this requirement is warranted on the basis of comparing operations in small, shallow drift mines with those of deep shaft mines which extend for miles and miles underground.

It is our hope that our colleagues will join us in very carefully reviewing the bill reported by our committee in an effort to determine whether any of these provisions are unworkable, unrealistic, or inequitable.

THE VIEWS OF SENATOR JOHN SHERMAN COOPER

Senator John Sherman Cooper of Kentucky has been intimately connected with coal mines and the subject of coal mine health and safety for many years. Senator Cooper appeared before our committee to offer an amendment which to a certain extent would preserve the distinction between gassy and nongassy mines.

He has indicated that he will offer this amendment on the floor of the Senate, and as a courtesy to Senator Cooper, we are including the following views which he has prepared:

I am a cosponsor of the administration bill, S. 1300. I stated on the floor at the time of its introduction that I had reviewed the President's proposals and I considered them to be strong and comprehensive measures for dealing with and meeting the increasing problems of health and safety in our coal mines. At the same time, I indicated that I reserved my right to offer amendments and, based on my experience in this field, to call to the committee's attention and to the attention of the Senate particular suggestions that I believe would promote greater safety and health protection in our coal mines. In concluding my remarks I stated that I wished "to express firmly that the new hazardous conditions in our coal mines require new remedies if we are to provide for the health and safety of our workers. I shall work and vote for such a bill."

In the course of the Labor and Public Welfare Committee's consideration of this and related bills, I offered four amendments on the Senate floor—three were approved by the committee, one was rejected.

The first amendment would provide greater protection for all miners working in underground coal mines from the hazards of roof, face, and rib falls. (For a detailed explanation, see my remarks—Congressional Record of May 26, pages S5625-S5628.) The need for the amendment is supported by the records of the Bureau of Mines which show that roof falls

are responsible annually for more coal mine fatalities than all other causes combined. I am pleased to note that the committee accepted this amendment with some changes. It is included in section 203 of the reported bill.

A second amendment which I offered would prohibit the use of an open flame lamp in all mines. This amendment was also accepted by the committee. It is included in section 202 of the reported bill.

A third amendment I introduced would maintain the present classification of coal mines as "gassy" and "nongassy" mines. The amendment was rejected by the committee. Under existing law, mines classed as gassy must use permissible electrical equipment. The use of this equipment is not presently required in nongassy mines. The bill reported by the committee classes all mines as gassy and would require operators of mines now classified as nongassy mines to purchase and use permissible equipment. The operators of mines now classified as nongassy would be compelled by law to junk the equipment now in use and to purchase "permissible" equipment at a cost that would be prohibitive for most small operators, and would result in the closing of hundreds of mines and the loss of jobs by hundreds, if not thousands, of miners.

The justification provided by the Bureau of Mines for classing all mines as gassy is essentially the assumption that all mines are potentially gassy. This assertion requires thorough examination. A question I raised before the committee and will raise in the Senate is this: Does the safety record of the nongassy mines when compared with the gassy mines warrant this assumption, and the imposition on nongassy mines of such drastic legislation?

In my statement on the Senate floor on June 5, I submitted statistics from the Bureau of Mines showing that the danger of explosion and consequent fatalities and injuries is inherent in the mines which have been classed gassy and not in nongassy mines. The records of the Bureau of Mines disclose that in less than 400 gassy mines during the 16-year period (1952-68) 381 ignitions and explosions occurred, resulting in 374 fatalities and 427 injuries. In dramatic contrast, and in the same period, in over 3,000 nongassy mines, 52 ignitions and explosions occurred, resulting in 27 fatalities and 54 injuries.

An examination of the records of the Bureau of Mines will show that if "permissible" equipment had been required and used in the 3,000 nongassy mines, the explosions and the fatalities would not have been prevented. (A detailed analysis of the 52 ignitions and gas explosions is contained in my statement of June 5 at pages S6053-S6066 of the Congressional Record.)

This comparison, based on the Bureau of Mines records, clearly indicates the validity of the present classification of mines as "gassy" and nongassy. There are well known and identifiable characteristics distinguishing the two groups of mines. Mines now classed as nongassy have different topographical and geological characteristics. They are usually above the water table and gas has been released. The entries

of these mines, being above the water table, are usually driven into the slope or side of the hills. The area of these mines is necessarily of smaller acreage than gassy mines which are below the water table. Their entries are of lesser length and they are more easily ventilated.

One must fly against the facts, against the differing characteristics of gassy and nongassy mines, against the records of the Bureau of Mines, to place "nongassy" mines in the same category as "gassy" mines and to require nongassy mines to install the costly equipment that would drive many of them out of business and throw out of work thousands of miners in areas where unemployment is great and where coal is the chief source of employment.

I regret that the committee did not take testimony from representatives of the Bureau of Mines, the small- and medium-sized coal operators of nongassy mines, coal mine equipment manufacturers, dealers, and repair shop operators on the question of the cost of the permissible equipment required by the bill, its availability and the facilities needed to convert nonpermissible equipment to permissible equipment and to service that equipment. The hearing record does not go into these problems, with the exception of the testimony of Cloyd B. McDowell, president of the Harlan County, Ky., Coal Operators Association, which is found on page 881 of the hearing record. In my remarks on June 5, I noted that Mr. McDowell, who is one of the best informed and responsible men in the coal industry, stated that Bureau of Mines' officials in the State of Kentucky had estimated that the cost of re-equipping the nongassy mines in one county—Harlan County, Ky.—with "permissible" equipment would be in the range of \$10 million.

To insure against the possibility of drilling into gassy pockets in the operation of nongassy mines, I submitted an amendment to the committee which would require all mines to install permissible electric coal drills and to be installed within 120 days after enactment of the bill. The amendment was rejected, even though it would remove the possibility of drilling into an unexpected gassy pocket with a resulting ignition. For emphasis, I state again that during the 16-year period (1952-68) in less than 400 gassy mines, 381 ignitions and explosions occurred, resulting in 374 fatalities and 427 injuries in comparison with 52 ignitions and explosions, resulting in 27 fatalities and 54 injuries occurring in over 3,000 nongassy mines during the same period.

The amendments I offered would not change other provisions of the reported bill—provisions which I support—which require a greater number of mine inspections, daily or over a period of time, and more effective standards for carrying out tests for gas in all underground coal mines. West Virginia, Kentucky, and Pennsylvania, in this order, are the largest producers of coal in the United States. Each has a model mine safety law. I know that Kentucky requires and makes more mine inspections annually than the Federal Bu-

reau of Mines has made annually throughout the entire Nation.

Members of the Senate should take note that the committee adopted an amendment, incorporated in section 301(i) of the bill, which affirms my position, and which recognizes the distinction between gassy and nongassy mines. This amendment would require daily Federal mine inspections for gas at mines which the Secretary has determined to be extremely gassy and which present increased risks of ignitions and gas explosions. This will require the employment of hundreds of additional Federal coal mine inspectors which further emphasizes the danger in gassy mines as compared with nongassy mines. The amendment provides that the Secretary's determination of the particular gassy mines to be covered by these Federal inspection standards is to be made "based on the past history of the mine and other criteria he shall establish."

This action by the committee confirms the argument that I make—that gassy mines differ substantially from nongassy mines in their topographical, geological, and other characteristics, offer greater hazards to safety, and that any proposed legislation should recognize these differences.

What the committee has done in the reported bill is to abolish the present statutory classification of nongassy mines, but then reintroduce the concept of classification by giving the Secretary the authority, based on criteria that he may establish, to classify certain mines as being of such a dangerous gassy nature as to demand additional Federal inspections. I submit that these daily inspections will be required only in the mines now classed as gassy, or, in the future, may be classed as gassy.

The true danger of future ignitions and explosions is in the mines that are actually gassy, classed as gassy, and which have been recognized as gassy over a period of years. The Bureau of Mines' records show that as many as eight, nine, and 10 explosions have occurred in a single mine now classed as gassy. Some of the mines now classed as "gassy" are operated in gas-producing fields. I offered an amendment which was accepted by the committee with certain changes, that the operation of such mines shall not be permitted within 500 feet of a known gas or oil field, whether producing or abandoned. But even this amendment will not remove the danger of continued operation of mines which are known to be gassy and where there will always be the risk of explosions and ignitions and possible loss of lives and injuries.

This risk is increased in the gassy mines operated on large acreages. The economic operation of such mines requires the use of the most advanced mining machinery. This machinery used at the coal face produces a concentrated volume of coal dust and the resultant danger of ignitions. In the smaller acreages of the nongassy mines, the new advanced machinery cannot be used economically, and the volume of coal dust is reduced and is more easily removed by ventilation than in the large gassy mines.

Some have made the argument that the amendment I propose to retain the "gassy" and "nongassy" classifications should not be accepted because it is based upon the economic welfare of the coal operators. If this is logical, it must be agreed that it is based also on the economic interest of the thousands of miners who work in these mines, many of whom will be forced out of employment if the classification is removed. The same argument of economic interest can be more properly applied to keeping open the large gassy mines, which Bureau of Mines records prove are gassy and deadly dangerous.

I have said many times before the Senate, and I repeat, that if the proposed removal of the classification would promote greater safety, I would support it even though it meant economic loss. It will mean economic loss to the coal operators, to the miners thrown out of employment, to the related industries, and to the communities and areas in which these nongassy mines are operated. For example, the overwhelming proportion of the coal mines in eastern Kentucky are nongassy and nongassy small mines. Millions of dollars in the form of Federal aid has been spent in the eastern part of Kentucky, and in similar areas in West Virginia. Coal mining is the principal occupation in these areas and if the mines are closed, anyone can foresee the effect upon the well-publicized areas of eastern Kentucky, West Virginia, and similar areas in the United States.

There is another form of economic loss which is hardly considered—the requirement that the costly permissible equipment must be used in all mines will have the effect of denying forever the development and operation of small mines near the top of the hills and of small acreage, as they cannot economically be operated using the costly permissible machinery. An analogy would be the passage of a law which would permit the operation of farms or businesses in one area of a State and deny it to another area.

The diminution or closing of a number of nongassy mines will not cure the true danger which resides in the gassy mines. One alternative is to drive operators to increasing the number of strip mines, against which the public cries out. As production of coal must be maintained, the more likely alternative is that production and miners will be shifted to the large mines now classified as gassy, and the danger to miners will increase rather than lessen.

An effective method of increasing the safety of those who work in the mines, an objective which all support, might be to close some of the large gassy mines which have a record of repeated ignitions and explosions and repeated fatalities and injuries.

I would not want to end my views without stating my support of adequate measures relating to health and to protect those who work in the mines against the dangers of pneumoconiosis and other respiratory diseases.

In conclusion, I would like to express my appreciation to the chairman of the Subcommittee on Labor, Senator Harrison Williams, and to the ranking minority member, Senator Javits, for the opportunity of appearing before the subcommittee in executive session to discuss my suggestions and proposed changes in the bill. I thank the committee for their consideration of my views, which I shall press before the Senate.

WINSTON PROUTY.
PETER H. DOMINICK.

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(Excerpts Only)

Calendar No. 410

91ST CONGRESS
1ST SESSION

S. 2917

[Report No. 91-411]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 1969

Mr. WILLIAMS of New Jersey, from the Committee on Labor and Public Welfare, reported the following bill; which was read twice and ordered to be placed on the calendar

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That this Act may be cited as the “Federal Coal Mine
4 Health and Safety Act of 1969”.

5 FINDINGS AND PURPOSE

6 SEC. 2. Congress declares that—

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

10 (2) deaths and serious injuries from unsafe and

1 unhealthful conditions and practices in the coal mines
2 cause grief and suffering to the miners and to their
3 families;

4 (3) there is an urgent need to provide more effec-
5 tive means and measures for improving the working
6 conditions and practices in the Nation's coal mines in
7 order to prevent death and serious physical harm, and
8 in order to prevent occupational diseases originating in
9 such mines;

10 (4) the existence of unsafe and unhealthful con-
11 ditions and practices in the Nation's coal mines is a
12 serious impediment to the future growth of the coal
13 mining industry and cannot be tolerated;

14 (5) the operators of such mines with the assistance
15 of the miners have the primary responsibility to prevent
16 the existence of such conditions and practices in such
17 mines;

18 (6) the disruption of production and the loss of
19 income to operators and miners as a result of coal
20 mine accidents or occupationally caused diseases unduly
21 impedes and burdens commerce; and

22 (7) it is the purpose of this Act (1) to establish
23 interim mandatory health and safety standards and to
24 direct the Surgeon General and the Secretary of the In-
25 terior to develop and promulgate improved mandatory

1 standards to protect the health and safety of the Na-
2 tion's coal miners; (2) to require that each operator of
3 a coal mine and every miner in such mine comply with
4 such standards; (3) to cooperate with, and provide as-
5 sistance to, the States in the development and enforce-
6 ment of effective State coal mine health and safety pro-
7 grams; and (4) to improve and expand, in cooperation
8 with the States and the coal mining industry, research
9 and development and training programs aimed at pre-
10 venting coal mine accidents and occupationally caused
11 diseases in the industry.

12 MINES SUBJECT TO ACT

13 SEC. 3. Each coal mine, the products of which enter
14 commerce, or the operations or products of which affect com-
15 merce, shall be subject to this Act, and each operator of such
16 mine and every miner in such mine shall comply with the
17 provisions of this Act and the applicable standards and
18 regulations of the Secretary and the Surgeon General promul-
19 gated under this Act.

20 DEFINITIONS

21 SEC. 4. For the purpose of this Act, the term—

22 (1) "Secretary" means the Secretary of the In-
23 terior or his delegate;

24 (2) "Surgeon General" means the Surgeon Gen-

1 eral, United State Public Health Service in the Depart-
2 ment of Health, Education, and Welfare, or his delegate;

3 (3) "commerce" means trade, traffic, commerce,
4 transportation, or communication among the several
5 States, or between a place in a State and any place out-
6 side thereof, or within the District of Columbia or a
7 possession of the United States, or between points in
8 the same State but through a point outside thereof;

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

12 (5) "operator" means any owner, lessee, or other
13 person who operates, has control of, or supervises a coal
14 mine;

15 (6) "agent" means any person charged with re-
16 sponsibility for the operation of all or part of a coal
17 mine or the supervision of the miners in a coal mine;

18 (7) "person" means any individual, partnership,
19 association, corporation, firm, subsidiary of a corpora-
20 tion, or other organization;

21 (8) "miner" means any individual working in a
22 coal mine;

23 (9) "coal mine" means an area of land and all

1 structures, facilities, machinery, tools, equipment, shafts,
2 slopes, tunnels, excavations, and other property, real or
3 personal, placed upon, under, or above the surface of
4 such land by any person, used or to be used in, or
5 resulting from, the work of extracting in such area bi-
6 tuminous coal, lignite, or anthracite from its natural de-
7 posits in the earth by any means or method, and the
8 work of preparing the coal so extracted, and includes
9 custom coal preparation facilities;

10 (10) "work of preparing the coal" means the break-
11 ing, crushing, sizing, cleaning, washing, drying, mixing,
12 storing, and loading of bituminous, lignite, or anthracite
13 coal, and such other work of preparing such coal as is
14 usually done by the operator of the coal mine;

15 (11) "imminent danger" means the existence of
16 any condition or practice in a coal mine which could
17 reasonably be expected to cause death or serious physical
18 harm before such condition or practice can be abated;

19 (12) "accident" includes a mine explosion, mine
20 ignition, mine fire, or mine inundation, or injury to, or
21 death of, any person; and

22 (13) "Panel" means the Interim Compliance Panel
23 established by this Act.

1 INTERIM COMPLIANCE PANEL

2 SEC. 5. (a) There is hereby established the Interim
3 Compliance Panel, which shall be composed of five members
4 as follows:

5 (1) Assistant Secretary of Labor for Labor Stand-
6 ards, Department of Labor, or his delegate;

7 (2) Director of the Bureau of Standards, Depart-
8 ment of Commerce, or his delegate;

9 (3) Administrator of Consumer Protection and En-
10 vironmental Health Service, Department of Health, Edu-
11 cation, and Welfare, or his delegate;

12 (4) Director of the Bureau of Mines, Department
13 of the Interior, or his delegate; and

14 (5) Director of the National Science Foundation, or
15 his delegate.

16 (b) Members of the Panel shall serve without compensa-
17 tion in addition to that received in their regular employment,
18 but shall be entitled to reimbursement for travel, subsistence,
19 and other necessary expenses incurred by them in the per-
20 formance of duties vested in the Panel.

21 (c) Notwithstanding any other provision of law, the
22 Secretary of Health, Education, and Welfare, Secretary of
23 Commerce, the Secretary of Labor, and the Secretary of the
24 Interior shall, upon request of the Panel, provide the Panel

1 such personnel and other assistance as the Panel determines
2 necessary to enable it to carry out its functions under this
3 Act.

4 (d) Three members of the Panel shall constitute a
5 quorum for doing business. All decisions of the Panel shall
6 be by majority vote. The chairman of the Panel shall be
7 selected by the members from among the membership thereof.

8 (e) The Panel is authorized to appoint as many hear-
9 ing examiners as are necessary for proceedings required to
10 be conducted in accordance with the provisions of this Act.
11 The provisions applicable to hearing examiners appointed
12 under section 3105 of title 5 of the United States Code shall
13 be applicable to hearing examiners appointed pursuant to
14 this subsection.

15 (f) (1) It shall be the function of the Panel to carry
16 out the duties imposed on it pursuant to sections 102 and
17 206 (1) of this Act. The provisions of this section shall ter-
18minate upon completion of the Panel's functions as set forth
19 under sections 102 and 206 (1) of this Act.

20 (2) The Panel shall make an annual report, in writing,
21 to the Secretary for transmittal by him to the Congress con-
22 cerning the achievement of its purposes, and any other rele-
23 vant information (including any recommendations) which it
24 deems appropriate.

1 TITLE I—MANDATORY HEALTH STANDARDS
2 FOR COAL MINES
3 PART A—INTERIM MANDATORY HEALTH STANDARDS FOR
4 CONTROLLING DUST AT UNDERGROUND COAL MINES
5 SCOPE OF COVERAGE

6 SEC. 101. (a) The provisions of sections 102 and 103
7 of this title shall be interim mandatory health standards ap-
8 plicable to all underground coal mines until superseded in
9 whole or in part by improved mandatory health standards
10 promulgated by the Secretary in accordance with health
11 standards established by the Surgeon General for such mines
12 to become effective after the operative date of this title. Any
13 orders issued in the enforcement of the provisions of this part
14 shall be subject to review as provided in title III of this Act.

15 (b) Among other things, it is the purpose of this title
16 to provide, to the greatest extent possible, that the working
17 conditions in each underground coal mine are sufficiently free
18 of dust concentrations in the atmosphere to permit each
19 miner the opportunity to work underground during the
20 period of his entire adult working life without incurring
21 any disability from pneumoconiosis or any other occupation-
22 related disease during or at the end of such period.

23 (c) (1) Within one year after the date of enactment
24 of this Act, the Surgeon General shall develop and submit
25 to the Secretary and the Congress recommendations as to

1 the maximum permissible total exposure of individuals to
2 coal mine dust during a working shift. Such recommenda-
3 tions shall be revised by the Surgeon General as necessary.

4 (2) Within three years after the date of enactment of
5 this Act, and thereafter as needed, the Secretary shall pub-
6 lish as provided in subsection 105 (c) of this title a schedule
7 specifying the times within which mines shall reduce the
8 total personal exposure to dust on a working shift to the
9 levels recommended by the Surgeon General. Such schedule
10 of the Secretary shall be based upon his determination of
11 what is the minimum time necessary for these levels to be
12 technologically feasible and the availability of equipment.
13 The levels so specified by the Secretary shall be the dust
14 standards applicable to coal mines under this Act.

15 DUST STANDARD AND RESPIRATORS

16 SEC. 102. (a) (1) Effective sixty days after the opera-
17 tive date of this title, each operator shall continuously
18 maintain the concentrations of respirable dust in the atmos-
19 phere of the active workings of the mine during each shift at
20 or below 3.0 milligrams of dust per cubic meter of air, ex-
21 cept that, where a permit for noncompliance has been issued
22 to an operator as hereinafter provided, such operator shall
23 continuously maintain the concentration of respirable dust in
24 the atmosphere of the active workings of the mine during
25 each shift at or below 4.5 milligrams of dust per cubic meter

1 of air or, if a lower concentration is prescribed in such per-
 2 mit, at or below such lower concentration. In mining
 3 operations where the coal dust contains more than 5 per
 4 centum quartz, the dust standard shall be determined in
 5 accordance with a formula to be prescribed by the Surgeon
 6 General.

7 (2) Effective three years after the date of the enact-
 8 ment of this Act, each operator shall continuously maintain
 9 the concentrations of respirable dust in the atmosphere of
 10 the active workings of the mine during each shift at or below
 11 2.0 milligrams of dust per cubic meter of air, except that,
 12 where a permit for noncompliance has been issued to an
 13 operator as hereinafter provided, such operator shall con-
 14 tinuously maintain the concentration of respirable dust in
 15 the atmosphere of the active workings of the mine during
 16 each shift at or below 3.0 milligrams per cubic meter of air
 17 or, if a lower concentration is prescribed in such permit, at
 18 or below such lower concentration.

19 (b) (1) Any operator who determines that he will be
 20 unable, using available technology, to comply with the 3.0
 21 milligram standard established by subsection (a) (1) of this
 22 section, or the 2.0 milligram standard established by sub-
 23 section (a) (2) of this section, upon the effective date of
 24 such standard, may, no later than sixty days prior to the
 25 effective date of the standard with respect to which such

1 application is filed, file with the Panel an application for a
 2 permit for noncompliance. If, in the case of an application for
 3 a permit for noncompliance with the standard established
 4 by subsection (a) (1) of this section, the application satisfies
 5 the requirements of subsection (c) of this section, the Panel
 6 shall issue to the operator a permit for noncompliance. If,
 7 in the case of an application for a permit for noncompliance
 8 with the standard established by subsection (a) (2) of this
 9 section, the application satisfies the requirements of subsection
 10 (c) of this section, and the Panel, after all interested
 11 persons have been notified and given an opportunity for a
 12 hearing, determines that the applicant will be unable to
 13 comply with such 2.0 milligram standard, the Panel shall
 14 issue to the operator a permit for noncompliance. Any such
 15 permit so issued shall entitle the permittee during a period
 16 which shall expire at a date fixed by the Panel, but in no
 17 event later than twelve months after the effective date of
 18 such standard, to maintain continuously the concentrations
 19 of respirable dust in the atmosphere in each active working
 20 place during each shift to which the extension applies at a
 21 level specified by the Panel, which shall be at the lowest
 22 level which the application shows the conditions, technology
 23 applicable to such mine, and other available and effective
 24 control techniques and methods will permit, but in no
 25 event shall such level exceed 4.5 milligrams of dust per

1 cubic meter of air during the period when the 3.0 milligram
2 standard is in effect, or 3.0 milligrams of dust per cubic meter
3 of air during the period when the 2.0 milligram standard is in
4 effect.

5 (2) (A) Except as provided in paragraph (3) of this
6 subsection, in any case in which an operator, who has been
7 issued a permit (including a renewal permit) for noncom-
8 pliance under this section, determines, not more than ninety
9 days prior to the expiration date of such permit, that he still
10 is unable to comply with the 3.0 milligram standard estab-
11 lished by subsection (a) (1) of this section or the 2.0 milli-
12 gram standard established by subsection (a) (2) of this
13 section, he may file with the Panel an application for renewal
14 of the permit. Upon receipt of such application for renewal
15 of a permit, the Panel, if it determines, after all interested
16 persons have been notified and given an opportunity for a
17 hearing, that the application is in compliance with the pro-
18 visions of subsection (c) of this section, and that the appli-
19 cant will be unable to comply with such standard, may re-
20 new the permit for a period not exceeding six months. Any
21 hearing held pursuant to this subsection shall be of record
22 and the Panel shall make findings of fact and shall issue a
23 written decision incorporating its findings therein.

24 (B) Such renewal permit shall entitle the permittee,
25 during the period of its effectiveness, to maintain continu-

1 ously during each shift the concentrations of respirable dust
2 in the atmosphere at any active working place to which
3 the renewal permit applies at the lowest level which the
4 conditions, technology applicable to such mine, and other
5 available and effective control techniques and methods will
6 permit, as determined by the Panel, but in no event shall
7 such level exceed 4.5 milligrams of dust per cubic meter of
8 air during the period when the 3.0 milligram standard is in
9 effect, or 3.0 milligrams of dust per cubic meter of air during
10 the period when the 2.0 milligram standard is in effect.

11 (3) Except to the extent otherwise provided in sub-
12 section (k) of this section, no permit or renewal permit
13 for noncompliance shall entitle any operator to an extension
14 of time beyond thirty-six months from the date of enact-
15 ment of this Act to comply with the 3.0 milligram standard
16 established by subsection (a) (1) of this section, or beyond
17 seventy-two months from the date of enactment of this Act
18 to comply with 2.0 milligram standard established by sub-
19 section (a) (2) of this section.

20 (c) Any application for an initial or renewal permit for
21 noncompliance made pursuant to this section shall contain—

22 (1) a representation by the applicant and the engi-
23 neer conducting the survey referred to in paragraph (2)
24 of this subsection that the applicant is unable to comply
25 with the dust standard applicable under subsection (a)

1 (1) or (a) (2) of this section at specified active
2 working places because the technology for reducing such
3 dust concentrations at such place is not available, or be-
4 cause of the lack of other effective control techniques
5 or methods, or because of any combination of such
6 reasons;

7 (2) an identification of the active working places
8 in such mine for which the permit is requested; the
9 results of an engineering survey by a certified engineer
10 of the dust conditions of each active working place of
11 the mine with respect to which such application is filed
12 and the ability to reduce the dust concentrations to the
13 level required to be maintained in such working place
14 under this section, together with a copy of such engi-
15 neering survey; a description of the ventilation system
16 of the mine and its capacity; the quantity of air regularly
17 reaching the last open crosscut in any pair or set of
18 developing entries and the last open crosscut in any
19 pair or set of rooms of each such active working place;
20 the method of mining; the amount and pressure of the
21 water, if any, reaching the working face; the number,
22 location, and type of sprays, if any; actions taken to
23 reduce the dust concentrations; and such other informa-
24 tion as the Panel may require; and

25 (3) statements by the applicant and the engineer

1 conducting such survey, of the means and methods to
 2 be employed to achieve compliance with the applicable
 3 dust standard, the progress made toward achieving com-
 4 pliance, and an estimate of when compliance can be
 5 achieved.

6 (d) The Secretary shall cause to be made such frequent
 7 spot inspections as he deems appropriate of the active work-
 8 ings of underground coal mines for which permits for non-
 9 compliance have been granted under this section for the pur-
 10 pose of obtaining compliance with the provisions of this title.
 11 The Secretary shall also make spot inspections of all active
 12 workings in underground mines to insure compliance.

13 (e) Any operator or representative of miners aggrieved
 14 by a final decision of the Panel with respect to an application
 15 for an initial or renewed permit for noncompliance may file
 16 a petition for review of such decision in accordance with the
 17 provisions of section 304 of this Act:

18 (f) Each operator shall take samples of the atmosphere
 19 of the active workings of the mine to determine the atmo-
 20 spheric concentrations of respirable dust. Such samples shall
 21 be taken by any device approved by the Secretary and in
 22 accordance with the methods and at locations and at inter-
 23 vals and in a manner prescribed by him. Such samples shall
 24 be transmitted to the Secretary, in a manner prescribed by

1 the Secretary, and analyzed and recorded by him in a man-
2 ner to assure that the dust levels established by, or permitted
3 under, this section are not exceeded and to enable him to
4 cause an immediate inspection of any mine whenever such
5 samples indicate that the concentration of dust therein ex-
6 ceeds such level. If, upon the basis of such samples or addi-
7 tional samples taken during an inspection, the Secretary or
8 his authorized representative finds that the concentrations
9 of respirable dust in any active workings in a mine exceed
10 the level required to be maintained under this section, the
11 Secretary or his representative shall issue a notice to the
12 operator or his agent, a copy of which shall be transmitted
13 to the Panel and to a representative of the miners in the
14 mine, fixing a reasonable time to take corrective action,
15 which time shall not exceed seventy-two hours, and the
16 operator of the mine shall take corrective action immediately
17 in order to bring such concentrations at or below the level
18 required to be maintained under this section. If, upon the
19 expiration of such time, the Secretary or his authorized
20 representative finds that such action has not been completed
21 and the violation has not been abated, he shall issue an
22 order requiring that while such corrective action is under-
23 way, no work, other than that necessary to take such ac-
24 tion and to obtain valid samples of the atmosphere of the
25 active workings of the mine to determine the atmospheric

1 concentrations of respirable dust, shall be permitted until
2 the dust concentrations in such mine have been reduced to
3 or below such required level. As soon as possible after an
4 order is issued, the Secretary, upon request of the operator,
5 shall dispatch to the mine involved a person or team of
6 persons, to the extent such persons are available, determined
7 by him to be knowledgeable in the methods and means of
8 controlling and reducing respirable dust. Such person or team
9 of persons shall remain at the mine involved for such time
10 as they shall deem appropriate to assist the operator in re-
11 ducing respirable dust concentrations. While at the mine,
12 such persons may require the operator to take such actions
13 as they deem appropriate to insure the health of any person
14 in the coal mine.

15 (g) The dust resulting from drilling in rock shall be
16 controlled by the use and maintenance of dust collectors, by
17 water or water with a wetting agent, or by ventilation or
18 other means approved by the Secretary. Miners who are
19 engaged in drilling in rock and exposed for short periods to
20 inhalation hazards from gas, dust, fumes, or mist shall wear
21 respiratory equipment. When the exposure is for prolonged
22 periods, other measures to protect such miners or to reduce
23 the hazard shall be taken.

24 (h) Respirators shall be worn by all persons for pro-

1 tection against exposures to concentrations of dust in excess
 2 of the levels required to be maintained under this section.
 3 Use of respirators shall not be substituted for environmental
 4 control measures. Each mine shall maintain a supply of
 5 respirators adequate to comply with the provisions of this
 6 section.

7 (i) References to respirators, dust collectors, or respi-
 8 ratory equipment in this section mean respirators, dust collec-
 9 tors, and equipment approved by the Secretary in accordance
 10 with health standards established by the Surgeon General.

11 (j) References to specific concentrations of dust in this
 12 title mean concentrations of respirable dust if measured with
 13 an MRE instrument or equivalent concentrations of dust if
 14 measured with another device approved by the Secretary.
 15 As used in this title, the term "MRE instrument"
 16 means the gravimetric dust sampler with four channel hori-
 17 zontal elutriator developed by the Mining Research Estab-
 18 lishment of the National Coal Board, London, England.

19 (k) At any time within two years following the date
 20 on which the 2.0 milligram standard established by subsec-
 21 tion (a) (2) of this section becomes effective, the Secretary
 22 may, after having given the Congress advance written notice
 23 not less than one hundred and twenty days prior thereto and
 24 in accordance with health standards established by the Sur-
 25 geon General, extend the time within which all underground

1 coal mines are required to comply with such standard, if the
2 Secretary determines that the technology or other effective
3 control techniques or methods for reducing such dust con-
4 centrations to the level required by such standard is not
5 available. Such extension shall be effective at the end of the
6 first period of sixty calendar days of continuous session of
7 Congress after the date on which a written plan of such ex-
8 tension is transmitted to it unless, between the date of trans-
9 mittal and the end of the sixty-day period, either House
10 passes a resolution stating in substance that that House does
11 not favor the extension plan.

12 (l) For the purposes of subsection (k) of this section—

13 (1) the continuity of a session is broken only by
14 an adjournment of Congress sine die; and

15 (2) the days on which either House is not in ses-
16 sion because of an adjournment of more than three days
17 to a day certain are excluded in the computation of the
18 sixty-day period.

19 (m) Any extension plan transmitted to the Congress
20 pursuant to this section shall be received and acted on by
21 the Congress in the same manner as that provided for
22 reorganization plans under chapter 9 of title 5 of the United
23 States Code.

24 (n) The Secretary and the Surgeon General shall, from
25 time to time, but in no event less than twice annually, sub-

1 mit a written report to the Congress setting forth the prog-
2 ress made toward achieving absolute compliance with the
3 standards established by subsection (a) of this section, and
4 an estimate of the time as to when such compliance can be
5 achieved.

6 (o) The Secretary or his authorized representative may
7 require a greater quantity of air than the minimum required
8 under section 204 (b) of this Act when he finds it necessary
9 to protect the health of miners in a coal mine. Where line
10 brattice or other approved devices are installed, the space
11 between such device and the rib shall, in addition to the re-
12 quirements of section 204 (c) (2) of this Act, be adequate
13 to permit the flow of sufficient volume of air to reduce the
14 concentrations of respirable dust at each active working face.

15 MEDICAL EXAMINATIONS

16 SEC. 103. (a) The operator of an underground coal
17 mine shall establish a program approved by the Surgeon
18 General under which each miner working in such under-
19 ground coal mine will be given, at least annually, beginning
20 six months after the operative date of this title, a chest
21 roentgenogram and such other tests as may be required by
22 the Surgeon General. The films shall be taken in a manner
23 to be prescribed by the Surgeon General and shall be read
24 and classified by the Surgeon General and the results of each
25 reading on each such miner shall be available to the Surgeon
26 General and, with the consent of the miner, to his physician

1 and other appropriate persons. The Surgeon General may
2 also take such examinations and tests where appropriate and
3 may cooperate with the operator in taking of such examina-
4 tions and tests on a reimbursable basis. Each operator shall
5 cooperate with the Surgeon General in making arrangements
6 for each miner in such mine to be given such other medical
7 examinations as the Surgeon General determines necessary.
8 The results of any such examination shall be submitted in the
9 same manner as the aforementioned films. In no case, how-
10 ever, shall any such miner be required to have a chest
11 roentgenogram or examination under this section without
12 his consent.

13 (b) (1) On and after the effective date of the 3.0
14 milligram standard established by section 102 (a) (1) of this
15 title, any miner who, in the judgment of the Surgeon General
16 based upon such reading or medical examinations, shows
17 evidence of the development of pneumoconiosis shall be as-
18 signed by the operator, for such period or periods as may
19 be necessary to prevent further development of such disease,
20 to work, at the option of the miner, in any working sec-
21 tion or other area of the mine, where the mine atmosphere
22 contains concentrations of respirable dust of not more than
23 2.0 milligrams of dust per cubic meter of air.

24 (2) On and after the effective date of the 2.0 milligram
25 standard established by section 102 (a) (2) of this title, any

1 miner so showing such evidence of the development of pneu-
 2 moconiosis shall be assigned in accordance with the provisions
 3 of paragraph (1) of this subsection to any working sec-
 4 tion or other area of the mine where the mine atmosphere
 5 contains concentrations of respirable dust at a level, below
 6 2.0 milligrams of dust per meter of air, determined by the
 7 Secretary, in accordance with health standards established by
 8 the Surgeon General, to be necessary to prevent further de-
 9 velopment of such disease.

10 (3) Any miner assigned to work in any other working
 11 section or other area of the mine pursuant to paragraphs (1)
 12 or (2) of this subsection shall receive for such work the
 13 regular rate of pay received by other miners performing
 14 comparable work in such section or area, or the regular rate
 15 of pay received by such miner immediately prior to his
 16 assignment, whichever is the greater.

17 PART B.—PROMULGATION OF MANDATORY HEALTH

18 STANDARDS FOR ALL COAL MINERS

19 HEALTH STANDARDS; REVIEW

20 SEC. 105. (a) In accordance with health standards
 21 established by the Surgeon General from time to time and
 22 the procedures set forth in this section, the Secretary shall
 23 promulgate mandatory health standards for the protection
 24 of life and the prevention of occupational diseases in coal
 25 mines.

1 (b) In the development of such standards, the Surgeon
2 General shall consult with other interested Federal agencies,
3 representatives of State agencies, appropriate representatives
4 of the coal mine operators and miners, other interested per-
5 sons and organizations, the State, such advisory commit-
6 tees as he may appoint, and, where appropriate, foreign
7 countries. In addition to the attainment of the highest degree
8 of health and protection for the miner, other considerations
9 shall be the latest available scientific data in the field, the
10 technical feasibility of the standards, and experience gained
11 under this and other health regulations.

12 (c) The Secretary shall from time to time publish any
13 such proposed standards and the schedule provided for in
14 subsection 101 (c) (2) of this title in the Federal Register
15 and shall afford interested persons a period of not less than
16 thirty days after publication to submit written data or com-
17 ments. Except as provided in subsection (e) of this section,
18 the Secretary may, upon the expiration of such period and
19 after consideration of all relevant matter presented, promul-
20 gate such standards or schedule with such modifications as
21 he and the Surgeon General may deem appropriate. Not
22 later than twelve months after the date of enactment of
23 the Act, the Secretary, in accordance with health standards
24 established by the Surgeon General, shall propose manda-
25 tory health standards for surface coal mines and surface

1 work areas of underground coal mines and shall publish
2 such proposed standards in the Federal Register.

3 (d) On or before the last day of any period fixed for the
4 submission of written data or comments under subsection
5 (c) of this section, any interested person may file with the
6 Secretary written objections to a proposed standard or sched-
7 ule, stating the grounds therefor and requesting a public
8 hearing by the Secretary on such objections. As soon as
9 practicable after the period for filing such objections has
10 expired, the Secretary shall publish in the Federal Register
11 a notice specifying the proposed standards or provisions of
12 the schedule to which objections have been filed and a hear-
13 ing requested, and shall review such standards, schedules,
14 and objections in accordance with subsection (e) of this
15 section.

16 (e) Promptly after any such notice is published in the
17 Federal Register by the Secretary under subsection (d) of
18 this section, the Secretary shall issue notice of and hold a
19 public hearing for the purpose of receiving relevant evi-
20 dence. Within sixty days after completion of the hearings,
21 the Secretary shall make findings of fact and may promul-
22 gate the mandatory standards with such modifications, or
23 take such other action, as he and the Surgeon General deem
24 appropriate. All such findings shall be public.

25 (f) Any mandatory standard or schedule promulgated

1 under this section shall be effective upon publication in the
2 Federal Register unless the Secretary specifies a later date.

3 (g) all health standards established by the Surgeon
4 General pursuant to this title shall, at the time of their trans-
5 mission by him to the Secretary for disposition by him in
6 accordance with the provisions of this title, be published in
7 the Federal Register.

* * * * *

20

TITLE IV—ADMINISTRATION

21

RESEARCH

22

SEC. 401. (a) The Secretary and the Surgeon General

23

shall conduct such studies, research, experiments, and dem-

24

onstrations as may be appropriate—

25

(1) to improve working conditions and practices,

1 and to prevent accidents and occupational diseases orig-
2 inating in the coal mining industry;

3 (2) after an accident, to recover persons in a coal
4 mine and to recover the mine;

5 (3) to develop new or improved means and meth-
6 ods of communication from the surface to the under-
7 ground portion of the mine;

8 (4) to develop new or improved means and meth-
9 ods of reducing concentrations of respirable dust in the
10 mine;

11 (5) to develop new and improved sources of power
12 for use underground, including diesel power, which will
13 provide greater safety; and

14 (6) to determine the improvement to health or
15 safety that illumination will produce and to develop such
16 methods of illumination by permissible lighting.

17 (b) The Surgeon General shall conduct studies and
18 research into matters involving the protection of life and
19 the prevention of diseases in connection with persons, who
20 although not miners, work with or around the products
21 of coal mines in areas outside of such mines and under
22 conditions which may adversely affect the health and well-
23 being of such persons.

24 (c) The Secretary is authorized to grant an operator,
25 on a mine-by-mine basis, an exception to any of the pro-

1 visions of this Act for the purpose of granting accredited
2 engineering institutions the opportunity for experimenting
3 with new techniques and new equipment to improve the
4 health and safety of miners. No such exception shall be
5 granted unless the Secretary finds that the granting of the
6 exception will not adversely affect the health and safety
7 of miners.

8 (d) The Surgeon General is authorized to make grants
9 to any public or private agencies, institutions and organiza-
10 tions, and operators or individuals for research and experi-
11 ments to develop effective respiratory devices and other
12 devices and equipment which will carry out the purposes
13 of this Act.

14 TRAINING AND EDUCATION

15 SEC. 402. (a) The Secretary shall expand programs
16 for the education and training of coal mine operators, agents
17 thereof, and miners in—

18 (1) the recognition, avoidance, and prevention of
19 accidents or unsafe or unhealthful working conditions in
20 coal mines; and

21 (2) in the use of flame safety lamps, permissible
22 methane detectors, and other means approved by the
23 Secretary for accurately detecting gases.

24 (b) The Secretary shall, to the greatest extent possible,
25 provide technical assistance to each operator of a coal mine

1 in meeting the requirements of this Act and in further im-
 2 proving the health and safety conditions and practices at
 3 such mine.

4 STATE PLANS

5 SEC. 403. (a) In order to assist the States where coal
 6 mining takes place in developing and enforcing effective
 7 health and safety laws and regulations applicable to such
 8 mines consistent with the provisions of section 407 of this
 9 Act and to promote Federal-State coordination and coopera-
 10 tion in improving the health and safety conditions in the
 11 Nation's coal mines, the Secretary shall approve any plan
 12 submitted under this section by such State, through its official
 13 coal mine inspection or safety agency, which—

14 (1) designates such State coal mine inspection or
 15 safety agency as the sole agency responsible for admin-
 16 istering the plan throughout the State and contains satis-
 17 factory evidence that such agency will have the author-
 18 ity to carry out the plan;

19 (2) gives assurances that such agency has or will
 20 employ an adequate and competent staff of trained in-
 21 spectors qualified under the laws of such State to make
 22 mine inspections within such State;

23 (3) sets forth the plans, policies, and methods to
 24 be followed in carrying out the plan;

25 (4) provides for the extension and improvement of

1 the State program for the improvement of coal mine
2 health and safety in the State, and that no advance no-
3 tice of an inspection will be provided any operator or
4 agent of an operator of a coal mine;

5 (5) provides such fiscal control and fund account-
6 ing procedures as may be appropriate to assure proper
7 disbursement and accounting of grants made to the
8 State under this section;

9 (6) provides that the designated agency will make
10 such reports to the Secretary, in such form and con-
11 taining such information, as the Secretary may from
12 time to time require; and

13 (7) meets additional conditions which the Secre-
14 tary may prescribe by rule in furtherance of and con-
15 sistent with the purposes of this section.

16 (b) The Secretary shall approve any State plan or any
17 modification thereof which complies with the provisions of
18 subsection (a) of this section. He shall not finally disap-
19 prove any State plan or modification thereof without first
20 affording the State agency reasonable notice and opportunity
21 /for a hearing:

22 (c) Whenever the Secretary, after reasonable notice and
23 opportunity for a hearing, finds that in the administration of
24 an approved State plan there is (1) a failure to comply sub-
25 stantially with any provision of the State plan, or (2) a

1 failure to afford reasonable cooperation in administering the
2 provisions of this Act, the Secretary shall by decision incor-
3 porating his findings therein notify such State agency of his
4 withdrawal of approval of such plan and upon receipt of such
5 notice such plan shall cease to be in effect.

6 (d) Any State aggrieved by the Secretary's decision
7 under subsection (c) of this section may file within thirty
8 days from the date of such decision with the United States
9 Court of Appeals for the District of Columbia a petition
10 praying that such action be modified or set aside in whole
11 or in part. A copy of the petition shall forthwith be sent
12 by registered or certified mail to the Secretary, and
13 thereupon the Secretary shall certify and file in such court
14 the record upon which the Secretary made his decision, as
15 provided in section 2112, title 28, United States Code. The
16 court shall hear such appeal on the record made before the
17 Secretary. The findings of the Secretary, if supported by
18 substantial evidence on the record considered as a whole,
19 shall be conclusive. The court may affirm, vacate, or remand
20 the proceedings to the Secretary for such further action as it
21 directs. The filing of a petition under this subsection shall not
22 stay the application of the Secretary's decision, unless the
23 court so orders.

24 (e) The Secretary is authorized to make grants to any

1 State where there is an approved State plan (1) to carry
2 out the plan, including the cost of training State inspectors;
3 and (2) to assist the States in planning and implementing
4 other programs for the advancement of health and safety in
5 coal mines. Such grants shall be designed to supplement,
6 not supplant, State funds in these areas. The Secretary shall
7 cooperate with such State in carrying out the plan and shall,
8 as appropriate, develop facilities for, and finance a pro-
9 gram of, training of Federal and State inspectors jointly.
10 The Secretary shall also cooperate with such State in estab-
11 lishing a system by which State and Federal inspection re-
12 ports of coal mines located in the State are exchanged for
13 the purpose of improving health and safety conditions in
14 such mines.

15 (f) The amount granted to any State for a fiscal
16 year under this section shall not exceed 80 per centum of the
17 sum expended by such State in such year for carrying out
18 the State coal mine health and safety enforcement program.

19 (g) There is authorized to be appropriated \$3,000,000
20 for fiscal year 1970 and \$5,000,000 annually in each suc-
21 ceeding fiscal year to carry out the provisions of this section
22 which shall remain available until expended. The Secretary
23 shall provide for an equitable distribution of sums appropri-
24 ated for grants under this section to the States where there
25 is an approved plan. The Secretary shall coordinate with

1 the Secretaries of Labor and Health, Education, and Wel-
2 fare in making grants under this section.

3 RELATED CONTRACTS AND GRANTS

4 SEC. 404. In carrying out the provisions of sections 201
5 (b), 401, and 402 of this Act, the Secretary and the Sur-
6 geon General may enter into contracts with, and make grants
7 to, public and private agencies and organizations and indi-
8 viduals.

9 INSPECTORS; QUALIFICATIONS; TRAINING

10 SEC. 405. The Secretary may, subject to the civil service
11 laws, appoint such employees as he deems requisite for the
12 administration of this Act and prescribe their duties. Persons
13 appointed as authorized representatives of the Secretary shall
14 be qualified by practical experience in the mining of coal or
15 by experience as a practical mining engineer or by education.
16 Persons appointed to assist such representatives in the taking
17 of samples of dust concentrations for the purpose of enforcing
18 title I of this Act shall be qualified by training or experi-
19 ence. The provisions of section 201 of the Revenue and
20 Expenditure Control Act of 1968 (82 Stat. 251, 270) shall
21 not apply with respect to the appointment of such authorized
22 representatives of the Secretary or to persons appointed to
23 assist such representatives, and, in applying the provisions of
24 such section to other agencies under the Secretary and to
25 other agencies of the Government, such appointed persons

1 shall not be taken into account. Such persons shall be ade-
2 quately trained by the Secretary. The Secretary shall develop
3 programs with educational institutions and operators designed
4 to enable persons to qualify for positions in the administra-
5 tion of this Act. In selecting persons and training and re-
6 training persons to carry out the provisions of this Act, the
7 Secretary shall work with appropriate educational institu-
8 tions, operators, and representatives of employees in develop-
9 ing adequate programs for the training of persons, particu-
10 larly inspectors. Where appropriate, the Secretary shall co-
11 operate with such institutions in carrying out the provisions
12 of this section by providing financial and technical assistance
13 to such institutions.

14

ADVISORY COMMITTEES

15 SEC. 406. (a) (1) The Secretary shall appoint an ad-
16 visory committee on coal mine safety research composed of—

17 (A) the Director of the Office of Science and
18 Technology or his delegate, with the consent of the
19 Director;

20 (B) the Director of the National Bureau of Stand-
21 ards, Department of Commerce, or his delegate, with
22 the consent of the Director;

23 (C) the Director of the National Science Foun-
24 dation or his delegate, with the consent of the Director;
25 **and**

1 (D) such other persons as the Secretary may
 2 appoint who are knowledgeable in the field of coal mine
 3 safety research.

4 The Secretary shall designate the chairman of the committee.

5 (2) The advisory committee shall consult with, and
 6 make recommendations to, the Secretary on matters in-
 7 volving or relating to coal mine safety research. The Secre-
 8 tary shall consult with and consider the recommendations of
 9 such committee in the conduct of such research, the making
 10 of any grant, and the entering into of contracts for research.

11 (3) The chairman of the committee and a majority of
 12 the persons appointed by the Secretary pursuant to para-
 13 graph (1) (D) of this subsection shall be individuals who
 14 have no economic interests in the coal mining industry, and
 15 who are not operators, miners, or officers or employees
 16 of the Federal Government or any State or local government.

17 (b) (1) The Surgeon General shall appoint an advisory
 18 committee on coal mine health research composed of—

19 (A) the Director, Bureau of Mines, or his delegate,
 20 with the consent of the Director;

21 (B) the Director of the National Science Founda-
 22 tion or his delegate, with the consent of the Director;

23 (C) the Director of the National Institutes of Health
 24 or his delegate, with the consent of the Director; and

1 (D) such other persons as the Surgeon General may
2 appoint who are knowledgeable in the field of coal mine
3 health research.

4 The Surgeon General shall designate the chairman of the
5 committee.

6 (2) The advisory committee shall consult with, and
7 make recommendations to, the Surgeon General on matters
8 involving or relating to coal mine health research. The Sur-
9 geon General shall consult with and consider the recommen-
10 dations of such committee in the conduct of such research, the
11 making of any grant, and the entering into of contracts for
12 research.

13 (3) The chairman of the committee and a majority of
14 the persons appointed by the Surgeon General pursuant to
15 paragraph (1) (D) of this subsection shall be individuals
16 who have no economic interests in the coal mining industry,
17 and who are not operators, miners, or officers or employees
18 of the Federal Government or any State or local government.

19 (c) The Secretary or the Surgeon General may ap-
20 point other advisory committees as he deems appropriate to
21 advise him in carrying out the provisions of this Act. The
22 Secretary or the Surgeon General, as the case may be, shall
23 appoint the chairman of each such committee, who shall be
24 an individual who has no economic interests in the coal min-
25 ing industry, and who is not an operator, miner, or an

1 officer or employee of the Federal Government or any State
2 or local government. A majority of the members of any
3 such advisory committee appointed pursuant to this sub-
4 section shall be composed of individuals who have no eco-
5 nomic interests in the coal mining industry, and who are
6 not operators, miners, or officers or employees of the Federal
7 Government or any State or local government.

8 (d) Advisory committee members, other than em-
9 ployees of Federal, State, or local governments, while per-
10 forming committee business shall be entitled to receive
11 compensation at rates fixed by the Secretary or the Surgeon
12 General, as the case may be, but not exceeding \$100 per
13 day, including travel time. While so serving away from their
14 homes or regular places of business, members may be paid
15 travel expenses and per diem in lieu of subsistence at rates
16 authorized by section 5703 of title 5, United States Code, for
17 persons intermittently employed.

18 EFFECT ON STATE LAWS

19 SEC. 407. (a) No State law in effect upon the effec-
20 tive date of this Act or which may become effective thereafter
21 shall be superseded by any provision of this Act or order
22 issued or standard established or promulgated thereunder,
23 except insofar as such State law is in conflict with this Act
24 or with any order issued or standard established or promul-
25 gated pursuant to this Act.

1 (b) The provisions of any State law or regulation in
2 effect upon the effective date of this Act, or which may
3 become effective thereafter, which provides for more strin-
4 gent health and safety standards applicable to coal mines
5 than do the provisions of this Act or any order issued or
6 standard established or promulgated thereunder shall not
7 thereby be construed or held to be in conflict with this Act.
8 The provisions of any State law or regulation in effect upon
9 the effective date of this Act, or which may become effective
10 thereafter, which provide for health and safety standards
11 applicable to coal mines for which no provision is contained
12 in this Act or any order issued or standard established or
13 promulgated thereunder, shall not be held to be in conflict
14 with this Act.

15 (c) Nothing in this Act shall be construed or held to
16 supersede or in any manner affect the workmen's compensa-
17 tion laws of any State, or to enlarge or diminish or affect in
18 any other manner the common law or statutory rights,
19 duties, or liabilities of employers and employees under State
20 laws in respect of injuries, occupational or other diseases,
21 or death of employees arising out of, or in the course of,
22 employment.

23 ADMINISTRATIVE PROCEDURES

24 SEC. 408. Except as otherwise provided in sections 201
25 (d), 303 and 308 (a) of this Act, the provisions of sections

1 551-559 and sections 701-706 of title 5 of the United States
2 Code, shall not apply to the making of any order or decision
3 pursuant to this Act, or to any proceeding for the review
4 thereof.

5 REGULATIONS

6 SEC. 409. The Secretary, the Surgeon General, and the
7 Panel are authorized to issue such regulations as each deems
8 appropriate to carry out any provisions of this Act.

9 ECONOMIC ASSISTANCE

10 SEC. 410. (a) Section 7 (b) of the Small Business Act,
11 as amended, is amended—

12 (1) by striking out the period at the end of para-
13 graph (4) and inserting in lieu thereof “; and”; and

14 (2) by adding after paragraph (4) a new para-
15 graph as follows:

16 “(5) to make such loans (either directly or in
17 cooperation with banks or other lending institutions
18 through agreements to participate on an immediate or
19 deferred basis) as the Administration may determine to
20 be necessary or appropriate to assist any small business
21 concern operating a coal mine in effecting additions to
22 or alterations in the equipment, facilities, or methods
23 of operation of such mine to requirements imposed
24 by the Federal Coal Mine Health and Safety Act of
25 1969, if the Administration determines that such concern

1 is likely to suffer substantial economic injury without
 2 assistance under this paragraph."

3 (b) The third sentence of section 7 (b) of such Act is
 4 amended by inserting "or (5)" after "paragraph (3)".

5 (c) Section 4(c) (1) of the Small Business Act, as
 6 amended, is amended by inserting "7 (b) (5)," after "7 (b)
 7 (4),".

8 (d) Loans may also be made or guaranteed for the
 9 purposes set forth in section 7 (b) (5) of the Small Business
 10 Act, as amended, pursuant to the provisions of section 202
 11 of the Public Works and Economic Development Act of
 12 1965, as amended.

13 TITLE V—COAL MINE HEALTH AND SAFETY

14 RESEARCH TRUST FUND

15 ESTABLISHMENT OF TRUST FUND

16 SEC. 501. (a) There is hereby established in the Treas-
 17 ury of the United States a trust fund to be known as the
 18 Coal Mine Health and Safety Research Trust Fund, herein-
 19 after in this section called the trust fund. The trust fund
 20 shall consist of such amounts as are appropriated to it by
 21 subsection (b).

22 (b) There is hereby appropriated to the trust fund, out
 23 of any money in the Treasury not otherwise appropriated,
 24 amounts equivalent to 100 per centum of the assessments
 25 received in the Treasury under the provisions of section 502

1 of this Act. The amounts appropriated pursuant to this sub-
 2 section shall be transferred at least monthly from the general
 3 fund of the Treasury to the trust fund on the basis of esti-
 4 mates by the Secretary of the Treasury of the amounts re-
 5 ceived in the Treasury under the provisions of section 502 of
 6 this Act. Proper adjustments at the end of each fiscal year
 7 shall be made in the amounts subsequently transferred to the
 8 extent prior estimates in each year were in excess of or less
 9 than the amounts required to be transferred.

10 (c) It shall be the duty of the Secretary of the Treasury
 11 to hold the trust fund, and (after consultation with the Sec-
 12 retary of the Interior) to report to the Congress not later than
 13 the 1st day of March of each year on the financial condition
 14 and the results of the operations of the trust fund during the
 15 preceding fiscal year and on its expected condition and
 16 operations during each fiscal year thereafter. Such report
 17 shall be printed as a House document of the session of the
 18 Congress to which the report is made. It shall be the duty
 19 of the Secretary of the Treasury to invest such portion of
 20 the trust fund as is not, in his judgment, required to meet
 21 current withdrawals. Such investments may be made only
 22 in interest-bearing obligations of the United States or in ob-
 23 ligations guaranteed as to both principal and interest by the
 24 United States. For such purpose such obligations may be
 25 acquired (A) on original issue at par, or (B) by purchase

1 of outstanding obligations at the market price. The purposes
2 for which obligations of the United States may be issued
3 under the Second Liberty Bond Act, as amended, are hereby
4 extended to authorize the issuance at par of special obliga-
5 tions exclusively to the trust fund. Such special obliga-
6 tions shall bear interest at a rate equal to the average rate
7 of interest, computed as to the end of the calendar month
8 next preceding the date of such issues, borne by all mar-
9 ketable interest-bearing obligations of the United States
10 then forming a part of the public debt; except that where
11 such average rate is not a multiple of one-eighth of 1 per
12 centum, the rate of interest of such special obligations shall
13 be the multiple of one-eighth of 1 per centum next lower than
14 such average rate. Such special obligations shall be issued
15 only if the Secretary of the Treasury determines that the
16 purchase of other interest-bearing obligations of the United
17 States, or of obligations guaranteed as to both principal
18 and interest by the United States on original issue or at
19 the market price, is not in the public interest. Any ob-
20 ligation acquired by the trust fund (except special ob-
21 ligations issued exclusively to the trust fund) may be sold
22 by the Secretary of the Treasury at the market price, and
23 such special obligations may be redeemed at par plus
24 accrued interest. The interest on, and the proceeds from
25 the sale or redemption of, any obligations held in the

1 trust fund shall be credited to and form a part of the trust
 2 fund.

3 (d) Amounts in the trust fund shall be available, as
 4 provided by appropriation Acts, only to enable the Secre-
 5 tary and the Surgeon General to carry out sections 201 (b)
 6 401, and 402 of this Act.

7 ASSESSMENTS ON COAL MINE OPERATORS AND
 8 IMPORTERS OF COAL

9 SEC. 502. (a) In order to provide funds for the Coal
 10 Mine Health and Safety Research Trust Fund, each operator
 11 of a coal mine in the United States, and each importer of
 12 coal into the United States, shall pay an assessment to the
 13 United States for each ton of coal sold or used by such
 14 operator or importer according to the following schedule:

Coal sold or used—	Assessment per ton—
After the operative date of this title and before July 1, 1970-----	1 cent
After June 30, 1970, and before July 1, 1971-----	2 cents
After June 30, 1971, and before July 1, 1972-----	3 cents
After June 30, 1972-----	4 cents.

15 (b) Assessments payable under subsection (a) shall,
 16 except as provided in subsection (c), be collected by the
 17 Secretary of the Interior in accordance with such regula-
 18 tions as he may prescribe and shall be deposited in the
 19 Treasury of the United States.

20 (c) The Secretary of the Interior is authorized to enter
 21 into an agreement with the Secretary of the Treasury for

1 the collection of the assessments payable under subsection
 2 (a). In the event such an agreement is entered into, the
 3 Secretary of the Treasury is authorized—

4 (1) to collect the assessments payable under sub-
 5 section (a) by operators of coal mines in the United
 6 States in the same manner and with the same powers as
 7 if such assessments were excise taxes imposed by sub-
 8 title D of the Internal Revenue Code of 1954, as
 9 amended, and

10 (2) to collect the assessments payable under sub-
 11 section (a) by importers of coal in the same manner
 12 and with the same powers as if such assessments were
 13 customs duties imposed by the Tariff Schedules of the
 14 United States.

15 **TITLE VI—MISCELLANEOUS**

16 **JURISDICTION; LIMITATION**

17 **SEC. 601.** In any proceeding in which the validity of
 18 any interim mandatory health or safety standard set forth in
 19 this Act is in issue, no justice, judge, or court of the United
 20 States shall issue any temporary restraining order or prelim-
 21 inary injunction restraining the enforcement of such standard
 22 pending a determination of such issue on its merits.

23 **OPERATIVE DATE AND REPEAL**

24 **SEC. 602.** The provisions of titles I through III and
 25 title V of this Act shall become operative one hundred and

1 twenty days after enactment. The provisions of the Federal
2 Coal Mine Safety Act, as amended, are repealed on the op-
3 erative date of those titles, except that such provisions shall
4 continue to apply to any order, notice, or finding issued
5 under that Act prior to such operative date and to any pro-
6 ceedings related to such order, notice, or finding. All other
7 provisions of this Act shall be effective on the date of enact-
8 ment of this Act.

9

SEPARABILITY

10 SEC. 603. If any provision of this Act, or the application
11 of such provision to any person or circumstance, shall be held
12 invalid, the remainder of this Act, or the application of such
13 provision to persons or circumstances other than those as to
14 which it is held invalid, shall not be affected thereby.

15

REPORTS

16 SEC. 604. Within one hundred and twenty days follow-
17 ing the convening of each session of Congress, the Secretary
18 and the Surgeon General shall submit through the President
19 to the Congress separate annual reports upon the subject
20 matter of this Act, the progress concerning the achievement
21 of its purposes, the needs and requirements in the field of coal
22 mine health and safety, and any other relevant information,
23 including any recommendations either deems appropriate.

Calendar No. 410

91st CONGRESS
1st Session

S. 2917

[Report No. 91-411]

A BILL

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

By Mr. WILLIAMS of New Jersey

SEPTEMBER 17, 1969

Read twice and ordered to be placed on the calendar

FEDERAL COAL MINE HEALTH AND
SAFETY ACT OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 410, S. 2917.

The PRESIDING OFFICER. The bill will be read by title.

The LEGISLATIVE CLERK. A bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

FEDERAL COAL MINE HEALTH AND
SAFETY ACT OF 1969

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

Mr. WILLIAMS of New Jersey. Mr. President, today, the Senate begins consideration of S. 2917, a bill to require urgently-needed improvements in health and safety at all coal mines in the United States. S. 2917 is legislation which, perhaps, should be known as a bill to reduce the cost of coal; not the cost in dollars and cents to the corporate operators of our coal mines, but the infinitely greater cost that does not appear on profit and loss records; the cost in human pain and suffering to our Nation's coal miners and to their families.

Ever since the Civil War, the Nation has witnessed the annual slaughter, in our coal mines. Countless Americans have burned in their memories the picture of the long-suffering coal miner's wife and family waiting at the portal of a Farmington, W. Va. mine last November 20, for the husband or father, son or brother to walk out of the mine or be carried out of it after a series of explosions. For 78 miners, they are still waiting.

Periodically, in the past 100 years, the Nation has responded to mine disasters with legislation, but the legislation has always been too timid and ineffective. Such legislation has frequently left more undone than was done.

In 1910, after a series of disasters, Congress created the U.S. Bureau of Mines, but deprived the Bureau of authority to make inspections.

Another series of disasters prior to the second World War prompted the enactment of the first Federal Coal Mine Safety Act in 1941. This act authorized inspections, but deprived the Bureau of authority to establish even the most rudimentary safety standards and enforcement powers.

During the Korean war, after one explosion had snuffed out the lives of 119 miners just 4 days before Christmas 1951, Congress enacted the 1952 Federal Coal Mine Safety Act which President Truman called "a sham." As he noted, on signing the bill, it exempted from compliance all mines employing 15 persons or less; it left prevention of a broad area of accidents to the States, despite the recognized inability of the States to fulfill that responsibility; it included exemptions worded in such a way as to permit unsafe conditions and practices to continue for years—indeed, in many instances they still continue; and its complex procedural provisions led the President to conclude:

It could be exceedingly difficult, if not impossible, to carry out an effective enforcement program.

In 1966, the act was amended to provide limited coverage for miners in small mines, responding in part to one of President Truman's objections,

President Truman, however, was, indeed, prophetic. For, from 1952 through 1968, there have been nearly 5,000 miners killed, and 200,000 injured in underground coal mines of the United States, despite the passage of the 1952 act. During 1968, the Nation's underground coal miners produced about 35 million tons of coal, resulting in the death of 311 miners, or about one miner for every one million tons of production.

In the early morning of one bleak day last November, a series of explosions rocked Consolidation Coal Co.'s No. 9 mine at Farmington, W. Va., killing 78 miners.

Often described as the size of Manhattan Island, this mine was finally sealed 2 days after Thanksgiving Day. As we debate this bill today, men are risking their lives in an attempt to reopen this mine, recover the dead, and ascertain the cause of this tragedy.

Many of our miners who are lucky enough to escape the violence that has plagued the Nation's mines for years, are subject to another peril which often causes total disability or death. They pay the price of having to work in an atmosphere often saturated with coal dust, which is inhaled daily into their lungs, causing respiratory disability and later death, sometimes by cardiac failure. The press and others refer to this disease as "black lung." The doctors call it coal workers' pneumoconiosis. Whatever it is called, the fact is that the Surgeon General estimates that over 100,000 active and retired miners are afflicted with it.

Thus, the sudden violence of Farmington, and the slower, and often equally deadly, effects of black lung are the catalysts that have caused the public in general, and the miners in particular, to demand Federal action to eliminate the causes of this violence and disease, and to reduce the death and injury rate for this industry—a death and injury rate which is several times as high as the average for all other industries.

Indeed, this industry's record was described by Secretary Udall last December as "disgraceful."

The urgency of this action is dramatically and forcefully underscored by the near tragedy of just this week at another Consolidation Coal Mine in Fairview, W. Va., only 2 or 3 miles from the ill-fated Farmington mine.

At 5 a.m., while 116 men were underground, a mine fire started and got out of hand, requiring that the section be sealed. All escaped, fortunately. But the accident demonstrates the urgent need for this legislation.

Mr. President, S. 2917—the Federal Coal Mine Health and Safety Act of 1969—is the first of a series of actions that must be taken if this demand is to be met. It is aimed at reducing and ultimately eliminating the excessively high price paid to produce coal each day, not by the industry, not by the consumer, but exclusively by the miner—the most valuable resource of this industry—and by his family.

* * * * *

The bill is the culmination of long and arduous work by members of the Labor Subcommittee and the full Labor and Public Welfare Committee, beginning with 9 days of public hearings and ending with 13 days of executive sessions, as well as untold hours of staff work. The issues involved were complex. The subject matter was extremely technical. The terminology used is unique to this industry.

Yet, despite this, with the able guidance of those Senators who represent the major coal producing States and who have a first-hand knowledge of this industry, with the remarkable diligence displayed by all members of the committee, the committee was able to develop and report out unanimously the most comprehensive coal mine health and safety bill ever to be considered by this body.

All of the members of the committee deserve a special word of gratitude for their tireless efforts.

I also wish, Mr. President, to express my gratitude to the senior Senator from Kentucky (Mr. Cooper), who, though not a member of our committee, accepted my invitation to meet with the subcommittee during its executive deliberations. He made a number of suggestions, several of which were adopted by the committee, and, in my judgment, helped to improve the legislation greatly.

Just last December, the chairman of the National Coal Association and president of Consolidation Coal Co. publicly stated:

There can be no question that the health and safety of employees in the coal mining industry must be given first priority.

Later, in March of this year, the president of that association assured the subcommittee, stating:

The industry does not believe profits should be put ahead of the health and safety of mineworkers.

I certainly concur with both of these statements. But to achieve these admirable industrial goals, the industry must make major changes in its health and safety practices. For, as the Department of the Interior stated:

While the coal mining industry has made giant strides in its ability to extract the natural resource coal from the depths of the earth, it has lagged behind other industries in protecting its most valuable resource—the miner.

The purpose of S. 2917 is to insure that both the industry and the Government do, in fact, give first priority to the health and safety of the miner; to insure an end to the annual carnage in our Nation's coal mines; and to insure that new generations of coal miners are not ravaged by black lung.

The evidence is unmistakable that the miners themselves are no longer willing to accept the fatalistic attitude still prevalent in this industry—the attitude which almost accepts with a shrug of the shoulders the proposition that “mining is a hazardous occupation.” They know that coal mining need not be so hazardous if only the operators and the Government will place as high a priority on the health and safety of the miner as is placed on economics.

That is what this bill is about. It recognizes that voluntarism in this industry which has been the byword of the past 17 years is not enough.

This bill provides the tools for better health and safety. The bill, however effective it may be, will never achieve adequate health and safety for the miner unless the Department of the Interior acquires new perspective and focus concerning the importance of the miner and unless there is strong and vigorous administration by the Department.

This Federal Coal Mine Health and Safety Act of 1969 makes an across-the-board comprehensive attack on both the safety and health problems. It not only corrects the deficiencies in the 1952 act, it accounts for all we have learned since 1952, and provides for the development and implementation of safeguards against hazards which may develop in the future. For the first time, it covers the health of the miner; covers surface, as well as underground coal mines; authorizes health and safety standards by regulation, not just by statute, and permits administrative change of the standards in the bill to improve health and safety; establishes an extensive array of interim mandatory health and safety standards; provides for injunctions and civil and criminal penalties for violations; requires an expansion of the sadly deficient Bureau of Mines safety and health research program, and provides for a health and safety research trust fund; and expands the coverage of the law to afford protection against all accidents, not just those that kill five or more at one time, as the 1952 act provided.

At this point, I should like to discuss some of the major issues in this legislation and the provisions in the bill which deal with them.

1. CONTROL OF RESPIRABLE DUST

A new dimension has been added to the already known hazards of coal mining. The new hazard is not violent; it is not even visible, yet it embraces in its deadly arms over 100,000 of our Nation's miners—black lung.

What is black lung? I ask my colleagues to take volume IV of the hearing record, that thin 12-page volume on your desks. In figure 1 you have a photograph of an actual lung cross section. It is a healthy lung. It was taken, during an autopsy, from a 90-year-old schoolteacher. Now look at the next page—figure 2. That is a lung section from a 40-year-old miner. That is black lung. Or look at figures 7 and 8, or figure 12. That, too, is black lung.

Unlike the violent death that may result from a methane ignition, mine fire, or other accident, black lung does not kill instantly. First, it causes many years of painful breathlessness before ultimate death—or—it causes heart failure.

The disease is caused by respirable coal dust, and, although the industry and the Government have known about the disease and its cause for some time now, the United States is the only major coal-producing nation in the world which does not have an industrywide Government standard to control this dust. Great Britain has a standard. Poland, Czecho-

slovakia, and even the Soviet Union have standards. But not the United States.

It is clear that a properly enforced official standard for respirable coal dust would make a significant reduction in new cases of coal workers' pneumoconiosis, and hopefully reduce the rate of progression in miners who have already contracted the disease.

The Surgeon General, in testifying on this legislation, cautioned the committee that the ideal dust level, in terms of absolute prevention of the disease, would be a zero dust level. The ideal would be to prohibit any respirable coal dust in any coal mine. He recognized, however, that this is a goal which cannot be achieved immediately.

On the basis of all of the testimony before the committee, and the entire five-volume record now before the Senate, especially the recommendations of the Surgeon General, S. 2917 provides for a two-phased mandatory reduction of the respirable coal dust levels in all U.S. mines.

Six months after enactment the bill requires that each coal mine operator maintain the respirable coal dust at a level no greater than 3.0 milligrams per cubic meter of air. Then, 3 years after enactment, he must reduce the level to 2.0 milligrams.

The committee recognized that not all mines would be able to achieve these statutory levels within the time prescribed. Therefore, the bill provides a procedure under which operators may obtain permission to operate at a higher level for a limited period of time. During the 2½-year period when the statutory level is 3.0 milligrams, an operator who cannot achieve the level may be permitted to operate at not more than 4.5 milligrams. Then, when the statutory level drops to 2.0, an operator who cannot achieve this new level may be permitted to operate for an additional period of up to 3 years at a 3.0 level. At the end of the sixth year after enactment, all mines must achieve the 2.0 level.

In the event, however, that it is technologically impossible to achieve this 2.0 level within the time permitted, the Secretary of the Interior may extend the period during which operators may be permitted to operate at 3.0 by filing an extension plan with the Congress. If neither the House nor the Senate disapproves of the extension plan, the plan would become effective.

I believe in this debate we should discuss the deliberations that led us to these periods, which might seem very long, for adjustment to the levels that the statute provides. It was a long deliberative process, and recognizing the problems that will be faced by industry in meeting our standards.

I note that my good friend, the senior Senator from Kentucky, is present in the Chamber. We went an unusual extra mile to be realistic and understand the problems that industry will face as we bring to the industry the requirement that it measures the air in terms of dust levels. Our objective is the elimination of this killing disease, pneumoconiosis, the so-called black lung.

The bill also directs the Surgeon General to establish, within 1 year, a health standard for application, as early as possible, which will insure that coal miners can work their entire adult lives in the mines without incurring black lung or any other occupationally caused disease.

Although the standards established by the bill will not in themselves completely prevent a miner from contracting pneumoconiosis, they will significantly reduce the probability that any given miner will be afflicted with the disease.

In addition to requiring reduced dust levels, the bill also provides for comprehensive medical examinations under the supervision of the Surgeon General, and for greatly expanded and intensified research by both the Government and the industry.

* * * * *

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. WILLIAMS of New Jersey. I yield.

Mr. RANDOLPH. Mr. President, the Subcommittee on Labor of the Committee on Labor and Public Welfare is chaired by the Senator from New Jersey (Mr. WILLIAMS), whom I commend for his capable and helpful discussion of the provisions and purposes of S. 2917. This legislation is necessary to improve the health and safety of the men who mine coal in the several producing States of this Republic. Our miners labor under hazardous conditions in the productions of an energy fuel which has a dynamic impact on industry, commerce, the general economy of the United States, and, frankly, on practically all of the people regardless of the areas of the country in which they live.

Coal mining is a hazardous industry. But there are occupational hazards in many industries. We must do everything to lessen these hazards wherever they are prevalent. We must make a special commitment to help bring occupational health and safety improvements to the coal industry.

I do not wish to express a pleasantry, as pleasant as it would be to do that, but I do state factually my appreciation, as a member of the Subcommittee on Labor, for the diligent and effective leadership of the Senator from New Jersey (Mr. WILLIAMS). His leadership was apparent in all of the efforts which he constructively carried forward in presiding over the hearings by the subcommittee during the executive sessions of the subcommittee, and in his further active attention to these problems as the full committee worked its will on this vital measure which now is the pending business.

As the Senator from New Jersey will recall, we referred several unresolved and critically important facets of the bill to the full committee where the distinguished Senator from Texas (Mr. YARBOROUGH), chairman of the full Committee on Labor and Public Welfare, presided with patience and capability to help achieve the reporting of the legislation before us.

This is a very complex measure. There is, understandably, an emotionalism that cannot be separated from consideration of this type legislation. By the mention of "emotionalism" I do not imply even one iota that it supersedes or clouds the actual need for mine health and safety improvements for the men who mine coal in the United States. I only use the term in reference to the fact that too often it is tragic events which impel us to move positively into such vital areas of legislative consideration as this pending business. The report filed by our com-

mittee on this bill makes this fact clear. Congress—and the whole of government, in fact—should be more responsive to health and safety needs as normal procedure without waiting for tragedy to prod action. But, unfortunately, this is largely a failing that is inherent in the history of human behavior.

It is not inappropriate for me to say—I think it is necessary to point out—that there is a cushion of time built into several necessary provisions of this bill which I believe is to enable the coal mining industry to adjust to and meet the standards that are set down in the legislation which is before us. There are critics of these phase-in provisions who are entitled to their opinions. But I do not agree with their criticism in very many instances.

Mr. President, there were differences of opinion in the subcommittee, and then within the full committee, as to how quickly the coal mining industry would be required to meet all standards. In certain areas of the country there are conditions of mining which are different from conditions of mining in other areas. My colleague from West Virginia (Mr. BYRD) who is sitting in the Chamber during this debate, knows that there are wide differences between types and grades of coal and in mining methods in the northern part of West Virginia and in the southern part of West Virginia. Not only does coal texture differ, but so does the depth of the seams of coal. Yes, there are peculiar problems of mining that must be considered even within one State, as well as one State possibly differing from another State—even between neighboring States.

In the consideration of this legislation, which I have supported in general, and which, as I said, I helped to draft in the subcommittee and in the full committee—I have attempted not to reflect the viewpoint of any particular segment, either mining from the standpoint of the workers or mining from the standpoint of the operators. I have tried earnestly to think in terms of the overall implications and applications that will come from the passage of S. 2917, a bill that, in conference with the House probably will be brought back to the Senate to be finalized before being sent to the President.

I recall, and I hope I can reflect on and express my recollections with propriety and good taste, my membership in the House of Representatives at the time we prepared the first meaningful coal mine safety act in this country. That was in 1941. I am very quick to say it was inadequate to the needs but it was passed in 1941, even though there had been some foundation legislation prior to that time. I remember how difficult it was after we had had hearings in the Mines and Mining Committee of which I was a member—I was chairman of the Subcommittee on Coal—to develop positive legislative action. We worked and worked to bring from that committee legislation on this subject of safety and, to a lesser degree, the subject of health. I was a leader in placing a petition on the Speaker's desk so that we could discharge

the committee and bring that legislation to the House floor.

We tried very diligently over a period of many months to achieve success with that discharge petition. That effort did succeed and the House of Representatives was able to act favorably on that measure, a measure that had earlier been acted on in the Senate. So the law was passed in 1941.

As the able chairman of the subcommittee knows, there was additional legislation on this subject matter in 1952.

In that year, there was an attempt to strengthen those provisions which, frankly, were more voluntary than regulatory in the act of 1941. I recall very well that the 1941 enactment had a strengthening effect. But I am quick to indicate in this debate that I think it would have been well to have strengthened the original amendments to the act during the period 1941 to 1952. Congress certainly must share a responsibility, which could be called an irresponsibility, for failure to meet the problems as they came with greater impact. One might ask: "Why do you say they came with greater impact?" Well, they came with greater impact because in this country, as the able Senators from Kentucky and Pennsylvania and Virginia well know, and as the Senators from West Virginia and other States know, we moved into those technological developments which gave us production of coal through mechanization more than by so-called hand labor.

We had, in the State of West Virginia, 120,000 to 125,000 miners digging coal in the 1940's and early 1950's. When the transition came, in some areas of our State, and in some States more quickly than others, there was a rapid reduction in manpower in the production of this fossil fuel. The men who were a part of the mining industry, and who made such a great contribution to this country's progress, realized that they were part of a mechanization program which lessened their numbers—and they saw that the production of coal was not decreased, but rather, was increased. It was the number of men involved in the production of coal which was so drastically reduced.

Thus, from approximately 125,000 bituminous coal miners in the State of West Virginia, the mining force has dropped to perhaps not more than 40,000 men and we come now to the hour when we open debate on S. 2917.

We have not reduced production through mechanization. We have increased it substantially. We have reduced only manpower.

I think it is important to stress that with the advance of mechanization there came the increasing problems of coal dust in the mines.

Hand labor did not create a situation by digging coal which affected the health and safety of miners to the degree that their health and safety are affected today when the fast drills are at work and when the dust flies as the cutting machine slices itself into mountains.

So I say that the transition from the digging of coal by labor to the mining of coal through mechanization and technological advances brought in a new

element to the health and safety problem of miners to which I think Congress should have addressed itself more emphatically at a much earlier date.

Mr. President, let us think now in terms of the further legislation which came into being in 1966, when we felt it was necessary to apply the provisions of the Federal Mine Safety Act to those mines employing less than 15 workers, those mines which are so abundant in the State of Kentucky particularly, and to a lesser degree in Virginia and West Virginia and in some other parts of the country.

It was a difficult task to bring even that change of safety laws into being.

The record will disclose that I fought diligently to extend the Coal Mine Safety Act provisions to the smaller mines to protect all miners. Although I was not a Member of Congress during the years from 1947 through November of 1958, I say for the record that I feel that had I been here during that period of time I would have been active in giving attention to the mining problems of that era which have grown into the serious problems we begin to attack in the pending legislation.

In the 1966 act, I believe the record will indicate that there was no Member of this body who worked more earnestly for coverage to the smaller mines than did the Senator from West Virginia now speaking. But, Mr. President, I am again quick to admit that, as so often happens in this body—and what is true here is true of people generally—we react to tragedy. We react to that which causes us to stop and see the magnitude of a mine disaster like the Farmington disaster in West Virginia last November. I knew 15 of the 78 miners who perished in that disaster. I knew them personally, and, in several instances, I also knew the members of their families.

I have known many, many of the miners in West Virginia. I have worked with them on many of their problems. Today, I hope that, with other Members of the Senate, I can at least partially meet the challenge of necessary and workable, yet reasonable, legislation which is encompassed in the bill now before the Senate.

Mr. President, we come so often after the fact. This is what we do legislatively, not only in this field of coal mine health and safety but also in the broad spectrum of the legislative field which we consider in the Senate.

Today we are faced with being suffocated by, or of being buried under, or of being drowned in the waste that we, the most affluent people in the world, have produced in this country.

So, in the Committee on Public Works, of which I have the responsibility to be chairman, we have been moving toward air and water pollution control and abatement legislation, and solid waste disposal programs, trying, as it were, after the fact, to see if we can keep pace with and overcome the degradation of the environment of which we are a part. We know what a difficult task it is. Unfortunately, in the field of solid waste disposal, the magnitude of that one problem in our country is hardly realized by the American people.

I use this as an illustration of the tendency of Members of Congress, as it is the tendency of all people, to come to the attacking of problems on a broad front too long a period of time after the crisis came upon us. The chairman and his subcommittee and the chairman and his full committee have performed great services in developing this bill. We thought our legislative acts of the past were bold steps, but they were timid and did not suffice.

I presided not long ago at a hearing of the subcommittee on water pollution control in Jacksonville, Fla. I have no desire to name an offender, but I can say that on that trip I saw with my own eyes, in the early morning before our meeting began, raw sewage coming into the St. Johns River. From where? From a hospital. That hospital is supposed to be concerned—and it is, as are the doctors working in it—with the health and safety of the men and women who are patients who are entitled to healing. They receive it in such an institution, but the citizenry of the community was exposed to incredible conditions by it. There is no need to mention the hospital. I saw what happened.

Like or similar conditions are repeated over and over in our country today. The reason for my mentioning it at this time is not in any sense to relieve the Congress of its responsibility, but only to say that, in a sense, it is only human nature in the Congress to come too much after the fact, rather than before the fact, on subject matters which are within the jurisdiction of almost every committee in the Senate.

Mr. President, I do not want to be misunderstood now. I am being very careful. I want to weigh my words. Humanity is involved here, and we must not overlook that. Precious lives are at stake, too, in the mining of coal. They are the lives of good people. The lives of hardy people are at stake. We must not overlook it.

I think I have the responsibility to say that the bill before us, if it is enacted into law, will cost many millions of dollars more than heretofore in the mining of coal. It is inescapable. There will be increased costs in the price of coal to the consumers, be they electric utilities or many of the other coal-using customers throughout the United States. But I think we must do what we are doing here. I do not use the trite expression, "We must pay the price." I do not mean that. I mean that as we necessarily move forward—perhaps much too slowly; I admit that—we must understand that the desired health and safety improvements cannot be accomplished without many of the costs being built in.

I see the Senator from Missouri (Mr. EAGLETON) on his feet. I say to him we, the consuming public, must be prepared to absorb those costs. We will pay them, possibly even in higher rates for electricity. I think industry will realize it is necessary to pay them. Those who mine the coal realize, and I think major portions of the management of the coal industry realize, that we can in no wise put profit ahead of the life of a coal miner in West Virginia or in any other State of this Union.

We in the Congress must understand, too, that the requirements on Federal departments and agencies for the administration of the provisions of this measure will be very costly and will necessitate vastly increased personnel and appropriations. That is a responsibility we must face and meet; it is another price we must pay in the interest of humanity.

Mr. President, amendments will be offered to the proposed legislation. At this time I do not indicate that I will support or oppose the amendments to be offered. It is important that we have thorough discussion and consideration of the bill. The viewpoints of members of the committee, some of whom will offer amendments, and those of other Senators who are not on the committee, but who also will offer amendments, must be given expression. There is a need for a dialog, in a democratic fashion, in the Senate on legislation of this type. There is no need to pass the bill within a few hours. In fact, that would beg the question, which is the very real one of doing that which is right or of doing that which might be expedient.

The Committee on Labor and Public Welfare, whose chairman, Senator RALPH YARBOROUGH of Texas, truly is a humanitarian in the true sense, means to do right on this measure. I have already expressed my compliment, which is in no wise cursory, about the chairman of the committee and the chairman of the subcommittee. I wish to pay the same compliments to the ranking minority member of the committee, Senator JAVITS of New York. With no coal mines in the Empire State, but with coal consumers in that great State, he has applied himself with great ability to a study of the important provisions and implications and applications of the legislation and he has made truly outstanding contributions to the development of this measure.

Mr. President, I propose to talk further at a subsequent time on this bill. I do not know what the actual progress of this legislation will be through the general debate and then through the amendment stage, but there are some matters which I shall wish to discuss with my colleagues.

We need the counsel of all Members of the Senate in the matter now before us. I hope that Members of the Senate who cannot, because of other commitments and responsibilities, be in the Chamber during the debate and discussion and determination will read carefully the report on S. 2917 and the material which is inserted in the Record by the chairman of the subcommittee as a necessary part of the Record.

I repeat what I have said in varying ways over a period of weeks and months, and it is that I believe the Senate will help the Congress of the United States send to the President a bill that will be effective. It must be effective. We will send to the President a bill that is workable—and it must be workable. We will send to the President a bill that is in the interests of the American public, as well as to the coal miners and their families. I am sure that to such a commit-

ment not one, but all the Members of this body will subscribe.

I thank my colleague for yielding.

Mr. WILLIAMS of New Jersey. Mr. President, I wish to say for myself that, coming as I do from a State that does not have coal mines, the responsibility of developing this legislation in the committee involved new subject matter to me. I wish to express my gratitude to the Senator from West Virginia. He brought to our committee deliberations nearly three decades of attention to the welfare of miners under the legislative processes, and it was invaluable to the chairman of the subcommittee and to the committee. His experience and his tireless devotion were certainly appreciated.

Mr. EAGLETON. Mr. President, will the Senator from New Jersey yield?

Mr. WILLIAMS of New Jersey. I yield.

Mr. EAGLETON. Mr. President, this is a good bill. That expression is perhaps a cliché; it is often said of almost any bill that is taken up for consideration by the Senate; but I can personally attest to the comprehensive and thorough treatment given to S. 2917, the Federal Coal Mine Health and Safety Act of 1969. I know of no bill that has been before this, the first session of the 91st Congress, that has received more attention in its public hearings, from a voluminous list of witnesses from all walks of life, than did S. 2917. I know of no bill, through its many executive sessions in both the Labor Subcommittee and the full Committee on Labor and Public Welfare, that has had expended upon it more man-hours by both Senators and their able staffs.

I think it is appropriate as we begin the consideration of this bill that I make some reference to three Senators who, above all others, played major roles in the evolution of the matter that is now before us.

First, of course, is the chairman of the Labor Subcommittee, the Senator from New Jersey (Mr. WILLIAMS). Most of us, though we are reluctant to admit it, are somewhat parochial in nature. We concern ourselves with those things that are of immediate and direct concern to our constituents in our respective States. We display more interest toward matters that are precisely germane to our electorate, and leave those things that are somewhat remote from our own jurisdiction to other Senators and other times.

The Senator from New Jersey, as has been pointed out, is from a State that has no coal mines. He has no vested interest, as a politician, in coal mines. He has no vested interest, as a politician, in coal mining. His constituency is not directly affected.

Yet, despite this lack of any immediate personal or political interest, he has displayed the greatest of patience, the greatest degree of leadership, and untold energy in seeing that S. 2917 was reported out from committee and is now before the Senate. Without his patience and his diligence, in my humble judgment, the bill would not have been before us in this first session of the 91st Congress, and indeed perhaps would not have been here in the second session, and might not even be before the 92d Congress when it convenes.

I pay tribute to him, not in the idle way in which Senators sometimes exchange personal pleasantries, but most sincerely, because he has been the single most important contributing factor, I think, to the evolution of this bill.

Next, I would be remiss if I did not point out the efforts of the Senator who just completed his introductory remarks, the senior Senator from West Virginia (Mr. RANDOLPH). As a display of my parochialism, I subscribe only to Missouri newspapers, and a couple of other journals called national in scope, some printed in this city and elsewhere in the East. I am not a subscriber to any newspaper published in West Virginia. I have no friends or relatives there to speak of, and so I am in constant communication with that State. But it has been brought to my attention that it has been alleged that the Senator from West Virginia (Mr. RANDOLPH) was something less than completely interested in seeing that a sound, effective, workable, and meaningful Coal Mine Safety Act would come out of this session of Congress.

Whoever makes those statements in West Virginia could not be more totally misinformed, whether intentionally or unintentionally I know not, because at the same time that the Senator from New Jersey (Mr. WILLIAMS) was expending the amount of effort and time that I have already stated he put forth, Senator RANDOLPH likewise attended every session, both of public hearings of the Labor Subcommittee and of every executive session of both the Labor Subcommittee and the full Committee on Labor and Public Welfare, when the bill was considered. And not only was he there in attendance, he was there as a vigorous participant, trying to help bring out a bill that was effective and meaningful. He brought to this committee an expertise, a knowledge, an awareness, and a compassion that were indispensable to the creation of this bill. No other member of the committee was really knowledgeable about coal mining in specific detail. Senator RANDOLPH was and is, and at each juncture he was of immense value to all other Senators who served on both the subcommittee and the full committee, in imparting to us the expertise and the knowledge that, I repeat, were indispensable to the committee. At no time did he attempt to obstruct, impede, or in any way hinder the progress of this bill. At every meeting, on every point, he, together with Senator WILLIAMS, attempted to move the bill, to resolve disputes, to reconcile differences, and to move on to another section.

This is a complex and detailed bill, with facts and figures and percentages, and time limitations and duration periods, and rules and regulations that defy comprehension by even a reasonably well-informed layman. It is not the kind of bill that you can crank out of a committee in an hour, a day, or a week. But Senator RANDOLPH was there at every session, pushing, prodding, keeping us moving, explaining when explaining was necessary, so that this bill could come to the floor. I think it is only fair that the people of his State and, more importantly, the people of this country, and coal miners from every State, be made

aware of the fact that without Senator RANDOLPH's prodding, his urging, his persuasion, and his ability to work out rational and effective compromises, this bill would not be before us.

This unjustified criticism should not be his reward for such labors. The gratitude and the thanks of the people who work in coal mines are owed to him. I think that in due course more and more people will begin to realize this. And those who have been critical, those who have done all the carping, will look back upon their criticism and their carping as, at the very least, terribly misguided.

Mr. RANDOLPH. Mr. President, will the Senator yield for a comment?

Mr. EAGLETON. I yield.

Mr. RANDOLPH. Mr. President, I am not an overly sensitive person to criticism, because I understand the problems of a legislator. I have experienced these problems during my 14 years in the House of Representatives and now for more than 10 years in the Senate. That is almost a quarter of a century of service in the Congress. So I can understand the attitudes of people—their misunderstandings and their apprehension and their criticism.

I think some misunderstandings have occurred. I hope that they can be clarified.

I shall ever be grateful for the expressions of my colleague, the Senator from Missouri, a valued member of the Committee on Labor and Public Welfare. In fact, I say with no overstatement that I shall carry in my pleasantest of memories that which he has said. I shall not forget.

Mr. EAGLETON. Mr. President, I thank the Senator from West Virginia.

Mr. President, the third Senator in the triumvirate who are owed so much in so far as the bill is concerned, is the ranking Republican member of the Committee on Labor and Public Welfare, the Senator from New York (Mr. JAVITS). He, like the Senator from New Jersey (Mr. WILLIAMS) is not a representative of a coal-producing State. However, again like the Senator from New Jersey, it is typical of the Senator from New York that in anything he undertakes, he gives of himself in an almost inexhaustible manner. He, too, is a tremendously skillful legislative craftsman.

The Senator from New York was of inestimable value in resolving the conflicting opinions of those who espoused opposite views with the result that the bill accomplishes the desired end.

Without the help of the distinguished Senator from New York, without his persuasion as an articulate and capable lawyer, and without his ability to find satisfactory and effective ways of surmounting what, from time to time, appeared to be an impasse, the bill would perhaps not be before the Senate today.

Mr. President, the entire Senate which, in due course, will cast its vote with respect to S. 2917 should be deeply and everlastingly grateful to these three Senators, the Senator from New Jersey (Mr. WILLIAMS), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from New York (Mr. JAVITS), for the effort, the talent, the energy, and the

compassion which they displayed in bringing the bill into being so that coal miners in all of the various States that engage in that industry will from the date of its enactment forward have a better, safer, and healthier place in which to work and ply their trade.

Mr. President, I yield the floor.

Mr. WILLIAMS of New Jersey. Mr. President, I certainly express my appreciation to the Senator from Missouri for the generosity of his remarks dealing with me and also once again for his complete participation in all of our committee deliberations, for the hard and important but pleasant work that consumed us all with dedication, without acrimony, but with agreement and with good results, because we reported the bill with a unanimous vote.

The Senator from Missouri was most helpful in every step of the way. I appreciate his efforts.

Mr. BYRD of West Virginia. Mr. President, I would like to ask the able Senator from New Jersey a question as to what consideration if any was given to the possibility of having provisions included in the bill which would provide compensation for miners suffering from black lung who do not qualify for compensation under State law.

The reason I ask the question is that I have been very interested in legislation which would provide for compensation to miners suffering from pulmonary diseases who are not covered by State statute. In West Virginia there are many miners suffering from black lung and other pulmonary diseases who do not qualify under State statutes for compensation.

With this in mind, I gave considerable time to the development of proposed legislation which would provide Federal assistance in this area. I was able to work with the Washington headquarters of the United Mineworkers of America in developing a proposed bill which would provide Federal assistance over a period of 20 years, with the Federal assistance decreasing, I believe, in the amount of 5 percent a year and the States picking up the additional costs annually, but with no cost to the coal industry. I have felt that if the Federal Government could provide assistance along this line, without additional cost to the industry, we would not incur the opposition of the industry, which is already heavily burdened with overhead costs; but, at the same time, the Federal Government would be assuming some responsibility in this area, and I think it should assume such responsibility.

So it was with the advice and counsel and assistance of Mr. George Titler, vice president, and other officials of the United Mineworkers of America, that I was able to prepare the proposed legislation, and my senior colleague, Senator RANDOLPH, and I joined in cosponsoring it.

As the able Senator from New Jersey will recall, I appeared before his subcommittee and testified in support of this measure. My first question, therefore, is, Was consideration given in the subcommittee deliberations to adding provisions dealing with compensation?

My second question is, What are the prospects for such legislation at this point being added by way of an amendment to this bill?

My third question is, If such prospects are not good, what encouragement or assurance could the able Senator give to the Senator from West Virginia as to the prospects for such legislation in the near future?

Mr. WILLIAMS of New Jersey. First, the committee did not have before it any proposed legislation dealing exclusively with workmen's compensation for black lung disease, pneumoconiosis. One of the bills, S. 1094, although it included provisions on this subject, had health and safety as its major thrust. I believe I am accurate when I state my recollection that the first time the attention of the committee was directly drawn to the need for compensation for men disabled by black lung disease was by the junior Senator from West Virginia (Mr. BYRD). Of course, it was my personal feeling as chairman of the subcommittee that this certainly should receive careful attention and, so far as the chairman was concerned, most sympathetic consideration.

As we continued our hearings and deliberations on the safety and health measure, we did not deal in any comprehensive way with this particular approach of compensation for the disease. As necessary as it is, as grateful as we were that the junior Senator from West Virginia brought it to us, it was not dealt with at that point to the extent that we were able to include it in the pending bill.

So far as amendments here are concerned, it would seem to me that it is now established that this disease, without preadventure, is associated with the dust in the coal mining process, that it is disabling, and that it should be a compensable disease.

I would believe that our committee responsibility should be to consider it in depth. In the meantime, if there were a way to deal with this temporarily through a measure to bring disability payments to men disabled by the disease, certainly I would try to find, even now, a way to deal with the emergency in a temporary fashion, looking toward a comprehensive, long-range program of compensation for men disabled by pneumoconiosis.

Mr. BYRD of West Virginia. Mr. President, I thank the able Senator for his response. I understand his answer to be that it is quite possible that consideration might be given on the floor of the Senate to language which would establish a short-term program to assist coal miners who suffer from pulmonary diseases and who do not qualify under State statutes. Am I correct?

Mr. WILLIAMS of New Jersey. That is what I tried to convey to the Senator, yes.

Mr. BYRD of West Virginia. With the idea that there would be a study running concurrently with the temporary program, the study leading possibly to a long-range program.

Mr. WILLIAMS of New Jersey. Yes. I would think that would make a great deal of sense. That would be the logical and

best way to do it. Whoever would make the study—Federal or State—it would be subject to discussion, decision, and conclusion. I would think a permanent program would be most sensible.

Mr. BYRD of West Virginia. I appreciate the sympathetic attitude on the part of the able Senator from New Jersey.

I realize that such long-range legislation would require considerable study and would require some actual cost estimates. But I would hope that something could be worked out while the bill is on the floor, leading in this direction at least—perhaps providing for an interim program as the chairman has suggested.

At this moment I also wish to express my appreciation to the able Senator for the great effort he has put into this matter and for the long hours of hard work he has spent in bringing this bill to the floor. I think he has done a splendid job.

I also wish to congratulate my able senior colleague, Senator RANDOLPH, who has been so diligent and so thorough in his study of this measure.

I also wish to congratulate and express appreciation to the able senior Senator from New York (Mr. JAVITS), who likewise has performed admirably.

Mr. WILLIAMS of New Jersey. Mr. President, may I say in that regard that it has been mentioned that this Senator comes from a State that does not have coal mining as an industry, and the Senator from New York, who has been so helpful in the whole process, comes from a State that is not known as a coal mining State. I do not know whether the Senator from New York has been, but I have been lightly abused and chided about my interest in an industry that does not come on bulking large in my State. With apology to the Senator from New York, I was referred to as the "Broadway coal miner."

But I will say this: Not knowing much about the industry and getting into this with a responsibility, I spent a good deal of time in coal mines and now know a little of the problems and dangers and I have a great feeling of compassion for the problems of the coal miners. I now have a sufficient working knowledge to feel confident that this bill is needed and it is a good bill to meet the objectives.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS of New Jersey. I yield.

Mr. JAVITS. Mr. President, for the information of the Senate, I should like to say at this moment that the Prime Minister of Israel is downstairs, being received by the Committee on Foreign Relations, of which I am a member. I should be honored to attend that session, if I am permitted to do so. So, although I am the ranking minority member, rather than follow Senator WILLIAMS, the Senator from Kentucky (Mr. COOPER), who has a profound interest in the proposed legislation, will succeed Senator WILLIAMS to the floor.

With the permission of the acting majority leader, I should like to ask unanimous consent that, following Senator COOPER's remarks, I may be recognized in respect of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I have just this further observation with respect to the statement by the Senator from New Jersey. He spoke of the need for Federal research, and research on the part of the industry, into the hazards of coal mining, and with respect to the health and safety of coal miners.

I want the record to show, Mr. President, that the Federal Government has been cognizant of the need for research in connection with diseases among the coal mining population.

As far back as 1963, I was successful in adding an amendment in the amount of \$100,000 to the bill making appropriations for the Public Health Service to establish a research program in West Virginia dealing with pulmonary diseases among the coal-mining population. Each year thereafter the committee appropriated moneys for the continuation of this research program. Last year, the appropriation was \$1,227,000, the result being that presently at the University of West Virginia in Morgantown there is what we call ALFORD, the Appalachian Laboratory for Occupational Respiratory Diseases, which gives its entire time to the study of pulmonary diseases among the mining population of Appalachia.

Also I would point out that Congress has appropriated approximately \$5 million for the construction of the Appalachian Health Center which I was instrumental in locating at Morgantown, W. Va., and that center will carry on and conduct continuing research with respect to pulmonary diseases among the mining population.

I say this so the record will show that the Federal Government has not only appropriated moneys for coal research and research dealing with the commercialization of coal, the development of byproducts from coal, and so forth, but that it has also appropriated money dealing with research in connection with mining diseases.

I do not mean to denigrate what the Senator has said about the need for increased health research, but I thought the record should show that the Congress has not been entirely oblivious to this great need and that it has been responding over a period of several years.

Mr. WILLIAMS of New Jersey. We are where we are because there are now clear findings of the relationship of the dust to the respiratory system. Certainly some of the best data we have had in making these findings came from the facility the Senator referred to.

I wish to ask the Senator from West Virginia, who has been so close to this industry and the problems connected with the industry so much longer than I have, is it not true that the disease known as pneumoconiosis was not absolutely related to coal dust and the respiratory system until recent years?

Mr. BYRD of West Virginia. I think that is correct. Certainly as a result of this research we have learned more about pneumoconiosis, silicosis, black lung, and other pulmonary diseases, so prevalent among coal miners.

Mr. WILLIAMS of New Jersey. I agree. I thank the Senator from West Virginia.

Mr. JAVITS. Mr. President, I ask unanimous consent that the unanimous-consent agreement which was just obtained with respect to the order of speakers may be vacated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, with the kind consent of the Senator from Kentucky (Mr. COOPER), I shall speak now because I find that the affairs downstairs have been delayed.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, as the ranking minority member of the Committee on Labor and Public Welfare, the Subcommittee on Labor, and as the author of two of the bills which the committee considered in drafting the coal mine health and safety bill which is now before the Senate as S. 2917, I support the bill as reported by the committee. The Subcommittee on Labor and the full committee have given this bill the most careful and detailed consideration.

I think with the great leadership which has been given to this matter by the Senator from New Jersey (Mr. WILLIAMS), we have brought to the Senate a credible reform measure on this most dangerous of all industrial fields.

I realize there are objections to the bill and problems which will be raised, primarily by our very distinguished friend, the Senator from Kentucky (Mr. COOPER). However, I think that all in all we have produced a product which is worthy of the Senate. Certainly it had the most thorough consideration.

We have heard over 40 witnesses representing the administration, operators of both large and small mines, coal miners, medical and safety experts in this country and Europe, and other interested persons. The hearing record covers over 1,500 pages.

The bill which is now before the Senate was the product of some 13 days of executive consideration by the Subcommittee on Labor and the full committee, and is certainly the most comprehensive health and safety legislation ever to come before the Congress. It is in no sense a partisan bill. It incorporates the ideas and suggestions of virtually every member of the committee. Furthermore, and I want to emphasize this point, it is in no sense a compromise bill. Throughout this bill the committee has consciously avoided sacrificing considerations of health or safety to economics or efficiency. To put the matter succinctly, this bill, if properly enforced, will produce the safest and healthiest coal mines possible, given the state of existing technology.

Under the bill, strict new interim safety standards are established to cope with the danger of explosions such as the one which killed 78 miners in Farmington, W. Va., last November. The improved standards are not, however, limited to those directed at preventing "major disasters"; that is, those which threaten injury or death to five or more miners. All types of dangers are covered, including

particularly, roof falls, which are responsible for most of the deaths which have year in and year out, occurred in the mines. In addition, the bill, for the first time, establishes health standards to limit the level of coal dust, the cause of the infamous "black lung" disease, which has disabled and killed thousands of miners. The Secretaries of Interior and Health, are given the responsibility and authority to develop and promulgate improved safety and health standards in the future, as research and experience show that new standards are necessary. A strict enforcement scheme is established with civil and criminal penalties applicable to operators of mines in which violations of health and safety standards occur and to miners in the case of violations of standards prohibiting smoking. Other salient features of the bill include crash research programs in areas in which the committee believes further and prompt improvement is necessary and a tax going up to 4 cents per ton of produced or imported coal to finance health and safety research.

Mr. President, I do not for a moment deny that this bill is strong medicine for the coal mine industry. But strong medicine is clearly required in the face of the facts concerning health and safety in this industry.

Coal mining is perhaps the most dangerous occupation in America. In the last 10 years there have been over 112,000 accidents in coal mines, 2,752 of them fatal. In 1968 alone there were 9,806 accidents, in which 311 men died. I have already spoken of the horrible catastrophe which occurred last year in Farmington, W. Va., where the Mannington mine exploded, killing 78 miners. After that disaster, industry-government conferences were held, pledges were made by all parties to take special steps to increase health and safety in the mines, the number of inspections was drastically increased, the practice of notifying operators prior to Federal inspection was stopped, but we have still had over 95 fatalities in underground coal mines since last November.

No radical change can be expected in this record unless and until the existing Coal Mine Safety Act is modernized and strengthened.

As long ago as 1942, the Russell Sage Foundation published a study regarding the prevention of fatal explosions in coal mines. The authors of that report wryly commented:

Dead miners have always been the most powerful influence in securing passage of mining legislation.

Mr. President, there is no doubt that the Mannington disaster has had a great deal to do with the kind of bill that the committee has reported out and is pending before the Senate today. This bill obviously comes too late to help the miners buried in the Manning mine, or their widows and children, but it does represent an attempt, perhaps for the first time, to close the barn door before the horses have been stolen.

This is especially true insofar as the safety provisions of the bill dealing with the danger of explosions or ignitions are

concerned. These provisions, which are of great importance to me, deal with such matters as better ventilation practices, more frequent tests for methane, the use of automatic methane monitors and the elimination of the wholly spurious distinction between so-called "nongassy" and "gassy" mines.

The elimination of this distinction between gassy and nongassy mines proved to be most controversial, and aside from the dust standard, no issue was given as much time or attention by the committee. After hearing the arguments advanced by the small mine gassy mine operators, and particularly the most eloquent and persuasive arguments of the senior Senator from Kentucky (Mr. COOPER), who appeared before the committee in executive session, the committee concluded, in my opinion correctly, that the danger of methane ignitions or explosions in mines previously classified as nongassy is sufficiently great to warrant elimination of the distinction and to require that all electric face equipment used in such mines be made permissible.

The committee report goes into this question in very great detail and, in my judgment, conclusively demonstrates the correctness of the decision reached by the committee. Briefly, the record shows that during the past 17 years, over 50 methane ignitions, causing 27 fatalities, have occurred in nongassy mines of every description, including drift, slope and shaft mines, above and below the water table. In many of the mines in which these explosions or ignitions occurred, none or only the slightest trace of methane had ever been found previously. As this record implies, the fact is that there is really no such thing as a nongassy mine; trapped pockets of methane may exist in any type of mine, whether or not it is a drift, slope or shaft mine and whether or not it is above the water table.

The majority of the methane ignitions or explosions which have occurred in nongassy mines have been caused by smoking or open flames. However, at least nine of the explosions were caused by low-horsepower electric face equipment, such as drills, and it appears that four explosions one of which killed 11 miners, have been caused by electric face equipment in nonpermissible condition. Thus, it simply flies in the face of the facts to maintain, as some small operators have done, that the use of nonpermissible equipment has never been the cause of any injury or fatality in nongassy mines.

The senior Senator from Kentucky pointed out to the committee that in comparison to gassy mines, nongassy mines have an excellent safety record, particularly insofar as explosions or ignitions are concerned. Such is indeed the case. Senator COOPER also made several suggestions concerning the maintenance of proper barriers between coal mines and gas wells, and the prohibition of open flames and nonpermissible low-horsepower equipment, such as drills, which the committee adopted, in substance. However, the committee, by a

vote of 14 to 3, rejected his amendment which would have permitted the continued use of heavy nonpermissible type electric face equipment in nongassy mines. I voted against the amendment in committee, and will oppose it if offered on the floor.

In my view it is our duty to enact legislation which will provide the highest degree of protection possible to miners employed in both gassy and nongassy mines, and the fact that gassy mines may be more dangerous than nongassy mines does not justify ignoring such hazards as may exist in nongassy mines. Furthermore, the committee has, in fact, taken account of the much more dangerous nature of gassy mines as compared to nongassy mines. Section 301(i) of the bill requires the stationing of a Federal inspector permanently in those "underground mines which liberate excessive quantities of explosive gas and which are most likely to present explosion dangers in the opinion of the Secretary, based on the past history of the mine and other criteria he shall establish."

The heart of the matter is that gas can occur in any mine, and that sparks from nonpermissible equipment can ignite such gas in any kind of mine. If smoking or open flame lamps, or small nonpermissible equipment can cause explosions in nongassy mines, as it has on nine occasions, then so can large nonpermissible equipment, as has been demonstrated in four cases.

Nor in my view, does the cost of converting all equipment to permissible status justify continuance of present practices. The committee gave the most careful consideration to the economic arguments advanced by the small nongassy mine operators and Senator COOPER on their behalf. Members of the committee staff held intense discussions of this question of cost with representatives of the administration. As the committee report points out, one result of these intense deliberations was the finding that the previously high cost of obtaining approval from the Bureau of Mines for electric face equipment could be substantially moderated if a field inspection system were utilized, authorizing on the spot inspection of nonstandardized equipment. Fortunately, the Bureau of Mines concluded that such a system was indeed feasible and the committee bill specifically authorizes the uses of such a system.

The use of the field inspection system will drastically cut the estimated costs of conversion, rebuilding or upgrading existing equipment to meet permissibility standards. Instead of having to ship equipment to Pittsburgh for approval, operators will be permitted to buy component parts, link them together in a permissible manner and obtain approval from authorized representatives of the Bureau. As a result, the average cost of conversion for the typical small, nongassy mine, will probably not exceed \$10,000. This of course is just an average figure and will vary considerably from mine to mine. But it is certainly a far cry from the exaggerated statements which have been made by some small nongassy op-

erators to the effect that this bill would cost the average small mine operator over \$200,000 in conversion costs.

The committee further recognized that even this much reduced cost level might produce problems for many small operators. It, therefore, authorized long-term low-interest loans to be made to such operators under both the Small Business Act and the Economic Development Act. Under these acts low-interest loans can be made for terms ranging up to 20 to 25 years to small operators to enable them to finance the cost of conversion of their existing equipment.

Finally, the committee also considered the problem of unavailability of equipment. Operators who demonstrate that they are unable to comply with the bill's requirements concerning the permissibility of heavy electric face equipment may obtain permits for noncompliance for up to 4 years, allowing them to continue to use existing nonpermissible equipment in nongassy mines.

Of equal importance to the improvements in standards designed to prevent explosions and all other accidents contained in this bill, are the provisions designed once and for all to end the scourge of "black lung," otherwise known as coal workers pneumoconiosis. The history of this disease and the lack of recognition accorded to it by medical authorities represents a sad comment on our insensitivity to the health and well-being of the hundreds of thousands of miners who have spent most of their working lives underground. First known as "miners con," then as "miners asthma," then classified as "silicosis" or "anthrasilicosis," coal workers pneumoconiosis has taken a terrible toll. In its complicated form it causes progressive massive fibrosis of the lung, severely impairing the respiratory functions of the miner, and eventually causing heart failure and death. The disease is particularly insidious in that there is no known cure, progression of the disease from its simple to its complicated stage is not necessarily halted when exposure to dust ends, and miners who are afflicted with it in the complicated form often spend the last years of their lives as virtual invalids, forced to gasp for breath with the least exertion. The incidence of the disease in the United States was revealed for the first time when the Public Health Service conducted a study of the problem between 1963 and 1965. The study showed that approximately 20 percent of all retired miners suffer from the disease and 10 percent of active miners suffer from it.

The Public Health Service study further found that among working miners 6.8 percent showed evidence of simple pneumoconiosis and 3.0 percent showed evidence of complicated pneumoconiosis; the percentages for nonworking miners were 9.2 and 9.0 respectively. Among miners working in dusty locations, such as near the face, these percentages were naturally higher. Thus 22.3 percent of working and 33 percent of nonworking miners who worked at or near the face of the mine showed evidence of pneumoconiosis.

The committee bill deals with the black lung problem the way it should be dealt with: It establishes strict controls on respirable coal dust, the cause of the disease.

From studies made in Great Britain, which is far ahead of the United States in attempting to deal with this problem, we know that the probability of developing simple pneumoconiosis decreases with decreasing dust concentration. Thus at 7 milligrams per cubic meter, which is the average dust level in mines surveyed by the Bureau of Mines, the rate per 1,000 miners after 35 years of continuous exposure, would be 36 percent. At 4.5 milligrams, the expected rate would be 150 per 1,000 miners or 15 percent. At 3 milligrams per cubic meter, the expected rate would be 50 per 1,000 miners, or 5 percent and at 2 milligrams per cubic meter, the expected rate would drop to 20 per 1,000 miners, or 2 percent.

British data also indicate that the probability of developing progressive massive fibrosis, which is the result of complicated pneumoconiosis, also significantly decreases with reduced dust exposure. Thus, at 7 milligrams per cubic meter the probability of developing complicated pneumoconiosis after 35 years of exposure is 13 percent. At 4.5 milligrams per cubic meter the rate is 4 percent; and at 3 milligrams per cubic meter, the rate is 2 percent.

Under the committee bill, 6 months after the date of the bill all mines which can do so must meet a 3-milligram standard; those which cannot meet that level, because of the unavailability of equipment using available technology can obtain permits for noncompliance from a special interim compliance panel set up for that purpose, which will permit them to operate for up to 1 year at a level which they can meet but in no event exceeding 4.5 milligrams per cubic meter. If upon the expiration of the initial permit for noncompliance the operator still cannot reduce dust levels to meet the 3 milligram standard, he may obtain up to a maximum of three renewal permits for periods of 6 months each, entitling him to operate at the lowest level which he can maintain, but again in no event exceeding 4.5 milligrams.

Three years after the date of enactment of the bill, all operators who can do so must meet a 2-milligram standard and those who cannot meet that standard using available technology may again receive permits for noncompliance entitling them to operate at levels not exceeding 3 milligrams. After 6 years from the date of enactment of the act, all mines must meet the 2-milligram standard unless the Secretary of the Interior, acting upon the basis of health standards established by the Surgeon General, and after due notice to Congress, extends this time for absolute compliance with the 2-milligram standard. Any such extension can be vetoed by either House of Congress.

Moreover, within 1 year after the date of enactment, the Surgeon General must develop and submit to the Secretary of Interior and to Congress recommenda-

tions as to the absolute maximum permissible total exposure of individuals to coal dust during any working shift and within 3 years after the date of enactment the Secretary of the Interior must publish a schedule specifying the time within which mines shall reduce the total personal exposure to dust on a working shift to the levels recommended by the Surgeon General.

Mr. President, the provisions relating to dust control are based on information as to British experience in reducing the incidence of "black lung" through a dust control program and on information given to the committee, primarily by the Bureau of Mines, as to what is, in fact, attainable, given the state of existing technology in the coal mine industry. They are also consistent with the recommendations of the Public Health Service made in December 1968 for a 3-milligram standard and have, in general, been endorsed by the administration.

Specifically, the Director of the Bureau of Mines, Mr. John O'Leary, testified that virtually all coal mines in the United States could, with proper use of existing technology, and that includes primarily ventilation and water sprays, meet a 4.5-milligram standard.

In addition, the Director testified that approximately 30 to 50 percent of all U.S. mines could, using existing technology, meet a 3-milligram standard. Finally, the Director testified that it was his belief that within 3 years existing technology would be improved to the point where virtually all U.S. mines could meet the 3-milligram standard.

Although various representatives of the coal mine operators dispute Mr. O'Leary's contentions, the operators utterly failed to present to the committee any scientific evidence refuting them, or justifying the use of only a "best efforts" approach to meeting maximum dust levels, as urged by the operators. The committee also properly refused to adopt the suggestion of industry representatives and Secretary of Interior Hickel which would have permitted a 6-month extension on a mine-by-mine basis to reduce dust levels to 4.5 milligrams.

The fact is that despite the fact that the industry has been on notice concerning the dust problem for years; despite the fact that as long ago as last December the Surgeon General made a public recommendation for reduction of dust level to 4.5 milligrams; despite the fact that S. 1300 gave the industry notice that an interim maximum of 4.5 milligrams was being requested by the Administration; and, despite the fact that industry representatives pledged to take meaningful action to meet this problem both at the industry-Government conference last December and in testifying on this legislation last February—up to this very day—with one or two exceptions, virtually nothing has been done by operators to reduce dust levels. I deplore this record of inaction by the industry and I have recently expressed these sentiments in identical letters to Mr. Stephen Dunn, the president of the National Coal Association, and Mr. James Garvey, president of Bituminous

Research, Inc. I ask that a copy of my letter to Mr. Dunn be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 3, 1969.

MR. STEPHEN F. DUNN,
President, National Coal Association,
Washington, D.C.

DEAR MR. DUNN: Thank you for your recent communications concerning the coal mine health and safety bill, which, as you know, has recently been ordered reported by the Committee on Labor and Public Welfare. The Committee, quite properly in my opinion, rejected the suggestion that the provisions concerning coal dust merely require operators to use their best efforts to achieve a 4.5 milligram standard, and permit operators who cannot meet that standard to continue to operate, provided that miners exposed to excessive dust levels wear respirators. I have as yet seen no scientific evidence that a substantial number of operators cannot meet a 4.5 milligram standard, the maximum that would be allowed under permits for noncompliance during the first three years after the bill is enacted. Furthermore, I am informed that even those operators who have informed myself and other Committee members that they are not currently meeting a 4.5 milligram standard, without any improvement in dust control techniques, have not applied correct measurement techniques and may well be meeting the standard. Under these circumstances, I believe it would have been most irresponsible for the Committee to reject an absolute environmental dust control standard and to permit the use of respirators, especially since the testimony clearly indicated that many miners would refuse to wear them and, in any event, there is some question whether respirators will offer effective protection against coal workers' pneumoconiosis.

In my view, the Committee also properly rejected the suggestion that an additional six months be permitted, on a mine by mine basis, to attain a 4.5 milligram standard. The coal mine industry has been on notice that it would be asked to meet a dust standard of no higher than 4.5 milligrams for almost eight months. Another few months will probably elapse before this bill is signed into law. Despite this delay, and despite the firm promises by operators to the effect they are concerned about the dust problem and would make every effort to comply with the 4.5 standard, the industry, with at most a very few exceptions, has made no concerted attempt to lower existing dust levels. Indeed, had a real program been instituted by coal mine operators to reduce dust levels to 4.5 milligrams, without success, perhaps the Committee would have been more receptive to their protestations.

I believe that the industry ought not to wait until the legislative process has been completed before it begins to implement known techniques for reducing dust levels in the coal mines; I hope that the members of your organization will agree.

With best wishes,

Sincerely,

JACOB K. JAVITS.

Mr. JAVITS. Mr. President, I hope very much that the industry will finally realize that we are not kidding about ending "black lung" in this country and that this bill is just not going to be weakened to spare the industry the cost of reducing dust to the level necessary to accomplish that objective.

In short, Mr. President, we have put health and safety first, above every other consideration. Under the leadership of

the Senator from New Jersey (Mr. WILLIAMS), I hope very much that the Senate will sustain us.

Now, Mr. President, may I thank the distinguished Senator from Kentucky (Mr. COOPER) for being so gracious as to allow me to proceed and not disturb the arrangements we have made before.

Mr. COOPER. Mr. President, I thank the Senator from New York. He is the ranking Republican member on the committee and certainly has the privilege of speaking at any time he wishes and for as long as he wishes. I know that it is necessary for him to be in the Committee on Foreign Relations, and I am sure he will return to the Chamber later.

Mr. President, at the outset, I wish to pay my respects to and congratulate the chairman of the Subcommittee on Labor and Public Welfare, the distinguished Senator from New Jersey (Mr. WILLIAMS), and all the members of the subcommittee who have worked so faithfully on the pending bill. Also the chairman of the committee, the Senator from Texas (Mr. YARBOROUGH), and the Senator from West Virginia (Mr. RANDOLPH), who has a vital interest in the coal mine industry and in mine health and safety.

Mr. President, this debate will continue. I do not intend to speak at any great length today. I shall offer some amendments so that they may be printed for the convenience of Senators.

Mr. President, this is a very important subject. The coal industry itself is an important industry in this country. I believe there are 22 States which produce sizable amounts of coal. It happens that my State of Kentucky is the second largest producer of coal in the Nation following West Virginia. Pennsylvania is third, and Virginia, Illinois, Ohio, and Tennessee are also producers of large amounts of coal. There are many States in the West which, if transportation were accessible to the large industrial centers, would be larger producers of coal.

While the number of men who work in the mines has steadily lessened due to the modernization of mines, coal mining is still a source of income for thousands of miners and their families all over the Nation. Due to his progressive outlook and the work of the United Mine Workers of America, the coal miners have been paid wages which do not compensate them entirely for the dangerous work they undertake, but which have provided them with a higher wage standard than that of many members of other unions in this country.

Coal mine health and safety is a difficult subject. Not many of us have been in a coal mine. It is very hard to visualize what a coal mine is like, and how it works. Not many of us have worked in a coal mine. Not many of us have operated a coal mine. But, coal mining affects the livelihood of a great segment of our people. In addition to the workers, management, and those who furnish capital for the mines, it affects the railroads, the trucking industry, and every community in which the mines are located.

Mr. President, the subject of safety and health is difficult. In 1941, the first

act was passed which gave the Bureau of Mines authority to make inspections and recommendations to the States and to the mine owners.

In 1952, the first substantial amendment was adopted by the Congress. It classified mines into two groups, title I and title II. Title I comprised those employing 14 or fewer. Title II were those employing more than 14.

In the case of title I mines, the small mines, the enforcement of the regulations was left to the States. In the case of title II mines, enforcement resided within the Bureau of Mines.

I served on the Labor and Public Welfare Committee in the 1950's for, I believe, 5 or 6 years. I served as a member of the Subcommittee on Mine Safety. For 2 or 3 years—1957, 1958, and 1959—under the leadership of former Senator Morse, who was chairman of the subcommittee, we tried to work out some amendments to provide better safety standards for the mines. I was on the committee. Senator Morse, the champion of the workingman, was on that committee. The late Senator John F. Kennedy was a member of that committee.

We brought a bill to the floor of the Senate which would have attacked the greatest danger in the mines, by requiring improved mine supports, to reduce the hazards of rib, roof, and face falls. The bill passed the Senate, but it was not passed in the House. It is my understanding that it was not passed in the House—and I say this with all respect—because of the opposition of the United Mine Workers, even though the bill would have provided better standards of safety against rib, face, and roof falls, for the protection of its members.

In 1966, while I was not a member of the committee, Senator Morse asked me to join with him in working on a bill to provide better standards for safety in our mines. I did so. That bill became law, the first major amendment to the Federal Coal Mine Safety Act since 1952. I am very proud to say that Senator Morse, on the floor of the Senate, called attention to the work I had done on it. I do not say that with any personal pride, but to indicate that throughout the years I have been interested in the subject and also that I have had some practical experience in dealing with it.

The bill before us today was, of course, developed in the subcommittee of the Committee on Labor and Public Welfare, and again I pay my tribute to the Senator from New Jersey (Mr. WILLIAMS). I have read and studied the hearings. I have noticed the assiduous dedication he has paid to the subject, as have the other members of the committee.

The bill deals, as its title indicates, with measures to provide better health standards to protect those who are in this hazardous occupation, and chiefly to deal with the disease of pneumoconiosis and other pulmonary diseases.

The health standards are directed to reduce the hazards created by dust that accumulates in mines, and particularly at the face of the coal, as a result of the operations of cutting machines, and continuous mining machines. These machines dig into the face of the coal and

create large volumes of dust which miners have to breathe and swallow and thus their lungs are affected. Many of them are permanently injured. The bill fixes standards to give miners greater protection. I think the committee is to be complimented for its work.

* * * * *

suffering from black lung and other pulmonary diseases who do not qualify under State law. At that time, the able Senator indicated it might be possible to work out a short-term interim program to provide disability payments to men disabled by the disease.

The able Senator said he would try to find some way to devise a temporary program leading ultimately toward a long-range program, thus giving the committee time in which to study the problem in depth.

I think it is fair to say for the RECORD that the able Senator and I have been conferring this morning and that we both have had discussions with the Representative from Kentucky in the other body, Mr. PERKINS, and that there seems to be favorable sentiment on that side of the Capitol for such an approach.

I just want to urge the manager of the bill at this time to devote every effort possible over the weekend to work out some program whereby these old and disabled miners, who have contracted this disease, perhaps 5, 10, or 15 years ago, and who have been in forced retirement for all these years but who have not qualified under State statutes for disability payments, can be given assistance through some Federal-State program.

I personally would urge that the cost of such a program be borne initially by the Federal Government. I hesitate to think that we would have to load an additional expense on the management of the mines at this time when overhead costs are already very high and at a time when it is difficult for the product to remain competitive in the marketplace.

I want to express the hope that we might devise some way for the Federal Government, along with the States, over a period of years, to shoulder the burden of the cost so that the mine management would not have to carry this additional burden.

But I strongly believe that out of fairness to the miners, and to the wives and widows of miners who have lost their lives through the contracting of pulmonary diseases from the inhalation of silica and coal dust, we in Congress have a responsibility to work out some program whereby disabled miners would be given help when they are not eligible under State workmen's compensation programs. Many of them cannot qualify under State statutes which are not retroactive, and yet they do need assistance. I would like to see them get assistance so they would not have to be on welfare programs, so that they could have some steady income, and so that they might be able to provide for themselves and their families.

Mr. President, I wish to express appreciation to the manager of the bill for his sympathetic understanding of this problem and his strong assurance of cooperation in making the effort to work out some feasible program.

Mr. WILLIAMS of New Jersey. Mr. President, let me say that following the floor discussions, prompted by the Senator from West Virginia's (Mr. BYRD) expression of concern in this area, considerable progress has been made, even to this point, in working toward exactly

the objective described by the Senator. It is an objective which I can certainly understand will be agreed to, and we are working toward that end in a program the Senator suggests, which could be interim in nature until perhaps the Department of Health, Education, and Welfare could, after study, suggest an ongoing compensation program for miners disabled as a result of their occupation, particularly respiratory diseases which they have contracted, for only one reason; namely, the inhalation of dust in the mines.

Thus, at this point, we are on our way to suggesting to the Senate exactly what the Senator from West Virginia hopes we will, and I hope it will be acceptable to all concerned.

Mr. BYRD of West Virginia. Mr. President, I recognize the fact that there must be fairly accurate cost estimates worked out, and I realize that the Senator's committee wants to go into this phase of the problem before it launches into any long-range program. I am greatly reassured by the Senator from New Jersey, and I know that I express the sentiments of my colleague (Mr. RANDOLPH) in what I have said today. My colleague and I have discussed the matter at length upon several occasions.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

(At this point, Mr. BELLMON assumed the chair.)

Mr. BYRD of West Virginia. Mr. President, yesterday I queried the distinguished Senator from New Jersey with respect to the possibility of having language included in the bill which would provide for a program under which disability benefits would be paid to miners

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The ACTING PRESIDENT pro tempore. The Senator from Vermont (Mr. Prouty) is recognized.

Mr. PROUTY. Mr. President, I yield to the Senator from West Virginia.

AMENDMENT INTENDED TO BE PROPOSED TO S.
2917—COAL MINE HEALTH AND SAFETY BILL
BY SENATORS FROM WEST VIRGINIA; WOULD ADD
NEW TITLE ON COAL MINER'S WORKMEN'S
COMPENSATION IMPROVEMENT

Mr. RANDOLPH. Mr. President, I send to the desk an amendment which may be proposed by me for myself and my distinguished West Virginia colleague (Mr. Byrd) to S. 2917, to improve the health and safety conditions of persons working in the coal mining industry of the United States.

The amendment would be on page 123 after line 23 and would add a new title VII, Coal Miners' Workmen's Compensation Improvement. Part A would be extension of the Longshoremen's and Harbor Workers' Compensation Act to employees not covered by State workmen's compensation laws. Part B would provide minimum compensation benefits for employees covered by State laws. Part C is administrative provisions. And part D is amendments to other acts.

There is Federal precedent in other Federal statute for this amendment which would extend to miners coverage for death or disability from respiratory disease. This objective would be accomplished through extension of the Federal Longshoremen's and Harbor Workers' Compensation Act to those engaged in mine work.

The States would be given 2 years to amend, revise, or otherwise modify State worker's compensation laws to provide such coverage. In the event that a State does not provide such coverage, the Secretary of Labor could provide benefits for miners under the Longshoremen's and Harbor Workers' Compensation Act.

Under this amendment, employers could provide compensation coverage through private insurance or as self insurers. The Longshoremen's and Harbor Workers' Act would be amended to provide that claims for compensation on account of death or disability resulting from respiratory disease shall be conclusively presumed to be under the provisions of the Federal Act if a miner

involved worked for at least 5 years in the coal mining industry.

The Federal statute would be amended to permit the Secretary of Labor to determine if an individual would have been entitled to compensation under State workers' compensation or under the Federal statute if this title had been in effect at the time of death or disability. This would provide compensation in those cases during the interim period between enactment and the implementation of the provisions of this title for individuals who are not eligible for compensation now.

Mr. President, I submit a section-by-section analysis of our amendment which may be offered, and ask unanimous consent that it be printed in the RECORD at the conclusion of these remarks.

The ACTING PRESIDENT pro tempore. The amendment will be received and printed, and will lie on the table; and, without objection, the section-by-section analysis will be printed in the RECORD.

The material referred to follows:

SECTION BY SECTION ANALYSIS

PART A

Section 701. This section would extend the coverage of the Longshoremen's and Harbor Workers' Compensation Act to any employee of any employer engaged in the coal mining industry if such employee is not covered by a state workmen's compensation law two years after the 31st day of December following the date of the enactment of the title.

Paragraph (b) of the section provides that if an employee engaged in the coal mining industry suffers death or disability as a result of a respiratory disease and the State workmen's compensation law does not contain provisions substantially the same as those contained in Section 20(b) of the Longshoremen's and Harbor Workers' Compensation Act, then the employee may elect to be covered by such Act. (Section 20 of the Longshoremen's and Harbor Workers' Compensation Act is amended by Section 341 of this title to provide compensation to coal miners suffering death or disability resulting from a respiratory disease after working five or more years in the coal mining industry.)

Section 711 provides that two years after the 31st day of December following the date of enactment of the title, every employer in the coal mining industry shall secure the payment of compensation for employees covered by a state workmen's compensation law at benefit levels not less than those prescribed by the appropriate provision of the Longshoremen's and Harbor Workers' Compensation Act either as a self-insurer or by insuring and keeping insured payment of compensation for miners with stock companies or mutual companies or State insuring funds.

Paragraph (b) of the section contains requirements for the contents of every policy or contract of insurance with respect to the payment of benefits at levels consistent with the title irrespective of the provisions of State workmen's compensation laws which may provide for lesser payments and appropriate provisions that insolvency or bankruptcy of the employer or his discharge shall not relieve the insurance carrier from payment of compensation.

Paragraph (c) of the section makes provision for notice of cancellation for the policy or contract of insurance issued by an insurance carrier under this section.

Section 712 provides for claims procedures.

Section 713 authorizes the Secretary of Labor to enter into agreements with appropriate State agencies charged with the administration of State workmen's compensation laws

for utilizing the services of State and local agencies in handling and processing claims.

Section 714. This section establishes in the Treasury of the United States a separate fund to be known as the Employees' Benefit Fund for the purpose of making payments in accordance with the provision of section 722(e). Payments to the fund shall be made as follows:

"(1) The sum of \$5,000 shall be paid for the death of an employee of an uninsured employer where the employee's death was due to his employment and there is no person entitled under this part to compensation for such death.

(2) All amounts collected as fines and penalties under the provisions of this part.

(3) The moneys recovered by the Secretary pursuant to Section 322.

(4) Such amounts as the Congress of the United States may appropriate from time to time."

Section 715 provides for penalties for failing to secure payment of compensation in accordance with the requirements of the Act.

Section 721 authorizes the Secretary to make necessary rules and regulations.

Section 722 provides subpoena powers for the Secretary.

Section 723 provides that nothing in the title shall be construed as repealing or modifying any other Federal law providing compensation coverage.

Section 724 specifies that unless the context otherwise requires, the Act shall take effect upon enactment and apply only to injuries which occur after its effective date.

Section 725 defines terms used in the Act.

Section 731 amends the Longshoremen's and Harbor Workers' Compensation Act to provide:

"(b) (1) In the case of a claim for compensation on account of death or disability resulting from respiratory disease if the injured employee worked for five years or more in the coal mining industry it shall be conclusively presumed that the claim comes within the provisions of this Act. This subsection shall not be deemed to affect the applicability of subsection (a) in the case of claims on account of death or disability resulting from respiratory disease when the injured employee has not worked in a mine for as much as five years.

"(2) For purposes of paragraph (1) years worked in the coal mining industry shall be determined on the basis that two hundred and forty days of work constitutes one year of work."

(b) The amendment made by this section shall apply with respect to injuries or deaths occurring after the effective date of this Act."

Section 732 adds a new section to Chapter 81, subchapter II, title 5 as follows:

"S. 8174. Respiratory disease claims.

"If the Secretary of Labor determines that (1) an individual would be entitled to compensation under a State workmen's compensation law, or under the Longshoremen's and Harbor Workers' Compensation Act, on account of death or disability resulting from respiratory disease if title VII of the Federal Coal Mine Health and Safety Act of 1969 had been in effect at the time of the death or injury, and (2) such individual is not entitled to such compensation, then the Secretary shall pay compensation to such person from the Employees' Compensation Fund at the rate and for the period he determines such individual would receive if he was entitled to compensation under such laws. No payment shall be made under this section for any period prior to the effective date of the Federal Coal Mine Health and Safety Act of 1969. Original claims under this section shall be made within one year after such effective date, but the Secretary of Labor shall make exceptions to this requirement for reasonable cause shown. The provisions of sections 8121, 8122(b), 8123, 8124, 8125, 8126, 8127, 8128, 8129, 8130, 8131, 8132, and 8135 shall apply with respect to claims under this section."

Mr. PROUTY. Mr. President, shortly I shall raise a point of order against a section of the pending legislation. Specifically, the point of order is to section 502 of the bill, which provides that each producer or importer of coal shall pay an assessment of 1 cent per ton to the United States on all coal production in or imported into this country from the operative date of this legislation until June 30, 1970. The assessment is then raised 1 cent per ton at the beginning of each succeeding fiscal year, until it reaches 4 cents per ton, commencing July 1, 1972.

The Constitution of the United States clearly and unambiguously prohibits the Senate from originating this type of legislation. The first paragraph of section 7 of article I of the Constitution of the United States of America reads as follows:

All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

So, in accordance with my previously announced intention, Mr. President, I make a point of order against section 502 of the pending bill, for the reason that it is a revenue raising measure, which, under the Constitution, must originate in the House of Representatives.

The ACTING PRESIDENT pro tempore. The Chair had been informed of the point of order.

The Chair rules that the point of order raises a constitutional question on which the Chair is not authorized to rule. Under the uniform precedents of the Senate, the Chair submits all constitutional questions to the Senate for decision, which are debatable and decided by a majority vote.

The question now is, Is it the judgment of the Senate that this point of order is well taken?

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. COOPER. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will resume the calling of the roll.

The bill clerk resumed and concluded the calling of the roll, and the following Senators answered to their names:

[No. 102 Leg.]

Allott	Griffin	Pearson
Bellmon	Hansen	Pell
Byrd, W. Va.	Hruska	Prouty
Cook	Kennedy	Randolph
Cooper	Long	Sparkman
Fulbright	Metcalf	Williams, N.J.

Mr. KENNEDY. I announce that the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Tennessee (Mr. GORE), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUE), the Senator from Washington (Mr. JACKSON), the Senator from Montana (Mr. MANSFIELD), the Senator from Wyoming (Mr. MCGEE),

the Senator from New Mexico (Mr. MONTOYA), and the Senator from Utah (Mr. MOSS) are necessarily absent.

I further announce that the Senator from Washington (Mr. MAGNUSON) and the Senator from Iowa (Mr. HUGHES) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Delaware (Mr. BOGGS), the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from Illinois (Mr. SMITH) are necessarily absent.

The Senator from Colorado (Mr. DOMINICK), the Senator from Illinois (Mr. PERCY), and the Senator from Ohio (Mr. SAXBE) are absent on official business.

The Senator from Vermont (Mr. AIKEN), the Senator from Hawaii (Mr. FONG), the Senator from Idaho (Mr. JORDAN), the Senator from Maryland (Mr. MATHIAS), the Senator from California (Mr. MURPHY), and the Senator from Texas (Mr. TOWER) are detained on official business.

The ACTING PRESIDENT pro tempore. A quorum is not present.

Mr. KENNEDY. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Massachusetts.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Allen	Gravel	Pastore
Anderson	Gurney	Proxmire
Baker	Harris	Ribicoff
Bayh	Hart	Russell
Bennett	Hatfield	Schweiker
Bible	Holland	Scott
Byrd, Va.	Hollings	Smith, Maine
Cannon	Jordan, N.C.	Spong
Case	McCarthy	Stennis
Church	McClellan	Stevens
Cotton	McGovern	Symington
Curtis	McIntyre	Talmadge
Dodd	Miller	Thurmond
Eastland	Mondale	Tydings
Ellender	Mundt	Williams, Del.
Ervin	Muskie	Yarborough
Fannin	Nelson	Young, N. Dak.
Goodell	Packwood	Young, Ohio

The PRESIDING OFFICER (Mr. SCHWEIKER in the chair). A quorum is present.

Mr. KENNEDY obtained the floor.

Mr. KENNEDY. Mr. President, I yield to the Senator from Vermont.

Mr. PROUTY. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is: Is it the judgment of the Senate that this point of order is well taken?

This point of order raises a constitutional question on which the Chair is not authorized to rule. Under the uniform precedents of the Senate, the Chair submits all constitutional questions to the Senate for decision, which are debatable and decided by a majority vote.

Mr. PROUTY. Mr. President, I ask for the yeas and nays.

September 26, 1969

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

Mr. KENNEDY and Mr. HOLLAND addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. PROUTY. I am ready to vote on this matter at any time. Let us vote.

**FEDERAL COAL MINE HEALTH AND
SAFETY ACT OF 1969**

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

Mr. HOLLAND. Mr. President, I would like to address a question to the acting majority leader. Is it the intention of the acting majority leader to allow a vote to take place this afternoon?

Mr. KENNEDY. Mr. President, the Senate will come to a vote, as at other times, in accordance with its procedures and according to its rules. This matter is now open for debate and discussion which, under the rules, may be unlimited. The position of the distinguished Senator from Vermont is understood. We are trying to work out an agreement. The solution is not yet clear. Senators on both sides of the aisle may wish to speak on the matter, and they will have an opportunity to do so.

Mr. HOLLAND. Mr. President, if I may express the opinion of one Senator, I think it would be very unfortunate to have a bare quorum of 51 Senators pass on a point of order addressed to a constitutional question which, as I understand from the Parliamentarian, differs in some degree from any such question that has been offered heretofore.

Without expressing any commitment one way or another, after reading section 502 of the pending measure, it seems to me the question of whether or not the point of order is well taken depends entirely on whether the assessment mentioned in that section is a tax and is a revenue measure as defined by the Constitution. Surely, that is a matter of sufficient importance that it should be addressed to the consciences of the full Senate, or as near a full Senate as could be here at a regular session, and not on a late Friday afternoon.

I would hope that there would be no intent to have a vote this afternoon, and if necessary and if there are other Senators who would like to debate this matter, the Senate would give permission to the Senator from Vermont to withdraw his point of order and renew it Monday, when the Senate will be in session with a substantially full membership here. I would very much dislike to see this point of order decided by a bare quorum of the Senate.

Mr. RANDOLPH. Mr. President, I send to the desk an amendment, which I intend to offer for myself, my colleague from West Virginia (Mr. BYRD), the Senator from New Jersey (Mr. WILLIAMS), the Senator from New York (Mr. JAVITS), and the Senator from Texas (Mr. YARBOROUGH).

It would be an amendment—possibly it may be offered—to S. 2917, aimed at the problem of providing benefits to coal miners, together with their dependents, who are totally disabled from complicated pneumoconiosis—black lung—resulting from their employment in the coal mines, and who are no longer gainfully employed.

It does not apply to active coal miners. It provides temporary disability benefits for these inactive coal miners and their dependents. It is aimed at an emergency situation since present State laws do not provide these benefits. This temporary measure would utilize half of the funds which would be received in the trust fund intended to be established under this bill, as well as direct appropriations for mak-

ing grants to the States to pay benefits in accordance with standards to be established with the Secretary of Health, Education, and Welfare. At the same time, I stress, the proposed amendment recognizes that more information is needed on this problem of disability from complicated pneumoconiosis, and it would direct that a study to be completed in a year, thereby enabling the Congress to review the entire matter and to consider alternative methods or other approach options.

This interim proposal also would enable the States to act during the interim period to develop their own programs along conventional lines for providing compensation, both relating to active and inactive miners.

The amount of the benefits would be determined in accordance with a formula described in the amendment proposal. It would establish benefits for a totally disabled miner at 50 percent of the minimum amount payable to a Federal employee at a G-2 level under the Federal Employment Compensation Act. This benefit would be increased percentage-wise depending on the number of dependents. In addition, it would provide a similar benefit to the widow and children of such a miner.

Mr. President, the RECORD will disclose that yesterday, my able colleague from West Virginia (Mr. BYRD) discussed these problems of compensation. They are very real problems. We have a bill which we have jointly sponsored, S. 1716 was introduced in the Senate March 27, 1969.

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. The Senator from West Virginia has the floor.

Mr. RANDOLPH. There has been a continuing dialog on this very important subject of crippling black lung disease which has afflicted many of the coal miners of the United States of America.

Can we do something on an interim basis? On a more permanent basis? These are matters of real concern.

The House Education and Labor Committee's bill, as we understand it, approaches this matter, and what we are doing and what the House of Representatives does will, of course, be a matter for conference on the mine health and safety legislation.

I wish to emphasize that the amendment which has been authored by those of us who have joined in its sponsorship is one that may or may not be considered formally in the Senate, but it is one that we think should be made part of the RECORD. It can thus be studied by our colleagues who, we believe, are intensely interested in this subject matter, including, as it does, not only health and safety but the compensation of needy miners not now active who have contracted black lung disease.

I am in full accord with the position taken by our distinguished colleague from Florida (Mr. HOLLAND) that this pending business is, of course, a complicated measure. He has not used that exact language, but now a constitutional point is raised concerning the research

trust fund financing feature of S. 2917. There are Senators who, I know, will wish to be present as we discuss that matter and as we discuss the matter of compensation in one form or another, and the approach that we shall take to it. I think that the Senate, in the final analysis, will commit itself to what I believe will be well-reasoned legislation on the overall subject of mine health and safety, and compensation possibilities for the sufferers of respiratory disease occupationally associated.

I am now associated with two potential approaches to the compensation area of consideration. I placed another proposal at the desk earlier. So we will have at least two, and possibly other, amendments on the issue to study and choose between. I believe it is good that we have alternatives to consider and choose between.

Mr. President, I feel that any legislation we pass must be realistic and workable, but legislation which will come to grips with the problems of the health and safety of our miners. Although I have never felt we should legislate under what one might call the heat of emotion, there are elements of compassion which surely will enter into the feelings of Senators who are attempting to cope with this very compelling problem.

The PRESIDING OFFICER. Without objection, the amendment will be received and printed, and will lie on the table.

Mr. KENNEDY. Mr. President, I wish to respond to the inquiry earlier of the distinguished Senator from Florida (Mr. HOLLAND) about whether a vote will take place this afternoon.

It is not our intention to have any vote this afternoon. It is the present intention of the leadership, after such time as Senators desire, for any other additional speeches or entries into the RECORD, to move that the Senate stand in adjournment; and under the previous order, we will meet at noon on Monday next.

Mr. HOLLAND. Mr. President, I thank the distinguished Senator.

Mr. KENNEDY. At that time, with the concurrence of the floor manager of the bill and the leadership, and those who have amendments, it may be that unanimous-consent request can be pro- pounded.

Mr. GRIFFIN. Mr. President, will the Senator from Massachusetts yield?

Mr. KENNEDY. I yield.

Mr. GRIFFIN. A Senator with a special interest in this matter finds it very difficult to be here on Monday, when the matter would be brought up. There has been some discussion that there might be a possibility of laying the point of order aside temporarily and having it be the pending business on Tuesday, and that we might proceed to consider some other amendment or amendments in the interim.

The Senator from Kentucky (Mr. COOPER), for example, has an amendment that he would like to offer. If that would be convenient to all Senators, that would be a way of cooperating with the Senator in question. Obviously, if there is any objection or inconvenience to anyone else, of course, we would not be able to do that.

Mr. KENNEDY. We have tried, at times in the past, to make such adjustments and accommodations in situations of this nature. Given the present circumstances, however, I think it would be difficult at this time to get an agreement for a specified time. I think this may be a close, difficult question that the Senator from Vermont has raised. We will have to move for adjournment when no other Senator desires to speak, and leave this unfinished business at the conclusion of the morning hour on Monday.

Mr. PELL. Mr. President, will the Senator from Massachusetts yield, for clarification?

Mr. KENNEDY. I yield.

Mr. PELL. Can any indication be given to us as to when the first vote might come on Monday?

Mr. KENNEDY. No, we could not give any assurance on that.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. HOLLAND. As I understand it—and I should like to be confirmed on this point, or corrected—the point of order is debatable, is it not?

Mr. KENNEDY. That is correct.

Mr. HOLLAND. And we do not know how long that debate will require.

Mr. KENNEDY. The Senator is correct.

Senate proceed to the consideration of S. 2917.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 1917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

The PRESIDING OFFICER. Without objection, the Senate will resume its consideration.

The question now is, Is it the judgment of the Senate that the point of order raised by the Senator from Vermont (Mr. PROUTY) is well taken?

The Senator from Vermont is recognized.

Mr. PROUTY. Mr. President, the pending business is the point of order which I raised last Friday against section 502 of S. 2917.

For the benefit of my colleagues who were not present on the floor Friday, I point out that section 502 of this bill requires that an assessment be paid to the United States for each ton of coal produced in or imported into the United States. This assessment starts at 1 cent per ton, and increases by 1 cent at the start of each new fiscal year until it becomes 4 cents per ton on and after July 1, 1972.

However, Mr. President, the Constitution of the United States specifically prohibits the Senate of the United States from originating this type of measure. Article I, section 7 of our Constitution states clearly and unambiguously:

All Bills for raising Revenue shall originate in the House of Representatives . . .

I regard this assessment on every ton of coal produced in or imported into the United States as a tax on coal production, even though the word "tax" is never used in this section.

I would point out to the Senate, however, and particularly to my good friend, the senior Senator from Florida, who raised this subject last Friday that the constitutional issue here is not whether this assessment on coal production is or is not a tax.

The question presented, rather, is whether the assessment on coal production is for the purpose of raising revenue. For the Constitution of the United States, like section 502 of the pending bill, does not contain the word "tax."

The clear constitutional prohibition is much broader than that, prohibiting the Senate from originating "all bills for raising revenue."

I submit, Mr. President, that the imposition of this assessment on all coal production with the proceeds to be deposited in the Treasury of the United States, is obviously a provision for the raising of revenue.

Let me note briefly the provisions of section 502 of S. 2917.

Subsection (a) establishes the assessments on coal I have just discussed, progressing from 1 cent a ton by stages to 4 cents a tone on July 1, 1972.

Subsection (b) provides that the Secretary of the Interior shall collect the assessments imposed on coal production and deposit them with the Treasurer of the United States, unless he enters into

an agreement with the Treasurer of the United States for the collection of those assessments directly by the Treasury.

Subsection (c) authorizes the Secretary of the Interior to enter into such an agreement. It further provides that if such an agreement is entered into, the Secretary of the Treasury is authorized to collect the assessments on coal production, "In the same manner and with the same powers as if such assessments were excise taxes imposed by subtitle I of the Internal Revenue Code of 1954, as amended."

Subtitle D of the Internal Revenue Code of 1954 is entitled "Miscellaneous Excise Taxes."

The Secretary of the Treasury is further authorized to collect the assessments on each ton of coal imported into the United States" in the same manner and with the same powers as if such assessments were custom duties imposed by the Tariff Schedules of the United States."

I submit, Mr. President that this is a valid constitutional point of order. The constitutional issue is simple, not complex. The objectives of title V may be highly meritorious but that is not the question at issue. Let me emphasize that we are not now concerned with the merits of title V in its attempt to provide funds for necessary research and training.

What will be determined by the pending vote, Mr. President, is whether the Senate intends to abide by the provisions of our Constitution, or whether the Senate desires to go on record as holding that it is above and beyond the constitutional restraints which our Founding Fathers in their wisdom saw fit to place upon this body.

Mr. RANDOLPH. Mr. President, I rise in opposition to the point of order brought before the Senate by my friend, the able Senator from Vermont (Mr. PROUTY), a member of the Committee on Labor and Public Welfare.

As we know, the pending business before the Senate is S. 2917, a bill reported from the Committee on Labor and Public Welfare to improve the health and safety conditions of persons working in the coal mining industry of the United States.

I am sure that the Senator from Vermont will recall, because he was very attentive to the subject matter of the pending legislation, that a substantial part of the discussion during the committee consideration was title V, to which reference has been made—section 501, which establishes a coal mine health and safety research trust fund, and section 502, which provides for an assessment on the coal operators and importers of coal.

I think that the Senator from Vermont will also remember that these provisions were retained in the bill by a one-vote margin. I know the Senator recalls this situation.

On that issue, I voted for an amendment offered by the Senator from Vermont to strike section 502. However, we now have pending before the Senate as the privileged business, the point of order which has been raised by the distinguished Senator from Vermont, that the

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the

inclusion of section 502 in S. 2917 contravenes article I, section 7, clause 1 of the U.S. Constitution.

Our colleague's point is that the inclusion of section 502 makes this a "bill for raising revenue," and that the Senate cannot do this under the constitutional provision which requires that a "bill for raising revenue" can originate only in the House of Representatives.

The Senator from Vermont did not raise this point of order in the committee. If I recall correctly, his action was that of proposing an amendment to strike the section for other reasons.

Mr. President, I am joined with other senior members of the Committee on Labor and Public Welfare, including the distinguished chairman (Mr. YARBOROUGH), the chairman of the Subcommittee on Labor (Mr. WILLIAMS), and the ranking minority member (Mr. JAVITS) in a letter offered for the consideration of all Members of the Senate on this point-of-order issue.

Although I was on the same side as Senator PROUTY in the vote against section 502 in the committee, it does not follow that I am or that I will be a supporter of his point of order against that section. This is an entirely different issue that involves principles entirely outside of the merits of the provisions in question. Involved here is the competence of the Senate to legislate in certain areas of finance.

This point of order could very well set highly significant precedents for the Senate of the United States for all time to come—not just on the single issue before us today.

As we have written in our joint letter urging that there be full debate and careful consideration on this vital point-of-order issue: We have found no record of a point of order of this nature ever having been sustained in the Senate, and we urge our colleagues not to uphold it when it comes to a vote whether it be today, tomorrow, or later in the week.

Mr. PROUTY. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. PROUTY. Mr. President, I wonder if there is any record indicating that a point of order of a similar character has ever been rejected by the Senate.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator from Vermont yield at that point?

Mr. PROUTY. I yield.

Mr. WILLIAMS of Delaware. I think that perhaps the reason a point of order has never been sustained or overridden is that heretofore the Senate has recognized when the question was raised that it was not the proper procedure. Without debating or passing upon the merits of the particular section in question, it may be an essential part of the bill, but I would strongly suggest to Senators interested in the bill that it does embrace an amendment to the Revenue Code. Senators who are in favor of it should introduce it as an amendment to a revenue bill so that there will be no question either as to its constitutionality or to the fact that it is being handled in the proper manner.

Revenue bills will be before the Sen-

ate shortly, and this proposal can be offered as an amendment to, say, the tax reform package or to any other revenue bill from the House. The precedent heretofore has been that amendments to revenue bills would only be considered when offered to House-passed bills.

We would have this problem if the Senate passes the amendment as a part of the pending bill; in conference a part of the bill should go to the Ways and Means Committee of the House whereas the other part should go to the Committee on Labor and Public Welfare.

I think that Senators who are interested in this section would be well advised not to defeat the bill itself by adding this revenue amendment but to offer it later to some other revenue bill where it could be considered and acted upon on its merits.

Mr. RANDOLPH. I will say again, especially to the Senator from Delaware (Mr. WILLIAMS), that this question was not raised by the Senator from Vermont in the Committee on Labor and Public Welfare. We voted on the deletion of a certain section, and I joined him in reference to that matter. But as to the constitutionality, as it will be developed in our discussion, certainly, as I understand it, the provisions of the Constitution do not refer to assessments of taxes which are not general revenue-raising measures, but are merely incidental to the special purposes of a statute, such as in Senate bill 2917, in which they are provided for merely to further those particular purposes. They are included, of course, in this bill.

This principle has been consistently expounded and applied by the Supreme Court, so I am advised, to sustain special-purpose assessments designed to further particular legislative programs, even though such provisions have originated in the Senate.

I think mention will be made of certain cases—at least three, which I shall not discuss—that go directly to this point. Under the principle, the provision to which the present point of order has been raised, is clearly, we believe, one which may originate in the Senate. Section 502 of Senate bill 2917 provides for an industry benefit assessment to be used only for research into means for improving the health and safety of the coal miners of the United States.

Thus the assessment applies only to the coal mining industry and its proceeds would be used only for the benefit of those engaged in that industry. If such a measure can be attacked on the ground that the inclusion of an assessment for a specific purpose can originate only in the House of Representatives, then I think it will serve as a precedent to jeopardize future action on many types of programs which in the past, as I shall indicate very strongly, have been initiated in the Senate.

As stated in our communication to the Members of the Senate—

Furthermore, a vote in rejection of the point of order would not constitute a vote in favor of the assessment provided in section 502.

It is true that a vote in favor of the point of order does strike the assess-

ments, but not necessarily as an action on merit but, rather, as one based on an interpretation of the Constitution.

Again quoting from the joint letter now in circulation to Senators:

A few examples of the numerous analogies to the provision now under challenge which can be found in existing provisions of law may be cited: registration fees levied under the Securities Act; the annual assessments for administrative costs imposed on hydroelectric power facilities under the Federal Power Act; fees authorized to be levied by the Land and Water Conservation Fund Act; the duck stamp charge under the Migratory Bird Hunting Stamp Act; fees for administrative expenses imposed under the Perishable Agricultural Commodities Act; the "debris tax" imposed on hydroelectric mining operations under the California Debris Commission Act; and the special fund payments required to be made under the Longshoremen's and Harbor Workers' Compensation Act.

Some of the foregoing and other comparable types of provisions have been initiated in the Senate, and it is clear that in formulating such legislative programs, the Senate has not considered itself restricted from including such incidental funding provisions. The Senate should not want to preclude itself from initiating such legislation in the future.

Aside from its extremely important broad implications for future legislation, the point of order on which we will be voting would strike down the assessment provision which would enable use of some of the proceeds of the assessment to provide, on a temporary and limited basis, interim and emergency benefits to miners who are totally disabled by black lung disease. If the assessment is eliminated by the point of order, the anticipated means for funding these benefits will be lost.

We are therefore most hopeful that you will join in voting against the point of order, for the sake of its effect on the current vital legislation, as well as its effect as a precedent on a great variety of future legislation.

Mr. President, I ask unanimous consent that the complete text of my letter to Senators be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE.
COMMITTEE ON LABOR AND PUBLIC
WELFARE,

Washington, D.C., September 29, 1969.

DEAR COLLEAGUES: Last Friday, a point of order was raised by Senator Prouty with respect to the Health and Safety Research Trust Fund assessment provision contained in Section 502 of S. 2917, the Coal Mine Health and Safety bill now before the Senate. The point of order asserted that this provision is a "bill for raising revenue," which, under Article I, Section 7, clause 1, of the Constitution can originate only in the House of Representatives.

We have found no record of a point of order of this nature ever having been sustained in the Senate, and we urge our colleagues not to uphold it when it comes up for a vote on Monday or Tuesday of this week. Important principles of great significance to all Senators, now and in the future, are at stake in this vote.

As will be pointed out during the floor debate on this point of order, the foregoing provision of the Constitution does not have reference to assessments or taxes which are not general revenue-raising measures, but which are merely incidental to the special purposes of a statute, and which are provided for merely to further those particular purposes. This principle has been consistently expounded and applied by the Supreme

Court to sustain special-purpose assessments designed to further particular legislative programs, even though such provisions have originated in the Senate. See *United States vs. Norton*, 91 U.S. 566 (1876); *Twin City Bank vs. Nebeker*, 167 U.S. 196 (1897); *Milliard vs. Roberts*, 202 U.S. 429 (1906).

Under this principle, the provision to which the present point of order has been raised is clearly one which may originate in the Senate. Section 502 of S. 2917 provides for an industry benefit assessment to be used only for research into means for improving health and safety in our Nation's coal mines. Thus, the assessment applies only to this industry, and its proceeds would be used only for the benefit of this particular industry. If such a measure can be attacked on the ground that it can originate only in the House of Representatives, it will serve as a precedent to jeopardize future action on innumerable other types of programs which, in the past, the Senate has freely initiated. Furthermore, a vote in rejection of the point of order would not constitute a vote in favor of the assessment.

A few examples of the numerous analogies to the provision now under challenge which can be found in existing provisions of law may be cited: registration fees levied under the Securities Act; the annual assessments for administrative costs imposed upon hydroelectric power facilities under the Federal Power Act; fees authorized to be levied by the Land and Water Conservation Fund Act; the duck stamp charge under the Migratory Bird Hunting Stamp Act; fees for administrative expenses imposed under the Perishable Agricultural Commodities Act; the "debris tax" imposed upon hydroelectric mining operations under the California Debris Commission Act; and the special fund payments required to be made under the Longshoremen's and Harbor Workers' Compensation Act.

Some of the foregoing and other comparable types of provisions have been initiated in the Senate, and it is clear that in formulating such legislative programs, the Senate has not considered itself restricted from including such incidental funding provisions. The Senate should not want to preclude itself from initiating such legislation in the future.

Aside from its extremely important broad implications for future legislation, the point of order upon which we will be voting, would strike down an industry benefit assessment provision which would provide the means for achieving desperately needed research toward improvement of the working conditions in our Nation's coal mines. In addition, an amendment to S. 2917 has been offered, with wide support, which would use some of the proceeds of the assessment to provide, on a temporary and limited basis, interim and emergency benefits to miners who are totally disabled by pneumoconiosis. If the assessment is eliminated by the point of order, the anticipated means for funding these benefits will be lost.

We are therefore most hopeful that you will join in voting against the point of order, both for the sake of its effect upon the instant legislation, as well as its effect as a precedent upon a great variety of future legislation.

Sincerely yours,

JENNINGS RANDOLPH,
RALPH YARBOROUGH,
JACOB K. JAVITS,
HARRISON A. WILLIAMS, JR.

Mr. PROUTY. Mr. President, will the Senator from West Virginia yield?

Mr. RANDOLPH. I yield.

Mr. PROUTY. Were any of these measures initiated in the Senate, or were they added to tax bills or bills first approved by the House?

Mr. RANDOLPH. They were added to bills that came from the House.

Mr. PROUTY. From the House?

Mr. RANDOLPH. Will the chairman of the subcommittee clarify that point?

Mr. WILLIAMS of New Jersey. Yes.

Mr. RANDOLPH. We will do it on some of these. I think that one or two of them were initiated in the Senate, even from the standpoint of taxes. The Senate should not want to preclude itself from initiating such legislation in the future.

Mr. PROUTY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator yield for that purpose?

Mr. RANDOLPH. Yes, certainly.

Mr. PROUTY. Mr. President, does the rule of germaneness prevail at this time on the point of order?

The PRESIDING OFFICER. The rule pertaining to germaneness of debate is in order now.

Mr. PROUTY. In other words, as I understand it, a Senator in discussing the point of order must restrict his debate to the question of the point of order which I have raised?

Mr. RANDOLPH. Mr. President, does my colleague maintain that I have not addressed myself to the point of order?

Mr. PROUTY. May I have the ruling of the Chair first?

The PRESIDING OFFICER. The Chair would like to read to the Senator from Vermont the last part of rule VIII:

At the conclusion of the morning hour or after the unfinished business or pending business has first been laid before the Senate on any calendar day, and until after the duration of three hours, except as determined to the contrary by unanimous consent or on motion without debate, all debate shall be germane and confined to the specific question then pending before the Senate.

And the time for germaneness of debate started at 1:45 p.m.

Mr. PROUTY. A point of order could be raised against a Senator who did not follow the rule of germaneness?

The PRESIDING OFFICER. That is correct.

Mr. RANDOLPH. Mr. President, I think the inquiry made was a proper one, and I was glad to yield the floor for the inquiry as to the kind of debate that shall be carried on.

Mr. COOK. Mr. President, I rise to speak in favor of the point of order raised by the Senator from Vermont. I am sure the precedent that would be set by the Senate would be a precedent for doing this that was set for the first time. The Constitution does not say "taxes." The Constitution says "All bills for raising revenue."

There is no question about the fact that this bill raises a substantial amount of revenue. Because we call it an "assessment," somehow or other we feel it must rise and fall on the word "assessment."

If that be true, I would suggest to the Senator from West Virginia and I would suggest to the chairman of the committee, if it is to stand on its own as an assessment, that they remove the words in subsection (1) "as if such assessments were excise taxes imposed by subtitle D of the Internal Revenue Code."

In other words, but for the Internal

Revenue Code and but for title D of the Internal Revenue Code, there would be no machinery to collect these assessments.

As to importers, it provides, "as if such assessments were customs duties imposed by the Tariff Schedules of the United States." But because they are called "assessments" means nothing, for they cannot be collected unless they consider such assessments as "customs duties imposed by the Tariff Schedules of the United States."

If this section could be taken out, there could be eliminated the fact that the only means by which they could be collected is by the Internal Revenue Code, or, on the part of importers, by the Tariff Schedules established by this Nation, then they might well have an argument, but then they would have to get over the definition of the word "assessment" as defined by Webster:

A valuation of property for the purpose of taxation; such valuation and an adjudging of the sum to be levied on property as if by taxation.

I think the real question here is not whether the Senate is about to give something away, but whether the Senate is, for the first time, about to assume something that the Constitution says it cannot do. I think it is entirely clear.

I think we can talk about side issues. I think we can talk about the problems in the mines, about which we are all aware. Obviously, if something must be done along these lines, then we should do it properly. But I think it is rather strange that we would write a section into the bill on which no hearings were held, on which no one had an opportunity to appear before the committee, discussing an assessment on every ton of coal, starting at a penny and running up to 4 cents a ton, and yet find it, for the first time, in a page of this bill on the floor of the Senate.

I may add that there is no distinction here in the value of a ton of coal. A "ton of coal" would go all the way from sludge to the finest coal mined or brought into this country. But in the bill the coal is going to carry the same assessment. There is going to be no real attempt to assess its value, and the bill places a cost on it, but it is imposed on everybody.

The Senator from West Virginia, in his remarks, stated that this was a means by which we could cope with the situation of black lung. But we are imposing on every ton of coal, whether it comes out of a strip mine, a drift mine, slope mine, or a deep vein, an assessment of from 1 to 4 cents a ton, even though it might have nothing to do with the problem to be solved.

They mine coal in Arizona, and it is of such a poor quality that it is mixed with water and a sludge is made out of it. They get very little out of it, and yet the penalty by way of assessment that they must pay is the same as if it were on the finest ton of coal mined in this country or imported into this country.

So I can only say that, to me, on its merits, this is a tax. I do not see how we can, frankly, fool around into calling

something an assessment and believing we can win an argument on the basis of its being an assessment, merely by changing a word from what it really is.

Again, I call attention to the fact that there is absolutely no means by which these funds can be properly collected except by the Secretary of the Treasury, as authorized by title I of the Revenue Code of 1954, or by the Secretary of the Treasury on importers of coal through duties imposed by the Tariff Schedules of the United States.

No Senator can say that, under these circumstances, this proposal does not fall within the category of being a flat-out taxation of from 1 to 4 cents a ton on coal in the United States, whether it is mined or not, regardless of its source and regardless of the value of the ton of coal once it has been mined.

Mr. EAGLETON. Mr. President, I speak in opposition to the point of order raised by the Senator from Vermont (Mr. PROUTY) to section 502 of S. 2197, a bill designed to improve the health and safety conditions of persons working in the coal mining industry of the United States.

I am deeply concerned about the point of order and the possible consequences it could have on the prerogatives of the Senate if it were sustained. I hope that all Senators will consider the matter carefully and will weigh its importance before they vote. I feel certain that if they do, they will conclude, as do I, that the point of order should not be sustained.

Article I, section 7, clause 1 of the U.S. Constitution provides:

All bills for raising revenue shall originate in the House of Representatives.

The clause has been construed as being confined to bills to levy taxes in the strict sense of the word and has not been understood to extend to bills for other purposes which incidentally create revenue. I cite as being relevant on this point the case of *United States v. Norton*, 91 U.S. 566, a decision handed down in 1876. Thus, Senate bills or Senate amendments which contain clauses incidentally raising revenue have been held not violative of this constitutional section. There is no exclusive definition of the doctrine of "incidentally creating revenue." Each situation must be examined on its own. Aspects of the doctrine have been considered by the Supreme Court as well as by Congress.

In the case of *Twin City National Bank v. Nebeker*, 167 U.S. 202, an 1897 decision, Congress provided for a national currency secured by a pledge of bonds of the United States, and, in the furtherance of that object, and also to meet the expenses attending the execution of the act, imposed a tax on the notes in circulation of banking associations organized under earlier statutes, the act was held to be not a revenue bill within the meaning of article I, section 7, clause 1.

The Senate had inserted the amendment to the act which provided for the payment by each banking association organized under the act of a duty upon the average amount of its notes in circulation, upon the average amount of its deposits, and upon the average amount

of its capital stock beyond the amount invested in U.S. bonds, the proceeds of which were to be used to meet expenses incurred in carrying out the purpose of the act.

The Supreme Court held that—

It is sufficient . . . to say that an act of Congress providing a national currency secured by a pledge of bonds of the United States, and which, in the furtherance of that object, and also to meet the expenses attending the execution of the Act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives . . . The main purpose that Congress had in view was to that end it was deemed wise to impose the tax in question. The tax was a means of effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the government, (167 U.S. 202-203).

In *Millard v. Roberts*, 202 U.S. 429 (1906), it was held that an act of Congress originating in the Senate, which appropriated money to be paid to railway companies to carry out a scheme of public improvement in the District of Columbia and which required the companies to eliminate grade crossings and erect a union station, the appropriations to be levied and assessed on property in the district other than that of the United States, was not in violation of article 1, section 7, clause 1. The taxes imposed were deemed "but means to the purposes provided by the Act"—202 U.S. 437.

The payment of certain sums to the companies was deemed to be for a government, that is public benefit use, rather than a private use.

Finally, in a debate in the Senate resulting in a decision holding a Senate bill which proposed a gasoline tax in the District of Columbia to be a revenue producing measure to be originated in the House, Senator McKellar, in deeming the bill to be a revenue raising measure stated:

This bill provides for a tax which would be paid into the Treasury of the United States. It would be for general purposes. It would go into the Treasury of the United States just exactly as do the moneys which arise from tariff taxes or internal revenue taxes or any other taxes. The taxes raised by this bill would be mingled with and become a part of all the revenues of this Government. This is as completely a revenue bill to be set aside; they are to be intermingled with other funds of the government. They would be a part of the General Revenue of the Government and it is impossible, it seems to me, that any theory could be urged against a measure of this kind originating in the House of Representatives, as is required by the plain terms of the Constitution.

Mr. President, I now turn again to the constitutional provision which gives rise to the point of order. It states:

All bills for raising revenues shall originate in the House of Representatives.

Mr. President, if the Senator from Vermont is correct in his view that a section of S. 2917 is a bill "for raising revenue" within the meaning of the Constitution

then certainly the point of order should be sustained. If, however, the Senator is wrong, and I believe he is, then the Senate has no right to yield its jurisdiction through this point of order. No department of the Government has any right to surrender any portion of the power or responsibility conferred on it by the Constitution.

Certainly, from a constitutional standpoint, as I have stated, S. 2917 is not a "bill for raising revenue" for the support of the Government.

This then brings us to the issue: What is a revenue bill within the meaning of the Constitution?

The definition is, I believe, well settled:

Revenue laws: Laws made for the direct and avowed purpose of creating and securing revenue or public funds for the service of the Government.

Mr. President, I read this definition from Mr. Justice Story. The Supreme Court, in the case of *United States v. Norton*, (91 U.S. 568) had the occasion to consider the word "revenue" in a Post Office money order case where the Court had to decide on this question in deciding the case. The Court said, and I quote:

In no just view, we think, can the statute in question be deemed a revenue law.

The lexical definition of the term "revenue" is very comprehensive. It is thus given by Webster: "The income of a nation, derived from its taxes, duties, or other sources, for the payment of the national expenses."

The phrase "other sources" would include the proceeds of the public lands, those arising from the sale of public securities, the receipts of the patent office in excess of its expenditures, and those of the Post-Office Department, when there should be such excess, as there was for a time in the early history of the government. Indeed the phrase would apply in all cases of such excess. In some of them the result might fluctuate, there being excess at one time and deficiency at another.

It is a matter of common knowledge that the appellative "revenue laws" is never applied to the statutes involved in these classes of cases.

The Constitution of the United States, article I, section 7, provides that "all bills for raising revenue shall originate in the House of Representatives."

The construction of this limitation is practically well settled by the uniform action of Congress. According to that construction it "has been confined to bills to levy taxes in the strict sense of the words and has not been understood to extend to bills for other purposes which incidentally create revenue. (Story on the Constitution, Sec. 880)." "Bills for raising revenue" when enacted into laws become revenue laws. Congress was a constitutional body sitting under the Constitution. It was, of course, familiar with the phrase "bills for raising revenue" as used in that instrument and the construction which had been given it.

"The precise question before us"—

That is, as to what was meant by a "revenue bill" under this clause of the Constitution—

came under the consideration of Mr. Justice Story, in the *United States v. Mayo* (1 Gall., 396). He held that the phrase "revenue laws," as used in the act of 1804, meant such laws "as are made for the direct and avowed purpose of creating revenue or public funds for the service of the government." The same doctrine was reaffirmed by that eminent judge in *United States v. Cushman*.

Mr. President, there is also at least one other case directly on this point—*Oran C. Michels v. Thomas L. James* 13 Blatchford's Circuit Court reports 207—where the court said:

Certain legislative measures are unmistakably bills for raising revenue. These impose taxes upon the people, either directly or indirectly, or lay duties, imposts, or excises for the use of the government, and give to the persons from whom the money is exacted no equivalent in return, unless in the enjoyment, in common with the rest of the citizens, of the benefit of good government.

That is a well thought out distinction and definition.

It is this feature which characterizes bills for raising revenue. They draw money from the citizen: They give no direct equivalent in return. In respect to such bills it was reasonable that the immediate representatives of the taxpayers should alone have the power to originate them. Their immediate responsibility to their constituents and their jealous regard for the pecuniary interests of the people, it was supposed, would render them especially watchful in the protection of those whom they represented. But the reason fails in respect to bills of a different class. A bill regulating postal rates for postal service provides an equivalent for the money which the citizen may choose voluntarily to pay. He gets the fixed service for the fixed rate, or he lets it alone, as he pleases and as his own interests dictate. Revenue, beyond its cost, may or may not be derived from the service and the pay received for it, but it is only a very strained construction which would regard a bill establishing rates of postage as a bill for raising revenue, within the meaning of the constitution. This broad distinction existing in fact between the two kinds of bills, it is obviously a just construction to confine the terms of the constitution to the case which they plainly designate. To strain those terms beyond their primary and obvious meaning, and thus to introduce a precedent for that sort of construction, would work a great public mischief. Mr. Justice Story, in his commentaries on the Constitution (sec. 880), puts the same construction upon the language in question, and gives his reasons for the views he sustains, which are able and convincing. In Tucker's Blackstone only, so far as authorities have been referred to, is found the opinion that a bill for establishing the post-office operates at a revenue law. But this opinion, although put forth at an early day, has never obtained any general approval: But both legislative practice and general consent have concurred in the other view.

Now applying the principles I have just enunciated to title V of the bill, I confess that I fail to see how this section in any way is prohibited by article I, section 7, clause I of the Constitution of the United States. S. 2917 is not a revenue raising bill. Title V is merely an incidental part of that bill.

The primary and only purpose of S. 2917 is to protect the coal miners from terrible tragedies that befell the 78 miners at Farmington who are still entombed in a mine racked with explosions, and to protect the thousands of miners whose lungs are ravaged by the coal dust they must breathe while working.

Mr. PROUTY. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. PROUTY. I am not going to raise a point of order against the Senator, but he is going a bit far afield when he is

discussing title V as a whole, or other sections of the bill. I wonder whether in any cases he has cited—I am not a lawyer, so it is difficult for me to follow them—he has been able to establish when a revenue bill originated in the Senate?

Mr. EAGLETON. In answer to the Senator from Vermont—the way he phrases his question, of course, will affect the answer that will be given thereto—if a bill is on its face a revenue bill as such, of course, under the previously cited constitutional provision, it must originate in the House.

The point that Justice Story tried to make in his cases, which are Supreme Court cases and are binding on this body—the point that he made in amplification of those cases in his commentaries on the law—is that one must examine the bill in its entirety in order to find out whether its main thrust is revenue producing or, contrariwise, whether it is a bill that treats of a general subject matter, with the matter of a relatively minor item of revenue being incidental thereto.

That is why, in my opinion, in order for the Senate to make a proper decision on the point of order as raised by the Senator from Vermont, the Senate cannot confine its attention merely to the small section of this bill which is involved in the Senator from Vermont's point of order. In order to determine whether this is a revenue bill and hence one that must originate in the House, the Senators have to examine the entire contents of the bill in order to determine its possible thrust, direction, and so forth. If a revenue matter be but a minor or incidental part of a bill which has as its overall basic concept the protection of the health and safety of coal miners, then, under the Story doctrine, it is perfectly proper that such a bill originate in the Senate and have included within it a matter such as title V.

Mr. PROUTY. I should like to point out that the Constitution does not refer to a revenue bill, but that all bills for raising revenue shall originate in the House.

Let me give the Senator the Black's Law Dictionary definition of "revenue":

As applied to the income of a government, a broad and general term, including all public moneys which the state collects and receives, from whatever source and in whatever manner.

It defines "revenue law" as follows:

Any law which provides for the assessment and collection of a tax to defray the expenses of the government. Such legislation is commonly referred to under the general term "revenue measures," and those measures include all the laws by which the government provides means for meeting its expenditures.

It seems to me that that is all-inclusive, Mr. President. It seems to me that this is a revenue-raising measure; and if the Senate fails to sustain the point of order, it seems to me that we do great violence to the constitutional provisions relating to revenue-raising methods.

Mr. EAGLETON. In response to the distinguished Senator from Vermont, I have no quarrel—although I cannot give it back to him verbatim—with the definition he has just cited from Black's Law

Dictionary, which is a most valuable legal document, both for law students and practicing lawyers.

The essence of the definition from Black's is that revenue bills or revenue measures are those which are enacted by Congress to defray the cost of government. If a bill has as its purpose to defray the cost of government, it is per se a revenue bill and, under the constitutional provision, must originate in the House.

The pending bill, S. 2917, is not a bill to defray the cost of government. This is the Coal Mine Health and Safety Act of 1969. This is a bill that has as one provision, contained within a whole body of provisions, many of which are detailed and complex, an item which would assist in research and related matters thereto, which is an industry benefit assessment. Hence, I think this bill comes quite adequately within the definition that the Senator from Vermont has given from Black's Law Dictionary and is not a bill in which we are prohibited from proceeding on an original basis in the Senate.

Mr. PROUTY. May I point out that the point of order is directed only against section 502 of the bill. It is not directed against the entire substance of the bill:

Mr. EAGLETON. I take it, of course, that the Senator from Vermont is eminently correct. His point of order is not to strike the entire bill but the one provision thereof. I concur in that.

However, the precedent he attempts to have set would apply to any and all other bills originating in the Senate dealing with environment, dealing with pollution, dealing with the whole range of matters that comes before Congress. If they have one section that has something to do with an assessment or something to do with the creation of a fund for research or development, his precedent, if he has his way, would prohibit all such provisions in all bills coming before the Senate. It would broaden immensely the very definition which he quoted from Black's dictionary—that is, that revenue bills are those designed to defray the cost of government.

The provision that is being challenged by the Senator from Vermont's point of order is not a provision defraying the cost of government; and the Coal Mine Health and Safety Act of 1969, in and of itself, is not a revenue bill.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. EAGLETON. I am pleased to yield to the Senator from Kentucky.

Mr. COOPER. This is an interesting question and an important one. Because there are no precedents which are on all fours, I would agree that perhaps the Senator from Delaware (Mr. WILLIAMS) is correct, that in the past this type of approach has not been used.

The Senator said that it is not intended to defray the cost of government nor for general revenue. How would he describe this fund?

Mr. EAGLETON. This fund, in response to the Senator from Kentucky, is a fund, as I read it, that would be designed primarily to go forward with research and further delving into how the

life of a coal miner could be made better in terms of protecting his health and safety while working in those mines. It is not a tax per se that is imposed upon income. It is not an income tax, nor is it a sales tax. It is a measure which would raise money from coal producers for research.

Mr. COOPER. It is for research.

The Senator knows that revenue is raised for general purposes and then it is appropriated for research. Is that correct?

Mr. EAGLETON. The Senator is correct. As the Senator from Kentucky well knows, we have spent many, many weeks on the floor of the Senate in the past few months debating some of these provisions in the military bill with respect to research and the like.

Mr. COOPER. I know, for example, we authorize funds for research for many diseases in bills which are reported by the Committee on Labor and Public Welfare. Large sums of money are authorized and later appropriated for research in specific causes. For example, to the National Institutes of Health. In that last decade appropriations have been authorized for the National Institutes of Health, drawing from the general revenues, for research in the prevention and causes of heart disease, cancer, and other dread killers. We have appropriated money to the Bureau of Mines for research.

A tax could be levied properly by the House and Congress could then appropriate from the revenues such sums as it thought fit and appropriate, for the purposes in this bill. Is that correct?

Mr. EAGLETON. The Senator from Kentucky is correct in that point, in that many bills emanating from almost every committee of Congress frequently have contained within them provisions which authorize research programs in this, that, or another area. As previously mentioned in response to the preceding question, the Armed Services have provisions for research in their bill. Various educational bills that come out of the same committee as the coal mine bill have research provisions. I dare say that research comes out of many bills in the Senate.

If I comprehend the words of the Senator from Kentucky, the point where we may be at variance with one another is that this bill, insofar as the point of order as raised by the Senator from Vermont, is not, when examined in its total consequences, a revenue raising bill; and second, the one provision being challenged is of and itself not a revenue bill designed to defray the costs of government, that being the definition cited by the Senator from Vermont.

Mr. COOPER. I think we are all agreed on the worthy purpose of this section. However, I would point out that section 8, article I, of the Constitution provides:

The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the debts and provide for the common defense and general welfare of the United States.

And by section 7, the right to originate these taxes is retained to the House.

There was a time when "general welfare" was construed very narrowly. But

for several decades, "general Welfare" has come to include almost everything that Congress says contributes to the welfare of the people.

Congress has recognized this obligation particularly in the field of health by appropriating vast sums to determine the causes, prevention, and treatment of some of the dread killers in this country. Attention to black lung has been given by the subcommittee headed by the Senator from New Jersey. Black lung should receive funds for research. I hope that in this Congress measures will be passed providing proper compensation to victims of black lung. Black lung is a disease just as other killers for which we have provided research funds, and for which we have appropriated money out of general revenues. I believe an assessment can be properly levied under sections 7 and 8 of article I of the Constitution.

I have not made a determination on this issue, but it seems to me that it is not correct to avoid the constitutional requirements by giving the tax a name such as an assessment.

Take for example, the highway trust fund. The taxes for road construction are levied first by the Ways and Means Committee of the House, and then the Committee on Finance in the Senate. This money goes to a trust fund for specific purposes, and authorizations can be made in the Senate.

There are other cases where special funds are established from general revenues.

Mr. COOK. Mr. President, will the Senator yield?

Mr. EAGLETON. I am pleased to yield to the Senator from Kentucky.

Mr. COOK. Mr. President, in the Senator's remarks he talked about incidental revenues, and that this was a strong point in his argument.

I would like to know, for the purposes of the record, under section 502, how much incidental revenue is the Senator talking about at 1 cent a ton through 1970, 2 cents a ton through 1971, 3 cents a ton through 1973, and up to 4 cents? How much incidental revenue is the Senator talking about?

Mr. EAGLETON. First year \$5 million, second year \$10 million, and on up in annual increments to the maximum of \$20 million at 4 cents a ton.

Mr. COOK. I might suggest to Members of the Senate that I do not think this is incidental revenue.

The Senator made reference to the case of *Millard v. Roberts*, 202 U.S. 429.

Mr. EAGLETON. Yes; a landmark case.

Mr. COOK. I wish to suggest to the Senator that the headnote states exactly what the Senator said. The headnote states:

Revenue bills, within the meaning of the constitutional provision that they must originate in the House of Representatives and not in the Senate are those that levy taxes in the strict sense of the word and are not bills for other purposes which may incidentally create revenue.

That is the only thing the case says. This case states it is within the power of Congress to authorize the District of

Columbia to pay to the railroads the sum of \$750,000 to remove their rights-of-way to see to it they have markers at their crossings. It has nothing to do with what the Senator suggested. As a matter of fact, the only paragraph on page 434 is:

The act of February 28, 1903, from the recitals in its enacting clause and the fact that it has received the approval of the President and has been regularly enrolled among the statutes of the United States, must be presumed to have been passed by Congress in strict accord with the letter and spirit of the Constitution, and resort cannot be had to the journals of the two houses to overthrow this presumption.

That is the only remark it makes with regard to the authority of the Senate to initiate. As a matter of fact the tax initiated here was initiated by the District of Columbia and the authority was given to the District to initiate a tax. The Senate had initiated no tax at all.

Mr. EAGLETON. I thank the Senator from Kentucky, and I wish to respond to his question. First, I wish to respond to his query about my use of the word "incidental."

I did say in my remarks that title V is an incidental part of that bill. In terms of sophisticated semantics "incidental" does not mean that it has a connotation of meager in terms of dollar amounts. "Incidental," as I used it here means it is a part of the bill but is not the central object of the bill.

I do not care if the fund were \$10 million, \$15 million, \$20 million; if the fund were \$500 million the first year, then a billion dollars, and then \$2 billion after 4 years, it would still be incidental to the bill and incidental to the overall thrust of the bill which is a health and safety act as far as the coal miners are concerned.

I am very much pleased that the Senator from Kentucky took occasion to delve in a little further into the landmark case, one of the classics on this point; namely, *Millard against Roberts*, which as previously cited is 202, U.S. Reports, page 429, wherein I pointed out that one of the headnotes of this case supported my contention, as indeed it does, because I read it, and it precisely supports my contention. Then the Senator from Kentucky and went off and discussed another part of the case that was not covered by the headnote. So now I should like, in clarification of the record, and to be on the very point that it covered by this headnote, to read from *Millard against Roberts*, from that portion of the case that is in point and is germane to the point of order as raised by the Senator from Vermont.

I read from page 436, the second full paragraph, and shall read thereafter:

The first contention of appellant is that the acts of Congress are revenue measures, and therefore should have originated in the House of Representatives and not in the Senate.

This is right on the point.

And to sustain the contention appellant submits an elaborate argument. In answer to the contention the case of *Twin City Bank versus Nebeker*, 167 U.S. 196, need only be cited.

Parenthetically, Mr. President, let me add that that was in my opening remarks, too. It is an even earlier landmark case. Perhaps we can get into that.

Mr. COOK. We will.

Mr. EAGLETON. Mr. President, I continue to read:

It was observed there that it was a part of wisdom not to attempt to cover by a general statement what bills shall be said to be, "bills for raising revenue" within the meaning of those words in the Constitution, but it was said, quoting Mr. Justice Story—

I deviate from the quotation to comment that it appears in this discussion because he, above all others, one of the most learned members of the U.S. Supreme Court, is the authority in terms of the interpretation of this particular constitutional provision. To return to the quotation, from Justice Story:

The practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes, which may incidentally create revenue.

That is from Justice Story and again clarified in Story on the Constitution, section 880, which is the section I have repeatedly cited.

Now going on with the Millard against Roberts case:

And the Act of Congress which was there passed on illustrates the meaning of the language used. The Act involved was one providing a national currency, and imposed a tax upon the average amount of the notes of a national banking association in circulation. The provision was assailed for unconstitutionality because it originated in the Senate. The provision was sustained, this court saying:

"The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States and be available in every part of the country.

There was no purpose, by the act or by any of its provisions, to raise revenue to be applied in meeting the expenses or obligations of the government.

Mr. President, here is an important sentence. It is the last one I shall quote. This is back to the Millard against Roberts case opinion, on top of page 437:

This language is applicable to the acts of Congress in the case involved. Whatever taxes are imposed are but a means to the purposes provided by the act.

Let me repeat that because it is, I think, dispositive of the question raised by the Senator from Vermont in his point of order:

Whatever taxes are imposed are but a means to the purposes provided by the act.

Mr. COOK. Mr. President, will the Senator from Missouri yield?

Mr. EAGLETON. I yield.

Mr. COOK. Let us go back to the Twin City Bank against Nebeker case, which was quoted at length.

Mr. EAGLETON. I have it with me. It is one of the best cases on this.

Mr. COOK. Let me read a section from the Constitution again, article I, section 7:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

I repeat, "but the Senate may propose or concur."

Now let us read the language of the Twin City Bank against Nebeker case, because it is very important.

Mr. EAGLETON. May I ask the Senator from Kentucky, does he have the same volume I have, 167 U.S. Reports?

Mr. COOK. Yes. Page 198.

Mr. EAGLETON. Page 198. I thank the Senator.

Mr. COOK. Let me quote from the opinion:

The Journals of the House of Representatives and the Senate of the United States for the 1st session of the 38th Congress were put in evidence by plaintiff. The bank claims that these Journals show that the National Bank Act originated as a bill in the House of Representatives, that when it passed the House, it contained no provision for a tax upon the National banks or upon any corporation or upon any individual or upon any property, nor any provision whatever for raising revenue, and that all provisions appear to authorize the Treasurer of the United States to collect a tax on the circulating notes of the national bank originated in the Senate by way of amendment to the House bill.

I repeat again, article I, section 7 of the Constitution:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

So that the amendment to the bill that provided for the tax came from the Senate but it was an amendment on a bill that came from the House in strict compliance with section 7 of the Constitution as is set out in the Twin City Bank case.

Mr. EAGLETON. Once again, in response to the Senator from Kentucky, who is learned in the law and for whom I have the highest respect both personally and professionally, he has cited from and made reference to just one part of the Twin City Bank case and one part of that opinion.

This case was not—and I emphasize the word "not"—decided on the very narrow ground which was enunciated by the Senator from Kentucky—to wit, as he put it, which is factually correct, that the bill in question in the Twin City Bank case originated in the House and an amendment was tacked on in the Senate. Factually he is correct. But the opinion of the Supreme Court in this case—the Supreme Court of the United States—in 1896, was not posited on the narrow ground which was enunciated by the Senator from Kentucky.

Mr. President, once again to clarify the record, I want to read from a portion of this case which explains and spells out the ground upon which the U.S. Supreme Court did make its decision.

I invite the attention of the Senator from Kentucky to page 202 of the opinion. I commence reading at the top of the full paragraph on that page.

The contention in this case is that the section of the Act of June 3, 1864—

That is the act in question in that case. Providing for a national currency secured by a pledge of United States bonds and by the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association in circulation, was a revenue bill within

the clause of the Constitution declaring that "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other bills." Article 1, section 7 that it appeared from the official journals of the two Houses of Congress that while the Act of 1864 originated in the House of Representatives, the provision imposing this tax was not in the bill as it passed that body but originated in the Senate by amendment and, being accepted by the House, became a part of the statute; that such tax was therefore, unconstitutional and void; and that, consequently, the statute did not justify the action of the defendant.

The case is not one that requires either an extended examination of precedents, or a full discussion as to the meaning of the word in the Constitution, "bills for raising revenue." What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt by any general statement, to cover every possible phase of the subject. It is sufficient in the present case to say that an act of Congress providing a national currency secured by a pledge of bonds of the United States and which, in the furtherance of that object and also to meet the expenses attending the execution of the act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives.

I emphasize that—

Is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives.

And here is this name again:

Mr. Justice Story has well said that the practical construction of the Constitution and the history and the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word—

This is a direct quotation from the Twin City Bank case; I will repeat it—

Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strictest sense of the word, and are not bills for other purposes which may incidentally create revenue.

That is the guts of the case before us.

Let me just finish this paragraph, very interesting paragraph:

The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question. The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.

And I could not have found language if I had been on the Supreme Court back in 1896 myself, that could be more directly applicable to the instant matter raised by the Senator from Vermont than that which I have just cited from the Twin City Bank case. It shows that even though a bill may deal with money, may treat of money, and, in fact, may even raise money from some source or another, if it is such that that provision is merely incidental to the overall thrust

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of the bill, then that provision can be part of an act which does originate in the U.S. Senate.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. ALLEN. I would like to ask the distinguished junior Senator from Missouri, who has been quoting approvingly from a Supreme Court decision of 1896, if he agrees with the logic and reasoning of all the cases decided by the Supreme Court of the United States in that year, 1896.

Mr. EAGLETON. In response to my distinguished colleague from Alabama, I would say the opinions of the Supreme Court handed down in any given year are sometimes separate but unequal, and I wish to certainly separate this learned opinion, on this relatively obscure section of the U.S. Constitution, from any other opinions that may have been handed down, including Plessy against Ferguson.

Mr. COOK. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. COOK. One of the important quotations the Senator read from the Twin City Bank case was the fact that the Supreme Court of the United States actually called it a tax. As a matter of fact, in the last paragraph on that page the decision reads:

The tax was a means for effectually accomplishing the object of giving to the people a currency.

The other important quotation from that case is:

There was no purpose by the Act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.

I think that is important because we here, as the Government, are establishing something. We are establishing the coal mine health and safety research trust fund. We are, in fact, establishing it as a government. The interest that was imposed upon the bonds would come within section 7 of article I, because section 7 states that the Senate may propose amendments.

But let us get to the very important case that goes to the guts of it, 202 U.S., *Millard v. Roberts*:

There was no purpose by the Act or any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.

If the Senator will refer to section 502, on page 121 of the bill, we are creating the coal mine health and safety research trust fund. No one else is creating it. The coal industry is not creating it. We are creating it. If we create by this act, and as we create it for the purpose of the creature that this Government will create, the coal mine health and safety research trust fund, we are imposing an assessment of 1 cent, 2 cents, 3 cents, 4 cents, would the Senator please, by the farthest stretch of his imagination, explain to me how we can get by the provision of the Twin City Bank case when it said:

There was no purpose by the Act or any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.

Will the Senator tell me, under the terms of this act, if the Government or a part of the Government is not the coal mine health and safety research trust fund, and if the only way this money can be collected is, first of all, through the Secretary of the Interior, who is authorized to enter into an agreement with the Secretary of the Treasury, and the Secretary of the Treasury shall collect these funds by reason of subtitle D of the Internal Revenue Code of 1954 and, on the importers, by the Tariff Schedules of the United States? Are we collecting these for someone other than a Government-created coal mine health and safety research trust fund?

Because, if we are collecting it for another purpose, then tell me, if the Government is not going into this business, who is going into the business? And if the money is not being collected for a governmental purpose, and to defray costs of government, then why are we creating this fund? If the Government is not assuming to collect, from some source, a sum of money to help sustain it and help pay the cost of a governmentally-created coal mine health and safety research trust fund, will the Senator from Missouri please explain to me what section 502 really means, and what it really does?

Mr. EAGLETON. In response to the question of the Senator from Kentucky—

Mr. COOK. Before the Senator answers, let me add one other thing. Under section 501, this money also goes to the Surgeon General of the United States, not to an individual, not to some group picked or selected to perform this function. This section establishes a coal mine health and safety research trust fund in the Treasury. It appropriates to the trust fund amounts equivalent to 100 percent of the assessment received in the Treasury under section 502. It also would make such amounts as are provided by appropriation acts—appropriation acts of this body—available to the Secretary and Surgeon General, to carry out the research required by sections 201 (b), 401, and 402.

If that is the case, is not this money we are collecting for the purposes of government?

Mr. EAGLETON. In response to the Senator from Kentucky, who has quite eloquently and convincingly postulated a whole series of questions, it will be a bit difficult for me to address myself precisely to each question he has addressed to me, but I will try to make a general critique or commentary on what I think was the point he was trying to make.

I think his point is relevant to the decision that the Senate is being called upon to make. These is a vast difference and, indeed, a singular difference between a revenue bill and a measure such as that before us, in that a revenue bill is designed to raise money generally for the public interest, to be distributed by the Government. That is in accordance with the definition from Black's Law Dictionary cited by the Senator from Vermont.

Placing that on the one hand as being the hallmark of a revenue bill, and then getting to the immediate question, which concerns an assessment which is to be

used for the benefit of a particular industry, the coal mine industry, we then get to the precise point that was ruled on in the case of Millard against Roberts.

In that case, it was labeled an assessment, and it was held by the U.S. Supreme Court to be a matter which could in fact originate in the U.S. Senate.

Let me read just one portion of the case of Millard against Roberts, because it is on this very point. I read at page 435, the first full paragraph on that page:

The principal allegations of the bill—

This referred to the bill that was involved in the Millard against Roberts case. Refreshing the memory of the Senator from Kentucky, that was a bill relating to the railway and terminal facilities in the District of Columbia, back in 1905.

The U.S. Supreme Court, Mr. Justice McKenna writing the opinion, said:

The principal allegations of the bill are that the railroad defendants are private corporations and all interested in the railway and terminal facilities of the District of Columbia; that the District of Columbia owns no stock in any of the companies nor is otherwise interested in any of them save as useful private enterprises, and yet it is required by said acts, "without any lawful consideration therefor," to pay the Baltimore and Potomac Railroad Company the sum of \$750,000., and a like sum to the Baltimore and Ohio Railroad Company—

I emphasize this—

"to be levied and assessed upon the taxable property and privileges in the said District other than the property of the United States and the District of Columbia," and for the exclusive use of said corporations respectively, "which is a private use, and not a governmental use;" that the public moneys of the District of Columbia are raised chiefly by taxation on the lands therein, and that the complainant is obliged to pay and does pay direct taxes on land owned by him therein. And the bill also alleges that the acts of Congress are "acts which provide for raising revenue and are repugnant to article I, section 7, clause 1, of the Constitution of the United States, and are, therefore, null and void *ab initio*, and to their entire extent, because they and each and every one of them originated in the Senate and not in the House of Representatives."

I have read from this decision at some length because the assessment that was being made back in 1905—64 years ago—is precisely of the same type; the same assessment that is being made in section 5 of the instant bill.

Mr. COOK. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. COOK. The assessment is nowhere nearly the same. I should like to get the Senator back to September 1969, and not way back at the turn of the century. I shall read to him from subsection (b) of section 205, so we can see how governmentally regulated this bill is, and how important it is to the governmental purpose:

There is hereby appropriated to the trust fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of the assessments received in the Treasury under the provisions of section 502 of this Act. The amounts appropriated pursuant to this subsection shall be transferred at least monthly from the general fund—

Not from this fund, but from the general fund—

Of the Treasury to the trust fund on the basis of estimates by the Secretary of the Treasury of the amounts received in the Treasury under the provisions of section 502 of this Act. Proper adjustments at the end of each fiscal year shall be made in the amounts subsequently transferred to the extent prior estimates in each year were in excess of or less than the amounts required to be transferred.

This means that monthly, a certain amount will be paid into the trust fund out of the general fund revenues of the United States—not out of the trust fund, but out of the general fund—and that an accounting will be made at the end of the year.

I also read to the Senator subsection (c):

(c) It shall be the duty of the Secretary of the Treasury to hold the trust fund, and (after consultation with the Secretary of the Interior) to report to the Congress not later than the 1st day of March of each year on the financial condition and the results of the operations of the trust fund during the preceding fiscal year and on its expected condition and operations during each fiscal year thereafter. Such report shall be printed as a House document of the session of the Congress to which the report is made. It shall be the duty of the Secretary of the Treasury to invest such portion of the trust fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at par, or (B) by purchase of outstanding obligations at the market price.

Now, is this not an integral part of the Government? Not only is this to be a trust fund, but, if the funds are slow coming in from the producers, it shall be averaged out, and the money shall be paid from the general fund of the Treasury to the department each month or two, three, or four, and an audit shall be made at the end of the year to find out whether they have paid too much or too little.

Is the Senator from Missouri still contending that this is not an absolute purpose of the Federal Government, and the raising of this money is not absolutely raising of funds for a governmental purpose?

Mr. EAGLETON. The Senator from Kentucky, I think, is putting a question that is unrelated—at least not directly related—to the precise question which the Senate will be called upon to decide on this point of order.

It has never been my position that there is no governmental nexus between section 501, and the trust fund thereby created. It goes without saying that if it is not put into the law, if it is not made a part of a bill, there will be no trust fund, because I hasten to add I know full well that industry by itself will not create it, and unless it is forced upon them by law, it will not be there. So the Senator is correct to this point.

Mr. COOK. Will the Senator yield?

Mr. EAGLETON. Let me finish my statement; then I shall be happy to yield.

There is a governmental nexus between the trust fund being created and

the statute; yes. There is going to be a trust fund created by the benefit of and under the color of law.

That does not change one iota the basic question to be decided by the Senate and the basic question that was decided by Millard against Roberts and the Twin City Bank case, despite the fact that one is an 1896 case and one is a 1905 case.

We are now living in the era of strict construction. And all of us treasure these rather musty old cases as much as if they were written yesterday, because they have not been overruled. They have not been cast aside. They carry with them the imprimatur of longevity, one of the bulwarks of the judicial system. And the fact that this case was not handed down in the Warren era, when some of the greatest cases of our time were handed down, in no way detracts from the Millard against Roberts case.

I know that the Senator from Kentucky did not wish to cast aspersion on the principle of stare decisis. However, be that as it may, the point to be decided is the substance of a general revenue raising bill for a general public purpose.

Here we have a measure as a part of the overall bill which has as an incidental purpose, the creation of a trust fund.

I cite the Senator from Kentucky a more recent example, since he wishes to get away from the Millard against Roberts case. If, indeed, I were in his position, I would wish to have it ignored, also. However, it is there. It is in print.

I give the Senator a more recent example. It is a 1958 act of the 85th Congress. It was Senate bill 2617.

That bill provided for raising from \$2 to \$3 the duck-hunting tax stamp required to be purchased under the Migratory Bird Hunting Stamp Act.

The proceeds from the stamp tax were to go to the support of the wildlife refuges.

The bill originated in the Senate and then went to the House, where it passed and became Public Law 85-585. Here is a bill that raised the stamp tax from \$2 to \$3. It was earmarked for a certain purpose—to support wildlife refuges.

There is an analogous situation to section 5 of the instant act, where a trust fund is being created to help individuals help themselves by advancing research for the benefit of those who labor in the coal mines.

Mr. COOK. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. COOK. Mr. President, I have no idea whether a point of order was raised on the Senate bill to which the Senator refers. However, if this is the course the Senator is suggesting, I point out that I have been wanting ever since I have been in the Senate to raise social security benefits for everyone in the country. I feel that we should introduce a bill in the Senate tomorrow to raise the social security tax. I feel that we would have no problem under the theory of the Senator with respect to section 502. There are two specific groups or classifications of people. We really ought to get on with it and not wait for the House to act.

I have no idea whether a point of order was raised in the duck hunting situation.

However, I doubt seriously that raising the tax by \$1 would raise \$20 million a year.

I might suggest to the Senator that it was done for the purpose of executing an act that was already in existence.

The Senator here is proposing something new and as a Member of the U.S. Senate proposes to create a new function in the Coal Mine Health and Safety Act.

It is even provided that if the section is passed the general revenues can be used in lieu of the trust funds until such time as an audit is made.

It seems to me that we either have these funds coming in or we do not.

Suppose that under the act the Senator came to a conclusion in 1 month that we were going to receive so much money and that each month the Treasury of the United States paid out of the general funds a certain amount of money. And suppose at the end of the year there were not sufficient funds with which to pay that amount. Under the act, it would not just be a trust fund, but it would in effect be the general fund and a trust fund. If this is not raising revenue for a governmental purpose, then section 7 of the Constitution appears to be meaningless.

Mr. EAGLETON. Mr. President, I thank the Senator from Kentucky for his continued interest in the subject matter. I do not know whether his more recent comments have shed any new light on the question.

First, he raises the question of whether the Senate could originate legislation increasing benefits under the social security system.

I think it would be very interesting if the Senate were to try to do so. I am not sure with what favor such an attempt would be received by the House of Representatives. I am not here today to say that it would be fatally unconstitutional if the U.S. Senate were to attempt to do so. However, even if that were deemed to be beyond the pale of constitutionality, it is a very good thing to talk in terms of the social security tax which admittedly is levied on a specific segment of our society, employees and employers, for the benefit of employees, covering the whole of commerce of the United States, the 50 States, workers in every way, shape, and form, and at the same time to analogize it to an assessment made on the coal mine operators, the purpose of which assessment is to assist the operators themselves in improving their own research on the environment in which coal workers labor.

With respect to the bill I mentioned before, S. 2617, that raised this duck hunting tax from \$2 to \$3, the Senator is correct that a point of order was not raised at that time.

I gather in reading the Journal that it became quite obvious to the 100 Members of the Senate that a point of order would not lie.

Finally, with respect to the amount of money raised by that bill, since the Senator alluded to the possibility that it was a mere pittance and hence because of its innocuous nature might be overlooked, I point out that the amount of money raised by that increase in tax from \$2 to \$3 was \$9 million, which is almost

twice as much as the amount to be raised by this assessment for its first year of operation.

Mr. COOK. Mr. President, will the Senator from Vermont permit me to depart from the rule of germaneness for 2 minutes?

Mr. PROUTY. I ask unanimous consent that the Senator may do so.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EAGLETON. Mr. President, I reserve the right to object, but I will not object.

Mr. COOK. Mr. President, the Senator from Missouri will realize that there is on the calendar a bill from the Senate Committee on Agriculture and Forestry to provide that the potato growers of this Nation may meet together and impose on themselves an assessment for the operation of their industry.

I think that is the very thing that we are discussing. It is not a revenue-raising measure as far as the Senate is concerned. It is an objective measure that is within the purview of the Senate. It provides that they may have the option in association to impose on themselves a levy for their own industry, for their own business.

I think that this is altogether different, because they have a right in that act either to join that association or not to join it. They have a right to be a part of it and then have a right to ask to be removed from it.

They have a right to impose on themselves by their own election a sum of money up to a certain amount.

By the obligation and the option in the pending bill, we would be saying this to the entire industry—which of course is at a smaller level but is just as integral as the entire group included in the social security group, only much smaller. It is an integral group that comes within a classification, as do those, under social security.

But there is no option here. The coal industry cannot get together and decide whether it will or will not, which I think easily would put it within the prerogative of the Senate. The coal industry does not have an option to decide what its rate will be. The coal operators do not have—in any way, shape, or form—any control over this fund. It is entirely a governmental fund. And to this extent I think we see the difference between revenue raising for a governmental purpose and revenue raising for the purpose of some function that is not governmental.

That is the distinction I should like to make to the Senator from Missouri. I believe it is a sound one. I am sure he will contest it, but I throw it out for what it is, because I think there is the distinction—the distinction that the Senate can allow a revenue-raising measure to be imposed when those who want to raise it can raise it or not, as they see fit, and who may have in some way control over it.

I might suggest to the Senator from Missouri that he stands here ready to impose assessment after assessment after assessment on another industry and another industry and another industry,

and perhaps some day on the people of the United States, and not call it a tax. But I think that by any other name it is the same, and it cannot be otherwise.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. EAGLETON. I shall yield in due course, but I should like to present my response to the junior Senator from Kentucky, which I believe may be both surprising and refreshing in its brevity.

I am pleased that the junior Senator from Kentucky brought to my attention the bill pending on the calendar called the Potato Research and Promotion Act. I have been glancing through the committee report on that bill.

The junior Senator from Kentucky pointed out that this is a bill originating in the Senate. It is a bill which contains, I quote from the report, "an assessment of not more than 1 cent per hundred pounds of potatoes produced commercially in the 48 contiguous States."

So the Senator points out that we have on the calendar a Senate bill with an assessment on potato producers.

Mr. COOK. The Senator will read that that assessment is imposed only if the growers themselves vote to impose it.

Mr. EAGLETON. And then the Senator points out that there are variations between the potato bill and the instant coal mine safety bill by which this assessment is assessed, funded, and computed. But he raises the point that this is on the calendar, and then he says that the potato bill is within the legitimate purview of a bill that may originate in the Senate.

On page 5 of this report the Agriculture Committee defines the purpose of the bill. I want to read the purpose of the potato bill as spelled out by the Agriculture Committee, and then I am going to read from page 2 of the report of the Senate Labor Committee, in terms of the purpose of the coal mine safety bill. I am doing it because the Senator will find that the purposes, as spelled out by the two respective committees that set up these two assessment funds, are almost identical.

I quote first from the potato bill:

The purpose of the bill is to enable potato growers to finance a nationally coordinated research and promotion program to improve their competitive position and expand their markets for potatoes.

That is the purpose of the potato bill.

Mr. COOK. If they wish to do so.

Mr. EAGLETON. The purpose of the pending bill is to provide a more extensive and accelerated research program in the field of coal mine health and safety.

The purposes of the two bills are analogous and identical, and the funds are both assessment funds, both originating in the Senate.

Mr. COOK. Would the Senator agree to allow an amendment to go on the bill which would give the coal industry the same authority, to vote itself that assessment or not vote itself that assessment, as is provided in the potato bill?

Mr. EAGLETON. It seems to me that it would be sustainable on a point of order.

Mr. COOK. Would the Senator be agreeable to supporting such an amendment?

Mr. EAGLETON. If the Senator will let me finish my speech on the point of order, he will be surprised to learn that when we get to the merits of the case, I may well not support the present trust fund in the pending coal bill. I am waiting to get to that part of my speech.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. COOPER. I have had little opportunity to read all the cases on this point. I have looked at a list of cases provided as annotations to the Constitution, and I find very few in print. But they all have certain characteristics.

The Senator has quoted from the currency case.

Mr. EAGLETON. The Senator is correct.

Mr. COOPER. He has also spoken of the case in which a license was levied in the so-called duck act.

Mr. EAGLETON. Yes.

Mr. COOPER. That became a famous case a few years ago, when we were considering the Bricker amendment. We are very familiar with the case.

In the cases to which the Senator from Missouri referred, the Court made it clear that in those cases a license could be levied for the purpose of execution of the act itself, providing funds to execute the act.

The junior Senator from Kentucky is correct when he says that the potato case is different because it authorizes the potato growers to decide whether or not they will levy a license upon themselves.

I have two cases here which are quoted, and I found these quoted in the annotations to this section of the Constitution. One is *Flint v. Stone & Tracy, Co.*, 220 U.S. 107-143, 1911, later than the 1896 case quoted by the Senator. Another case is *Rainey v. United States*, 232 U.S. 310 (1914).

In both cases, the Court said specifically that the Senate had the authority to levy a tax because it had done so by an amendment to a general revenue bill which had originated in the House.

It has been a long time since I practiced law or was a judge—and I can see the Senator from New York rising behind me—but I believe that every case quoted and the ones I have quoted can be distinguished.

First, some cases held that the Senate can levy a license if it is for the execution of costs of operation. Second, in the potato case, a practice is followed as with other agricultural products, to let the farmers decide whether or not they will fix fees upon themselves. The other cases—there may be others I have not come across—make it clear that no constitutional question was involved because the Senate levied a tax by amendment to a general revenue bill.

Mr. PROUTY. Mr. President, will the Senator yield?

Mr. EAGLETON. First, I should like to respond briefly to the senior Senator from Kentucky; then I intend to yield to the Senator from West Virginia; and

then I will yield to the Senator from Vermont.

The Senator points out a case which, quite frankly, I have not read, a 1911 case, the Stone case. But he points out in his comments that each of these cases is somewhat distinguishable from the other. Indeed, the Senator is correct. If there were a case in a printed volume on all fours, this colloquy would not be indulged in. But one argues from the benefit of earlier cases by way of analogy insofar as trying to employ them as current precedent.

I think the Senator raises an important point. He mentions that the case he cites—and I have not read it—is a 1911 case. It is 5 or 6 years, or even more recent—

Mr. COOPER. It is 1914.

Mr. EAGLETON. It is more recent in point of time than the 1905 case we cited or the 1896 case we cited. State constitutions, by the way, have similar provisions, analogous to this Federal provision. There are two reasons why more current cases are not in the bound volumes, either from the U.S. Supreme Court or from other jurisdictions. One, it is rather firmly established in constitutional law that the Story commentary is the law of the land, that an assessment provision, a revenue provision, which is merely incidental to a broader purpose of a bill, can be originated in the Senate; and, second, it is likewise firmly established constitutional law—one of the leading cases is a Missouri case which interprets the Missouri constitution which, if not identical, is very similar to the Federal Constitution—that State and Federal appellate courts will not intervene in the legislative function if a bill which is clearly constitutional under other constitutional provisions is adopted in identical form by both sides of the general assembly—here the House and the Senate—even though some question might be raised as to which should have been the preferable house of origin; that is, once a law goes on the books and is signed by the Governor—in this case the President—courts are not to upset such a statute on the grounds of which house should have been the house of origin.

I think it is important to point out why there are not more recent cases than cited in this decision, all of them a more than a half century old. The answer is that the law is settled just as the Story commentary is the law of the land. No one challenges it. Should this coal mine bill become law I dare say the Supreme Court, no matter who is then a member of that Court, will readopt the Story principle and not challenge whether it should have been enacted in the Senate.

I yield to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, the able Senator from Missouri addresses himself in splendid argument on the point of order raised by the able Senator from Vermont. The Senator has mentioned S. 1181, the potato bill. The bill, by its very title, is to enable potato growers to finance nationally coordinated research and promotion. We have been talking about research in connection with mine health and safety legislation.

I wish to ask the Senator who has just been speaking if it is not true that the assessment, which will run 20 cents a ton, would not be a very large sum of money. Does he know that figure?

I do not know whether the able Senator from Florida (Mr. HOLLAND) who is now standing, knows the figure or not. The Senator's Committee on Agriculture and Forestry reported the potato bill on August 18. I am not sure whether he can speak with accuracy as to the amount of money but I do know that on page 14 of the reported bill there is a criminal penalty providing for criminal prosecution.

Mr. COOK. Mr. President, will the Senator yield?

Mr. EAGLETON. I shall yield first to the Senator from Florida to get the correct figure in the potato bill.

Mr. HOLLAND. Mr. President and my distinguished friend, I cannot give the exact amount because I do not know. But I can tell Senators how the marketing agreements are set up. This is the law, and it is strictly in accordance with the Marketing Agreement Act.

It provides for payment, either by producers direct, or in this case it says of a certain sum per unit to a commission for the purpose of carrying out the provisions of the act.

The money is never Federal money and never goes to the Federal Treasury. It does not require an appropriation of Congress either to get it into the Federal Treasury or to appropriate it out. It is not for the carrying out of a Federal program by Federal officials as is the case in this bill, but instead, it is for the carrying out of a procedure for the improvement and service of the industry affected—in this case, for the promotion of more information about health values of potatoes.

The two things are not similar at all. The procedure in the bill before the Senate requires the payment of the funds to the Secretary of Interior and by him into the general treasury of the United States. It requires an appropriation out of the general treasury by Congress for use of the Surgeon General and the Secretary for the carrying out of a very important public program, not managed by a committee or commission but, instead, managed by the Federal Government. There is all the difference in the world in the program outlined in S. 1181, to which the Senator from Virginia and the Senator from Missouri addressed themselves.

As far as the Senator from Florida is concerned, he is concerned with this marketing agreement and the order. The order cannot be issued unless two-thirds or more growers subscribe to the agreement. The Senator from Florida knows something about that situation because he drafted some of the orders, and they have to do with an industry effort administered through a commission or board for the benefit of the industry. There is not available the excise tax laws as made available in this case or the tariff laws as made available in this case. There is available a criminal proceeding in the event there is a mishandling of the money, which is as if I owed the distinguished Senator from West Virginia some money that had come into my

hands to go to him and instead I embezzled it. Then, of course, a criminal procedure would lie.

There is nothing in the potato promotion bill at all like the pending coal mine measure. I regret to say that because I had hoped to support the efforts of many in the coal industry to get a sounder and better law. In this instance I could not agree that the assessment is anything other than a tax because it is so clearly made such by the fact it is assessed by the Federal Government, paid to the Federal Government, it goes into the General Treasury, and has to be appropriated from the General Treasury, not back to the industry, but to the Surgeon General and the Secretary of Interior to carry on important programs in the field of health.

I would not be able to vote against this point of order because it seems so clear to me that in this case regardless of what it is called, this is a tax levy. It is levied to carry out an important, and I believe it would be important, public program. I regret that that is the situation but taking these provisions out of the bill no doubt the bill could be passed and then financed otherwise through legislation originating on the other side. But when there is incorporated a provision which is really a levy, and it is really Federal money, to carry out a program, I cannot see any other answer than that the point of order is well taken. I regret to so state.

Mr. EAGLETON. Mr. President, if I may respond to the Senator from Florida, and the Senator from Mississippi says he would like to have the floor, but I will be glad to yield to the Senator from Vermont thereafter.

Mr. PROUTY. I made the point of order. I have not attempted to—

Mr. EAGLETON. May I respond to the Senator from Florida? First of all, I want to thank him for his complete and thorough explanation of what is involved in the Potato Research and Promotion Act, especially insofar as the assessment is concerned. The Senator did not give a precise figure, but it is in the millions of dollars, I presume. It will involve more than \$1 million.

Mr. HOLLAND. The Senator from North Dakota (Mr. Young) is the author of the bill.

Mr. EAGLETON. If I may ask the Senator—

Mr. HOLLAND. I am sorry I do not know what the precise amount is, but that has nothing to do with the case. In the Florida citrus industry, we have rather large sums made available in connection with our marketing agreement and the enforcement of that act, but it does not have anything to do with the question of the way we handle taxes or enforcement under the Florida Citrus Commission but in connection with the control of the movement of fruit. The Marketing Act covers that. The amount is sizable.

I cannot give the figure here. But it is a large industry and has large interests in the matter of proper distribution of the crops. But I do not think the amount of the industry fund would have anything to do with the conclusion that a

person would reach as to whether this is a tax or not.

Mr. EAGLETON. I fully concur with that last answer. I think the amount involved has absolutely no bearing on the legitimacy of the method by which we are attempting to raise the fund. I merely asked that question and, indeed, it was also asked by the Senator from West Virginia, because in the earlier exchange between myself and the junior Senator from Kentucky it was he who pointed out the sizable nature of the fund—\$5 million in the first year, \$10 million in the second year. If ever the amount, is funded, it would have some bearing on what we were attempting to do and whether it was constitutionally satisfactory or not. I fully concur with the Senator from Florida on that part of his answer.

Mr. HOLLAND. I might say that while I have agreed with some of the position taken by my distinguished friends from Kentucky—I heard both their speeches—this was one of the points made by the junior Senator from Kentucky with which I could not concur because I do not think that the size of the fund is determinative on the question that is before the Senate.

Mr. COOK. If the Senator will yield, I brought this question up because we had been discussing the term "incidental funds." I really wanted to place in the RECORD the amount that this revenue would actually produce.

Along the lines discussed with the Senator from Florida, I should like to ask him in regard to the act that we have discussed, the Potato Act, that is voluntary is it not, Senator?

Mr. HOLLAND. Certainly. It is voluntary. It has to be entered into by, as I said a while ago, two-thirds, either by number or volume of producers.

Mr. COOK. They impose an assessment on that much—

Mr. HOLLAND. They do. In that agreement, in terms of the agreement, they have to be passed upon and approved by the Secretary of Agriculture. But the carrying out of this program is in the hands of the commission or the committee, I have forgotten which it is—

Mr. COOK. Committee.

Mr. HOLLAND. Sometimes one, sometimes the other. That is set up, and that committee or that commission is representative of persons from the industry affected who are named by the—

Mr. COOK. Producers.

Mr. HOLLAND. The Secretary of Agriculture, but their duties are duties which they perform in connection with the carrying out of the effort of the industry which is embraced in the marketing agreement.

Mr. COOK. They are named by the Secretary of Agriculture from the list submitted by the producers, are they not?

Mr. HOLLAND. That is true in Florida. It may be true in connection with the Potato Act which will require that provision. I think all we have in Florida is in connection with the citrus and tomato industries both of which I am reasonably familiar with. We have others I am not so familiar with. It requires

that the Secretary make his appointments from a list submitted by the industry affected.

Mr. COOK. It also provides, does it not, Senator, that a producer who joins a group can withdraw by giving notice after 90 days, and that he can withdraw and receive a return on his funds?

Mr. HOLLAND. Under the potato measure, that is true. Also under the cotton measure, with which I am reasonably familiar—but that is a nationwide measure. Insofar as the citrus measure in Florida is concerned, that is not true. A grower cannot demand his funds back. As I say, there are many differences between agreements, but in essence what they require is the payment of funds out of the pockets of those who produce or handle the product in order to benefit the producers.

Mr. COOK. May I ask the Senator, is it not true that the main difference in this act calling for a fund for the potato growers and this one, is that the one for the potato growers is voluntary and the obligation to pay is whether he does or does not want to belong to the association and he can withdraw at any time. The present one before us is absolutely mandatory. If passed by this body, it will become an obligation to operate a fund which will be totally and exclusively an operation of the Federal Government.

Mr. HOLLAND. That is true. The program set up is the program set up by the Federal Government under the terms of this act. I am told by my assistant that the potato measure is estimated to produce \$2¼ million a year. It is a sizable program. We do not know whether it will ever go into effect because before it does, it has to be approved in writing by two-thirds of the producers in volume or in number.

Mr. COOK. I thank the Senator from Florida.

Mr. EAGLETON. Mr. President, I thank both the Senator from Florida and the junior Senator from Kentucky. They have, and properly so, pointed out the distinct differences between the assessment provision found in the Potato Research and Promotion Act and the assessment provision in S. 2917.

I have never contended that these two assessment provisions were to all intents and purposes, and in language, identical, one to the other. I said that they were similar, one to the other. The similarity is purely and simply this: They are both assessment funds raised by Federal law. Neither one can exist without Congress' creating them, whether one be voluntary or the other involuntary. They both have the benefit of Federal law as their creator. These are both Federal assessment funds created by Federal law, each one of which is earmarked for a specific research function in a special industry—in the potato industry on the one hand, and in the coal mine industry on the other, to that extent, they are similar, albeit not identical. To that extent, I think, because they are similar, because they are both incidental to the respective acts in which they occur—in one there are the potato and tomato industries, and in the other there is the coal mine safety prob-

lem—they come under Justice Story's definition so often cited heretofore.

Mr. PROUTY. Mr. President, will the Senator from Missouri yield?

Mr. EAGLETON. I am happy to yield to the Senator from Vermont.

Mr. PROUTY. Mr. President, I thank the Senator from Missouri for yielding to me.

In the past, research for safety in the mines has been carried on by the Bureau of Mines and money has been appropriated for that purpose, is that not correct?

Mr. EAGLETON. That is correct.

Mr. PROUTY. Would not the Senator agree that past expenses for coal mine safety have been a function of Government?

Mr. EAGLETON. That is correct. Under present law.

Mr. PROUTY. Funds which have been appropriated—

Mr. EAGLETON. Monies collected out of Federal general revenue go to operate the entire Department of the Interior of which the Bureau of Mines is a subdivision.

Mr. PROUTY. Now, under subsection B 501, we are appropriating 100 percent of the assessments received in the Treasury. How do we commingle those funds and determine this half of the general revenue and the other half or not?

Mr. EAGLETON. In candid response to the Senator from Vermont, I am not sufficiently sophisticated in Federal bookkeeping and what the Treasurer of the United States or the Secretary of the Treasury does with respect to various bank accounts that are kept by the Federal Government.

All I can say is that the funds in question here, which are challenged by the Senator's point of order, are incidental to the entire thrust of the bill.

Mr. PROUTY. I cannot follow the Senator's reasoning, because it seems to me that if half the funds proposed by the section come from general Federal Treasury funds and the other half come from so-called assessments provided for in section 501, I do not know where the Senator would draw the line. Which half comes from the general Federal revenues and which half does not?

Mr. EAGLETON. I think now I understand the Senator's point. In the proposed bill some Federal money would be appropriated out of general revenue, that being used by Secretary Hickel and the Bureau of Mines, and then general money in the area of research to improve the standards of coal mine safety. That is identical to what has been the case here before—general Federal moneys to be used for research—as I understand it. On a new and novel procedure, we have a proposal in addition to what the Government has been doing in this area, the money to come out of its general Federal revenue money. This provision, in title V, would call upon industry, out of coal mine production, to pay for what research is to be done by and for the benefit of industry. So these are two separate handles on the research concept.

Mr. PROUTY. I cannot agree with the Senator. Both are used for the general

function to be performed; one-half comes from the general revenues, which the Senator admits; the other half comes from assessments, which the Senator feels do not represent general revenues. I feel, in all logic, it cannot be conceived as anything other than general revenues.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. JAVITS. I would like to discuss this matter for the first time. I just wanted to get a little idea from the Senator as to the amount of time he expects to take.

Mr. EAGLETON. I have about 3 minutes more to complete my statement. Then I shall be glad to yield the floor to the Senator from New York or any other Senator.

Mr. JAVITS. I shall not interrupt the Senator.

Mr. EAGLETON. Mr. President, referring to where I was a few minutes ago, let me repeat a paragraph.

Now applying the principles I have just enunciated to title V of the bill, I confess that I fail to see how this section in any way is prohibited by article I, section 7, clause 1 of the Constitution of the United States. S. 2917 is not a revenue-raising bill. Title V is merely an incidental part of that bill.

The primary and only purpose of S. 2917 is to protect the coal miners from the terrible tragedies that befell the 78 miners at Farmington who are still entombed in a mine racked with explosions, and to protect the thousands of miners whose lungs are ravaged by the coal dust they must breathe while working.

The purpose of S. 2917 is also to insure that both the industry and the Government do, in fact, give first priority to the health and safety of the miner; to insure an end to the annual carnage in our Nation's coal mines; and to insure that new generations of coal miners are not ravaged by black lung.

Mr. President, in conclusion, may I say that what I have said here on the point of order in no way binds me as to how I may vote on the substance or merits of the so-called "industry benefit assessment." I concede that on the merits, this is an issue which should be debated and about which I have some personal misgivings. However, on the procedural point now before us, I am convinced that the point of order of the Senator from Vermont is not well taken.

UNANIMOUS-CONSENT AGREEMENT

Mr. KENNEDY. Mr. President, I ask the attention of the distinguished minority leader and also the attention of the distinguished Senator from Vermont and the distinguished Senator from New Jersey.

Mr. President, I ask unanimous consent that at 2 o'clock tomorrow, the unfinished business be laid before the Senate; that immediately after the Chair lays the unfinished business before the Senate, the Chair ascertain the presence of a quorum; that immediately upon the ascertainment of a quorum the time on the point of order be limited to 40 minutes, the time to be equally divided and controlled by the Senator from Vermont (Mr. PROUTY) and the Senator from New Jersey (Mr. WILLIAMS).

Mr. SCOTT. I have no objection, but I think the Senator from Vermont wishes to make a statement.

Mr. PROUTY. Mr. President, reserving the right to object, I would like to have a live quorum.

Mr. KENNEDY. Mr. President, I modify the unanimous-consent request to include the presence of a live quorum.

Mr. JAVITS. Mr. President, reserving the right to object, I wish to make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Should a motion to table the point of order be made, will the unanimous-consent request accommodate the making of that motion, even after the 40 minutes have expired?

The PRESIDING OFFICER. The motion would be in order only after the expiration of the time specified.

Mr. JAVITS. That is what I asked; but could the motion, nonetheless, be made, though there would be no further time? Will the unanimous-consent request provide that a Senator desiring to do so may move to table, notwithstanding the expiration of the time for debate?

Mr. President, perhaps we can solve it this way: I understand the Parliamentarian has just arrived.

Could we ask the Senator from Massachusetts to make the unanimous-consent request read that at the time set for expiration of the debate, a vote shall occur on a motion, or if none be made on the point of order itself? I think that is all we need.

The PRESIDING OFFICER. Does the Senator from Massachusetts concur?

Mr. KENNEDY. I ask that the unanimous-consent request reflect the change requested by the Senator from New York.

The PRESIDING OFFICER. The unanimous-consent request made by the Senator from Massachusetts is modified in accordance with the language proposed by the Senator from New York.

Is there objection?

Mr. COOPER. Mr. President, I object. The PRESIDING OFFICER. Objection is heard.

Mr. COOPER. I might withdraw my objection, but I should like to speak for a moment on it.

This is an important question. We have been debating this matter for about 4 hours, or at least 3½ hours. Few Senators have been present on the floor, I assume, because this is one of those jurisdictional questions which does not attract the interest of many Senators. But it involves a constitutional question. I think there should be sufficient time, so that the question could be properly considered.

We are dealing in a very sensitive area when we consider questions of black lung and other respiratory diseases. Of course, I can say for myself, and I am sure all Senators would agree, that we are willing to anything we properly can to help provide funds for research into this awful malady. Beyond that, as far as I am concerned, I am willing to vote for a plan which would properly provide funds for their compensation.

We are dealing with a very emotional question, involving men who have been

working in the mines all these years, and have been damaged by dust pouring out from the face of the coal. Of course we want to do something for them. But it is very doubtful that we can accomplish it this way, and we all know it.

Suppose this provision goes to conference. I have no doubt that the House of Representatives will strike it, because they wish to preserve their rights. What do we accomplish? Those who vote against the point of order will have the satisfaction of saying, "Well, we tried to get some money to fight this awful disease, but we were not successful."

Why not do it correctly? Why not take this section out, and put in a section authorizing \$10 million for next year, \$15 million for the following year, and \$20 million for the year after. I have no doubt that Congress will appropriate it. Then we will have done something to help these people. But here we are arguing at length over this question, with very few judicial precedents, while we know that if the point of order is voted down, the provision will be stricken in conference.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. COOPER. I yield.

Mr. JAVITS. I must say I thoroughly disagree with the Senator about the point he is making. We might just as well argue the merits. The fact is, you are not going to get money continuously out of the Treasury; but when you have a profit in a business involved, you have to begin to be business people. The Treasury will not take it and will not stand it.

Instead of \$10 million, you get \$25 million this way, or \$50 million, or \$100 million, whatever you need.

I think what we are doing is shrinking from the only way. The assessment per ton is not large. They are paying 40 cents a ton for the welfare fund. But if we are going to strip ourselves of this power, we are going to remain in the past, and never get into the present or the future.

I hope the Senate will take this seriously. I agree with the Senator when he says this matter is important, if he wants to debate it all day tomorrow, I will be glad to do so, because I am with him. This action will set a precedent for airplane manufacturers and many other lines of business. If we are not going to be able to do this, this Government cannot stand the gaff and modernize itself. If this point of order is going to be decided adversely anyway, we had better be on notice and know what we are doing. The Senate can debate it all day tomorrow, as far as I am concerned, but I cannot sit here and listen to a Senator make this argument, which defeats the very thing he wants to accomplish. If he gets \$10 million a year by the method he proposes, he will be lucky.

Mr. COOK. Mr. President, will the Senator yield?

Mr. COOPER. No, I wish to respond first to the Senator from New York.

I disagree completely with the Senator, though we are usually in agreement on many matters.

We want to help these people whose lives have been ruined by this awful malady. But the Senator's argument is not responsive to my point. In the first

place, I do not want to debate the matter all day long. I want a reasonable time to discuss it.

Second, the Senator gets away from the real question we are debating here, which is whether we have the authority to do it.

We have appropriated millions of dollars, and every year for a period of years additional millions, to the National Institute of Health for research on cancer, heart diseases, and all kinds of diseases. We have overridden the Bureau of the Budget, and we have overridden the committees on the floor of the Senate. The Senator from New Hampshire is nodding his head; he knows what I am talking about. We have provided all the money we thought they would need. I say we should also provide for these people.

But why go through the motion of pretending we are the House of Representatives, and levy a tax upon one industry? I believe that the House should levy such a tax on this industry. Forty percent of the coal production in this country today is produced by about 10 or 12 of the biggest corporations in the United States. They are able to pay it, and I am for them paying it, if it is levied properly, and that is by a tax bill originating in the House of Representatives. But I am not going to be a party to standing here on the floor of the Senate, and voting for some measure which I believe is a pretense, and which will only enable me to satisfy myself by saying, "Well, I tried to do something to help our miners," when I know I did not help them.

Several Senators addressed the Chair.

Mr. COOPER. I yield to my colleague from Kentucky.

Mr. COOK. I thank the Senator. I wish to associate myself with the remarks of the senior Senator from my State, and add this: In the first place, the Senator from New York said it would produce \$25 million, \$30 million, or \$100 million. We have been debating this for 4 hours, and the highest figure we got from anybody, after figuring it all out, was that even at 4 cents, it would produce only \$10 million a year.

If it is going to cost more than that, where is the money going to come from?

Second, we face the situation of having to vote on it on an emotional basis. I will be for a measure that comes over from the House of Representatives to cure black lung disease. I am for appropriating all the money necessary to cover those not now covered, who should be covered.

But what are we doing imposing a flat rate on all kinds of coal, it makes no difference whether it comes out of a strip mine, where there is no black lung; it makes no difference whether it comes out of Arizona, where the coal is almost water, and there is no incidence of black lung. We are saying coal has something to do with this disease, and therefore its victims are going to reap a benefit from every segment of the industry, purely because it involves coal. That means imposing it on every importer. It means imposing it on every ton of coal which comes into the United States.

I can only say, if we are going to do this, the way to do it is to liberalize the legislation; and if you say the only way to

get something done is by means other than by the law, then I might very well agree with you.

But I cannot agree with the theory. I could not under any circumstances agree with the theory. I should like to associate myself with the remarks of my colleague from Kentucky (Mr. COOPER). We can sit here and talk about the emotion of this problem. The Senator admits being a member of the committee. No hearings were held on this section that were open to the public. No one had a chance to come in and show the delineation of the industry. No one had a chance to come in and tell what it would or would not produce.

We sit here now and say we have to do something because it is necessary to solve a problem. Yes, we have to solve a problem, but let us do it right, so that we will get it right, and not find ourselves doing anything beyond being on the Record strongly in favor of something that we have not been able to accomplish.

Mr. JAVITS. Mr. President, will the Senator yield, as the Senator referred directly to me and talked to me?

Mr. COOPER. Mr. President, I yield first to the distinguished senior Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. HOLLAND. Mr. President, I suggest to those who are deeply interested in the bill—and I think that most of the Senators are interested in the bill and want to have it passed, although perhaps not in this exact language, but I am not as familiar with the context as I would like to be—this could be easily done by simply striking the offensive portions of the bill and putting in an authorization and attaching the same provisions to the first small tax measure that comes from the House. We have a perfect right to add on amendments. It seems to me that that might be the simplest way in which to do it.

May I state to my friend, the Senator from New York, who is on his feet at the moment, that there has been little talk about that portion of the tax that is imposed on importers who import coal from offshore, and pay at the same rates as those producing elsewhere. We know that the bill provides that the same laws should be available as are available for the enforcement of tariff law.

How it is possible to view that kind of collection of revenue as anything other than a revenue measure which could be imposed only by the United States and not by industry, I do not see, and particularly when the bill, as prepared, makes the direct statement that the collection of those amounts should be protected by exactly the same machinery used in collecting all other tariff or import revenue.

Mr. JAVITS. Mr. President, the erection of straw men in argument is almost as ancient as is nepotism in politics. And that is all I have heard here so far this afternoon. I have not argued for the amendment at all. As a matter of fact, it will interest the Senator from Kentucky to know that I voted against the measure in committee. So, I am not using an emotional argument. I do not

purport to. And I should not use it at all. It does not belong here.

The question concerns the power of the Senate. I was arguing the power of the Senate. I think it is particularly important that the power of the Senate should not in this particular point of order be designated so that it cannot be used again.

This is a matter of first impression. The Senate has never before sustained a point of order to one of those provisions. If it does it now and yields this very great constitutional power to the House of Representatives, we will paralyze ourselves from ever again levying an assessment.

The agricultural field is a sacred cow. However, if we analyze the potato proposition that has been debated here, we find that the Secretary has the power to collect, and so forth. The power of the United States is being used to aid in the collection of that assessment.

I agree that there is a much looser requirement on the payer of the assessment. Nonetheless the question of principle involved here is the use of the power of the United States to collect anything which is converted to particular industry purposes—in that case potatoes, in this case coal.

I will guarantee that if we sustain the point of order, we will have agricultural bills thrown back at us by the House of Representatives challenging exactly that point which we will have then conceded.

I do not say that the Senator is right or wrong at this particular point. I think that has to be proven.

I make my argument on the question of constitutional power. All I say is that we should not do this. That is the only thing I have tried to argue. If I said more, I apologize.

I felt that I was arguing only the importance of the particular point on which we will have to vote.

Mr. COOK. Mr. President, obviously I did not want in any way to criticize the remarks of the Senator from New York.

I doubt seriously that any of the agricultural acts would be contested by the House. I think that we made it clear in our discussion that, for instance, with respect to the Potato Act it was purely a voluntary association. They have the right to assess themselves up to a certain amount. They have the right to get out at any time they want to. They even have the right to get their money back that they have paid into it. They have the right to come to the Secretary of Agriculture, who would administer the fund. This is purely a voluntary organization.

As a matter of fact, to begin with, it takes the agreement of two-thirds of all the producers in the United States before this association even comes into existence. They impose on themselves by their own vote their own assessment.

In my opinion, the pending matter is absolutely mandatory. There is no way that anyone can get out of it once this is instituted. It would be administered by the U.S. Government.

There is even provision in the Act that if insufficient funds are collected from month to month, the amounts may be

paid out of the general funds in lieu of the trust fund.

None of this applies here. As a matter of fact, any funds going to the Surgeon General of the United States under the act must be appropriated by this very body. So, there is a tremendous distinction. I would like to make that distinction. I think it is real and extremely important in this argument.

Mr. JAVITS. Mr. President, I am grateful for the Senator's intercession. However, I do not agree with him.

The Secretary of Agriculture under the potato bill is given the authority to prepare a budget, to fix the assessment rate, and to exercise other powers contained in the law.

It seems to me that on the question of principle, it cannot be a private plan, privately administered, because if we analyze the power, the authority of Cabinet officers and the United States is implemented. There is a question of power involved.

The bill provides that a Cabinet officer of the Federal Government shall collect what we could argue is tantamount to revenue. Surely, they could get it back. Some could get a rebate on income taxes and other matters.

The fact that the machinery of the Federal Government is used for collection constitutes a matter of principle. It is part of the basic point.

It is a critically important point for the Senate. We find that with respect to many agricultural fields, a very important discussion is already going on with relation to the whole field. With respect to the use of an assessment of some kind, every time a broad plan is worked out involving this kind of mutualization of responsibility, we have to go back to the House of Representatives and treat it as a new matter.

The matter goes to the House Ways and Means Committee, and notwithstanding the fact that the whole House and Senate can work its will, we would be tying a millstone around our necks. We would have to continue to go through the appropriations and authorization route.

We have, therefore, a question of power. The power involved here is very important insofar as modernizing the Federal Government is concerned.

I voted against the particular assessment in this bill. I would have preferred a voluntary plan of some kind. I thought this was adding something rather heavy and weighty to the bill. However, I could not vote for the point of order.

It is very likely that I shall be the first to vote for some important modifications of this assessment plan.

I may, perhaps, vote to strike the matter. I do not think that is the point. The point is that the Senate would be for the first time giving up a power which it has refused to give up before. That is the power to use means which are incidental to the main purpose, even if they technically may provide for the raising of revenue.

The revenue has been clearly earmarked for a given purpose; and I should like to point out how tightly this revenue is earmarked for the given purpose.

Mr. KENNEDY. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. JAVITS. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. KENNEDY. Mr. President, on behalf of the distinguished Senator from Pennsylvania and myself, I ask unanimous consent that, at 2 o'clock p.m. tomorrow, the unfinished business be laid before the Senate; that immediately after the Chair lays the unfinished business before the Senate, the Chair ascertain the presence of a quorum; that immediately upon the ascertainment of a live quorum, the time on the pending point of order be limited to 90 minutes; that the time be equally divided and controlled by the Senator from Vermont (Mr. PROUTY) and the Senator from New Jersey (Mr. WILLIAMS).

Mr. JAVITS. And that at the conclusion thereof, a vote shall occur on any motion appropriately made or on the point of order itself.

The PRESIDING OFFICER. The understanding of the Chair is that, as the unanimous-consent request of the Senator from Massachusetts is worded, it merely provides a limitation of time, and that the usual parliamentary procedures which would be available, including motions to table, would then be available at the expiration of the time.

Mr. JAVITS. I thank the Chair.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Massachusetts?

Mr. HOLLAND. Mr. President, I object, unless there is something in the unanimous-consent request that requires a vote at that time on this measure. Under the unanimous-consent request as drawn, I could take the floor, if I were disposed to—and I shall not be—and talk 3 hours on something else, before we ever got to a vote. The proposed agreement does not provide for a vote at the end of that time, and that is what I think should be provided.

I am willing to have the matter worded as the Senator from New York suggested, but I think we should provide that Senators should be here expecting to vote, and that we will vote on this point of order or some motion addressed thereto. I object.

The PRESIDING OFFICER. The Chair advises the Senator from Florida that under the agreement as proposed by the Senator from Massachusetts, there would be no further debate. The usual motions would be available, but there would be no further debate.

Mr. HOLLAND. There is no provision for a vote, Mr. President, unless I heard inaccurately what the distinguished Senator from Massachusetts suggested. I ask that the clerk read the proposed unanimous-consent agreement.

Mr. KENNEDY. If there is any question about that inclusion in it, it would certainly be my intention to modify the unanimous-consent request to reflect that.

Mr. HOLLAND. I ask that the clerk read the proposed unanimous-consent agreement.

The PRESIDING OFFICER. The clerk will read the proposed unanimous-consent agreement.

The assistant legislative clerk read as follows:

That at 2 o'clock p.m. tomorrow, the unfinished business be laid before the Senate; that immediately after the Chair lays the unfinished business before the Senate, the Chair ascertain the presence of a quorum; that immediately upon the ascertainment of a live quorum, the time on the pending point of order be limited to 90 minutes; that the time be equally divided and controlled by the Senator from Vermont (Mr. PROUTY) and the Senator from New Jersey (Mr. WILLIAMS).

Mr. HOLLAND. Mr. President, I renew my objection, because that does not require a vote at the termination of that time. It simply provides that the argument on the pending point of order would be concluded.

Mr. KENNEDY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. Do I correctly understand that if there were not an objection to the unanimous-consent request, the time having expired under the unanimous-consent request, the Chair would then put the question before the Senate at that time, if there were no other motions in order?

The PRESIDING OFFICER. The Chair advises the Senator from Massachusetts that it is the understanding of the Chair that there could be no further debate, that the Senate would move immediately to the vote, either on the substantive question or on such motion which may intervene, but it would in any event be without further debate.

Mr. ALLOTT. Mr. President, reserving the right to object—I understand there is already an objection—I should like to propound a parliamentary inquiry or two.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. ALLOTT. One of the motions that can properly be made at that time, as the Presiding Officer has stated, is a motion to lay on the table. Am I correct?

The PRESIDING OFFICER. The Senator is correct. That would be in order under the proposed unanimous-consent agreement.

Mr. ALLOTT. And that would not be debatable.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLOTT. Another motion which could properly be made at that time would be to rerefer it to the committee. Am I correct? And that motion is debatable.

The PRESIDING OFFICER. Will the Senator state again the nature of the request that would be referred to committee?

Mr. ALLOTT. To refer the entire bill to the committee.

The PRESIDING OFFICER. The point of order would take precedence over a motion to rerefer it to the committee.

Mr. ALLOTT. May I inquire what other motions could be made, other than a motion to lay on the table?

The PRESIDING OFFICER. The Chair advises the Senator that, of course, a motion to recess or adjourn would be in order.

Mr. ALLOTT. As I understand the replies to the inquiries, then, since a motion to recess, a motion to adjourn, and a motion to lay on the table are not debatable, no debatable motion could be made at the termination of the agreed discussion.

The PRESIDING OFFICER. Under the unanimous-consent request as proposed, nothing else could be debatable, because all time would have expired.

Mr. HOLLAND. I shall continue to object, unless something is put in the unanimous-consent request permitting the Senate to vote either on the point of order or on some motion directed thereto when this period of debate is up. It is very evident that many people have different ideas about what could be done at the end of that time.

I think the Senate is tired of this debate. I think the Senate is entitled to vote. I am ready to vote right now. I am sure most Senators are. I object.

Mr. JAVITS. I yield, Mr. President.

Mr. KENNEDY. Mr. President, I ask unanimous consent that, at 2 o'clock p.m. tomorrow, the unfinished business be laid before the Senate; that immediately after the Chair lays the unfinished business before the Senate, the Chair ascertain the presence of a quorum; that immediately upon the ascertainment of a live quorum, the time on the pending point of order be limited to 90 minutes, the time to be equally divided and controlled by the Senator from Vermont and the Senator from New Jersey (Mr. WILLIAMS); and that upon the expiration of all time, a vote occur on the point of order or any appropriate motion.

Mr. HOLLAND. I thank the Senator. I have no objection.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

The unanimous-consent request, subsequently reduced to writing, is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That at 2 o'clock p.m. on Tuesday, September 30, 1969, the Chair shall lay before the Senate S. 2917, a bill to improve health and safety conditions of persons working in the coal mine industry of the United States, immediately after which the Chair shall ascertain the presence of a quorum.

Ordered further, That immediately thereafter further debate on the point of order against section 502 of the bill shall be limited to 90 minutes to be equally divided and controlled by the Senator from Vermont (Mr. PROUTY) and the Senator from New Jersey (Mr. WILLIAMS), immediately after which the Senate shall proceed to vote on the point of order or any appropriate motion.

Mr. JAVITS. Mr. President, to refer now to the major issue, the cases seem to be very clear that where the assessment or some payment is required which is to be administered within the governmental structure and it is incidental to the major purpose of the measure itself, as it is in this case, the Senate has the power to initiate it. That seems to be the whole purport of the cases.

So the real issue is, is this incidental or is it a revenue raising measure? That is really what the cases have held. It is very clear that both in amount—the amount which is involved has been variously argued but, as a matter of fact, it is \$20 million—and as to its being tied directly into an ancillary purpose to the bill itself, these are incidental revenues which result and therefore are fully within the power of the Senate, in accordance with these precedents.

I invite the attention of the Senate to section 501(d), which says that the amounts in the trust fund shall be available as provided by the appropriation acts, and that is dealt with in the preceding section, that every part of the trust fund—to wit, 100 percent—is to be appropriated only, I emphasize the word "only," to enable the Secretary and the Surgeon General to carry out sections 201(b), 401, and 402.

Section 201(b) is found at page 25:

The purpose of this Title is to provide for the immediate application of mandatory safety standards developed on the basis of experience and advances in technology and to prevent newly created hazards resulting from new technology in coal mining. The Secretary shall immediately initiate studies, investigations, and research to further upgrade such standards and to develop and promulgate new and improved standards promptly that will provide increased protection to the miners, . . .

That is a very specific purpose, completely incidental to the legislative framework of the bill.

Then we turn to sections 401 and 402, at page 104 of the bill. Those are general research sections under the head "administration—research." Those sections deal with the general responsibility of the Secretary and the Surgeon General to conduct studies, research, experiments, and demonstration, and so forth. Also, in section 402, training and education is specified as follows:

The Secretary shall expand programs for the education and training of coal mine operators, agents thereof, and miners, . . .

I cannot conceive of a purpose more incidental to the general legislative purpose of this bill, which is coal mine safety. There is involved how to prevent accidents, occupational diseases, education and training of operators, agents, and miners in respect to safety practices and the effort, which is in section 201(c), to upgrade the standards and to develop and promulgate new and improved standards incidental to coal mine safety.

Therefore, at every point lawfully and legally it seems that we are entirely correct in the argument that the Senate has the power. I am not arguing it should or should not exercise the power. We can argue that in due course. But the Senate has the power to deal with this kind of assessment and include it in the bill where the general framework is contributed to and the general purpose to raise the money is as an incidental purpose.

One thing worries me about this matter and the reason it has been stirred up, and I am grateful to my colleague from Kentucky for stirring it up. It would be a grave mistake and a disservice to the Senate if we allowed our judgment on the merits of this assessment to dictate

our judgment on the point of order. That is the one point I would like to leave in the record tonight. This is critically important. There is a 50-50 chance I will be with Members who seek to strike it out. I think it would be a grave error to concede the constitutional point on this point of order, but that is what we would be doing if we sustained the point of order, and it would be the first time because the Senate has not heretofore sustained this kind of point of order. That is my understanding from the research I have done and everything I have gathered.

The power is critically important because it will extend to many other things and not just to coal mine safety. It may be in a general health and safety bill. It permeates various agricultural bills. It applies to transportation, for example, highway safety. We are talking about airports, we are talking about safety and the safety of the airways of the country which may very well involve some kind of assessment on the user and the Senate should not lend itself to the fractionalization of authority and power which this would represent and deprive it of this opportunity in the other fields.

We know what would happen in the other body. I served 8 years in the other body. One part of it would go to the Ways and Means Committee. It has totally different standards, and I am not being derogatory. This matter saves the United States a great deal of money. I predict we will be reducing the amounts which can be made available for highly desirable public projects.

We are handicapping our ability to control the budget in a serious way and to do effective things if we concede this point of order. I believe the cases do not require it. It would be a grave mistake, and I hope the Senate will not hobble itself the way this point of order would make the Senate hobble itself.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. COOPER. Mr. President, as always, the Senator is persuasive. He is a very fine lawyer. However, I must come back to the issue that the point of order is raised upon a constitutional question. Each of us has to make a decision. We have to make a decision based on our views, what is constitutional, and also our comity with the other body.

As I said before, I agree wholly with everything the Senator said about the purposes of the amendment. I stand with him 100 percent. I hope this money will be made available from general revenues.

As far as I am concerned it can be properly provided by a tax on the industry. I support that also. That is what it should be and that is not the issue on which we have to vote. What do we really believe is our constitutional power and what is the power of the House? We cannot avoid this issue. If we do attempt to avoid it we would be voting with our emotions.

The Senator said a while ago the cases have held that if the levy or tax is incidental to the purpose of the bill the tax is a proper one. I have not made a thorough study. I would be very happy if the Senator would discuss the cases tomor-

row which uphold his point of view. I might say that if there are cases which he could show that support this authority I will consider changing my opinion and voting against the point of order.

Mr. JAVITS. Mr. President, I invite the attention of the Senator to the case of *Twin City Bank v. Nebeker*, 167 U.S. 196.

Mr. President, I ask unanimous consent that the entire text of the opinion of the court may be printed in the RECORD.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

TWIN CITY BANK V. NEBEKER

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[No. 202. Argued and submitted April 21, 1897.—Decided May 10, 1897.]

Section 41 of the National Banking Act imposing certain taxes upon the average amount of the notes in circulation of a banking association, now found in the Revised Statutes, is not a revenue bill within the meaning of the clause of the Constitution declaring that "all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills."

Whether in determining such a question the courts may refer to the journals of the two Houses of Congress for the purpose of ascertaining whether the act originated in the one House or the other is not decided. The case is stated in the opinion.

Mr. John J. Crawford for plaintiff in error.
Mr. Solicitor General filed a brief for defendant in error, but the court refused to hear further argument.

OPINION OF THE COURT

Mr. Justice Harlan delivered the opinion of the court.

This was an action by the plaintiff in error to recover from the defendant in error the sum of seventy-three dollars and eight cents alleged to have been paid by the former under protest to the latter, who was at the time Treasurer of the United States, in order to procure the release of certain bonds, the property of the bank, which bonds, the declaration alleged, were illegally and wrongfully withheld from the plaintiff by the defendant.

The plaintiff went into liquidation in the manner provided by law on the 23d of June, 1891, and on the 25th of August, 1891, deposited in the Treasury of the United States lawful money to redeem its outstanding notes, as required by section 5222 of the Revised Statutes of the United States. After making such deposit, the bank demanded the bonds which had been deposited by it to secure its circulating notes, and of which defendant had possession as Treasurer of the United States. The defendant refused to deliver them, unless the bank would make a return of the average amount of its notes in circulation for the period from January 1, 1891, to the date when the deposit of money was made, viz., the 25th of August, 1891, and pay a tax thereon. The bank then made a return of the average amount of its notes in circulation for the period from January 1 to June 30, 1891, and paid to the defendant \$56.25, protesting that he had no authority to demand the tax, and delivered to him a protest in writing setting forth that in making the return and in paying the tax it did not admit the validity of the tax or defendant's authority to exact or collect it, but made the return and payment solely for the purpose of procuring the possession of the United States bonds belonging to it, which defendant had refused to release until such return and payment were made, and further protesting that it was not liable to the tax or any part of it. The bank's agent then made

another demand upon defendant for the bonds; but he refused to deliver them until a return should be made of the average amount of its notes in circulation for the period from July 1 to August 25, 1891, and a tax paid thereon. Its agent then delivered such return to defendant and paid him \$16.83, at the same time delivering a written protest in the same form as the one above mentioned. These transactions were with the defendant himself, and the money was paid to him in person.

The journals of the House of Representatives and Senate of the United States for the first session of the 38th Congress were put in evidence by plaintiff. The bank claims that these journals show that the National Bank Act originated as a bill in the House of Representatives; that when it passed the House it contained no provision for a tax upon the national banks, or upon any corporation, or upon any individual, or upon any property, nor any provisions whatever for raising revenue; and that all the provisions that appear to authorize the Treasurer of the United States to collect any tax on the circulating notes of national banks originated in the Senate by way of amendment to the House bill.

A witness on behalf of the defendant testified, against the objection of plaintiff, that the money paid by it to him was covered into the Treasury, and applied to the payment of the semi-annual duty or tax due from the bank. But it did not appear whether this was done before or after the present action was brought.

At the close of the evidence counsel for the bank moved the court to direct the jury to return a verdict in its favor, which motion the court overruled, and counsel for the bank excepted. On motion of the defendant the court instructed the jury to return a verdict for him. To that ruling of the court counsel for plaintiff excepted.

Such is the case which the bank insists is made by the record.

The taxing provisions contained in the National Bank Act are found in its forty-first section. That section is as follows:

"The plates and special dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the provisions of this act respecting the procuring of such notes, and all other expenses of the bureau, shall be paid out of the proceeds of the taxes or duties now or hereafter to be assessed on the circulation, and collected from associations organized under this act. And in lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one half of one per centum each half year from and after the first day of January, eighteen hundred and sixty-four, upon the average amount of its notes in circulation, and a duty of one quarter of one per centum each half year upon the average amount of its deposits, and a duty of one quarter of one per centum each half year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association, the duties aforesaid may be collected in the manner provided for the collection of United States duties of other corporations, or the Treasurer may reserve the amount of said duties out of the interest, as it may become due, on the bonds deposited with him by such defaulting association. And it shall be the duty of each association, within ten days from the first days of January and July of each year, to make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average

amount of its capital stock, beyond the amount invested in United States bonds, for the six months next preceding said first days of January and July as aforesaid, and in default of such return, and for each default thereof, each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer, or, at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States; and in case of such default the amount of the duties to be paid to such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such other manner as the Treasurer may deem best: *Provided*, That nothing in this act shall be construed to prevent all the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State: *Provided, further*, That the tax so imposed under the laws of any State upon the shares of any of the associations authorized by this act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the State where such association is located: *Provided, also*, That nothing in this act shall exempt the real estate of associations from either State, county or municipal taxes to the same extent, according to its value, as other real estate is taxed." 13 Stat. 99, 111, c. 106.

The provision relating to taxation which, it is alleged, was inserted by way of amendment in the Senate, appears as section 5214 of the Revised Statutes. Other provisions of the act of 1864 are reproduced in sections 5217 and 5218 of the Revised Statutes.

By section 5222 of the Revised Statutes it is provided: "Within six months from the date of the vote to go into liquidation, the association shall deposit with the Treasurer of the United States lawful money of the United States sufficient to redeem all its outstanding circulation. The Treasurer shall execute duplicate receipts for money thus deposited, and deliver one to the association and the other to the Comptroller of the Currency, stating the amount received by him, and the purpose for which it has been received; and the money shall be paid into the Treasury of the United States and placed to the credit of such association upon redemption account."

In *Field v. Clark*, 143 U.S. 649, 672,—in which the constitutionality of the act of Congress of October 1, 1890, 26 Stat. 567, c. 1244, was questioned upon the ground that a certain provision which was in it upon its final passage was omitted when the bill was signed by the Speaker of the House of Representatives and the President of the Senate,—this court said: "The signing by the Speaker of the House of Representatives and by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two houses of such bill as one that has passed Congress. It is a declaration by the two houses, through their presiding officers, to the President, that a bill thus attested, has received, in due form, the sanction of the legislative branch of the Government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, receives his approval and is deposited in the public archives, its authentication as a bill that has passed Congress should be

deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled act in the custody of the Secretary of State and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate and of the President of the United States, carries on its face a solemn assurance by the legislative and executive departments of the Government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to co-equal and independent departments requires the judicial department to act upon that assurance and to accept, as having passed Congress, all bills authenticated in the manner stated, leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in conformity with the Constitution."

Referring to the above case, it was said in *Harwood v. Wentworth*, 162 U.S. 547, 560, that if the principle announced in *Field v. Clark* involves any danger to the public, it was competent for Congress to meet it by declaring under what circumstances, or by what kind of evidence, an enrolled act of Congress or of a territorial Legislature, authenticated as required by law, and in the hands of the officer or department to whose custody it was committed by statute, may be shown not to be in the form in which it was when passed by Congress or by the territorial Legislature.

The contention in this case is that the section of the act of June 3, 1864, providing a national currency secured by a pledge of United States bonds, and for the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association in circulation, was a revenue bill within the clause of the Constitution declaring that "all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills," Art. I, § 7; that it appeared from the official journals of the two Houses of Congress that while the act of 1864 originated in the House of Representatives, the provision imposing this tax was not in the bill as it passed that body, but originated in the Senate by amendment, and, being accepted by the House, became a part of the statute; that such tax was, therefore, unconstitutional and void; and that, consequently, the statute did not justify the action of the defendant.

The case is not one that requires either an extended examination of precedents, or a full discussion as to the meaning of the words in the Constitution, "bills for raising revenue." What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject. It is sufficient in the present case to say that an act of Congress providing a national currency secured by a pledge of bonds of the United States, and which, in the furtherance of that object, and also to meet the expenses attending the execution of the act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives. Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue. 1 Story on Const. § 880. The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question. The tax was a means

for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.

This interpretation of the statute renders it unnecessary to consider whether, for the decision of the question before us, the journals of the two Houses of Congress can be referred to for the purpose of determining whether an act, duly attested by the official signatures of the President of the Senate, the Speaker of the House of Representatives and the President, and which is of record in the State Department as an act passed by Congress, originated in the one body or the other.

Judgment affirmed.

Mr. Justice White concurs in the result.

Mr. JAVITS. Mr. President, I might read one statement in the opinion which states:

Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue. The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question.

That is exactly the situation here. We have a health and safety bill. We have imposed an assessment. To that end, it is completely incidental to the fundamental purpose of the bill which we have an undisputed constitutional right and authority to initiate.

I might say that just as the Senator from Kentucky, my beloved—and he knows I use that word in his case most advisedly—colleague, feels strongly about the constitutional point and he must obey his conscience, I might say that I do, too.

I am not arguing with the Senate for a minute that any Senator wants to do other than obey his conscience, but I point out that the Senate should not be diverted by favor or opposition to the assessment provisions themselves, because a point of order makes infinitely deeper precedent than that. This case, unlike general legislation, is a case in which precedent will count decisively because this is a question of the authority of the Senate. It is not what we put in a bill. We can vote yea today and nay tomorrow. But this is an assessment by the Senate of its constitutional power and its specific interpretation of it.

I therefore appeal to all Senators to understand very clearly the deep implications of a vote to sustain the point of order, which has not been done before, as I understand it from the research.

Mr. WILLIAMS of New Jersey. Mr. President, in reply to the distinguished Senator from Kentucky, this is a constitutional question before the Senate on the point of order. Under the rules of debate, the first 3 hours have to be germane. In other words, they have to deal not with the merits of the assessments for health and safety studies, but with the constitutional question.

For 3 hours, intense discussion was

centered on constitutional findings and not on a personal Senator's predilection for or against this particular part of the bill.

The Senator from New York has included in the RECORD one of the fundamental cases. I believe only one of them, because there is one other fundamental case central to the whole afternoon's argument, which I would ask unanimous consent to have printed in the RECORD. That is *Millard v. Roberts*, 202 U.S. 429. That is, again, a Supreme Court decision and is on the point to which the Senator from New York addressed himself, the finding that an assessment—I say of this nature—is not general revenue in the constitutional sense.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

MILLARD V. ROBERTS

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[No. 234. Argued April 18, 1906.—Decided May 21, 1906.]

Revenues bills, within the meaning of the constitutional provision that they must originate in the House of Representatives and not in the Senate are those that levy taxes in the strict sense of the word and are not bills for other purposes which may incidentally create revenue.

An act of Congress appropriating money to be paid to railway companies to carry out a scheme of public improvements in the District of Columbia, and which also requires those companies to eliminate grade crossings and erect a union station, and recognizes and provides for the surrender of existing rights, is an act appropriating money for governmental purposes and not for the private use exclusively of those companies.

The acts of Congress of February 12, 1901, 31 Stat. 767, 774, and of February 28, 1903, 32 Stat. 909, for eliminating grade crossings of railways and erection of a union station in the District of Columbia and providing for part of the cost thereof by appropriations to be levied and assessed on property in the District other than that of the United States are not unconstitutional either because as bills for raising revenue they should have originated in the House of Representatives and not in the Senate, or because they appropriate moneys to be paid to the railway companies for their exclusive use; and assuming but not deciding that he can raise the question by suit, a taxpayer of the District is not oppressed or deprived of his property without due process of law by reason of the taxes imposed under said statutes.

The facts are stated in the opinion.

Mr. Josiah Millard, pro se, appellant.

Taxes on land or the profits issuing from lands are taxes in the strict sense of the word: they are direct taxes within the meaning of the constitutional provision respecting the apportionment of representatives and direct taxes, and, therefore, also necessarily within the meaning of the provision that all bills for raising revenue shall originate in the House of Representatives. *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429; *S.C.*, 158 U.S. 601; *Story on Constitution*, § 880 and note; *Bank v. Nebeker*, 3 App. D.C. 190, 198-201; *S.C.*, 167 U.S. 196, 203; *Cooley on Taxation*, 3d ed., 95, 96 and notes; *License Tax Cases*, 5 Wall. 462; *Binn v. United States*, 182 U.S. 292; *Downs v. Bidwell*, 194 U.S. 489, 496.

The chief characteristic of an act which lays a tax for any purpose whatever, is that it is intended to raise revenue by taxation; and no other purpose, pretended or real, can deprive it of the nature of a bill for raising revenue. Bills which lay taxes on lands or

incomes for any purpose whatever are "bills for raising revenue within the purview of the Constitution." Story Const. § 880 and note; *Income Tax Cases*, 157 U.S. 429; Cong. Record, February 16, 1905 (Payne's citations).

It does not matter that this legislation relates to the District of Columbia, even if it related exclusively to it; for notwithstanding any rule of either House, the Power of Congress in this District is restricted and qualified by all the general limitations, express or implied, which are imposed on its authority by the Constitution. *Curry v. District of Columbia*, 14 D.C. App. 429, 438-445; *Gailan v. Wilson*, 127 U.S. 127; *Thompson v. Utah*, 170 U.S. 343, 346; *United States v. More*, 3 Cranch, 160, note; *Loan Association v. Topeka*, 20 Wall. 655; *Loughborough v. Blake*, 5 Wheat. 317, 325; *Wilkes County v. Coler*, 180 U.S. 506, 513-525; *Cohens v. Virginia*, 6 Wheat. 264, 446.

If a tax is imposed upon one of the political subdivisions of a country, as in the present case, the purpose must not only be a public purpose as regards the people of that subdivision, but it must also be local. *People v. Town of Salem*, 20 Michigan, 452, 474; *Cohens v. Virginia*, 6 Wheat. 264, 446; *Loughborough v. Blake*, 5 Wheat. 317, 325.

The people of the District of Columbia cannot be taxed to pay "the debts of the United States," in whole or in part, whether equitable or legal, unless the taxes on them for that purpose be, if indirect, uniform throughout the United States, and be, if direct, apportioned among the States and Territories in proportion to population; and hence the case of *United States v. Realty Co.*, 163 U.S. 440, 444, the *Sugar Bounty* case, is no precedent here, even if these taxes were designed to pay a debt, and not provide *uno flatu* a bounty for a private corporation and a stately edifice for the adornment of the capital of the nation, as such. The cases above cited sustain this contention.

The right of taxation can only be used in aid of a public object, an object which is within the purpose for which governments are established, and cannot, therefore, be exercised in aid of enterprises strictly private, even though, in a remote or collateral way, the local public may be benefited thereby. *Loan Association v. Topeka*, 20 Wall. 655, 664; *Cole v. LaGrange*, 112 U.S. 1, 6; *Miles Planting Co. v. Carlisle*, 5 D.C. App. 138; *Hanson v. Vernon*, 27 Iowa, 28; *Whiting v. Sheboygan, Fond du Lac R. R. Co.*, 25 Wisconsin, 167; *Sweet v. Hubbert*, 51 Barb. (N.Y.) 312; *Lowell v. Boston*, 111 Massachusetts, 454; *Central Branch U.P.R.R. Co. v. Smith*, 23 Kansas, 533.

It is admitted by the Court of Appeals that all three of the acts in question originated in the Senate; and the same fact also appears affirmatively by reference to the Congressional Record.

A literal compliance with the mandatory provisions of the Constitution, whether affirmative or negative, is a condition precedent to the validity of any law laying taxes on the property of the people, and attempts to evade those provisions constitute violations of them. *Wilkes County v. Coler*, 180 U.S. 506, 521, 522; *Baltimore v. Gill*, 31 Maryland, 375, 387, 388; *Rodman v. Munson*, 13 Barb. (N.Y.) 63; *People v. Nicoll*, 3 Seiden, 9, 139.

All remedial laws, such as the constitutional provisions respecting taxation and due process of law, must be so construed as to repel the mischief and advance the remedy, by searching out and nullifying evasions as well as violations of them. *Atty. General v. Meyricke*, 2 Vesey, Sr. 44; *Atty. General v. Day*, 1 Vesey, Sr. 218; *Atty. General v. Davies*, 9 Vesey, Jr. 535, 541; *Marbury v. Madison*, 1 Cranch, 137, 175, 176; *Ex parte Garland*, 4 Wall. 333; *Cummings v. Missouri*, 4 Wall. 237; *Baltimore v. Gill*, 31 Maryland, 375; *Cooke County v. Industrial School for*

Girls, 125 Illinois, 540, 564, 565; *Farmer v. St. Paul*, 67 N. W. Rep. 990; *Washingtonian Home v. Chicago*, 157 Illinois, 414, 428; *Central Transportation Co. v. Pullman's Palace Car Co.*, 139 U.S. 24, 40 et seq.; *Loan Association v. Topeka*, 20 Wall. 655; *Ward v. Joplin*, 186 U.S. 142, 152; *Brownsville v. League*, 129 U.S. 493; *Bank of San Francisco v. Dodge, Assessor*, 197 U.S. 70.

No conclusive presumption can arise to defeat the operation of the mandatory and remedial provisions of the Constitution respecting taxation and due process of law, which are self-executing. *Wilkes County v. Coler*, 180 U.S. 506, 521, 522; *Post v. Supervisors*, 105 U.S. 657, 667; *Town of South Ottawa v. Perkins*, 94 U.S. 280.

The Solicitor General for the Treasurer of the United States; Mr. Wayne Mac Veagh, Mr. Frederick D. McKenney and Mr. John S. Flannery for Philadelphia, Baltimore & Washington R.R. Co.; Mr. George E. Hamilton and Mr. Michael J. Colbert for Baltimore & Ohio R.R. Co. and Washington Terminal Co.; Mr. Edward H. Thomas for the Commissioners of the District of Columbia, appellees, submitted:

The act of February 28, 1903, and the two acts approved February 12, 1901, do not appropriate public moneys or levy taxes upon the taxpayers of the District of Columbia for private purposes. The project was in response to a general desire of the public, to abolish dangerous grade crossings and to remove the railroad tracks from the mall. The acts were based on an ample consideration, irrespective of the general power of Congress in the premises.

We submit that Congress, in the acts themselves, having declared that the appropriations were made upon a valuable consideration and for a public purpose, the matter is not open to review in the courts. Cooley's Principles of Constitutional Law, 57, 58; Cooley on Taxation, 2d ed., 111.

This court has repeatedly held that, although railroad corporations are private corporations as distinguished from those created for municipal and governmental purposes, their uses are public. *N.Y. & N.E.R.R. Co. v. Bristol*, 151 U.S. 566, 571.

The power of States, counties and municipalities to aid in the construction of railroads, upon the ground that railroads are quasi public institutions created and existing for the benefit of the public at large, is well established. *Olcott v. Supervisors*, 16 Wall. 698; *Curtis v. County of Butler*, 24 How. 447, 449; *Rogers v. Burlington*, 3 Wall. 665; *St. Joseph v. Rogers*, 16 Wall. 663; *Gillman v. Sheboygan*, 2 Black, 515; *Larned v. Burlington*, 4 Wall. 276; *Railroad Co. v. County of Otoe*, 16 Wall. 673; *Township of Pine Grove v. Talbot*, 10 Wall. 678; *United States v. Railroad Co.*, 17 Wall. 330; *Loan Assn. v. Topeka*, 20 Wall. 661; *Otoe Co. v. Baldwin*, 111 U.S. 15.

The United States possesses complete jurisdiction, both of a political and municipal nature, over the District of Columbia. When Congress, acting as the municipal legislature of said District, in the exercise of the police power, enacts legislation for the benefit of the health and safety of the community and makes an appropriation and levies an assessment to carry said legislation into effect, the propriety of its action is not open to review by the courts. *Wight v. Davidson*, 181 U.S. 371, 381; *Wilson v. Lambert*, 168 U.S. 611; *N.Y. & N. E. R. Co. v. Bristol*, 151 U.S. 556. See also *Wabash R. R. Co. v. Defiance*, 167 U.S. 88, 98; *Chicago & C. R. v. Nebraska*, 170 U.S. 57, 74.

But even if the appropriations made by the acts of 1901 and 1903 could be regarded as donations they would still be legal and the acts providing therefor constitutional and valid.

From the beginning of this Government, Congress has made donations for the benefit of public service corporations, in the nature of land grants, subsidies and bounties, and such donations have been invariably sus-

tained. *Allen v. Smith*, 173 U.S. 402; *United States v. Realty Co.*, 163 U.S. 440.

Said acts of 1901 and 1903 are not revenue or tax measures in the sense contemplated by the Constitution.

The provisions of section 7, article I of the Constitution, which requires that "all bills for raising revenue shall originate in the House of Representatives," cannot apply to any of the acts involved in this case, even if we should admit for the purposes of the argument that said acts did originate in the Senate instead of in the House of Representatives.

By "bills" is meant "money bills." Story's Constitution, § 874. In practice it is applied to bills to levy taxes in the strict sense of the word. 2 Elliott's Debates, 283, 284; Story's Constitution, § 880.

Twin City Bank v. Nebeker, 167 U.S. 196, is decisive on the question.

The act of February 28, 1903, from the recitals in its enacting clause and the fact that it has received the approval of the President and has been regularly enrolled among the statutes of the United States, must be presumed to have been passed by Congress in strict accord with the letter and spirit of the Constitution, and resort cannot be had to the journals of the two houses to overthrow this presumption. *Field v. Clark*, 143 U.S. 649, 680; *Harwood v. Wentworth*, 162 U.S. 547, 562; *Twin City Bank v. Nebeker, supra*.

Mr. Justice McKenna delivered the opinion of the court.

This is a bill in equity to enjoin Ellis H. Robers, as Treasurer of the United States, from paying to any person any moneys of the District of Columbia, under certain acts of Congress¹ (31 Stat. 767, 774; 32 Stat. 909), and to enjoin the other defendants from carrying into effect said acts of Congress, and that said acts "be declared null and void for want of constitutional authority." Defendants interposed demurrers to the bill, which were sustained by the Supreme Court, and a decree entered dismissing the bill. The Court of Appeals affirmed the decree.

The principal allegations of the bill are that the railroad defendants are private corporations and all interested in the railway and terminal facilities of the District of Columbia; that the District of Columbia owns no stock in any of the companies nor is otherwise interested in any of them save as useful private enterprises and yet it is required by said acts, "without any lawful consideration therefor," to pay the Baltimore and Potomac Railroad Company the sum of \$750,000, and a like sum to the Baltimore and Ohio Railroad Company, "to be levied and assessed upon the taxable property and privileges in the said District other than the property of the United States and the District of Columbia," and for the exclusive use of said corporations respectively, "which is a private use, and not a governmental use;" that the public moneys of the District of Columbia are raised chiefly by taxation on the

¹ An act entitled "An act to provide for eliminating certain grade crossings of railroads in the District of Columbia, to require and authorize the construction of new terminals and tracks for the Baltimore and Ohio Railroad Company in the city of Washington, and for other purposes," approved February 12, 1901; an act entitled "An act to provide for eliminating certain grade crossings on the line of the Baltimore and Potomac Railroad Company, in the city of Washington, D.C., and requiring said company to depress and elevate its tracks, and to enable it to relocate parts of its railroad therein, and for other purposes," approved February 12, 1901; an act entitled "An act to provide for a union railroad station in the District of Columbia and for other purposes," approved February 28, 1903.

lands therein, and that the complainant is obliged to pay and does pay direct taxes on land owned by him therein. And the bill also alleges that the acts of Congress are "acts which provide for raising revenue and are repugnant to article I, section 7, clause 1, of the Constitution of the United States, and are, therefore, null and void *ab initio*, and to their entire extent, because they and each and every one of them originated in the Senate and not in the House of Representatives." Certain volumes of the Congressional Record are referred to and made part of the bill.

In other allegations of the bill are expressed the limitations upon the power of the United States and the District of Columbia as to taxation; that the acts of Congress complained of are repugnant to the Constitution of the United States; that public funds are appropriated for private use, and that exorbitant taxes will be required to meet the legitimate expenses of the District of Columbia, and appellant will thereby be oppressed and deprived of his property without due process of law.

The first contention of appellant is that the acts of Congress are revenue measures, and therefore should have originated in the House of Representatives and not in the Senate, and to sustain the contention appellant submits an elaborate argument. In answer to the contention the case of *Twin City Bank v. Nebeker*, 187 U.S. 196, need only be cited. It was observed there that it was a part of wisdom not to attempt to cover by a general statement what bills shall be said to be "bills for raising revenue" within the meaning of those words in the Constitution, but it was said, quoting Mr. Justice Story, "that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes, which may incidentally create revenue." 1 Story on Constitution, § 880. And the act of Congress which was there passed on illustrates the meaning of the language used. The act involved was one providing a national currency, and imposed a tax upon the average amount of the notes of a national banking association in circulation. The provision was assailed for unconstitutionality because it originated in the Senate. The provision was sustained, this court saying:

"The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States and be available in every part of the country. There was no purpose, by the act or by any of its provisions, to raise revenue to be applied in meeting the expenses or obligations of the Government."

This language is applicable to the acts of Congress in the case at bar. Whatever taxes are imposed are but means to the purposes provided by the act.

The legality of those purposes is attacked in the other contentions of appellant. All of the contentions rest upon upon the correctness of the allegation that the moneys provided to be paid to the railroad companies are for the exclusive use of the companies, "which is a private use and not a governmental use."

The titles of the acts are the best brief summary of their purposes, and those purposes are obviously of public benefit. We do not think that it is necessary to enter into a discussion of the cases which establish this. The scheme of improvement provided by the acts required a removal of the railroads from their situations, large expenditures of money by the companies, and the surrender of substantial rights. These rights are recognized and their surrender expressed to be part of the consideration of the sums of

money paid to the companies. Indeed there is an element of contract not only in the changes made but in the manner and upon the scale which they are required to be made. As remarked by Mr. Justice Morris, speaking for the Court of Appeals:

"The case is practically that of a contract between the United States and the District of Columbia on the one side and the railroad companies on the other, whereby the railroad companies agree to surrender certain rights, rights of property as well as other rights, and to construct a work of great magnitude, greater perhaps than their own needs require, but which Congress deems to be demanded for the best interest of the national capital and by the public at large; and for this surrender of right and this work of magnitude commensurate with the public demand, Congress agrees to pay a certain sum, partly out of the funds of the United States and partly out of the funds of the District of Columbia. It is a simple case of bargaining and sale, like any other purchase."

We have assumed that appellant, as a taxpayer of the District of Columbia, can raise the questions we have considered, but we do not wish to be understood as so deciding.

Decree affirmed.

Mr. Justice Harlan concurs in the result only.

Mr. WILLIAMS of New Jersey. Mr. President, one further point and I shall be through for now.

The Senator from Kentucky expressed himself on the situation that would present itself in the House of Representatives. Well, the situation is just this with regard to this assessment, or one like it, that the House of Representatives has reported from its Labor Committee a coal mine safety and health measure. It does have a provision for assessment for study of better standards for safety and health in the coal mines. Now they evidently have made their finding there that it is not required of the Ways and Means Committee measure.

If the House of Representatives is the only body that deals with an assessment for the study of health and safety, and we do not, then, if we strike it out in conference on the point of order, we are limited to the House version, or a lesser degree thereof.

As a practical matter, of course, I would think we would not want to do that. If we keep this in and vote down the point of order, the Senate can work its will on title V. Senators can move to improve it as they might think it should be improved and have it in the shape they would have it when we go over in conference to the House of Representatives.

This is just another way of tying our hands on the bill.

I certainly agree with the Senator from New York that this is the kind of precedent that would ring down through the years to haunt the Members of this body on other measures, be it agriculture, be it aviation, be it recreation—whatever it is. It would be a very, very sad and haunting memory.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 218

Mr. RANDOLPH. Mr. President, Senators will recall that in keeping with other Senators, I have presented for their consideration, the two amendments that deal with the subject of compensation for disabled miners.

I submit an amendment which I intend to offer for myself and my colleagues Mr. BYRD, Mr. SCOTT, Mr. SCHWEIKER, and Mr. COOK, and ask unanimous consent that the amendment be printed in the RECORD and lie on the desk.

The PRESIDING OFFICER. Without objection, the amendment will be printed and lie on the desk as requested.

The text of the amendment is as follows:

On page 25, between lines 7 and 8 insert the following:

"PART C—INTERIM HEALTH BENEFITS FOR DISABLED MINERS

"PURPOSE

"SEC. 106. Based on a recent study conducted by the United States Public Health Service, Congress finds and declares that there are a significant number of inactive coal miners living today who are totally disabled and unable to be gainfully employed due to the development of complicated pneumoconiosis while working in one or more of the Nation's coal mines; that there also are a number of surviving widows and children of coal miners whose death was attributable to this disease; that few States have laws providing any benefits for disability from this disease to active or inactive coal miners; and that, in order to give more States time to enact laws to provide such benefits, it is, therefore, the purpose of sections 107 through 109 of this part to provide, on a temporary and limited basis, interim emergency health disability benefits to any coal miner who is totally disabled and unable to be gainfully employed on the date of enactment of this Act due to complicated pneumoconiosis which arises out of, or in the course of, his employment in one or more of the Nation's coal mines; to provide such benefits to the widows and children of any miner who, at the time of his death, was totally disabled and unable to be gainfully employed due to complicated pneumoconiosis arising out of, or in the course of, such employment; and to develop further and detailed information and data on the extent to which past, present, and future coal miners are or will be totally disabled by complicated pneumoconiosis developed from working in coal mines and thereby prevented from earning wages, and on the extent to which assistance to such miners and their dependents, consistent with existing conventional methods of providing benefits to workers in other fields is needed, and the most effective method for assuring such assistance.

"INTERIM BENEFIT STANDARDS; STATE AGREEMENTS; GRANTS

"SEC. 107. (a) In furtherance of the purpose of this part, the Secretary of Health, Education, and Welfare (hereinafter referred to in this part as "the Secretary") shall develop and promulgate interim disability benefit standards governing the determination of persons eligible to receive health disability benefits under this part and the methods and procedures to be used in disbursing such benefits to such persons. Such standards shall take into consideration the

length of employment in coal mines considered sufficient to establish a claim for such benefits; reasonable and equitable means, methods, and procedures for filing and establishing proof of disability consistent with the purpose of this part; and such other matters as the Secretary deems appropriate to effectuate this purpose as soon as possible after enactment of this Act. Such standards shall be effective upon publication in the Federal Register unless the Secretary prescribes a later date which date shall not be more than one hundred and eighty days after the enactment of this Act. The provisions of section 553 of title 5 of the United States Code shall apply to the promulgation of such standards.

"(b) After publication of such standards, the Secretary shall enter into agreements with any State pursuant to which the State shall receive and adjudicate, in accordance with the standards promulgated under this section, claims for emergency health disability benefits from any eligible person who is a resident of such State. Such agreements shall, in addition to such conditions as the Secretary deems appropriate, include adequate assurances that the State shall provide such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the State under this part; and that the State will make such reports to the Secretary, in such form and containing such information, as the Secretary may from time to time require.

"(c) Beginning after the effective date of any agreement entered into with a State under this section and ending on June 30, 1972, the Secretary, subject to the provisions of this part, shall make grants to such State from moneys in the Treasury appropriated for this purpose. Such grants shall be available to the State to pay such benefits to eligible persons as provided in section 108 of this title. No benefit payments shall be made under this part to an eligible person if the State, after the enactment of this Act, reduces the benefits for disability caused by complicated pneumoconiosis payable to such person under such State's laws or regulations.

"(d) There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to make grants referred to in this part.

"BENEFIT PAYMENTS

"Sec. 108. (a) Interim emergency health disability benefits shall be paid, in accordance with the provisions of this section, from grants to the States under section 107 of this title to persons determined by the State pursuant to the interim disability benefits standards established under section 107 of

this title to be eligible to receive such benefits. Such benefits shall be paid to such eligible persons as soon as possible after a claim is filed therefor and eligibility determined. Such benefits shall terminate when such person is no longer eligible, or on June 30, 1972, whichever is first, unless the State, extends such benefits under any State program for this purpose.

"(b) The amount of the benefits payable to an eligible person under this section by a State shall be determined as follows:

"(1) In the case of total disability, such eligible person shall be paid benefits during the period of such disability at a rate equal to 50 per centum of the minimum monthly payment to which an employee in grade GS-2 with one or more dependents, who is totally disabled, is entitled under the provisions of sections 8105 and 8110 of title 5, United States Code;

"(2) In the case of death of the disabled miner resulting from such disease, such eligible widow shall be paid benefits at the rate the deceased would receive such benefits if he were totally disabled until the widow dies or remarries;

"(3) In the case of an eligible person entitled to benefits under clause (1) or (2) of this subsection who has one or more dependents, such benefits shall be increased at the rate of 50 per centum of the benefits to which such person is entitled under clause (1) or (2) of this subsection, if such person has one dependent, 75 per centum if such person has two dependents, and 100 per centum if such person has three dependents; except that such increased benefits for a child, brother, sister, or grandchild, shall cease if such dependent dies or marries or becomes eighteen years of age, or if over age eighteen and incapable of self-support becomes capable of self-support.

"(c) Any benefit payment made to an eligible person under this section shall be reduced by an amount equal to any payment made to such person under any other provision of law for a disability directly caused by complicated pneumoconiosis arising out of, or in the course of, employment in coal mines.

"STUDY

"Sec. 109. The Secretary shall immediately undertake a study to determine the extent to which coal miners are or will be totally disabled due to complicated pneumoconiosis developed during the course of employment in the Nation's coal mines; the extent to which the States provide benefits to active and inactive coal miners and their dependents for such disability; the adequacy of such benefits, the need for, and the desirability of, providing any Federal assistance for such disability; the need for, and desir-

ability of, extending the provisions of sections 106 through 108 of this part for persons eligible for benefits under this part; and such other facts which would be helpful to the Congress in reviewing this part following completion of this study, as the Secretary deems appropriate. In carrying out this study, the Secretary shall consult with, and, to the greatest extent possible, obtain information and comments from, the Secretary of the Interior, the Secretary of Labor, and other interested Federal agencies, the States' operators, representatives of the miners, insurance representatives, and other interested persons. The Secretary shall submit a report on such study, together with such recommendations, including appropriate legislative recommendations, as he deems appropriate, to the Congress not later than October 1, 1970. The Secretary shall also submit to the Congress an annual report, beginning January 30, 1971, of the actions taken under this part.

"Sec. 110. This part shall take effect upon the date of the enactment of this Act."

On page 8, amend lines 1 and 2 to read as follows:

"TITLE I—MANDATORY HEALTH STANDARDS FOR COAL MINES AND EMERGENCY HEALTH DISABILITY BENEFITS FOR COAL MINERS"

On page 122, line 24, immediately after "title I", insert the following: "(other than Part C thereof)".

The LEGISLATIVE CLERK. A bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

The PRESIDING OFFICER. Under the unanimous consent agreement, the roll will be called to ascertain the presence of a quorum.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. JAVITS. Mr. President, will the Senator withhold that momentarily? We are doing a little talking.

The PRESIDING OFFICER (Mr. HUGHES in the chair). It is nondebatable.

Is there objection to the request of the Senator from Massachusetts?

Mr. RANDOLPH. Mr. President, the coal mining industry is today a highly—

The PRESIDING OFFICER. The unanimous-consent agreement is in effect. The agreement will have to be called off, or the Senator will have to have a quorum call.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the unanimous consent agreement be waived so that—

Mr. BYRD of West Virginia. Mr. President, we cannot hear the unanimous consent request.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the unanimous consent agreement be waived so that we might permit discussion and debate on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, reserving the right to object, I am willing to waive the unanimous consent agreement for the purpose of hearing Senator RANDOLPH, but I am not willing to vacate the unanimous consent agreement at this time. If that is understood, I have no objection.

Mr. KENNEDY. Mr. President, I withdraw that request.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The bill clerk called the roll, and the following Senators answered to their names:

[No. 103 Leg.]

Aiken	Goodell	Nelson
Allen	Gore	Packwood
Allott	Gravel	Pastore
Anderson	Griffin	Pearson
Baker	Gurney	Pell
Bayh	Hansen	Percy
Bellmon	Harris	Prouty
Bennett	Hartke	Proxmire
Bible	Holland	Randolph
Boggs	Hollings	Ribicoff
Brooke	Hruska	Russell
Burdick	Hughes	Saxbe
Byrd, Va.	Inouye	Schweiker
Cannon	Jackson	Scott
Case	Javits	Smith, Maine
Church	Jordan, N.C.	Smith, Ill.
Cook	Kennedy	Sparkman
Cooper	Long	Spong
Cotton	Mathias	Stennis
Cranston	McCarthy	Stevens
Curtis	McClellan	Symington
Dodd	McGee	Talmadge
Dole	McGovern	Thurmond
Dominick	McIntyre	Tower
Eagleton	Metcalf	Tydings
Ellender	Miller	Williams, N.J.
Ervin	Mondale	Williams, Del.
Fannin	Montoya	Yarborough
Fong	Moss	Young, N. Dak.
Fulbright	Mundt	Young, Ohio
Goldwater	Murphy	
	Muskie	

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

The PRESIDING OFFICER. Under the order of yesterday, the Chair lays before the Senate the unfinished business, which will be stated.

Mr. KENNEDY. I announce that the Senator from Mississippi (Mr. EASTLAND) and the Senator from Montana (Mr. MANSFIELD) are necessarily absent.

I also announce that the Senator from Michigan (Mr. HART) and the Senator from Washington (Mr. MAGNUSON) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. HATFIELD) and the Senator from Idaho (Mr. JORDAN) are necessarily absent.

The PRESIDING OFFICER (Mr. HUGHES in the chair). A quorum is present.

Under the unanimous consent agreement, the Senator from New Jersey has 45 minutes and the Senator from Vermont has 45 minutes.

Who yields time?

Mr. WILLIAMS of New Jersey. Mr. President, I yield such time as he may desire to the Senator from West Virginia (Mr. RANDOLPH).

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

THE COAL MINER IS A RESPONSIBLE CITIZEN

Mr. RANDOLPH. Mr. President, I am grateful for the cooperation of my able colleagues, the chairman of the Committee on Labor and Public Welfare (Mr. YARBOROUGH) and the chairman of the Subcommittee on Labor, the Senator from New Jersey (Mr. WILLIAMS).

Mr. President, the coal mining industry is today a highly mechanical complex, depending to a large degree on the well-developed American ability to provide machines and technology. The men who mine coal no longer have picks and shovels as their basic tools. In the larger underground mines, as in all surface mining, they use huge machines, to tear the coal from the earth, and do their work in superventilated atmosphere.

Therefore, Mr. President, in our consideration of this important legislation to improve the working conditions of miners the Labor Subcommittee and the Committee on Labor and Public Welfare of necessity have been compelled to devote much attention to matters of a technical nature.

But, at the same time, we have had firmly fixed in our minds the realization that what we were doing was for the benefit of the men who work in one of our most hazardous industries. While we dealt with technology as the way to improve health and safety conditions in the mines, the men who will benefit were also discussed, both in Congress and by interested parties elsewhere.

The technical aspects of this legislation have been explored at length, and they will be given further close scrutiny, as we consider the measure in this forum.

Today, Mr. President, I would like to discuss the men of the mining industry without whom the industry could not operate despite its status as one of the most highly mechanized in the United States.

I have known miners all of my life. I grew up in a mining State, the one it is my privilege to represent in the Senate together with my distinguished colleague (Mr. Byrd). So, over the years, I have become acquainted with men who mine coal. Hence, I am familiar with their

attitudes, their problems, their philosophy and their way of life.

I know the miners of West Virginia and other mining regions as stalwart citizens of their communities, subject to the same fears and joys, the same ambitions and desires as people elsewhere. In short, miners are not as different from nonmining citizens as they are sometimes depicted.

They are proud of their trade as miners, one that requires considerable skill and judgment, particularly in today's sophisticated mines.

I regret considerably that miners too frequently have been pictured as other than what they are. Too often they have been "discovered" in the hills and valleys where the coal lies and where miners live and work. Then, unfortunately, miners as a class—as a whole—are presented as ignorant, exploited semihumans lacking in intelligence or the simplest amenities of civilized life.

This, Mr. President, is not true. It is not fair. It is a cruel misrepresentation of a strong and independent segment of our society.

I am becoming disgusted at hearing and I am tired of seeing the coal miners of West Virginia depicted as men who live like animals. That is not true at all. More men work at coal mining in West Virginia than at any other job, and coal mining is one of the highest-paid industrial jobs in the Nation. In January of this year, the average American miner was earning \$170.95 a week, more than \$4 an hour. His average income was higher than are those of either steelworkers or workers in automobile manufacturing.

Could people earning the wages of today's miner be seriously labeled impoverished, downtrodden, and enslaved? That is not true, either. I do not believe that a man receiving \$170 a week in wages has to live in a shack if he does not want to live in such an abode.

Of course, we should strive to improve the safety of working and occupational health conditions of the coal miner, just as we should do for every American worker. Yes, more must be done to protect the miner from accidents at work; certainly we must see that his health is protected more adequately. The legislation now before us is designed to help us reach these objectives.

I hope that we can approach this legislation in an objective manner, free from excessive emotionalism. I hope we shall see less of the overdrawn image of today's coal miner as ignorant, oppressed and exploited. Some of them are under some mining conditions; the vast majority are not.

Today's miner is a highly skilled workman. His days of sporadic employment are long gone. Coal mines today are working mostly at full capacity, many of them on long-term contracts that will provide steady jobs for years. There is, in fact, an actual shortage of miners in some coal-producing regions.

Some people would have us believe that the miner lives in squalor in a company town and owes his soul to the company store. The truth is that the stereotyped coal camp of the past is near extinction. Miners now own cars, freeing them to live where they want and to

commute to their jobs. Many miners live in and enjoy the advantages of cities and towns while continuing to work in mines.

There are, of course, still slums in mining areas just as there are slums in every highly industrialized region of the world. This is undesirable, and great strides are being made to eliminate both the urban and rural slums. But there are few of the "company towns" of the 19th-century and early 20th-century type. Miners own their own homes, and in some cases where housing is inadequate, coal companies are helping to promote the development of new towns and new housing developments.

There are still a few company stores, but they exist only as a convenience for miners who work in isolated areas. And they must compete with the supermarkets and stores of the nearest town for the business of today's very mobile miner.

In West Virginia, for example, there are two new housing developments where miners have the first choice of buying their own homes. These developments were produced under the sponsorship of a coal company which brought together the bankers, builders, and others required to make the projects successful.

To obtain a profile of today's miner and his way of life, I asked earlier this year that a survey be made in West Virginia. I wanted to find out how many stories I had been hearing about miners might be true. I wanted hard, statistical facts to determine if my own observations were faulty or if I, and millions of others, were being misled.

A large mine in northern West Virginia, employing 367 men, was selected for the survey. The average employee is 42 years old and has been a miner for over 16 years. That the traditions of coal mining are strong is shown in the fact that 182 of this mine's workers came from coal mining families.

Only six of them live in company-owned housing, and this is by their own choice.

Here are some of the other findings of the survey taken at that 367-man mine: 63 percent of the miners own their own homes; 98.6 percent have indoor bathrooms; 95 percent own automobiles; 97 percent own television sets; 92 percent have a telephone at home; 99 percent have indoor plumbing; 78 percent go away from home on vacations.

The 367 employees at the Survey mine have 859 children, 137 of them in high school and 25 in college. Only 41 of the children of high school age, among the 859, dropped out before finishing high school. These figures certainly dispel any notion that the children of miners are denied an education.

The average wage at this mine should be more than \$8,500 this year, not including overtime.

Mr. President, many of the old notions about miners are today generalizations contrary to the facts.

Whatever may have been the case in the past is not true in any substantial degree in 1969. It is easier for some people to promote better working conditions for miners—a totally worthwhile objective on its merits—if they are depicted as

something other than ordinary people living ordinary lives.

Poverty and deprivation are deplorable, whether in West Virginia, Washington, D.C., New York City, or on an Indian reservation. But it cannot be successfully attacked until we know its true nature and extent.

Poverty is not the hallmark of the coal miner any more than it is of the average American.

As we consider the legislation now before us, I stress the need for an accurate picture of the men who will benefit from it, rather than a distorted apparition that is a combination of the past and of fancy.

Mr. RANDOLPH. Mr. President, I make a point of no quorum.

The PRESIDING OFFICER. From whose time is the time for a quorum call to be taken?

Mr. RANDOLPH. From my time.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. WILLIAMS of New Jersey. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 5 minutes.

COMPENSATION

Mr. WILLIAMS of New Jersey. Mr. President, I am gravely concerned about a problem, not now covered by S. 2917, which I believe needs attention by the Congress, namely the problem of providing some means of protection to the miner and his dependents we have forgotten—the inactive coal miner who is totally disabled and unable to work because he contracted pneumoconiosis or black lung while working in the coal mines.

The active miner of today who toils manfully deep in the bowels of the earth to produce about 15 tons of coal per day was, until recently, the forgotten man, but the tragedies of the past year and one-half have raised him high in the eye of the public. The people of this Nation have been shocked by these unfortunate events and have demanded, on his behalf, that Government and industry do a great deal more—not just half way measures—to improve his lot. The active miner of today is feeling the wonderful benefits that an aroused public can bestow on him. The bill before the Senate today is a tribute to this public awareness.

The bill before you today affords him the protection he so desperately needs. It gives directions to the Secretary of the Interior, which prior to this year, were thought to be impossible in this industry.

But today, Mr. President, as I have said there is another "forgotten man" in this industry who also cries for help. He is the inactive miner who was unfortunate enough to have breathed the coal dust which he toiled in the mines and

who now is totally disabled from a disease that he can hardly pronounce—pneumoconiosis—but what he can feel. This has been called by many names, but the most popular is—black lung. Not only is he forgotten, but also his wife and children, and when he dies from this disease, his widow and children are forgotten.

Volume 4 of the committee's hearings, which you all have on your desks, graphically depicts the effects of this disease in the lung. It is not pretty to look at. Imagine how it must be to those who have contracted this disease and know that there is no known cure.

It is estimated by the Public Health Service that about 9 percent of the number of nonworking miners in this country are suffering from complicated pneumoconiosis. Yet, in many cases, these former miners and their dependents are not eligible for compensation payments under State laws. At present, only seven States, West Virginia, Pennsylvania, Colorado, Alabama, Virginia, Tennessee, New Mexico, and Ohio provide any benefits for persons afflicted with this disease. In most cases, these State programs do not cover former miners or widows of miners or only provide minimal benefits for those people.

In my opinion, there is an urgent need to provide a program to help these forgotten people.

The amendment I offer today to S. 2917 would help these people.

The amendment would be a substitute for the present title V of the bill. It would establish on an interim basis a program of assistance to the States in providing emergency health disability benefits to inactive coal miners who are totally disabled and unable to be gainfully employed due to complicated pneumoconiosis contracted while working in the Nation's coal mines. Under the amendment, the Secretary of Health, Education, and Welfare is directed to develop expeditiously interim disability standards for use in this program. The standards would establish, among other things, what constitutes coal miner's complicated pneumoconiosis, the basis for determining who is eligible for benefits, and the means, methods, and procedures for filing claims and for the proof of eligibility. In this regard, it is intended that such standards recognize that the concern of this amendment is to help not only totally disabled miners, but also the widows and children of miners who have died in the past from a condition that was directly related to this occupationally caused disease. The standards would be effective as soon as possible after enactment, but not later than 90 days after the operative date of title V of the bill.

Once the standards are established, the Secretary is directed to undertake immediately to enter into agreements with the States under which they would administer this program pursuant to these standards. The States must give assurances as part of this agreement to pay one-half of the benefits payable during the fiscal years ending June 30, 1972, and June 30, 1973.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS of New Jersey. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for an additional 5 minutes.

Mr. WILLIAMS of New Jersey. Mr. President, once an agreement is entered into, the Secretary shall make grants to the States for the purpose of this title. During the remainder of this fiscal year, and during all of the next fiscal year, the program would be fully Federal funded. This will give the States time to obtain the funds necessary to finance their half in the next 2 fiscal years, when the Federal assistance will be limited to one-half of the estimated benefits needed for those two fiscal years. If, in the case of a State which now provides some benefits for this disability, that State reduces its benefits to eligible persons, the amendment prohibits the making of Federal payments under this program. In other words, this is not to be construed as a substitute for on-going State programs.

If, however, benefit payments are made to eligible persons under other provisions of law due to disability caused by coal miner's complicated pneumoconiosis, such benefit payments would be deducted from payments under this amendment. Payments under welfare laws, of course, would not count as a deduction for this purpose.

The benefits are payable under this amendment according to a formula which would provide: To the miner without dependents, \$1,635 annually; to the miner, with dependents, \$2,496 annually; to the miner, with two dependents, \$2,904 annually; and to the miner, with three or more dependents, \$3,264 annually.

Eligible widows and dependents thereof would be treated in the same manner as the miner.

The amendment would authorize appropriations of \$10 million for grants for the remainder of this fiscal year, \$30 million in the next fiscal year and \$15 million annually in the 2 years thereafter. The program would terminate by the end of the last fiscal year. If appropriations are not adequate in any one year, the grants and benefits will be reduced proportionately.

The amendment would also direct HEW to conduct a comprehensive study on this whole problem of benefits for this disease and report back to the Congress in the fall of next year. On the basis of this study, the Congress can then consider again this problem and determine what, if any, further Federal assistance will be needed.

Last, the amendment would authorize annual appropriations to the Secretary of the Interior and the Surgeon General to carry out the research program set forth in this bill.

The bill directs the Secretary and the Surgeon General to conduct comprehensive studies, experiments, and demonstrations in their respective areas of expertise in the field of coal mine health and safety. Special efforts are to be made to find improved methods for the recovery of persons from a mine after an accident, to solve the problem of underground-to-surface communications, to

find improved and safer sources of power to haul men and coal underground, and to illuminate active working places. In addition, section 201(b) requires research in connection with hazards from trolley wires and trolley feeder wires, signal wires, the splicing and use of trailing cables, and in connection with improvements in vulcanizing of electric conductors, improvement in roof control measures, methane draining in advance of mining, where such drainage relates to safety, improved methods of measuring methane and oxygen concentrations and the use of improved underground power equipment.

The Surgeon General and the Secretary will conduct an accelerated program to reduce dust concentrations underground. This section also would direct the Surgeon General to conduct research and studies on the health conditions of nonminers working with or around coal products in areas outside coal mines.

It is intended that the Secretary and the Surgeon General act promptly to carry out these directions and that funds are, in fact, provided to the levels set in the amendment. These levels are established at what appears to be the need for this program as testified to by the departments involved.

The PRESIDING OFFICER (Mr. PACKWOOD in the chair). Who yields time?

Mr. RANDOLPH. Mr. President, the able chairman of our Subcommittee on Labor of the Committee on Labor and Public Welfare has explained the purpose and provisions of the amendment.

I now send to the desk an amendment on behalf of myself, the Senator from West Virginia (Mr. BYRD), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Vermont (Mr. PROUTY), the Senator from New York (Mr. JAVITS), the Senator from Kentucky (Mr. COOPER), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Kentucky (Mr. COOK), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from Ohio (Mr. SAKBE). I ask that the amendment be read.

The PRESIDING OFFICER. An amendment cannot be offered while a point of order is pending.

Mr. JAVITS. Mr. President, I ask unanimous consent that the amendment be read for the information of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The assistant legislative clerk read as follows:

On page 118, line 13, through page 122, line 14, substitute the following:

"TITLE V—INTERIM EMERGENCY COAL MINE HEALTH DISABILITY BENEFITS

"Purpose

"Sec. 501. Based on a recent study conducted by the United States Public Health Service, Congress finds and declares that there are a significant number of inactive coal miners living today who are totally disabled and unable to be gainfully employed due to the development of complicated pneumoconiosis while working in one or more of the Nation's coal mines; that there also are a number of surviving widows and children of coal miners whose death was attributable to this disease; that few States

provide benefits for disability from this disease to inactive coal miners and their dependents; and that, in order to give the States time to enact laws to provide such benefits or to improve those laws where token or minimal benefits are provided, it is, therefore, the purpose of this title to provide, on a temporary and limited basis, interim emergency health disability benefits, in cooperation with the States, to any coal miner who is totally disabled and unable to be gainfully employed on the date of enactment of this Act due to complicated pneumoconiosis which arises out of, or in the course of, his employment in one or more of the Nation's coal mines; to the widows and children of any coal miner who, at the time of his death, was totally disabled and unable to be gainfully employed due to complicated pneumoconiosis arising out of, or in the course of, such employment; and to develop further and detailed information and data on the extent to which past, present, and future coal miners are or will be totally disabled by complicated pneumoconiosis and unable to be gainfully employed, on the extent to which assistance to such miners and their dependents is needed, and the most effective method for assuring such assistance.

"Interim disability benefit standards"

"Sec. 502. (a) The Secretary of Health, Education, and Welfare (hereinafter referred to in this title as "the Secretary") shall develop and promulgate interim disability benefit standards governing the determination of persons eligible to receive emergency coal mine health disability benefits under this title and the methods and procedures to be used in disbursing such benefits to such persons. Such standards shall take into consideration the length of employment in coal mines considered sufficient to establish a claim for such benefits; reasonable and equitable means, methods, and procedures for filing and establishing proof of disability, consistent with the purposes of this title, by the coal miner or, as appropriate, his survivor to enable such person to receive benefits as soon as possible after enactment of this Act; and such other matters as the Secretary deems appropriate. Such standards shall be effective upon publication in the *Federal Register*, unless the Secretary prescribes a later date which date shall not be more than ninety days after the operative date of this title. The provisions of Section 553 of title 5 of the United States Code shall apply to the promulgation of such standards.

"Assistance to states"

"Sec. 503. (a) Upon publication of the interim disability standards by the Secretary under this title, the Secretary shall enter into agreements with an State pursuant to which he shall provide financial assistance, in accordance with the provisions of this title, to the States to carry out the purpose of this title, and the States shall receive and adjudicate, in accordance with such standards, claims for interim emergency coal mine health disability benefits from any eligible person who is a resident of such State. Such State shall also agree to pay one-half of such benefits during the fiscal years ending June 30, 1972, and June 30, 1973. Such agreements shall, in addition to such other conditions as the Secretary deems appropriate, include adequate assurances that the State shall provide such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the State under this section; and that the State will make such reports to the Secretary, in such form and containing such information, as the Secretary may from time to time require.

"(b) Beginning after the effective date of any agreement entered into with a State under this section and ending on June 30, 1973, the Secretary, subject to the provisions of this section, shall, from sums available there-

for for any fiscal year, make grants to such States equal to the estimated sums needed by such State to pay all such benefits to eligible persons through June 30, 1971, and to pay one-half of such benefits to eligible persons during the fiscal years ending June 30, 1972, and June 30, 1973. No benefits shall be paid under this section to an eligible person if the State, after the enactment of this Act, reduces the benefits for disability caused by complicated pneumoconiosis to which such person is otherwise entitled under such State's laws or regulations. Benefits paid to an eligible person under this section shall be reduced by an amount equal to any payment made to such person under any other provision of law for a disability directly caused by complicated pneumoconiosis arising out of, or in the course of, employment in one or more of the Nation's coal mines.

"(c) Interim emergency coal mine health disability benefits shall be paid under this section to persons determined by the State pursuant to such standards to be eligible to receive such benefits. Such benefits shall be paid as soon as possible after a claim is filed therefor and eligibility determined, except that such benefits shall terminate when such person is no longer eligible, or on June 30, 1973, whichever date is first. The amount of benefits payable to an eligible person under this section shall be determined as follows:

"(1) In the case of total disability, such eligible person shall be paid benefits during the period of such disability up to a rate equal to 50 per centum of the minimum monthly payment to which an employee in grade GS-2 with one or more dependents, who is totally disabled, is entitled under the provisions of sections 8105 and 8110 of title 5, United States Code;

"(2) In the case of the death of a miner resulting from such disease, and eligible widow shall be paid benefits at the rate the deceased miner would be entitled to receive such benefits if such miner were totally disabled until such widow dies or remarries;

"(3) In the case of any eligible person entitled to benefits under clauses (1) or (2) of this subsection who has one or more dependents, such benefits shall be increased at a rate of 50 per centum of the benefits to which such persons is entitled under clauses (1) or (2) of this subsection, if such person has one dependent, 75 per centum, if such person has two dependents, and 100 per centum, if such person has three dependents; except that such increased benefits for a child, brother, sister, or grandchild, shall cease if such dependent dies or marries or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support.

"(d) There is hereby authorized to be appropriated from funds in the Treasury for the fiscal year ending June 30, 1970, not to exceed \$10,000,000, and for the fiscal year ending June 30, 1971, not to exceed \$30,000,000, and for the fiscal years ending June 30, 1972, and June 30, 1973, not to exceed \$15,000,000 annually for the purposes of this title. If the amounts appropriated for any fiscal year are less than the amounts necessary to enable the Secretary to make the full amount of grants to all States which have entered into agreements with him under this title, the grants to each State for such fiscal year, and the payments to eligible persons required to be made during such fiscal year under such agreements, shall be proportionately reduced.

"Study"

"Sec. 504. The Secretary shall immediately undertake a study to determine the extent to which coal miners are or will be totally disabled due to complicated pneumoconiosis developed during the course of employment in the Nation's coal mines and unable to be gainfully employed; the extent to which the States provide benefits to active and inactive

coal miners and their dependents for such disability; the adequacy of such benefits, the need for, and the desirability of, providing any Federal, State, or private assistance for such disability; the need for, and the desirability of, extending the provisions of this title for persons eligible for benefits under this title; and such other facts which would be helpful to the Congress following completion of this study, as the Secretary deems appropriate. In carrying out this study, the Secretary shall consult with, and, to the greatest extent possible, obtain information and comments from, the Secretary of the Interior, the Secretary of Labor, and other interested Federal agencies, the States, operators, representative of the miners, insurance representatives, and other interested persons. The Secretary shall submit a report on such study, together with such recommendations, including appropriate legislative recommendations, as he deems appropriate, to the Congress not later than October 1, 1970."

On page 106, between lines 13 and 14, add the following new subsection:

"(e) There is authorized to be appropriated to the Secretary of the Interior such sums as will be necessary to carry out his responsibilities under this section and section 201(b) of this Act at an annual rate of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970, \$25,000,000 for the fiscal year ending June 30, 1971, and \$30,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Surgeon General such sums as may be necessary to carry out his responsibilities under this section. Such sums shall remain available until expended."

The PRESIDING OFFICER. What is the will of the Senate?

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. To whose time is the quorum call to be charged?

Mr. KENNEDY. The time is to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. KENNEDY. Mr. President, I ask unanimous consent that the previous order to vote on the point of order be rescinded along with the time limitation associated therewith; that the point of order be withdrawn; that the amendment offered by the Senator from West Virginia (Mr. RANDOLPH) and others be made the pending business; and that debate on the amendment be limited to 1 hour, to be equally divided and controlled by the majority leader and the minority leader, or whomever they may designate.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. JAVITS. Mr. President, I think this is an admirable resolution of a problem which the Senate faced, of committing itself one way or the other on the point of order. I think the Senator from Vermont (Mr. PROUTY) rendered the Senate a signal service in raising the question. The question will be studied

carefully and we will not be caught in this position again.

I thank the Senator from New Jersey (Mr. WILLIAMS), the Senators from Kentucky (Mr. COOPER and Mr. COOK), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Massachusetts (Mr. KENNEDY), and all the other Senators who participated are entitled to great credit for this solution.

The Senate should understand the conclusion. We are offering an amendment relating to compensation for workers affected by black lung the pending business. It is not amendable. If the Senate does not like it it can vote the amendment down and bring up another amendment. We are not locking anything in except this amendment as it stands.

Mr. President, I hope Senators will show an interest and come to the Chamber to listen to the debate before voting.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. HOLLAND. Mr. President, reserving the right to object, and I do not object, it is my understanding that an addition to the subject matter mentioned by the Senator from New York is that this proposed amendment, which would be made the pending business without the privilege of amendment under the proposed unanimous-consent agreement, also contains an authorization which would finance the general operation of this bill, and that that authorization covers the same sum as was proposed to be expended each year for the first 30 years under the bill as originally drawn. Is that correct?

Mr. JAVITS. The Senator is correct.

Mr. HOLLAND. I have no objection. I appreciate the Senator's cooperation in working out the agreement.

Mr. COOPER. Mr. President, I join the Senator from New York in stating that a very fair agreement has been worked out. We have now gotten away from the question of the point of order. It is a unique question, and it can be studied should a similar question come before the Senate. The amendment is for authorization, but Congress and the Committee on Appropriations could work its will in the authorizations recommended both for research and a temporary system of compensation.

As I said, I would be glad to vote for such an amendment and I shall join as a cosponsor.

Mr. JAVITS. Mr. President, reserving the right to object I would not want the Senator to go away without understanding that at my request we have allowed a study to be made of the question of self-financing by the industry as a possible alternative. Other than that, the substantive part is as stated.

Mr. President, I wish to add to my previous comments the name of the deputy leader on the Democratic side, the Senator from West Virginia (Mr. BYRD), which I inadvertently omitted, who also helped work out the admirable compromise.

Mr. BYRD of West Virginia. I thank the Senator.

The PRESIDING OFFICER. Is there objection to the unanimous consent re-

quest? The Chair hears no objection, and it is so ordered.

The clerk will state the amendment.

The assistant legislative clerk read as follows:

On page 118, line 13, through page 122, line 14, substitute the following:

"TITLE V—INTERIM EMERGENCY COAL MINE HEALTH DISABILITY BENEFITS

"PURPOSE

"Sec. 501. Based on a recent study conducted by the United States Public Health Service, Congress finds and declares that there are a significant number of inactive coal miners living today who are totally disabled and unable to be gainfully employed due to the development of complicated pneumoconiosis while working in one or more of the Nation's coal mines; that there also are a number of surviving widows and children of coal miners whose death was attributable to this disease; that few States provide benefits for disability from this disease to inactive coal miners and their dependents; and that, in order to give the States time to enact laws to provide such benefits or to improve those laws where token or minimal benefits are provided, it is, therefore, the purpose of this title to provide, on a temporary and limited basis, interim emergency health disability benefits, in cooperation with the States, to any coal miner who is totally disabled and unable to be gainfully employed on the date of enactment of this Act due to complicated pneumoconiosis which arises out of, or in the course of, his employment in one or more of the Nation's coal mines; to the widows and children of any coal miner who, at the time of his death, was totally disabled and unable to be gainfully employed due to complicated pneumoconiosis arising out of, or in the course of, such employment; and to develop further and detailed information and data on the extent to which past, present, and future coal miners are or will be totally disabled by complicated pneumoconiosis and unable to be gainfully employed, on the extent to which assistance to such miners and their dependents is needed, and the most effective method for assuring such assistance.

"INTERIM DISABILITY BENEFIT STANDARDS

"Sec. 502. (a) The Secretary of Health, Education and Welfare (hereinafter referred to in this title as "the Secretary") shall develop and promulgate interim disability benefit standards governing the determination of persons eligible to receive emergency coal mine health disability benefits under this title and the methods and procedures to be used in disbursing such benefits to such persons. Such standards shall take into consideration the length of employment in coal mines considered sufficient to establish a claim for such benefits; reasonable and equitable means, methods, and procedures for filing and establishing proof of disability, consistent with the purpose of this title, by the coal miner or, as appropriate, his survivor to enable such person to receive benefits as soon as possible after enactment of this Act; and such other matters as the Secretary deems appropriate. Such standards shall be effective upon publication in the *Federal Register*, unless the Secretary prescribes a later date which date shall not be more than ninety days after the operative date of this title. The provisions of Section 553 of title 5 of the United States Code shall apply to the promulgation of such standards.

"ASSISTANCE TO STATES

"Sec. 503. (a) Upon publication of the interim disability standards by the Secretary under this title, the Secretary shall enter into agreements with any State pursuant to which he shall provide financial assistance, in accordance with the provisions of this

title, to the States to carry out the purpose of this title, and the States shall receive and adjudicate, in accordance with such standards, claims for interim emergency coal mine health disability benefits from any eligible person who is a resident of such State. Such State shall also agree to pay one-half of such benefits during the fiscal years ending June 30, 1972, and June 30, 1973. Such agreements shall, in addition to such other conditions as the Secretary deems appropriate, include adequate assurances that the State shall provide such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the State under this section; and that the State will make such reports to the Secretary, in such form and containing such information, as the Secretary may from time to time require.

"(b) Beginning after the effective date of any agreement entered into with a State under this section and ending on June 30, 1973, the Secretary, subject to the provisions of this section, shall, from sums available therefor for any fiscal year, make grants to such States equal to the estimated sums needed by such State to pay all such benefits to eligible persons through June 30, 1971, and to pay one-half of such benefits to eligible persons during the fiscal years ending June 30, 1972, and June 30, 1973. No benefits shall be paid under this section to an eligible person if the State, after the enactment of this Act, reduces the benefits for disability caused by complicated pneumoconiosis to which such person is otherwise entitled under such State's laws or regulations. Benefits paid to an eligible person under this section shall be reduced by an amount equal to any payment made to such person under any other provision of law for a disability directly caused by complicated pneumoconiosis arising out of, or in the course of, employment in one or more of the Nation's coal mines.

"(c) Interim emergency coal mine health disability benefits shall be paid under this section to persons determined by the State pursuant to such standards to be eligible to receive such benefits. Such benefits shall be paid as soon as possible after a claim is filed therefor and eligibility determined, except that such benefits shall terminate when such person is no longer eligible, or on June 30, 1973, whichever date is first. The amount of benefits payable to an eligible person under this section shall be determined as follows:

"(1) In the case of total disability, such eligible person shall be paid benefits during the period of such disability up to a rate equal to 50 per centum of the minimum monthly payment to which an employee in grade GS-2 with one or more dependents, who is totally disabled, is entitled under the provisions of Sections 8105 and 8110 of Title 5, United States Code;

"(2) In the case of the death of a miner resulting from such disease, an eligibility widow shall be paid benefits at the rate the deceased miner would be entitled to receive such benefits if such miner were totally disabled until such widow dies or remarries;

"(3) In the case of any eligible person entitled to benefits under clauses (1) or (2) of this subsection who has one or more dependents, such benefits shall be increased at a rate of 50 per centum of the benefits to which such person is entitled under clauses (1) or (2) of this subsection, if such person has one dependent, 75 per centum, if such person has two dependents, and 100 per centum, if such person has three dependents; except that such increased benefits for a child, brother, sister, or grandchild, shall cease if such dependent dies or marries or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support.

"(d) There is hereby authorized to be appropriated from funds in the Treasury for the fiscal year ending June 30, 1970, not to exceed \$10,000,000, and for the fiscal year ending June 30, 1971, not to exceed \$30,000,000, and for the fiscal years ending June 30, 1972, and June 30, 1973, not to exceed \$15,000,000 annually for the purposes of this title. If the amounts appropriated for any fiscal year are less than the amounts necessary to enable the Secretary to make the full amount of grants to all States which have entered into agreements with him under this title, the grants to each State for such fiscal year, and the payments to eligible persons required to be made during such fiscal year under such agreements, shall be proportionately reduced.

"STUDY

"Sec. 504. The Secretary shall immediately undertake a study to determine the extent to which coal miners are or will be totally disabled due to complicated pneumoconiosis developed during the course of employment in the Nation's coal mines and unable to be gainfully employed; the extent to which the States provide benefits to active and inactive coal miners and their dependents for such disability; the adequacy of such benefits, the need for, and the desirability of, providing any Federal, State or private assistance for such disability; the need for, and the desirability of, extending the provisions of this title for persons eligible for benefits under this title; and such other facts which would be helpful to the Congress following completion of this study, as the Secretary deems appropriate. In carrying out this study, the Secretary shall consult with, and, to the greatest extent possible, obtain information and comments from, the Secretary of the Interior, the Secretary of Labor, and other interested Federal agencies, the States, operators, representative of the miners, insurance representatives, and other interested persons. The Secretary shall submit a report on such study, together with such recommendations, including appropriate legislative recommendations, as he deems appropriate, to the Congress not later than October 1, 1970."

On page 108, between lines 13 and 14, add the following new subsection:

"(e) There is authorized to be appropriated to the Secretary of the Interior such sums as will be necessary to carry out his responsibilities under this section and section 201(b) of this Act at an annual rate of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970, \$25,000,000 for the fiscal year ending June 30, 1971, and \$30,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Surgeon General such sums as may be necessary to carry out his responsibilities under this section. Such sums shall remain available until expended."

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered. Who yield time?

Mr. WILLIAMS of New Jersey. Mr. President, I yield 5 minutes to the Senator from Kentucky.

Mr. COOK. Mr. President, I rise to congratulate the distinguished Senator from New Jersey (Mr. WILLIAMS) and the Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD) for working out this matter with the Senator from Vermont (Mr. PROBY), the senior Senator from Kentucky (Mr. COOPER), and myself, for many, many reasons.

First, Mr. President, I felt the adversary proceedings yesterday were tremendously helpful. I felt we were well

within the realm of proposing something, not only new for the Senate but, and I am not quite sure, in some respects rather disastrous for many collective industries throughout the country. I am pleased to say that during the course of the debate yesterday my senior colleague from Kentucky (Mr. COOPER) and I made it very clear that the real problem to be faced here was a problem that both of us and many other Senators were perfectly willing to see fully financed and to see this problem of black lung finally handled on a logical and compassionate basis by the Senate.

I felt, as did many of my colleagues, in my colloquy with the junior Senator from Missouri (Mr. EAGLETON) that this was an important enough issue, important on its merits, that we try diligently, and as a result this compromise was worked out.

I cannot say enough about the distinguished Senator from New Jersey (Mr. WILLIAMS) for not only understanding the problem but also realizing that the ultimate answer to the problem is really to solve it and not to continue debate on the floor of the Senate.

I hope, as was expressed by the Senator from New York, that the question of Article VII of the Constitution of the United States in regard to this body, can be examined. I hope that the expressed precedent, as was suggested yesterday, that revenue measures, if they are not anything more than a significant part of a bill, can be passed by this body, and will be seriously reviewed because I think it goes to the heart of the authority that this body really has.

The Senator from New York expressed the feeling that he did not in any way want to give up any right that this body might have. I concur in those remarks wholly and completely. But for myself I would say that if, by the Constitution of the United States, there is some right that this body does not possess, that it is possessed by the other body, then I do not feel that I am giving anything up but that I am, in fact, following the dictates of the Constitution of the United States and upholding its principles.

I conclude by saying that my State of Kentucky will be very grateful to this body for this amendment. The coal miners of my State can look, for the first time in many years, to the culmination of a dream, to the culmination of a drive, to the culmination of a program that will see to it that elimination of the horrible disease to which they have been subjected will now totally and completely be recognized by this country and fully implemented by the Senate.

Again my thanks to the distinguished Senator from New Jersey.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yield me some time?

Mr. WILLIAMS of New Jersey. Mr. President, I yield such time as he may desire to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I support the amendment of Senator RANDOLPH to establish an interim program for payment of benefits to inactive miners who

have been totally disabled by pneumoconiosis.

This is an unusual and dramatic proposal—but it is directed at an unusual and dramatic problem—our sublime insensitivity to what is probably the worst occupational disease in the country—black lung.

Mr. President, there exist today in the United States literally thousands of former coal miners who have reaped, as their sole reward for long and faithful service underground, ravaged lungs, enlarged hearts, and retirement years spent as semi or complete invalids, slowly choking to death. All because of coal dust. The tragic consequences of this disease were testified to by many witnesses who appeared before the committee. As Dr. Murray Hunter put it:

But what you must understand is that if the coal miner has five times the respiratory disability of the nonminer, you also have to understand that respiratory disability is like no other. Respiratory disability is the most agonizing kind, because respiratory death is preceded by 20 odd years of respiratory disability in some cases. And it is one thing to die at 75 of a stroke or a coronary after the productive life of a physician or U.S. Senator, and another thing to die after 20 years of breathlessness where you couldn't mount the stairs without stopping two or three times.

Mr. President, we do not know the exact number of victims of black lung. But we know that responsible sources estimate that its victims number over 100,000 with 50,000 of them disabled to some degree. We know, according to the Public Health Service prevalence study that 20 percent of all inactive, and 10 percent of all active miners show X-ray evidence of the disease, and that, of these, 9 percent of the inactive and 3 percent of the active miners have progressive massive fibrosis, the complicated form of the disease that causes severe disability and ultimately death. We know, according to Dr. Lorin Kerr, of the United Mine Workers Welfare and Retirement Fund, that in Pennsylvania alone "nearly 1,000 miners die of coal workers' pneumoconiosis every year and the same disease is listed as a contributory cause of death for almost 1,000 more." Finally, we know that X-ray evidence may not even tell the whole story, that in some cases even severe disability may occur absent X-ray changes characteristic of complicated pneumoconiosis.

In S. 2917, the Committee on Labor and Public Welfare has reported out a measure which we on the committee believe will end this deadly scourge once and for all. But we have done nothing to help those who have already fallen prey to black lung—to those who might not have been disabled and forced to spend the rest of their lives as vegetables had we only seen our duty and done it sooner.

I say "our duty" advisedly. For the root of the problem is the utter failure of all of us, and that includes the industry, the medical profession, and the Government—particularly the Public Health Service—to recognize this disease before being embarrassed into doing so—at least 20 years late, by Great Britain and other European countries.

Our failure to recognize coal workers' pneumoconiosis as a separate disease has had two particularly insidious effects: First, it obviously precluded any attempts, through private efforts or legislation, to control coal dust, and second, it operated to prevent many miners disabled from black lung from obtaining even minimally decent workmen's compensation. As a result, the thousands of inactive miners disabled by black lung are not only condemned to life as virtual invalids, they must also live out that life in abject poverty.

The amendment which is now before us is an attempt, on an interim basis, to do something about this problem, pending a study and report on permanent measures by the Secretary of Health, Education, and Welfare. Ordinarily, we would wait for the Secretary's report before acting, but this problem is so serious, and of such magnitude, that I do not believe that, in conscience, we can ask these former miners of their widows and families to wait several more years for help.

I emphasize, Mr. President, that the entire Nation shares the responsibility for this tragic situation; witness after witness who testified on this bill stressed America's complete insensitivity to the problem of black lung until very recently—it was not until the mid-1950's that black lung was recognized by responsible medical authorities as a disease. Britain, on the other hand, began to recognize the disease in 1934, and it became compensable in 1943. In the United States, until last year, only three States recognized black lung as a compensable disease; in other States the only way miners could receive compensation is if they could convince examining boards they had silicosis, which usually was not possible. One former miner who appeared before the committee testified to the difficulty he had encountered obtaining compensation in West Virginia. To prove his case he was forced, at his own expense of over \$1,300, to have a biopsy taken, and even then he only received a 40-percent disability award based on silicosis.

This case is the rule, not the exception. Through the years, American authorities have been almost exclusively concerned with silicosis, notwithstanding that black lung probably affects more workers, with worse results, than does silicosis.

This preoccupation with silicosis, and consequent insensitivity to black lung was developed most clearly in the testimony of Dr. Lorin Kerr of the United Mine Workers' Welfare and Retirement Fund. I ask that the relevant excerpts from Dr. Kerr's testimony be printed in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXCERPT FROM TESTIMONY OF DR. KERR

The U.S. Public Health Service recently reported that in 1950, American coal miners died at nearly twice the rate of other workers; diseases of the respiratory system killed miners at a rate five times greater than the general working male population; and the mortality rate for American coal miners was roughly twice those reported for British coal miners.

Among the living, the Pennsylvania Department of Public Health reported in 1967 that 19,175 coal miners had X-ray evidence of coal workers' pneumoconiosis and 23,768 more were disabled by the disease. In 1965, the U.S. Public Health Service reported that throughout the entire Appalachian soft coal mining area one out of every 10 active, and one out of every five former miners had X-ray evidence of the same disease.

These and other American statistics are a grisly repetition of those reported by British investigators for the last 25 years. In Great Britain, coal workers' pneumoconiosis accounts for more deaths than all other forms of dust diseases combined. Since 1930, it has constituted the greatest medical and social problem in all industry.

It is safe to conclude from all available information that in the United States, as previously stated, that a least 125,000 active and former coal miners have some stage of coal workers' pneumoconiosis and of this number nearly 50,000 may be disabled by the disease. In the last 20 years, at least one million miners have been exposed to a daily dose of life-threatening coal dust.

Scientific studies have repeatedly shown that achievement is not confined to any one nation. New discoveries and inventions usually occur simultaneously in a number of different locations. Why has coal workers' pneumoconiosis been an exception? Why, with our outstanding contributions in medicine, should we stand today where the British did nearly 30 years ago?

A major reason for this situation is that coal workers' pneumoconiosis is not well known or widely organized in the United States. Until recently, little has appeared in American medical journals on this disease and most of the earlier articles were reports on British research and surveys. This lack of concern about coal workers' pneumoconiosis has been due in part to a belief that conditions reported in Britain did not exist in the United States. It is also due to the conviction that only silica and dust containing silica is injurious.

I would like to depart from the record a moment to elaborate on this item, if I may, Senator.

We began research here in the United States on silicosis about 1915 with studies that were done in the tri-state area where the lead and zinc mines are located near Joplin, Mo. This followed a 1902 study in South Africa concerning high tuberculosis mortality rates among gold miners. It was determined that silicosis provided the development of the tuberculosis among these miners.

This study was followed by others elsewhere. Mass X-rays were first used in a 1911 study of silicosis. Subsequent studies here in the United States revealed a lot of silicosis in various industries.

Slowly it was thought to be diminishing. Then about 1930 a tunnel was dug at Gauley Bridge, W. Va. It is difficult to say whether it was silicosis or whether it was an overwhelming dose of dust in the lungs of these men that caused so many deaths. However, it created such a scandal that there was a congressional investigation. This was followed by a National Silicosis Conference in 1936 called by the Secretary of Labor, Madam Perkins. The reports were made in 1937. The definition of silicosis was one that had been developed in 1933. It has since been incorporated into most workmen's compensation legislation in the country. In fact, there was no workmen's compensation for silicosis until about 1937.

There has thus been this focus of attention over the years on silica and coal dust has been classified as an inert dust because it did not produce any fibrosis in the tissues.

I think it is important to keep in mind that when silicosis did hit the headlines here

in the United States it was followed by a congressional investigation, a National Conference on Silicosis, and the development of certain recommendations some of which are still not implemented. Even today we do not know the actual incidence or prevalence of silicosis in the United States. There is no accurate reporting on that disease either.

The impact of physician knowledge and attitudes is apparent in inaccurate or incomplete death certificates. These documents are essential for determining the existence of dangerous coal dust requiring governmental action for control or eradication. Too often no records mean no action.

A final comment on our 30-year lag behind the British is provided by Dr. Donald Hunter, the world-famous British authority on occupational health. Ten years ago in his book, "Health in Industry" he wrote extensively on coal workers' pneumoconiosis and said that not until 1934 did British physicians begin to accept the fact that coal dust in miners' lungs produces a slowly progressive fatal disease. He continued to say:

It must be admitted that medical men by their ill-informed complacency have a heavy load of responsibility to bear for this failure to discover the true state of affairs, a failure which constitutes what is probably the greatest disgrace in the history of British medicine.

Today, 35 years later, American medicine has barely begun to overcome its "ill-informed complacency" and "discover the true state of affairs" regarding coal workers' pneumoconiosis.

I can vividly remember, 21 years ago when I came with the UMWA Welfare and Retirement Fund, the constant stream of wheezing, breathless coal miners coming to the area medical office in Morgantown, W. Va., seeking relief from the struggle to breathe. I can also remember how overwhelmed I felt. Never in my earlier professional experience had I observed or heard of a single industry with so many men who seemed to be disabled by their jobs. I say "seemed to be disabled by their jobs" because doctors said these men rarely had silicosis and it was unusual to find a physician who even suspected that coal dust might be dangerous. The disability was called miners' asthma and it was accepted by miners and doctors as part of the job.

We, in the fund, also became acutely aware of the unusual medical care these breathless miners required. They had more colds and other respiratory infections than other miners and these infections lasted longer. Some of these men would become so ill when they had an upper respiratory infection that they would need to be hospitalized, where they frequently would stay for 2 and 3 weeks, several times every year. Oxygen in the hospital or at home seemed to bring more relief than anything else. If all the tanks of oxygen these men have used were laid end-to-end I would venture that a long green line would run at least 6,000 miles—twice across the Nation, coast-to-coast.

I might say parenthetically that I computed that, myself, and I think it is quite accurate.

In searching for the cause of the shortness of breath afflicting the coal miners, the fund's medical administrators could not agree with those doctors who claimed that it was due to "compensationitis" or nervousness. I can assure you that were I as breathless as some of the miners I have seen I would be nervous. But to claim it was due to nervousness and had nothing to do with dust was nonsense. I know of one doctor who even maintained that breathlessness was due simply to a fear of coal mining.

Our search for answers also included a review of death certificates but they were of little help. Cor pulmonale or right-sided enlargement of the heart was often given as the cause of death but there would be no

mention of what we now know was the primary cause of the heart failure—coal workers' pneumoconiosis.

No Government agency, including health departments, could answer our questions. They were all willing to listen but no one knew the cause of the breathlessness and no one was willing to even guess how many breathless miners were disabled by their jobs.

Mr. JAVITS. Mr. President, Dr. William Stewart, the Surgeon General of the United States, fully concurred with Dr. Kerr, as to the American preoccupation with silicosis. Furthermore, he could find no excuse for the failure of the Public Health Service to initiate a prevalence study until 1970. He testified:

I don't know all the story behind this, Senator Randolph, but I know that in the thirties there was great concern and attention to silicosis and the attention was drawn to it because of the high incidence of tuberculosis among people who have silicosis. And it was felt that the problem was caused by the amount or the percent of silica in the dust. This was not only the prevalent feeling in the United States, it was pretty well a worldwide consensus that silica caused the problem. In the forties, we began to realize that there were similar pathologies appearing on the X-rays from other kinds of dust, asbestos dust, cotton dust, and so on. There were also some studies done by various researchers in the United States among some of the coal mines where the silica content in the dust was very, very low and yet they were reporting pneumoconiosis in the miners. I don't know why it took us until 1960 to get around to doing the prevalence work, but it was just a matter of the way the state of knowledge developed.

Last year several States, including West Virginia, amended their laws to provide compensation for victims of black lung. But in West Virginia, for example, the new law only applies prospectively; it does nothing for the thousands of miners or their widows and children, who have already been disabled from black lung and forced to retire.

Those are the miners whom this amendment has been directed at. It is also directed at those miners in States like Pennsylvania, whose benefits, under special programs, are so pitifully small that no former miner can be expected to live on them. In Pennsylvania, for example, many miners receive only \$75 to live out their days.

This amendment will not allow any former miner to live in the lap of luxury—neither \$136 for a single miner nor \$272 for a family of four is anything more than the minimum level of decency requires. What we are trying to do, in substance, is give these people some temporary help for 2 years pending receipt of the Secretary's report on more permanent measures and deal with this tragic situation.

Mr. President, I do continue to express the hope that a way will be found to have this whole operation, at least in material part, financed by the industry itself. We have argued that at great length. It is a very important point, in this and many other measures.

Therefore, I approve very much of the fact that the authorization is \$30 million for 1971, and then goes down to \$15 million in 1972 and 1973 with the States required to match the amounts of Federal

aid. I hope that the program eventually proves to be self-financing by the industry. It is one of the things which we have committed for study and recommendation by the Secretary of Health, Education, and Welfare. I think that is probably the only thing that is open to us to do.

I continue to express my fidelity to that concept and my hope that that is the way it will go. I pledge to work for it when the results of the study demonstrate it makes the kind of sense I think it does.

Again, I congratulate all those concerned and only hope that this may be consummated and that we all may soon stand behind the President's chair as he signs the bill. It probably will be one of the most exciting demonstrations of what we can do here for individuals who need our help.

Mr. PROUTY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 10 minutes.

Mr. PROUTY. Mr. President, I think that when I raised the point of order against section 502 of Senate bill 2917 on last Friday, it was a valid point to make.

I am happy, indeed, that we have been able to work out a meaningful compromise which faces up to a truly serious situation among people who have worked in the coal mines of this country.

Mr. President, traditionally, the Bureau of Mines has not placed as great emphasis on health and safety research in coal as it has on the utilization to discover new uses for coal.

The Bureau's activities in health and safety have historically been centered about education, training, and persuasion in order to improve the health and safety record of the industry. As a result great emphasis had been placed on inspection activity rather than on developing new technology which might result in improved safety.

Because of the long neglect in research and development in the area of health and safety in coal mining, substantial amounts of money will be required in an attempt to catch up so that fatalities and accidents can be substantially reduced.

The very large sums which have been projected are necessary if the fatality and injury rate and accident rate of underground coal mining is to approach that of other industries. These rates must be reduced if the coal industry is to compete for its share of manpower in the future. There is little incentive for either professional, semiprofessional, or other employees to be attracted to an industry in which their chances of being injured or killed are so high.

The large increase in funds that is needed will be directed toward such activities as:

First, determining the dust levels presently found in U.S. coal mines, the occupations within the mines which have the highest dust levels, and the effects of various engineering parameters on dust concentrations.

Second, a study of methods of reducing dust concentrations, such as water infu-

sion, use of additives and foams, redesign of cutting bits, use of water sprays, auxiliary ventilation, use of vacuum-type manifolds.

Third, the development of entirely new methods of protecting miners from respirable dust, such as providing an artificial atmosphere to protect the miner from a hostile environment.

Fourth, the development of vastly improved methods of measuring the dust levels both over extended periods and instantaneously.

Fifth, development of fundamental knowledge on the formation and behavior of respirable dust and on the dust-generation characteristics of various coal beds.

Sixth, on the development of improved and analytical techniques on the detection of free silica in coal and for other toxic and hazardous constituents.

Seventh, development of improved instrumentation for measuring oxygen content and other noxious and hazardous gases.

Eighth, the development of improved technology to reduce roof fall hazards, which account, year in and year out, for between 50 and 60 percent of all underground fatalities.

Ninth, the development of nonsparking bits to reduce the danger of ignition.

Tenth, a completely new and administratively more manageable system of developing requirements for explosion-proofing of electrical equipment and for the determination of its permissibility.

Eleventh, the development of post-disaster, survival, life support, and rescue technology.

Twelfth, to devise improved methods of rendering coal dust nonexplosive rather than using the cumbersome system of adding rock dust to the coal dust.

Other areas of health and safety research which these initial investigations are expected to uncover will be investigated in future years on a scale necessary to demonstrate their feasibility.

In conclusion, I express my deep appreciation to the distinguished Senator from New Jersey, floor manager of the bill, and Senator RANDOLPH, Senator BYRD of West Virginia, Senator COOK, and other Senators, for their cooperation in bringing out a meaningful compromise which is going to contribute so much to the health and safety of the coal mine workers of this country.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS of New Jersey. Mr. President, I am happy to yield to the Senator from West Virginia (Mr. RANDOLPH), who has been so active this year in this effort to help coal miners, but whose record of constant effort dates back decades.

The PRESIDING OFFICER. How much time does the Senator yield?

Mr. WILLIAMS of New Jersey. As much time as the Senator needs.

Mr. RANDOLPH. Mr. President, there is real substance in the comments made by several Senators since the offering of the amendment. And they are symbolic. Senator COOK, Senator JAVITS, Senator PROUTY—and those additional Senators on the other side of the aisle who have

spoken since the amendment was offered—give clear evidence that there is a lack of partisanship in this effort. A very real understanding has been worked out here. The groundwork of Senator WILLIAMS of New Jersey and Senator PROUTY of Vermont, and the able assistance of my esteemed colleague from West Virginia, Senator ROBERT BYRD, and other Senators, and through helpful assistance of our staffs and the Labor Committee staff, brought into reality the amendment which I have offered for myself and the cosponsors previously named. I think, as Senator PROUTY has so cogently stated, that we have acted in a meaningful manner. We have accomplished much.

We must consider that, in a degree, the Senate itself can be congratulated on this matter, in that the point of order against section 502 has been withdrawn. If the point of order had been brought to a vote, I am sure Senator PROUTY would be the first Senator to recognize that there would have been a divisiveness that perhaps would have slowed the progress of this vital bill toward passage.

I am in no wise critical. As the Senator from Vermont knows, I said yesterday that he had every right to raise the point of order. Senator PROUTY is a diligent and understanding man. He has been most constructive in working with those of us within the committee who are endeavoring to shape this measure into what I hope will truly be meaningful legislation for the benefit of a large group of Americans who need our concern and our assistance.

Very frankly, we have preserved a Senate here with a flexibility of action and relative independence. These are important. The Senate must not be a strait-jacketed body, but one with certain options it can work within and under which it can function effectively.

Mr. President, I express commendation and appreciation to the Senators from New Jersey (Mr. WILLIAMS) and Vermont (Mr. PROUTY) for their statesmanship in helping to develop an appropriate and meaningful compromise which I hope will have prompt and overwhelming approval.

I repeat: The Senate as an institution will be the very real winner, in that withdrawal of the point of order against section 502 of the pending business (S. 2917) avoids an excess of divisiveness. Yes, the Senate's flexibility of action and relative independence are better preserved.

Mr. President, the coal mine health and safety legislation will be strengthened and broadened if we will accept and approve the plan under which special assessments on each ton of coal mined or imported would be deleted; health and safety research would be authorized for direct appropriations and expenditures; and an interim pilot program would be authorized to make appropriations and expenditures for the purpose of paying benefits to nonactive coal miners who have been totally disabled by coal miners' black lung disease. And these benefits likewise would go to widows or children with qualifications to be established.

Mr. President, the burdens of the costs of producing coal under the provisions of S. 2917 are to be so heavy that an assessment against each ton of coal produced to create a research trust fund, or for other purposes, would be unduly oppressive.

Senator COOPER, Senator COOK, Senator SCOTT, Senator SCHWEIKER, Senator BYRD of West Virginia, and the Senator who speaks now—from the leading coal producing States—these people, and we know their needs. And, of course, their dependents are involved. As the record indicates, many miners have been disabled totally by black lung disease.

I think I should stress again that the costs of producing coal under the provisions of S. 2917 are going to be very heavy. I said it in my opening speech. And I said it often during earlier consideration of the legislation.

If we had created a research trust fund based on assessments, I believe it would have been unduly oppressive. I am sure the Senator from Vermont shares this viewpoint.

I believe we would be on the wisest and most prudent course if we were to remove the assessment provisions and if we were to substitute authorizations for appropriations and expenditures. I voted against the assessment provisions of section 502 of the bill in committee.

It was a gratifying experience this morning for me to have had the opportunity and the privilege to counsel with Senators WILLIAMS and PROUTY and to urge them to join in the reaching of the excellent and thoroughly appropriate compromise that we have worked out.

I think it is not merely a compromise but an accommodation of viewpoints. In completing the job, we are going to benefit needy disabled former miners and their dependents who look to us, a Congress that must be realistic, and one that must be compassionate as well.

I urge the Senate to approve the amendment which I have offered with the cosponsorship of Senators WILLIAMS and PROUTY and several other Senators on both sides of the aisle.

Again, I congratulate—and it is not just a pleasantry—Senators and staff members, who worked so diligently over the weekend and yesterday and today to bring about this meeting of minds and, I say also, this meeting of hearts. It is bipartisan. In fact, I say that which we have done is nonpartisan. I think the substance of the amendment offered gives us a stronger, a broader-based, and much improved coal mine health and safety legislation.

I believe this amendment merits unanimous support and I believe it will have unanimous acceptance in this body.

Mr. COOPER. Mr. President, I think all of us would agree that today is a much happier day than yesterday. We debated for about 3 hours on a constitutional question—and it was an important constitutional question—but I know that I felt, as I left the Chamber yesterday, and in a conversation with the Senator from West Virginia I said so, that I was not too happy that we had devoted ourselves to what might be called the dry bones of a legal question—a very im-

portant constitutional question, and I believe we were right—but today we have come to an accommodation, through the efforts of the Senator from Vermont (Mr. PROUTY), the Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD), my colleague from Kentucky (Mr. COOK), and the chairman of the committee and manager of the bill, the Senator from New Jersey (Mr. WILLIAMS). We have brought something forth to help those who still live, though they are suffering with black lung disease.

I think we have also shown that debate in the Senate is worthwhile. The Senator from Vermont raised a point of order, which he had the right to raise and which would have been raised, I am sure, if he had not, by someone else. We had a debate for 2 or 3 hours, and out of that debate and our discussions with each other, this substitute amendment was produced. I had said throughout the debate that if we could agree upon a measure which would go the route of authorizations and appropriations, I would support it, not alone for research but for at least temporary benefits.

Those of us who come from coal States and have been candidates for office have traveled through coal-producing counties. There is something typical about each of those counties, whether they are in Kentucky, Tennessee, West Virginia, or Pennsylvania. I know that, speaking at courthouses and in front of courthouses, we always see a group sitting around, some of whom have been injured and some of whom are ill with pneumoconiosis. At last, due to the energy and initiative of the Senator from New Jersey (Mr. WILLIAMS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from West Virginia (Mr. BYRD) and others, and because we have been stirred by Senator PROUTY's amendment. I think we have brought forth something good today.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS of New Jersey. Mr. President, I yield the Senator from West Virginia such time as he may require.

Mr. BYRD of West Virginia. Mr. President, I wish to express my appreciation, as a Senator from the leading coal-producing State, to all those Senators who have worked together in devising a bipartisan approach to the problem presented by the point of order. I congratulate the Senator from Vermont (Mr. PROUTY), the Senator from New Jersey (Mr. WILLIAMS), manager of the bill, the Senators from Kentucky (Mr. COOPER and Mr. COOK), the senior Senator from New York (Mr. JAVITS), and certainly my own colleague from West Virginia (Mr. RANDOLPH), for their efforts, which will soon culminate in the adoption of this very humanitarian and necessary amendment.

My colleague and I some time ago proposed that there be Federal compensation for miners disabled by pulmonary diseases contracted from mining employment and ineligible for compensation under State statutes. Both he and I have wanted to see such compensation provided without an additional cost burden being placed upon the coal industry. The

amendment before us today obviates the necessity, certainly for the time being and hopefully for all time, of placing that burden upon an already overburdened industry.

Mr. President, I consider it a necessity that we pass legislation to provide disability benefits to miners suffering from pulmonary diseases, because in so many instances the State statutes, not being retroactive, do not reach the old disabled miner who long ago has been forced into retirement as a result of his having acquired black lung, pneumoconiosis, silicosis, or some other pulmonary disease through employment in the mines.

I feel that today we have proposed a measure which will bridge an important gap, and which will bring new hope to the mining population. I believe this to be a very humanitarian amendment, and I feel that it is necessary that we provide a way for these old, disabled miners and their families to live without being dependent upon welfare. In so many instances, they long ago exhausted their unemployment compensation benefits, and have been forced to go to the welfare offices, or go to their children and stand with their hats in their hands and hope for assistance from them. Here today we not only provide for some measure of assistance to the old, disabled, retired miner, but we are also lending some assistance to his children, who otherwise would have to provide help for their parents. I hope the Senate will vote unanimously for this amendment when we reach the time for a rollcall vote, and I hope that in conference the House of Representatives will accede to the position taken by this body.

Again I express my very deep appreciation to the manager of the bill, who at all times has shown extreme willingness to listen, and to cooperate, and a very sympathetic appreciation for the problems faced by those of us who represent coal mining States. I again express appreciation, too, to the Senator from Vermont (Mr. PROUTY), and certainly to my senior colleague (Mr. RANDOLPH), who has devoted so much of his time, energy, effort, and expertise to the bill before us and to the amendment on which we are about to vote. My appreciation goes out to all Senators who have worked together, and to their staffs, who have contributed so much to the devising of this amendment. I congratulate them, and I hope that the Senate, as I have stated, will soon vote, and vote unanimously, to approve the pending amendment.

Mr. PROUTY. Mr. President, I yield 1 minute to the distinguished Senator from Kentucky.

Mr. COOK. Mr. President, I merely wanted to add to the remarks that I made previously that I think this shows the tremendous capacity of individuals, as well as of many groups of people, in the United States. It shows the capacity of people who have trudged all over Capitol Hill, who have attended committee hearings, who have come out of the mountains and out of the mines; and I personally should like to say that from my point of view, probably the most interesting series of articles that I have read on black lung disease was a series of articles pub-

lished in the Louisville Courier-Journal, written by Mr. Ward Sinclair.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. PROUTY. I yield the Senator an additional minute.

Mr. COOK. Mr. Sinclair traveled over the coal mining regions of my State and wrote a series of tremendous articles, bringing this problem to the attention of people in urban areas, who probably had never really given any thought to it, to the extent that it became a situation that was not only important to the miner himself and his family, but was important to people in all walks of life.

I think that probably many Senators would want to give credit to individuals who did the same thing in their respective States. But I would feel remiss if I did not put this on record because of his efforts and the efforts of many other people who felt the same way and who worked hard and long in the effort to develop the sense of national alarm and national concern that resulted in our actions today.

I thank the Senator for yielding.

Mr. PROUTY. Mr. President, if there are no other speakers, and if it is agreeable with the Senator from New Jersey, I am perfectly willing to yield back the remainder of my time.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield me 1 minute?

Mr. WILLIAMS of New Jersey. Mr. President, I yield 1 minute to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 1 minute.

Mr. BYRD of West Virginia. Mr. President, I would be remiss if I did not include among those who have worked so diligently and hard on this compensation provision the leadership of the United Mine Workers of America and also the leadership of the industry itself.

I have talked with the representatives of industry and I have also talked often with the leaders of the United Mine Workers of America about such compensation, and I say for the Record that they have played an important part in the steps we have taken and the progress we have made which, I think, will soon culminate in the adoption of this very worthwhile and humanitarian amendment benefiting and protecting miners and their families.

Mr. SCHWEIKER. Mr. President, I rise in support of the pending substitute amendment embodying a new title V of S. 2917, the Federal Coal Mine Health and Safety Act of 1969.

I am pleased to be a cosponsor of this amendment. It is based primarily on a pneumoconiosis compensation amendment introduced yesterday by the distinguished Senator from West Virginia (Mr. RANDOLPH), in which I also joined as a cosponsor.

Pneumoconiosis, or black lung, is one of the main targets of the bill S. 2917. Pneumoconiosis afflicts one-fifth of the retired mining population and one-tenth of the active coal miners. Thus it is not sufficient for Congress simply to legislate for the future against the high dust levels in coal mines that will cause black lung. Congress must answer also the needs of

those miners who currently suffer from the ravages of this disease, and who are not receiving an adequate amount of assistance from their States or other sources.

The substitute amendment will provide interim disability compensation to retired miners suffering from complicated pneumoconiosis. If death has resulted from complicated pneumoconiosis, then the miner's widow is eligible for these benefits.

The amendment provides for a Federal study of the black lung problem, which would be completed and reported on to Congress by October 1, 1970.

Finally, the amendment authorizes long-overdue funds for coal mine health and safety research—up to \$20 million for this fiscal year, \$25 million for fiscal year 1971 and \$30 million for each fiscal year after that. This compares with current Federal spending for coal mine health and safety research of less than \$2 million in fiscal year 1969.

Mr. President, I urge adoption of this vital amendment to broaden and strengthen S. 2917.

Mr. WILLIAMS of New Jersey. Mr. President, I yield back the remainder of my time.

Mr. PROUTY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

All time having expired, the question is on agreeing to the amendment of the Senator from West Virginia. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Michigan (Mr. HART) and the Senator from Washington (Mr. MAGNUSON) are absent on official business.

I further announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Montana (Mr. MANSFIELD), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that, if present and voting, the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Washington (Mr. MAGNUSON), the Senator from Montana (Mr. MANSFIELD), and the Senator from Georgia (Mr. RUSSELL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. HATFIELD) and the Senator from Idaho (Mr. JORDAN) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is detained on official business.

If present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Oklahoma (Mr. BELLMON) would each vote "yea."

The result was announced—yeas 91, nays 0, as follows:

[No. 104 Leg.]

YEAS—91

Alken	Goodell	Nelson
Allen	Gore	Packwood
Allott	Griffin	Pastore
Anderson	Gurney	Pearson
Baker	Hansen	Pell
Bayh	Harris	Percy
Bennett	Hartke	Prouty
Bible	Holland	Proxmire
Boggs	Hollings	Randolph
Brooke	Hruska	Ribicoff
Burdick	Hughes	Saxbe
Byrd, Va.	Inouye	Schweiker
Byrd, W. Va.	Jackson	Scott
Cannon	Javits	Smith, Maine
Case	Jordan, N.C.	Smith, Ill.
Church	Kennedy	Sparkman
Cook	Long	Spong
Cooper	Mathias	Stennis
Cotton	McCarthy	Stevens
Cranston	McClellan	Symington
Curtis	McGee	Talmadge
Dodd	McGovern	Thurmond
Dole	McIntyre	Tower
Dominick	Metcalf	Tydings
Eagleton	Miller	Williams, N.J.
Ellender	Mondale	Williams, Del.
Ervin	Montoya	Yarborough
Fannin	Moss	Young, N. Dak.
Fong	Mundt	Young, Ohio
Fulbright	Murphy	
Goldwater	Muskie	

NAYS—0

NOT VOTING—9__

Bellmon	Hart	Magnuson
Eastland	Hatfield	Mansfield
Gravel	Jordan, Idaho	Russell

So Mr. RANDOLPH'S amendment was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COOK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

to thank the Senator from Kentucky and particularly the Senator from Vermont for raising the issue of the point of order on S. 2917.

The research I have made suggests that the State of Alaska produces a substantial amount of coal but that in the entire history of Alaska there has never been one case of black lung disease.

The net result of the amendment offered by the Senator from West Virginia (Mr. RANDOLPH) is that the coal miners of my State will be left in the economic position where they can compete and will not face the assessments previously intended by the version of S. 2917 as reported by the committee.

Mr. COOPER. Mr. President, may I have the attention of the Senator from West Virginia and the Senator from New Jersey (Mr. WILLIAMS).

A few moments ago, in consultation, I said that I would lay down my amendment No. 207 this afternoon so that it could become the pending business tomorrow, with a view to voting on it tomorrow.

Because I do not wish to delay the Senate, let me say that in checking over the amendment I want to be sure, first, that it fully accomplishes the purposes I intend. There may be some changes that will have to be made to accomplish those purposes; namely, to maintain the classification between gassy and nongassy mines.

I hope, when I get the floor tomorrow, to be able to lay down this amendment as the first order of business at tomorrow's session.

Mr. President, I just want to put the Senate on notice as to the purposes of the amendment.

Mr. BYRD of West Virginia. May I ask the Senator from Kentucky a question?

Mr. COOPER. Yes.

Mr. BYRD of West Virginia. Do I correctly understand the Senator to say that he will not lay down his amendment tonight to make it the pending business, but will lay it down tomorrow?

Mr. COOPER. I will. That is correct.

Mr. BYRD of West Virginia. I thank the Senator.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

Mr. STEVENS. Mr. President, I want

October 2, 1969

FEDERAL COAL MINE HEALTH AND
SAFETY ACT OF 1969

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* * * * *

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time.

The bill was read the third time.

* * * * *

STEVENS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Utah (Mr. BENNETT), the Senator from Arizona (Mr. FANNIN) and the Senator from Maryland (Mr. MATHIAS) are detained on official business.

If present and voting, the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. FANNIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), the Senator from Alaska (Mr. STEVENS), and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 73, nays 0, as follows:

(No. 110 Leg.)

YEAS—73

Aiken	Griffin	Pearson
Allen	Gurney	Pell
Allott	Hansen	Percy
Bellmon	Hart	Prouty
Bible	Hartke	Proxmire
Boggs	Holland	Randolph
Brooke	Hollings	Ribicoff
Byrd, Va.	Hruska	Saxbe
Byrd, W. Va.	Inouye	Schwelker
Cannon	Jackson	Scott
Case	Javits	Smith, Maine
Church	Jordan, N.C.	Sparkman
Cook	Jordan, Idaho	Spong
Cooper	Kennedy	Stennis
Cotton	Mansfield	Symington
Curtis	McGee	Talmadge
Dodd	Metcalf	Tower
Dominick	Miller	Tydings
Eagleton	Mondale	Williams, N.J.
Eastland	Moss	Williams, Del.
Ellender	Mundt	Yarborough
Fong	Muskie	Young, N. Dak.
Fulbright	Nelson	Young, Ohio
Goldwater	Packwood	
Goodell	Pastore	

NAYS—0

NOT VOTING—27

Anderson	Gore	McClellan
Baker	Gravel	McGovern
Bayh	Harris	McIntyre
Bennett	Hatfield	Montoya
Burdick	Hughes	Murphy
Cranston	Long	Russell
Dole	Magnuson	Smith, Ill.
Ervin	Mathias	Stevens
Fannin	McCarthy	Thurmond

So the bill (S. 2917) was passed, as follows:

S. 2917

An act 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 AND PURPOSE

Sec. 2. Congress declares that—

(1) 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;

(2) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal mines cause grief and suffering to the miners and to their families;

(3) 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 prevent occupational diseases originating in such mines;

(4) the existence of unsafe and unhealthful conditions and practices in the Nation's

coal mines is a serious impediment to the future growth of the coal mining industry and cannot be tolerated;

(5) 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;

(6) the disruption of production and the loss of income to operators and miners as a result of coal mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(7) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Surgeon General and the Secretary of the Interior to develop and promulgate improved mandatory standards to protect the health and safety of the Nation's coal miners; (2) to require that each operator of a coal mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to the States in the development and enforcement of effective State coal mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal mining industry, research and development and training programs aimed at preventing coal mine accidents and occupationally caused diseases in the industry.

MINES SUBJECT TO ACT

Sec. 3. Each coal mine, the products of which enter commerce, or the operations or products of which affect commerce, shall be subject to this Act, and each operator of such mine and every miner in such mine shall comply with the provisions of this Act and the applicable standards and regulations of the Secretary and the Surgeon General promulgated under this Act.

DEFINITIONS

Sec. 4. For the purpose of this Act, the term—

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

(2) "Surgeon General" means the Surgeon General, United States Public Health Service in the Department of Health, Education, and Welfare, or his delegate;

(3) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and 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;

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

(5) "operator" means any owner, lessee, or other person who operates, has control of, or supervises a coal mine;

(6) "agent" means any person charged with responsibility for the operation of all or part of a coal mine or the supervision of the miners in a coal mine;

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

(8) "miner" means any individual working in a coal mine;

(9) "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;

(10) "work of preparing the coal" means the breaking, crushing, sizing, cleaning,

Several Senators requested the yeas and nays on passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from North Carolina (Mr. ERVIN), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTROYA), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) are absent on official business.

I further announce that, if present and voting, the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from North Carolina (Mr. ERVIN), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTROYA), the Senator from Minnesota (Mr. MCCARTHY), and the Senator from Georgia (Mr. RUSSELL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Kansas (Mr. DOLE), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr.

washing, drying, mixing, storing, and loading of bituminous, lignite, or anthracite coal, and such other work of preparing such coal as is usually done by the operator of the coal mine;

(11) "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;

(12) "accident" includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any person; and

(13) "Panel" means the Interim Compliance Panel established by this Act.

INTERIM COMPLIANCE PANEL

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, Secretary of Commerce, the Secretary of Labor, and the Secretary of the Interior shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

(e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section 3105 of title 5 of the United States Code shall be applicable to hearing examiners appointed pursuant to this subsection.

(f) (1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to sections 102 and 206(1) of this Act. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under sections 102 and 206(1) of this Act.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

TITLE I—MANDATORY HEALTH STANDARDS FOR COAL MINES

PART A—INTERIM MANDATORY HEALTH STANDARDS FOR CONTROLLING DUST AT UNDERGROUND COAL MINES

SCOPE AND COVERAGE

SEC. 101. (a) The provisions of sections 102 and 103 of this title shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory health standards promulgated by the Secretary in accordance with health standards established by the Surgeon General for such mines to

become effective after the operative date of this title. Any orders issued in the enforcement of the provisions of this part shall be subject to review as provided in title III of this Act.

(b) Among other things, it is the purpose of this title to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of dust concentrations in the atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.

(c) (1) Within one year after the date of enactment of this Act, the Surgeon General shall develop and submit to the Secretary and the Congress recommendations as to the maximum permissible total exposure of individuals to coal mine dust during a working shift. Such recommendations shall be revised by the Surgeon General as necessary.

(2) Within three years after the date of enactment of this Act, and thereafter as needed, the Secretary shall publish as provided in subsection 105(c) of this title a schedule specifying the times within which mines shall reduce the total personal exposure to dust on a working shift to the levels recommended by the Surgeon General. Such schedule of the Secretary shall be based upon his determination of what is the minimum time necessary for these levels to be technologically feasible and the availability of equipment. The levels so specified by the Secretary shall be the dust standards applicable to coal mines under this Act.

(3) Within 6 months after the date of enactment the Surgeon General shall establish, and the Secretary shall publish, as provided in subsection 105(c) of this title proposed mandatory standards establishing maximum noise exposure levels for all coal mines.

DUST STANDARD AND RESPIRATORS

SEC. 102. (a) (1) Effective sixty days after the operative date of this title, each operator shall continuously maintain the concentrations of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 3.0 milligrams of dust per cubic meter of air, except that, where a permit for noncompliance has been issued to an operator as hereinafter provided, such operator shall continuously maintain the concentration of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 4.5 milligrams of dust per cubic meter of air, or, if a lower concentration is prescribed in such permit, at or below such lower concentration. In mining operations where the coal dust contains more than 5 per centum quartz, the dust standard shall be determined in accordance with a formula to be prescribed by the Surgeon General.

(2) Effective three years after the date of the enactment of this Act, each operator shall continuously maintain the concentrations of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 2.0 milligrams of dust per cubic meter of air, except that, where a permit for noncompliance has been issued to an operator as hereinafter provided, such operator shall continuously maintain the concentration of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 3.0 milligrams per cubic meter of air, or, if a lower concentration is prescribed in such permit, at or below such lower concentration.

(b) (1) Any operator who determines that he will be unable, using available technology, to comply with the 3.0 milligram standard established by subsection (a) (1) of this section, or the 2.0 milligram standard established by subsection (a) (2) of this section, upon the effective date of such standard, may, no later than sixty days prior to the

effective date of the standard with respect to which such application is filed, file with the Panel an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the standard established by subsection (a) (1) of this section, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue to the operator a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the standard established by subsection (a) (2) of this section, the application satisfies the requirements of subsection (c) of this section, and the Panel, after all interested persons have been notified and given an opportunity for a hearing, determines that the applicant will be unable to comply with such 2.0 milligram standard, the Panel shall issue to the operator a permit for noncompliance. Any such permit so issued shall entitle the permittee during a period which shall expire at a date fixed by the Panel, but in no event later than twelve months after the effective date of such standard, to maintain continuously the concentrations of respirable dust in the atmosphere in each active working place during each shift to which the extension applies at a level specified by the Panel, which shall be at the lowest level which the application shows the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

(2) (A) Except as provided in paragraph (3) of this subsection, in any case in which an operator, who has been issued a permit (including a renewal permit) for noncompliance under this section, determines not more than ninety days prior to the expiration date of such permit, that he still is unable to comply with the 3.0 milligram standard established by subsection (a) (1) of this section or the 2.0 milligram standard established by subsection (a) (2) of this section, he may file with the Panel an application for renewal of the permit. Upon receipt of such application for renewal of a permit, the Panel, if it determines, after all interested persons have been notified and given an opportunity for a hearing, that the application is in compliance with the provisions of subsection (c) of this section, and that the applicant will be unable to comply with such standard, may renew the permit for a period not exceeding six months. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein.

(B) Such renewal permit shall entitle the permittee, during the period of its effectiveness, to maintain continuously during each shift the concentrations of respirable dust in the atmosphere at any active working place to which the renewal permit applies at the lowest level which the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, as determined by the Panel, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

(3) Except to the extent otherwise provided in subsection (k) of this section, no permit or renewal permit for noncompliance shall entitle any operator to an extension of time beyond thirty-six months from the date of enactment of this Act to comply with the 3.0 milligram standard established by subsection (a) (1) of this section, or be-

yond seventy-two months from the date of enactment of this Act to comply with 2.0 milligram standard established by subsection (a) (2) of this section.

(c) Any application for an initial or renewal permit for noncompliance made pursuant to this section shall contain—

(1) a representation by the applicant and the engineer conducting the survey referred to in paragraph (2) of this subsection that the applicant is unable to comply with the dust standard applicable under subsection (a) (1) or (a) (2) of this section at specified active working places because the technology for reducing such dust concentrations at such place is not available, or because of the lack of other effective control techniques or methods, or because of any combination of such reasons;

(2) an identification of the active working places in such mine for which the permit is requested; the results of an engineering survey by a certified engineer of the dust conditions of each active working place of the mine with respect to which such application is filed and the ability to reduce the dust concentrations to the level required to be maintained in such working place under this section, together with a copy of such engineering survey; a description of the ventilation system of the mine and its capacity; the quantity of air regularly 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 of each such active working place; the method of mining; the amount and pressure of the water, if any, reaching the working face; the number, location, and type of sprays, if any; actions taken to reduce the dust concentrations; and such other information as the Panel may require; and

(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable dust standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

(d) The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of underground coal mines for which permits for noncompliance have been granted under this section for the purpose of obtaining compliance with the provisions of this title. The Secretary shall also make spot inspections of all active workings in underground mines to insure compliance.

(e) Any operator or representative of miners aggrieved by a final decision of the Panel with respect to an application for an initial or renewed permit for noncompliance may file a petition for review of such decision in accordance with the provisions of section 304 of this Act:

(f) Each operator shall take samples of the atmosphere of the active workings of the mine to determine the atmospheric concentrations of respirable dust. Such samples shall be taken by any device approved by the Secretary and in accordance with the methods and at locations and at intervals and in a manner prescribed by him. Such samples shall be transmitted to the Secretary, in a manner prescribed by the Secretary, and analyzed and recorded by him in a manner to assure that the dust levels established by, or permitted under, this section are not exceeded and to enable him to cause an immediate inspection of any mine whenever such samples indicate that the concentration of dust therein exceeds such level. If, upon the basis of such samples or additional samples taken during an inspection, the Secretary or his authorized representative finds that the concentrations of respirable dust in any active workings in a mine exceed the level required to be maintained under this section, the Secretary or his representative shall issue a notice to the operator or his agent, a copy of which shall be transmitted

to the Panel and to a representative of the miners in the mine, fixing a reasonable time to take corrective action, which time shall not exceed seventy-two hours, and the operator of the mine shall take corrective action immediately in order to bring such concentrations at or below the level required to be maintained under this section. If, upon the expiration of such time, the Secretary or his authorized representative finds that such action has not been completed and the violation has not been abated, he shall issue an order requiring that while such corrective action is underway, no work, other than that necessary to take such action and to obtain valid samples of the atmosphere of the active workings of the mine to determine the atmospheric concentrations of respirable dust, shall be permitted until the dust concentrations in such mine have been reduced to or below such required level. As soon as possible after an order is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person or team of persons, to the extent such persons are available, determined by him to be knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentrations. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the coal mine.

(g) The dust resulting from drilling in rock shall be controlled by the use and maintenance of dust collectors, by water or water with a wetting agent, or by ventilation or other means approved by the Secretary. Miners who are engaged in drilling in rock and exposed for short periods to inhalation hazards from gas, dust, fumes, or mist shall wear respiratory equipment. When the exposure is for prolonged periods, other measures to protect such miners or to reduce the hazard shall be taken.

(h) Respirators shall be worn by all persons for protection against exposures to concentrations of dust in excess of the levels required to be maintained under this section. Use of respirators shall not be substituted for environmental control measures. Each mine shall maintain a supply of respirators adequate to comply with the provisions of this section.

(i) References to respirators, dust collectors, or respiratory equipment in this section mean respirators, dust collectors, and equipment approved by the Secretary in accordance with health standards established by the Surgeon General.

(j) References to specific concentrations of dust in this title mean concentrations of respirable dust if measured with an MRE instrument or equivalent concentrations of dust if measured with another device approved by the Secretary. As used in this title, 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.

(k) At any time within two years following the date on which the 2.0 milligram standard established by subsection (a) (2) of this section becomes effective, the Secretary may, after having given the Congress advance written notice not less than one hundred and twenty days prior thereto and in accordance with health standards established by the Surgeon General, extend the time within which all underground coal mines are required to comply with such standard, if the Secretary determines that the technology or other effective control techniques or methods for reducing such dust concentrations to the level required by such standard is not available. Such extension shall be effective at the end of the first period of

sixty calendar days of continuous session of Congress after the date on which a written plan of such extension is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that that House does not favor the extension plan.

(1) For the purpose of subsection (k) of this section—

(1) the continuity of a session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

(m) Any extension plan transmitted to the Congress pursuant to this section shall be received and acted on by the Congress in the same manner as that provided for reorganization plans under chapter 9 of title 5 of the United States Code.

(n) The Secretary and the Surgeon General shall, from time to time, but in no event less than twice annually, submit a written report to the Congress setting forth the progress made toward achieving absolute compliance with the standards established by subsection (a) of this section, and an estimate of the time as to when such compliance can be achieved.

(o) The Secretary or his authorized representative may require a greater quantity of air than the minimum required under section 204(b) of this Act when he finds it necessary to protect the health of miners in a coal mine. Where line brattice or other approved devices are installed, the space between such device and the rib shall, in addition to the requirements of section 204 (c) (2) of this Act, be adequate to permit the flow of sufficient volume of air to reduce the concentrations of respirable dust at each active working face.

MEDICAL EXAMINATIONS

Sec. 103. (a) The operator of an underground coal mine shall establish a program approved by the Surgeon General under which each miner working in such underground coal mine will be given, at least annually, beginning six months after the operative date of this title, a chest roentgenogram and such other tests as may be required by the Surgeon General. The films shall be taken in a manner to be prescribed by the Surgeon General and shall be read and classified by the Surgeon General and the results of each reading on each such miner shall be available to the Surgeon General and, with the consent of the miner, to his physician and other appropriate persons. The Surgeon General may also take such examinations and tests where appropriate and may cooperate with the operator in taking of such examinations and tests on a reimbursable basis. Each operator shall cooperate with the Surgeon General in making arrangements for each miner in such mine to be given such other medical examinations as the Surgeon General determines necessary. The results of any such examination shall be submitted in the same manner as the aforementioned films. In no case, however, shall any such miner be required to have a chest roentgenogram or examination under this section without his consent.

(b) (1) On and after the effective date of the 3.0 milligram standard established by section 102(a) (1) of this title, any miner who, in the judgment of the Surgeon General based upon such reading or medical examinations, shows evidence of the development of the 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, in any working section or other area of the mine, where the mine atmosphere contains concentrations of respirable dust of not more than 2.0 milligrams of dust per cubic meter of air.

(2) On and after the effective date of the 2.0 milligram standard established by section 102(a)(2) of this title, any miner so showing such evidence of the development of pneumoconiosis shall be assigned in accordance with the provisions of paragraph (1) of this subsection to any working section or other area of the mine where the mine atmosphere contains concentrations of respirable dust at a level, below 2.0 milligrams of dust per meter of air, determined by the Secretary, in accordance with health standards established by the Surgeon General, to be necessary to prevent further development of such disease.

(3) Any miner assigned to work in any other working section or other area of the mine pursuant to paragraphs (1) or (2) of this subsection shall receive for such work the regular rate of pay received by other miners performing comparable work in such section or area, or the regular rate of pay received by such miner immediately prior to his assignment, whichever is the greater.

PART B—PROMULGATION OF MANDATORY HEALTH STANDARDS FOR ALL COAL MINERS

HEALTH STANDARDS: REVIEW

SEC. 105. (a) In accordance with health standards established by the Surgeon General from time to time and the procedures set forth in this section, the Secretary shall promulgate mandatory health standards for the protection of life and the prevention of occupational diseases in coal mines.

(b) In the development of such standards, the Surgeon General shall consult with other interested Federal agencies, representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, the State, such advisory committees as he may appoint, and where appropriate, foreign countries. In addition to the attainment of the highest degree of health and protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other health regulations.

(c) The Secretary shall from time to time publish any such proposed standards and the schedule provided for in subsection 101(c)(2) of this title 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 (c) of this section, the Secretary may, upon the expiration of such period and after consideration of all relevant matter presented, promulgate such standards or schedule with such modifications as he and the Surgeon General may deem appropriate. Not later than twelve months after the date of enactment of the Act, the Secretary, in accordance with health standards established by the Surgeon General, shall propose mandatory health standards for surface coal mines and surface work areas of underground coal mines and shall publish such proposed standards in the Federal Register.

(d) On or before the last day of any period fixed for the submission of written data or comments under subsection (c) of this section, any interested person may file with the Secretary written objections to a proposed standard or schedule, stating the grounds therefor and requesting a public hearing by the Secretary 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 or provisions of the schedule to which objections have been filed and a hearing requested, and shall review such standards, schedules, and objections in accordance with subsection (a) of this section.

(e) Promptly after any such notice is published in the Federal Register by the Secre-

tary under subsection (d) of this section, the Secretary shall issue notice of and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary shall make findings of fact and may promulgate the mandatory standards with such modifications, or take such other action, as he and the Surgeon General deem appropriate. All such findings shall be public.

(f) Any mandatory standard or schedule promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(g) all health standards established by the Surgeon General pursuant to this title shall, at the time of their transmission by him to the Secretary for disposition by him in accordance with the provisions of this title, be published in the Federal Register.

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tion 202(b) of this Act at an annual rate of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970, \$25,000,000 for the fiscal year ending June 30, 1971, and \$30,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Surgeon General such sums as may be necessary to carry out his responsibilities under this section. Such sums shall remain available until expended.

TRAINING AND EDUCATION

SEC. 402. (a) The Secretary shall expand programs for the education and training of coal mine operators, agents thereof and miners in—

- (1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines, and
- (2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for accurately detecting gases.

(b) The Secretary shall, to the greatest extent possible, provide technical assistance to each operator of a coal mine in meeting the requirements of this Act and in further improving the health and safety conditions and practices at such mine.

STATE PLANS

SEC. 403. (a) In order to assist the States where coal mining takes place in developing and enforcing effective health and safety laws and regulations applicable to such mines consistent with the provisions of section 407 of this Act and to promote Federal State coordination and cooperation in improving the health and safety conditions in the Nation's coal mines, the Secretary shall approve any plan submitted under this section by such State, through its official coal mine inspection or safety agency, which—

(1) designates such State coal mine inspection or safety agency as the sole agency responsible for administering the plan throughout the State and contains satisfactory evidence that such agency will have the authority to carry out the plan;

(2) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make mine inspections within such State;

(3) sets forth the plans, policies, and methods to be followed in carrying out the plan;

(4) provides for the extension and improvement of coal mine health and safety in the State, and that no advance notice of an inspection will be provided any operator or agent of an operator of a coal mine;

(5) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the State under this section;

(6) provides that the designated agency will make such reports to the Secretary, in such form and containing such information, as the Secretary may from time to time require; and

(7) meets additional conditions which the Secretary may prescribe by rule in furtherance of and consistent with the purposes of this section.

(b) The Secretary shall approve any State plan or any modification thereof which complies with the provisions of subsection (a) 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 a hearing.

(c) Whenever the Secretary, after reasonable notice and opportunity for a hearing, 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 Act, the Secretary shall by decision incorporating his findings therein

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TITLE IV—ADMINISTRATION

RESEARCH

SEC. 401. (a) The Secretary and the Surgeon General shall conduct such studies, research, experiments, and demonstrations as may be appropriate—

(1) to improve working conditions and practices, and to prevent accidents and occupational diseases originating in the coal mining industry;

(2) after an accident, to recover persons in a coal mine and to recover the mine;

(3) to develop new or improved means and methods of communication from the surface to the underground portion of the mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine;

(5) to develop new and improved sources of power for use underground, including diesel power, which will provide greater safety; and

(6) to determine the improvement to health or safety that illumination will produce and to develop such methods of illumination by permissible lighting.

(b) The Surgeon General shall conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with or around the products of coal mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

(c) The Secretary is authorized to grant an operator, on a mine-by-mine basis, an exception to any of the provisions of this Act for the purpose of granting accredited engineering institutions the opportunity for experimenting with new techniques and new equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners.

(d) The Surgeon General is authorized to make grants to any public or private agencies, institutions and organizations, and operators or individuals for research and experiments to develop effective respiratory devices and other devices and equipment which will carry out the purposes of this Act.

(e) There is authorized to be appropriated to the Secretary of the Interior such sums as will be necessary to carry out his responsibilities under this section and sec-

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.

(d) Any State aggrieved by the Secretary's decision under subsection (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action 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 Secretary made his decision, as provided in section 2112, title 28, United States Code. The court shall hear such appeal on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the Secretary's decision, unless the court so orders.

(e) The Secretary is authorized to make grants to any State where there is an approved State plan (1) to carry out the plan, including the cost of training State inspectors; and (2) to assist the States in planning and implementing other programs for the advancement of health and safety in coal mines. Such grants shall be designed to supplement, not supplant, State funds in these areas. The Secretary shall cooperate with such State in carrying out the plan and shall, as appropriate, develop facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall also cooperate with such State in establishing a system by which State and Federal inspection reports of coal mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

(f) The amount granted to any State for a fiscal year under this section shall not exceed 80 per centum of the sum expended by such State in such year for carrying out the State coal mine health and safety enforcement program.

(g) There is authorized to be appropriated \$3,000,000 for fiscal year 1970 and \$5,000,000 annually in each succeeding fiscal year to carry out the provisions of this section which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved plan. The Secretary shall coordinate with the Secretaries of Labor and Health, Education, and Welfare in making grants under this section.

RELATED CONTRACTS AND GRANTS

Sec. 404. In carrying out the provisions of sections 201(b), 401, and 402 of this Act, the Secretary and the Surgeon General 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 or by education. Persons appointed to assist such representatives in the taking of samples of dust concentrations for the purpose of enforcing title I of this Act shall be qualified by training or experience. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Sec-

retary or to persons appointed to assist such representatives, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall 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, operators, and representatives of employees 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.

ADVISORY COMMITTEE

Sec. 406. (a) (1) The Secretary shall appoint an advisory committee on coal mine safety research composed of—

(A) the Director of the Office of Science and Technology or his delegate, with the consent of the Director;

(B) the Director of the National Bureau of Standards, Department of Commerce, or his delegate, with the consent of the Director;

(C) the Director of the National Science Foundation or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary may appoint who are knowledgeable in the field of coal mine safety research.

The Secretary shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary on matters involving or relating to coal mine safety research. The Secretary shall consult with and consider the recommendations of such committee in the conduct of such research, the making of any grant, and the entering into of contracts for research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(b) (1) The Surgeon General shall appoint an advisory committee on coal mine health research composed of—

(A) the Director, Bureau of Mines, or his delegate, with the consent of the Director;

(B) the Director of the National Science Foundation or his delegate, with the consent of the Director;

(C) the Director of the National Institutes of Health or his delegate, with the consent of the Director; and

(D) such other persons as the Surgeon General may appoint who are knowledgeable in the field of coal mine health research. The Surgeon General shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Surgeon General on matters involving or relating to coal mine health research. The Surgeon General shall consult with and consider the recommendations of such committee in the conduct of such research, the making of any grant, and the entering into of contracts for research.

(3) The chairman of the committee and a majority of the persons appointed by the Surgeon General pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(c) The Secretary or the Surgeon General may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this Act. The Secretary or the Surgeon General, as the case may be, shall appoint the chairman of each such committee, who shall be an individual who has no economic interests in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government. A majority of the members of any such advisory committee appointed pursuant to this subsection shall be composed of individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(d) 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 or the Surgeon General, as the case may be, 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.

EFFECT ON STATE LAWS

Sec. 407. (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 established or promulgated thereunder, except insofar as such State law is in conflict with this Act or with any order issued or standard established or 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 provides for more stringent health and safety standards applicable to coal mines than do the provisions of this Act or any order issued or standard established or 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 established or 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. 408. Except as otherwise provided in sections 201 (d), 303 and 308(a) of this Act, 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. 409. The Secretary, the Surgeon General, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provisions of this Act.

ECONOMIC ASSISTANCE

Sec. 410. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (4) a new paragraph as follows:

"(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern operating a coal mine in effecting additions to or alterations in the equipment, facilities, or methods of operation of such mine to requirements imposed by the Federal Coal Mine Health and Safety Act of 1969, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of such Act is amended by inserting "or (5)" after "paragraph (3)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(5)," after "7(b)(4)."

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(5) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

TITLE V—INTERIM EMERGENCY COAL MINE HEALTH DISABILITY BENEFITS

PURPOSE

Sec. 501. Based on a recent study conducted by the United States Public Health Service, Congress finds and declares that there are a significant number of inactive coal miners living today who are totally disabled and unable to be gainfully employed due to the development of complicated pneumoconiosis while working in one or more of the Nation's coal mines; that there also are a number of surviving widows and children of coal miners whose death was attributable to this disease; that few States provide benefits for disability from this disease to inactive coal miners and their dependents; and that, in order to give the States time to enact laws to provide such benefits or to improve those laws where token or minimal benefits are provided, it is, therefore, the purpose of this title to provide, on a temporary and limited basis, interim emergency health disability benefits, in cooperation with the States, to any coal miner who is totally disabled and unable to be gainfully employed on the date of enactment of this Act due to complicated pneumoconiosis which arises out of, or in the course of, his employment in one or more of the Nation's coal mines; to the widows and children of any coal miner who, at the time of his death, was totally disabled and unable to be gainfully employed due to complicated pneumoconiosis arising out of, or in the course of, such employment; and to develop further and detailed information and data on the extent to which past, present, and future coal miners are or will be totally disabled by complicated pneumoconiosis and unable to be gainfully employed, on the extent to which assistance to such miners and their dependents is needed, and the most effective method for assuring such assistance.

INTERIM DISABILITY BENEFIT STANDARDS

Sec. 502. The Secretary of Health, Education and Welfare (hereinafter referred to in this title as "the Secretary") shall develop and promulgate interim disability benefit standards governing the determination of persons eligible to receive emergency coal mine health disability benefits under this title and the methods and procedures to be used in disbursing such benefits to such persons. Such standards shall take into consideration the length of employment in coal mines considered sufficient to establish a claim for such benefits; reasonable and equitable means, methods, and procedures for filing and establishing proof of dis-

ability, consistent with the purpose of this title, by the coal miner or, as appropriate, his survivor to enable such person to receive benefits as soon as possible after enactment of this Act; and such other matters as the Secretary deems appropriate. Such standards shall be effective upon publication in the Federal Register, unless the Secretary prescribes a later date which date shall not be more than ninety days after the operative date of this title. The provisions of section 553 of title 5 of the United States Code shall apply to the promulgation of such standards.

ASSISTANCE TO STATES

Sec. 503. (a) Upon publication of the interim disability standards by the Secretary under this title, the Secretary shall enter into agreements with any State pursuant to which he shall provide financial assistance, in accordance with the provisions of this title, to the States to carry out the purpose of this title, and the States shall receive and adjudicate, in accordance with such standards, claims for interim emergency coal mine health disability benefits from any eligible person who is a resident of such State. Such State shall also agree to pay one-half of such benefits during the fiscal years ending June 30, 1972, and June 30, 1973. Such agreements shall, in addition to such other conditions as the Secretary deems appropriate, include adequate assurances that the State shall provide such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the State under this section; and that the State will make such reports to the Secretary; in such form and containing such information, as the Secretary may from time to time require.

(b) Beginning after the effective date of any agreement entered into with a State under this section and ending on June 30, 1973, the Secretary, subject to the provisions of this section shall, from sums available therefor for any fiscal year, make grants to such State equal to the estimated sums needed by such State to pay all such benefits to eligible persons through June 30, 1971, and to pay one-half of such benefits to eligible persons during the fiscal years ending June 30, 1972, and June 30, 1973. No benefits shall be paid under this section to an eligible person if the State, after the enactment of this Act, reduces the benefits for disability caused by complicated pneumoconiosis to which such person is otherwise entitled under such State's laws or regulations. Benefits paid to an eligible person under this section shall be reduced by an amount equal to any payment made to such person under any other provision of law for a disability directly caused by complicated pneumoconiosis arising out of, or in the course of, employment in one or more of the Nation's coal mines.

(c) Interim emergency coal mine health disability benefits shall be paid under this section to persons determined by the State pursuant to such standards to be eligible to receive such benefits. Such benefits shall be paid as soon as possible after a claim is filed therefor and eligibility determined, except that such benefits shall terminate when such person is no longer eligible, or on June 30, 1973, whichever date is first. The amount of benefits payable to an eligible person under this section shall be determined as follows:

(1) In the case of total disability, such eligible person shall be paid benefits during the period of such disability up to a rate equal to 50 per centum of the minimum monthly payment to which an employee in grade GS-2 with one or more dependents, who is totally disabled, is entitled under the provisions of sections 8105 and 8110 of title 5, United States Code;

(2) In the case of the death of a miner resulting from such disease, an eligible widow

shall be paid benefits at the rate the deceased miner would be entitled to receive such benefits if such miner were totally disabled until such widow dies or remarries; and

(3) In the case of any eligible person entitled to benefits under clauses (1) or (2) of this subsection who has one or more dependents, such benefits shall be increased at a rate of 50 per centum of the benefits to which such person is entitled under clauses (1) or (2) of this subsection, if such person has one dependent, 75 per centum, if such person has two dependents, and 100 per centum, if such person has three dependents; except that such increased benefits for a child, brother, sister, or grandchild, shall cease if such dependent dies or marries or becomes eighteen years of age, or if over age eighteen and incapable of self-support becomes capable of self-support.

(d) There is hereby authorized to be appropriated from funds in the Treasury for the fiscal year ending June 30, 1970, not to exceed \$10,000,000, and for the fiscal year ending June 30, 1971, not to exceed \$30,000,000, and for the fiscal years ending June 30, 1972, and June 30, 1973, not to exceed \$15,000,000 annually for the purposes of this title. If the amounts appropriated for any fiscal year are less than the amounts necessary to enable the Secretary to make the full amount of grants to all States which have entered into agreements with him under this title, the grants to each State for such fiscal year, and the payments to eligible persons required to be made during such fiscal year under such agreements, shall be proportionately reduced.

STUDY

Sec. 504. The Secretary shall immediately undertake a study to determine the extent to which coal miners are or will be totally disabled due to complicated pneumoconiosis developed during the course of employment in the Nation's coal mines and unable to be gainfully employed; the extent to which the States provide benefits to active and inactive coal miners and their dependents for such disability; the adequacy of such benefits, the need for, and the desirability of, providing any Federal, State, or private assistance for such disability; the need for, and the desirability of, extending the provisions of this title for persons eligible for benefits under this title; and such other facts which would be helpful to the Congress following completion of this study, as the Secretary deems appropriate. In carrying out this study, the Secretary shall consult with, and, to the greatest extent possible, obtain information and comments from, the Secretary of the Interior, the Secretary of Labor, and other interested Federal agencies, the States, operators, representative of the miners, insurance representatives, and other interested persons. The Secretary shall submit a report on such study, together with such recommendations, including appropriate legislative recommendations, as he deems appropriate, to the Congress not later than October 1, 1970.

TITLE VI—MISCELLANEOUS

JURISDICTION; LIMITATION

Sec. 601. In any proceeding in which the validity of any interim mandatory health or safety standard set forth in this Act is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

OPERATIVE DATE AND REPEAL

Sec. 602. The provisions of titles I through III and title V 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. 603. 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. 604. Within one hundred and twenty days following the convening of each session of Congress, the Secretary and the Surgeon General shall submit through the President to the Congress separate annual reports 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 either deems appropriate.

Mr. WILLIAMS of New Jersey. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay it on the table was agreed to.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized, in the engrossment of the bill, to correct any technical or clerical errors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS of New Jersey. I also ask unanimous consent that Senators may add remarks for the Record within 5 days.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, by a unanimous vote, the Members of the U.S. Senate have committed themselves to improve the health and safety of the coal miners of the United States. As one of the Senators representing West Virginia, the State with the greatest tonnage of coal produced annually and the one with the largest number of miners employed in the production of that coal, I wish to express my personal and official appreciation to my colleagues in the Senate, and, especially, to my fellow members of the Committee on Labor and Public Welfare. I commend the able chairman of the Committee on Labor and Public Welfare (Mr. YARBOROUGH) and I am grateful beyond expression of words for the attention given to this vital subject by our tireless and diligent colleague from New Jersey (Mr. WILLIAMS), the chairman of the Subcommittee on Labor, who has spent many, many hours, days, and weeks managing this vital legislation in subcommittee, in full committee, and in this forum. He had excellent cooperation by his majority colleagues.

My words of commendation for him go equally to the very able Senator from New York (Mr. JAVITS), the ranking minority member of both the Committee on Labor and Public Welfare and of the Subcommittee on Labor, and to his colleagues on the minority side.

We wrote, within the subcommittee and the committee, and now we have

successfully completed in the Senate itself, a bill which I believe will enhance very much the health and safety of the Nation's coal miners. It is legislation which, although very stringent and very strict in its provisions, and likely to be very expensive to administer and to comply with, should be effective and workable. This is very important not only to those who operate the mines and to the workers in the mines, but also to people generally in the United States.

This measure is in no wise a timid contribution to the strengthening of industrial safety. It is a commitment, as I stated in my first sentence—a commitment by this Congress to a job that needed to be done. It is my hope, that, in conference with the House of Representatives, after a companion measure has been passed there, we can resolve as quickly as possible the differences between the measures, and place upon the desk of the President of the United States legislation important not only to miners and operators, but to the well being of the consuming public of the United States as well.

I conclude by associating myself with Chairman WILLIAMS' appropriate and thoroughly justified words of appreciation and commendation for the able and dedicated staffs of the Subcommittee on Labor and of the full Committee on Labor and Public Welfare. They performed admirably under stress and with loyalty to the cause of better health and safety for coal miners—a cause for which we were all working with devotion. I likewise commend the members of committee members' staffs for their very real assistance.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I shall just be 30 seconds. I appreciate everything that the Senator from West Virginia has just said about me. I know that the Senator from New Jersey (Mr. WILLIAMS) feels the same way. We could not have accomplished this effort without the work of the Senators from the coal-mining States, the Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD), the Senator from Kentucky (Mr. COOPER), and his tremendous fight for the operators of the nongassy mines in the mountains of eastern Kentucky, the Virginia Senators, and others who had the expertise. Senator WILLIAMS and I were the objective fellows who found the facts and worked out a bill, but I wanted at this point to pay my tribute to the Senators from the coal-mining States.

Mr. YARBOROUGH. Mr. President, I want to thank the distinguished Senator from New Jersey for his leadership on this bill. I am proud to report that this is the second safety bill, to protect American labor, to come out of the Labor Subcommittee this year, under the chairmanship of the distinguished Senator from New Jersey (Mr. WILLIAMS)—first the construction safety bill, and now the mine safety bill. These are two notable productions of that subcommittee. Despite the fact that some people say Congress is not moving, Mr. President, I say that the Senate is moving, and we

have gotten through two of the most important safety bills for the benefit of workers in this country in many years.

The passage of this bill has been accomplished with the cooperation, as has been stated, of the Senator from New York (Mr. JAVITS), the ranking minority member of the committee, and the Senators from the coal-producing States, notably the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Pennsylvania (Mr. SCHWEIKER), who coming as he does from the coal-mining State of Pennsylvania, was very active.

Mr. President, in the midst of our deliberations on this bill, word was spread through the news media to the effect that the people, the workers in the mines and the coal producers, had lost interest, and nobody wanted the bill. Nevertheless, the committee and the subcommittee, and then the Senate, moved ahead with this measure to protect these coal miners from black lung and other such ailments. I wish to thank the members of the subcommittee and every member of my Committee on Labor and Public Welfare for their excellent efforts. Week after week, while this matter was under consideration, we always had a quorum present.

Several Senators addressed the Chair.

Mr. BYRD of West Virginia. Mr. President, I wish to compliment the able Senator from New Jersey (Mr. WILLIAMS) on the splendid and effective manner in which he has managed the coal mine safety bill, and to express my appreciation for the diligence and the dedicated effort that he has put into the tedious and tiring deliberations on this measure over a long period of many months. At all times he has been very sympathetic, patient, and understanding. He has worked very hard.

I wish also to commend the able Senator from New York (Mr. JAVITS) on the very fine and sincere work that he has contributed. He truly has been most helpful and cooperative, and very effective. I commend all the other Senators who have worked so long on this very difficult measure. Especially, I would commend my colleague (Mr. RANDOLPH) who has lived so closely with this legislation from the beginning. He has certainly given his best.

My part in the measure, Mr. President, was confined almost entirely to the compensation amendment, which the Senate adopted on Tuesday by a vote of 91 to 0. I am not a member of the committee, but I did cosponsor that amendment with Mr. RANDOLPH and others, and I feel that my efforts in behalf of that amendment were of some assistance. I am happy, again, Mr. President, to commend the Senators who have worked so long and so hard on this very difficult and important bill, especially those on the committee.

Mr. SPONG. Mr. President, as a Senator from a coal-producing State, I would like to associate myself with the remarks of commendation made regarding the Senator from New Jersey (Mr. WILLIAMS) and the Senator from New York (Mr. JAVITS) for their efforts resulting in the unanimous adoption of a Coal Mine Health and Safety Act. In behalf of the coal miners of Virginia, I thank the floor

managers of the bill and the other Senators who have labored so long on this legislation.

I have had recent opportunity to talk with Virginia miners—some of them victims of accidents, others of lung disease resulting from their occupation.

The Senate has taken a step today toward improving the conditions for safety in the mines and reducing the chances for contraction of pneumoconiosis by workers in the coal mines.

Mr. MANSFIELD. Mr. President, while I was unable to attend the opening sessions of the debate on this measure which is designed to up-date our coal mine industry and provide miners with long-needed protection, it was with great pleasure that I witnessed the highly thoughtful debate today. The overwhelming passage of this measure represents a splendid achievement for the miners of our Nation.

Much of the credit, I must say, belongs to the distinguished Senator from New Jersey (Mr. WILLIAMS). All of us appreciate the long hours he devoted to preparing this measure both in committee and while it was pending before the Senate. The high caliber of that preparation was exhibited in the wide acceptance of the proposal. We are grateful.

Our thanks go also to the distinguished senior Senator from New York (Mr. JAVITS) who joined constructively and with characteristic cooperation to assure this fine success. Other Senators played vital roles, as well. Noteworthy was the contribution of the distinguished Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD): Representing a great mining State they understand well the grave problems of unsafe mines and mining operations. They contributed immensely to the discussion.

Of course, the distinguished senior Senator from Kentucky (Mr. COOPER) must be singled out for his contribution. Though his views differed to some extent with some features of the proposal, he urged his position with great advocacy and the deep sincerity which was always welcome. The same may be said for his colleague, the distinguished junior Senator from Kentucky (Mr. COOK). The Senator from Vermont (Mr. PROUTY) also deserves our gratitude for his contribution to the discussion and for cooperating to assure final disposition with such efficiency.

Finally, I wish to thank all Members of the Senate for their cooperation. I think each of us may take great pride in the passage of this measure. We have gone on record unequivocally in support of this great issue.

Mr. KENNEDY. Mr. President, I congratulate the Senator from New Jersey (Mr. WILLIAMS) for his outstanding leadership as he has led this important legislation through to passage today. His activities, and the final result today, are very impressive. I commend, as well, the Senator from New York (Mr. JAVITS), the Senator from Kentucky (Mr. COOPER), the Senator from Vermont (Mr. PROUTY), and the Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD).

* * * * *

(Excerpts Only)

91ST CONGRESS
1ST SESSION

S. 2917

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 1969

Ordered to be printed as passed

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Coal Mine
4 Health and Safety Act of 1969".

5 FINDINGS AND PURPOSE

6 SEC. 2. Congress declares that—

7 (1) the first priority and concern of all in the coal
8 mining industry must be the health and safety of its
9 most precious resource—the miner;
10 (2) deaths and serious injuries from unsafe and

1 unhealthful conditions and practices in the coal mines
2 cause grief and suffering to the miners and to their
3 families;

4 (3) there is an urgent need to provide more effec-
5 tive means and measures for improving the working
6 conditions and practices in the Nation's coal mines in
7 order to prevent death and serious physical harm, and
8 in order to prevent occupational diseases originating in
9 such mines;

10 (4) the existence of unsafe and unhealthful con-
11 ditions and practices in the Nation's coal mines is a
12 serious impediment to the future growth of the coal
13 mining industry and cannot be tolerated;

14 (5) the operators of such mines with the assistance
15 of the miners have the primary responsibility to prevent
16 the existence of such conditions and practices in such
17 mines;

18 (6) the disruption of production and the loss of
19 income to operators and miners as a result of coal
20 mine accidents or occupationally caused diseases unduly
21 impedes and burdens commerce; and

22 (7) it is the purpose of this Act (1) to establish
23 interim mandatory health and safety standards and to
24 direct the Surgeon General and the Secretary of the In-
25 terior to develop and promulgate improved mandatory

1 standards to protect the health and safety of the Na-
2 tion's coal miners; (2) to require that each operator of
3 a coal mine and every miner in such mine comply with
4 such standards; (3) to cooperate with, and provide as-
5 sistance to, the States in the development and enforce-
6 ment of effective State coal mine health and safety pro-
7 grams; and (4) to improve and expand, in cooperation
8 with the States and the coal mining industry, research
9 and development and training programs aimed at pre-
10 venting coal mine accidents and occupationally caused
11 diseases in the industry.

12 MINES SUBJECT TO ACT

13 SEC. 3. Each coal mine, the products of which enter
14 commerce, or the operations or products of which affect com-
15 merce, shall be subject to this Act, and each operator of such
16 mine and every miner in such mine shall comply with the
17 provisions of this Act and the applicable standards and
18 regulations of the Secretary and the Surgeon General promul-
19 gated under this Act.

20 DEFINITIONS

21 SEC. 4. For the purpose of this Act, the term—

22 (1) "Secretary" means the Secretary of the In-
23 terior or his delegate;

24 (2) "Surgeon General" means the Surgeon Gen-

1 eral, United State Public Health Service in the Depart-
2 ment of Health, Education, and Welfare, or his delegate;

3 (3) "commerce" means trade, traffic, commerce,
4 transportation, or communication among the several
5 States, or between a place in a State and any place out-
6 side thereof, or within the District of Columbia or a
7 possession of the United States, or between points in
8 the same State but through a point outside thereof;

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

12 (5) "operator" means any owner, lessee, or other
13 person who operates, has control of, or supervises a coal
14 mine;

15 (6) "agent" means any person charged with re-
16 sponsibility for the operation of all or part of a coal
17 mine or the supervision of the miners in a coal mine;

18 (7) "person" means any individual, partnership,
19 association, corporation, firm, subsidiary of a corpora-
20 tion, or other organization;

21 (8) "miner" means any individual working in a
22 coal mine;

23 (9) "coal mine" means an area of land and all

1 structures, facilities, machinery, tools, equipment, shafts,
2 slopes, tunnels, excavations, and other property, real or
3 personal, placed upon, under, or above the surface of
4 such land by any person, used or to be used in, or
5 resulting from, the work of extracting in such area bi-
6 tuminous coal, lignite, or anthracite from its natural de-
7 posits in the earth by any means or method, and the
8 work of preparing the coal so extracted, and includes
9 custom coal preparation facilities;

10 (10) "work of preparing the coal" means the break-
11 ing, crushing, sizing, cleaning, washing, drying, mixing,
12 storing, and loading of bituminous, lignite, or anthracite
13 coal, and such other work of preparing such coal as is
14 usually done by the operator of the coal mine;

15 (11) "imminent danger" means the existence of
16 any condition or practice in a coal mine which could
17 reasonably be expected to cause death or serious physical
18 harm before such condition or practice can be abated;

19 (12) "accident" includes a mine explosion, mine
20 ignition, mine fire, or mine inundation, or injury to, or
21 death of, any person; and

22 (13) "Panel" means the Interim Compliance Panel
23 established by this Act.

INTERIM COMPLIANCE PANEL

1
2 SEC. 5. (a) There is hereby established the Interim
3 Compliance Panel, which shall be composed of five members
4 as follows:

5 (1) Assistant Secretary of Labor for Labor Stand-
6 ards, Department of Labor, or his delegate;

7 (2) Director of the Bureau of Standards, Depart-
8 ment of Commerce, or his delegate;

9 (3) Administrator of Consumer Protection and En-
10 vironmental Health Service, Department of Health, Edu-
11 cation, and Welfare, or his delegate;

12 (4) Director of the Bureau of Mines, Department
13 of the Interior, or his delegate; and

14 (5) Director of the National Science Foundation, or
15 his delegate.

16 (b) Members of the Panel shall serve without compensa-
17 tion in addition to that received in their regular employment,
18 but shall be entitled to reimbursement for travel, subsistence,
19 and other necessary expenses incurred by them in the per-
20 formance of duties vested in the Panel.

21 (c) Notwithstanding any other provision of law, the
22 Secretary of Health, Education, and Welfare, Secretary of
23 Commerce, the Secretary of Labor, and the Secretary of the
24 Interior shall, upon request of the Panel, provide the Panel

1 such personnel and other assistance as the Panel determines
2 necessary to enable it to carry out its functions under this
3 Act.

4 (d) Three members of the Panel shall constitute a
5 quorum for doing business. All decisions of the Panel shall
6 be by majority vote. The chairman of the Panel shall be
7 selected by the members from among the membership thereof.

8 (e) The Panel is authorized to appoint as many hear-
9 ing examiners as are necessary for proceedings required to
10 be conducted in accordance with the provisions of this Act.
11 The provisions applicable to hearing examiners appointed
12 under section 3105 of title 5 of the United States Code shall
13 be applicable to hearing examiners appointed pursuant to
14 this subsection.

15 (f) (1) It shall be the function of the Panel to carry
16 out the duties imposed on it pursuant to sections 102 and
17 206 (1) of this Act. The provisions of this section shall ter-
18minate upon completion of the Panel's functions as set forth
19 under sections 102 and 206 (1) of this Act.

20 (2) The Panel shall make an annual report, in writing,
21 to the Secretary for transmittal by him to the Congress con-
22 cerning the achievement of its purposes, and any other rele-
23 vant information (including any recommendations) which it
24 deems appropriate.

1 TITLE I—MANDATORY HEALTH STANDARDS

2 FOR COAL MINES

3 PART A—INTERIM MANDATORY HEALTH STANDARDS FOR

4 CONTROLLING DUST AT UNDERGROUND COAL MINES

5 SCOPE OF COVERAGE

6 SEC. 101. (a) The provisions of sections 102 and 103
7 of this title shall be interim mandatory health standards ap-
8 plicable to all underground coal mines until superseded in
9 whole or in part by improved mandatory health standards
10 promulgated by the Secretary in accordance with health
11 standards established by the Surgeon General for such mines
12 to become effective after the operative date of this title. Any
13 orders issued in the enforcement of the provisions of this part
14 shall be subject to review as provided in title III of this Act.

15 (b) Among other things, it is the purpose of this title
16 to provide, to the greatest extent possible, that the working
17 conditions in each underground coal mine are sufficiently free
18 of dust concentrations in the atmosphere to permit each
19 miner the opportunity to work underground during the
20 period of his entire adult working life without incurring
21 any disability from pneumoconiosis or any other occupation-
22 related disease during or at the end of such period.

23 (c) (1) Within one year after the date of enactment
24 of this Act, the Surgeon General shall develop and submit
25 to the Secretary and the Congress recommendations as to

1 the maximum permissible total exposure of individuals to
2 coal mine dust during a working shift. Such recommenda-
3 tions shall be revised by the Surgeon General as necessary.

4 (2) Within three years after the date of enactment of
5 this Act, and thereafter as needed, the Secretary shall pub-
6 lish as provided in subsection 105 (c) of this title a schedule
7 specifying the times within which mines shall reduce the
8 total personal exposure to dust on a working shift to the
9 levels recommended by the Surgeon General. Such schedule
10 of the Secretary shall be based upon his determination of
11 what is the minimum time necessary for these levels to be
12 technologically feasible and the availability of equipment.
13 The levels so specified by the Secretary shall be the dust
14 standards applicable to coal mines under this Act.

15 (3) Within six months after the date of enactment the
16 Surgeon General shall establish, and the Secretary shall
17 publish, as provided in subsection 105 (c) of this title, pro-
18 posed mandatory standards establishing maximum noise ex-
19 posure levels for all coal mines.

20 DUST STANDARD AND RESPIRATORS

21 SEC. 102. (a) (1) Effective sixty days after the opera-
22 tive date of this title, each operator shall continuously
23 maintain the concentrations of respirable dust in the atmos-
24 phere of the active workings of the mine during each shift at
25 or below 3.0 milligrams of dust per cubic meter of air, ex-

1 cept that, where a permit for noncompliance has been issued
2 to an operator as hereinafter provided, such operator shall
3 continuously maintain the concentration of respirable dust in
4 the atmosphere of the active workings of the mine during
5 each shift at or below 4.5 milligrams of dust per cubic meter
6 of air or, if a lower concentration is prescribed in such per-
7 mit, at or below such lower concentration. In mining
8 operations where the coal dust contains more than 5 per
9 centum quartz, the dust standard shall be determined in
10 accordance with a formula to be prescribed by the Surgeon
11 General.

12 (2) Effective three years after the date of the enact-
13 ment of this Act, each operator shall continuously maintain
14 the concentrations of respirable dust in the atmosphere of
15 the active workings of the mine during each shift at or below
16 2.0 milligrams of dust per cubic meter of air, except that,
17 where a permit for noncompliance has been issued to an
18 operator as hereinafter provided, such operator shall con-
19 tinuously maintain the concentration of respirable dust in
20 the atmosphere of the active workings of the mine during
21 each shift at or below 3.0 milligrams per cubic meter of air
22 or, if a lower concentration is prescribed in such permit, at
23 or below such lower concentration.

24 (b) (1) Any operator who determines that he will be
25 unable, using available technology, to comply with the 3.0

1 milligram standard established by subsection (a) (1) of this
2 section, or the 2.0 milligram standard established by sub-
3 section (a) (2) of this section, upon the effective date of
4 such standard, may, no later than sixty days prior to the
5 effective date of the standard with respect to which such
6 application is filed, file with the Panel an application for a
7 permit for noncompliance. If, in the case of an application for
8 a permit for noncompliance with the standard established
9 by subsection (a) (1) of this section, the application satisfies
10 the requirements of subsection (c) of this section, the Panel
11 shall issue to the operator a permit for noncompliance. If,
12 in the case of an application for a permit for noncompliance
13 with the standard established by subsection (a) (2) of this
14 section, the application satisfies the requirements of subsec-
15 tion (c) of this section, and the Panel, after all interested
16 persons have been notified and given an opportunity for a
17 hearing, determines that the applicant will be unable to
18 comply with such 2.0 milligram standard, the Panel shall
19 issue to the operator a permit for noncompliance. Any such
20 permit so issued shall entitle the permittee during a period
21 which shall expire at a date fixed by the Panel, but in no
22 event later than twelve months after the effective date of
23 such standard, to maintain continuously the concentrations
24 of respirable dust in the atmosphere in each active working
25 place during each shift to which the extension applies at a

1 level specified by the Panel, which shall be at the lowest
2 level which the application shows the conditions, technology
3 applicable to such mine, and other available and effective
4 control techniques and methods will permit, but in no
5 event shall such level exceed 4.5 milligrams of dust per
6 cubic meter of air during the period when the 3.0 milligram
7 standard is in effect, or 3.0 milligrams of dust per cubic meter
8 of air during the period when the 2.0 milligram standard is in
9 effect.

10 (2) (A) Except as provided in paragraph (3) of this
11 subsection, in any case in which an operator, who has been
12 issued a permit (including a renewal permit) for noncom-
13 pliance under this section, determines, not more than ninety
14 days prior to the expiration date of such permit, that he still
15 is unable to comply with the 3.0 milligram standard estab-
16 lished by subsection (a) (1) of this section or the 2.0 milli-
17 gram standard established by subsection (a) (2) of this
18 section, he may file with the Panel an application for renewal
19 of the permit. Upon receipt of such application for renewal
20 of a permit, the Panel, if it determines, after all interested
21 persons have been notified and given an opportunity for a
22 hearing, that the application is in compliance with the pro-
23 visions of subsection (c) of this section, and that the appli-
24 cant will be unable to comply with such standard, may re-
25 new the permit for a period not exceeding six months. Any

1 hearing held pursuant to this subsection shall be of record
2 and the Panel shall make findings of fact and shall issue a
3 written decision incorporating its findings therein.

4 (B) Such renewal permit shall entitle the permittee,
5 during the period of its effectiveness, to maintain continu-
6 ously during each shift the concentrations of respirable dust
7 in the atmosphere at any active working place to which
8 the renewal permit applies at the lowest level which the
9 conditions, technology applicable to such mine, and other
10 available and effective control techniques and methods will
11 permit, as determined by the Panel, but in no event shall
12 such level exceed 4.5 milligrams of dust per cubic meter of
13 air during the period when the 3.0 milligram standard is in
14 effect, or 3.0 milligrams of dust per cubic meter of air during
15 the period when the 2.0 milligram standard is in effect.

16 (3) Except to the extent otherwise provided in sub-
17 section (k) of this section, no permit or renewal permit
18 for noncompliance shall entitle any operator to an extension
19 of time beyond thirty-six months from the date of enact-
20 ment of this Act to comply with the 3.0 milligram standard
21 established by subsection (a) (1) of this section, or beyond
22 seventy-two months from the date of enactment of this Act
23 to comply with 2.0 milligram standard established by sub-
24 section (a) (2) of this section.

1 (c) Any application for an initial or renewal permit for
2 noncompliance made pursuant to this section shall contain—

3 (1) a representation by the applicant and the engi-
4 nger conducting the survey referred to in paragraph (2)
5 of this subsection that the applicant is unable to comply
6 with the dust standard applicable under subsection (a)
7 (1) or (a) (2) of this section at specified active
8 working places because the technology for reducing such
9 dust concentrations at such place is not available, or be-
10 cause of the lack of other effective control techniques
11 or methods, or because of any combination of such
12 reasons;

13 (2) an identification of the active working places
14 in such mine for which the permit is requested; the
15 results of an engineering survey by a certified engineer
16 of the dust conditions of each active working place of
17 the mine with respect to which such application is filed
18 and the ability to reduce the dust concentrations to the
19 level required to be maintained in such working place
20 under this section, together with a copy of such engi-
21 neering survey; a description of the ventilation system
22 of the mine and its capacity; the quantity of air regularly
23 reaching the last open crosscut in any pair or set of
24 developing entries and the last open crosscut in any
25 pair or set of rooms of each such active working place;

1 the method of mining; the amount and pressure of the
2 water, if any, reaching the working face; the number,
3 location, and type of sprays, if any; actions taken to
4 reduce the dust concentrations; and such other informa-
5 tion as the Panel may require; and

6 (3) statements by the applicant and the engineer
7 conducting such survey, of the means and methods to
8 be employed to achieve compliance with the applicable
9 dust standard, the progress made toward achieving com-
10 pliance, and an estimate of when compliance can be
11 achieved.

12 (d) The Secretary shall cause to be made such frequent
13 spot inspections as he deems appropriate of the active work-
14 ings of underground coal mines for which permits for non-
15 compliance have been granted under this section for the pur-
16 pose of obtaining compliance with the provisions of this title.
17 The Secretary shall also make spot inspections of all active
18 workings in underground mines to insure compliance.

19 (e) Any operator or representative of miners aggrieved
20 by a final decision of the Panel with respect to an application
21 for an initial or renewed permit for noncompliance may file
22 a petition for review of such decision in accordance with the
23 provisions of section 304 of this Act:

24 (f) Each operator shall take samples of the atmosphere
25 of the active workings of the mine to determine the atmo-

1 spheric concentrations of respirable dust. Such samples shall
2 be taken by any device approved by the Secretary and in
3 accordance with the methods and at locations and at inter-
4 vals and in a manner prescribed by him. Such samples shall
5 be transmitted to the Secretary, in a manner prescribed by
6 the Secretary, and analyzed and recorded by him in a man-
7 ner to assure that the dust levels established by, or permitted
8 under, this section are not exceeded and to enable him to
9 cause an immediate inspection of any mine whenever such
10 samples indicate that the concentration of dust therein ex-
11 ceeds such level. If, upon the basis of such samples or addi-
12 tional samples taken during an inspection, the Secretary or
13 his authorized representative finds that the concentrations
14 of respirable dust in any active workings in a mine exceed
15 the level required to be maintained under this section, the
16 Secretary or his representative shall issue a notice to the
17 operator or his agent, a copy of which shall be transmitted
18 to the Panel and to a representative of the miners in the
19 mine, fixing a reasonable time to take corrective action,
20 which time shall not exceed seventy-two hours, and the
21 operator of the mine shall take corrective action immediately
22 in order to bring such concentrations at or below the level
23 required to be maintained under this section. If, upon the
24 expiration of such time, the Secretary or his authorized
25 representative finds that such action has not been completed

1 and the violation has not been abated, he shall issue an
2 order requiring that while such corrective action is under-
3 way, no work, other than that necessary to take such ac-
4 tion and to obtain valid samples of the atmosphere of the
5 active workings of the mine to determine the atmospheric
6 concentrations of respirable dust, shall be permitted until
7 the dust concentrations in such mine have been reduced to
8 or below such required level. As soon as possible after an
9 order is issued, the Secretary, upon request of the operator,
10 shall dispatch to the mine involved a person or team of
11 persons, to the extent such persons are available, determined
12 by him to be knowledgeable in the methods and means of
13 controlling and reducing respirable dust. Such person or team
14 of persons shall remain at the mine involved for such time
15 as they shall deem appropriate to assist the operator in re-
16 ducing respirable dust concentrations. While at the mine,
17 such persons may require the operator to take such actions
18 as they deem appropriate to insure the health of any person
19 in the coal mine.

20 (g) The dust resulting from drilling in rock shall be
21 controlled by the use and maintenance of dust collectors, by
22 water or water with a wetting agent, or by ventilation or
23 other means approved by the Secretary. Miners who are
24 engaged in drilling in rock and exposed for short periods to

1 inhalation hazards from gas, dust, fumes, or mist shall wear
2 respiratory equipment. When the exposure is for prolonged
3 periods, other measures to protect such miners or to reduce
4 the hazard shall be taken.

5 (h) Respirators shall be worn by all persons for pro-
6 tection against exposures to concentrations of dust in excess
7 of the levels required to be maintained under this section.
8 Use of respirators shall not be substituted for environmental
9 control measures. Each mine shall maintain a supply of
10 respirators adequate to comply with the provisions of this
11 section.

12 (i) References to respirators, dust collectors, or respi-
13 ratory equipment in this section mean respirators, dust collec-
14 tors, and equipment approved by the Secretary in accordance
15 with health standards established by the Surgeon General.

16 (j) References to specific concentrations of dust in this
17 title mean concentrations of respirable dust if measured with
18 an MRE instrument or equivalent concentrations of dust if
19 measured with another device approved by the Secretary.
20 As used in this title, the term "MRE instrument"
21 means the gravimetric dust sampler with four channel hori-
22 zontal elutriator developed by the Mining Research Estab-
23 lishment of the National Coal Board, London, England.

24 (k) At any time within two years following the date
25 on which the 2.0 milligram standard established by subsec-

1 tion (a) (2) of this section becomes effective, the Secretary
2 may, after having given the Congress advance written notice
3 not less than one hundred and twenty days prior thereto and
4 in accordance with health standards established by the Sur-
5 geon General, extend the time within which all underground
6 coal mines are required to comply with such standard, if the
7 Secretary determines that the technology or other effective
8 control techniques or methods for reducing such dust con-
9 centrations to the level required by such standard is not
10 available. Such extension shall be effective at the end of the
11 first period of sixty calendar days of continuous session of
12 Congress after the date on which a written plan of such ex-
13 tension is transmitted to it unless, between the date of trans-
14 mittal and the end of the sixty-day period, either House
15 passes a resolution stating in substance that that House does
16 not favor the extension plan.

17 (l) For the purposes of subsection (k) of this section—

18 (1) the continuity of a session is broken only by
19 an adjournment of Congress sine die; and

20 (2) the days on which either House is not in ses-
21 sion because of an adjournment of more than three days
22 to a day certain are excluded in the computation of the
23 sixty-day period.

24 (m) Any extension plan transmitted to the Congress
25 pursuant to this section shall be received and acted on by

1 the Congress in the same manner as that provided for
2 reorganization plans under chapter 9 of title 5 of the United
3 States Code.

4 (n) The Secretary and the Surgeon General shall, from
5 time to time, but in no event less than twice annually, sub-
6 mit a written report to the Congress setting forth the prog-
7 ress made toward achieving absolute compliance with the
8 standards established by subsection (a) of this section, and
9 an estimate of the time as to when such compliance can be
10 achieved.

11 (o) The Secretary or his authorized representative may
12 require a greater quantity of air than the minimum required
13 under section 204 (b) of this Act when he finds it necessary
14 to protect the health of miners in a coal mine. Where line
15 brattice or other approved devices are installed, the space
16 between such device and the rib shall, in addition to the re-
17 quirements of section 204 (c) (2) of this Act, be adequate
18 to permit the flow of sufficient volume of air to reduce the
19 concentrations of respirable dust at each active working face.

20 MEDICAL EXAMINATIONS

21 SEC. 103. (a) The operator of an underground coal
22 mine shall establish a program approved by the Surgeon
23 General under which each miner working in such under-
24 ground coal mine will be given, at least annually, beginning

1 six months after the operative date of this title, a chest
2 roentgenogram and such other tests as may be required by
3 the Surgeon General. The films shall be taken in a manner
4 to be prescribed by the Surgeon General and shall be read
5 and classified by the Surgeon General and the results of each
6 reading on each such miner shall be available to the Surgeon
7 General and, with the consent of the miner, to his physician
8 and other appropriate persons. The Surgeon General may
9 also take such examinations and tests where appropriate and
10 may cooperate with the operator in taking of such examina-
11 tions and tests on a reimbursable basis. Each operator shall
12 cooperate with the Surgeon General in making arrangements
13 for each miner in such mine to be given such other medical
14 examinations as the Surgeon General determines necessary.
15 The results of any such examination shall be submitted in the
16 same manner as the aforementioned films. In no case, how-
17 ever, shall any such miner be required to have a chest
18 roentgenogram or examination under this section without
19 his consent.

20 (b) (1) On and after the effective date of the 3.0
21 milligram standard established by section 102 (a) (1) of this
22 title, any miner who, in the judgment of the Surgeon General
23 based upon such reading or medical examinations, shows
24 evidence of the development of pneumoconiosis shall be as-

1 signed by the operator, for such period or periods as may
2 be necessary to prevent further development of such disease,
3 to work, at the option of the miner, in any working sec-
4 tion or other area of the mine, where the mine atmosphere
5 contains concentrations of respirable dust of not more than
6 2.0 milligrams of dust per cubic meter of air.

7 (2) On and after the effective date of the 2.0 milligram
8 standard established by section 102 (a) (2) of this title, any
9 miner so showing such evidence of the development of pneu-
10 moconiosis shall be assigned in accordance with the provisions
11 of paragraph (1) of this subsection to any working sec-
12 tion or other area of the mine where the mine atmosphere
13 contains concentrations of respirable dust at a level, below
14 2.0 milligrams of dust per meter of air, determined by the
15 Secretary, in accordance with health standards established by
16 the Surgeon General, to be necessary to prevent further de-
17 velopment of such disease.

18 (3) Any miner assigned to work in any other working
19 section or other area of the mine pursuant to paragraphs (1)
20 or (2) of this subsection shall receive for such work the
21 regular rate of pay received by other miners performing
22 comparable work in such section or area, or the regular rate
23 of pay received by such miner immediately prior to his
24 assignment, whichever is the greater.

1 PART B.—PROMULGATION OF MANDATORY HEALTH
2 STANDARDS FOR ALL COAL MINERS
3 HEALTH STANDARDS; REVIEW

4 SEC. 105. (a) In accordance with health standards
5 established by the Surgeon General from time to time and
6 the procedures set forth in this section, the Secretary shall
7 promulgate mandatory health standards for the protection
8 of life and the prevention of occupational diseases in coal
9 mines.

10 (b) In the development of such standards, the Surgeon
11 General shall consult with other interested Federal agencies,
12 representatives of State agencies, appropriate representatives
13 of the coal mine operators and miners, other interested per-
14 sons and organizations, the State, such advisory commit-
15 tees as he may appoint, and, where appropriate, foreign
16 countries. In addition to the attainment of the highest degree
17 of health and protection for the miner, other considerations
18 shall be the latest available scientific data in the field, the
19 technical feasibility of the standards, and experience gained
20 under this and other health regulations.

21 (c) The Secretary shall from time to time publish any
22 such proposed standards and the schedule provided for in
23 subsection 101 (c) (2) of this title in the Federal Register

1 and shall afford interested persons a period of not less than
2 thirty days after publication to submit written data or com-
3 ments. Except as provided in subsection (c) of this section,
4 the Secretary may, upon the expiration of such period and
5 after consideration of all relevant matter presented, promul-
6 gate such standards or schedule with such modifications as
7 he and the Surgeon General may deem appropriate. Not
8 later than twelve months after the date of enactment of
9 the Act, the Secretary, in accordance with health standards
10 established by the Surgeon General, shall propose manda-
11 tory health standards for surface coal mines and surface
12 work areas of underground coal mines and shall publish
13 such proposed standards in the Federal Register.

14 (d) On or before the last day of any period fixed for the
15 submission of written data or comments under subsection
16 (c) of this section, any interested person may file with the
17 Secretary written objections to a proposed standard or sched-
18 ule, stating the grounds therefor and requesting a public
19 hearing by the Secretary on such objections. As soon as
20 practicable after the period for filing such objections has
21 expired, the Secretary shall publish in the Federal Register
22 a notice specifying the proposed standards or provisions of

1 the schedule to which objections have been filed and a hear-
2 ing requested, and shall review such standards, schedules,
3 and objections in accordance with subsection (e) of this
4 section.

5 (e) Promptly after any such notice is published in the
6 Federal Register by the Secretary under subsection (d) of
7 this section, the Secretary shall issue notice of and hold a
8 public hearing for the purpose of receiving relevant evi-
9 dence. Within sixty days after completion of the hearings,
10 the Secretary shall make findings of fact and may promul-
11 gate the mandatory standards with such modifications, or
12 take such other action, as he and the Surgeon General deem
13 appropriate. All such findings shall be public.

14 (f) Any mandatory standard or schedule promulgated
15 under this section shall be effective upon publication in the
16 Federal Register unless the Secretary specifies a later date.

17 (g) all health standards established by the Surgeon
18 General pursuant to this title shall, at the time of their trans-
19 mission by him to the Secretary for disposition by him in
20 accordance with the provisions of this title, be published in
21 the Federal Register.

* * * * *

21

TITLE IV—ADMINISTRATION

22

RESEARCH

23

SEC. 401. (a) The Secretary and the Surgeon General

24

shall conduct such studies, research, experiments, and dem-

25

onstrations as may be appropriate—

1 (1) to improve working conditions and practices,
2 and to prevent accidents and occupational diseases orig-
3 inating in the coal mining industry;

4 (2) after an accident, to recover persons in a coal
5 mine and to recover the mine;

6 (3) to develop new or improved means and meth-
7 ods of communication from the surface to the under-
8 ground portion of the mine;

9 (4) to develop new or improved means and meth-
10 ods of reducing concentrations of respirable dust in the
11 mine;

12 (5) to develop new and improved sources of power
13 for use underground, including diesel power, which will
14 provide greater safety; and

15 (6) to determine the improvement to health or
16 safety that illumination will produce and to develop such
17 methods of illumination by permissible lighting.

18 (b) The Surgeon General shall conduct studies and
19 research into matters involving the protection of life and
20 the prevention of diseases in connection with persons, who
21 although not miners, work with or around the products
22 of coal mines in areas outside of such mines and under
23 conditions which may adversely affect the health and well-
24 being of such persons.

25 (c) The Secretary is authorized to grant an operator.

1 on a mine-by-mine basis, an exception to any of the pro-
2 visions of this Act for the purpose of granting accredited
3 engineering institutions the opportunity for experimenting
4 with new techniques and new equipment to improve the
5 health and safety of miners. No such exception shall be
6 granted unless the Secretary finds that the granting of the
7 exception will not adversely affect the health and safety
8 of miners.

9 (d) The Surgeon General is authorized to make grants
10 to any public or private agencies, institutions and organiza-
11 tions, and operators or individuals for research and experi-
12 ments to develop effective respiratory devices and other
13 devices and equipment which will carry out the purposes
14 of this Act.

15 (e) There is authorized to be appropriated to the Sec-
16 retary of the Interior such sums as will be necessary to carry
17 out his responsibilities under this section and section 201 (b)
18 of this Act at an annual rate of not to exceed \$20,000,000
19 for the fiscal year ending June 30, 1970, \$25,000,000 for
20 the fiscal year ending June 30, 1971, and \$30,000,000 for
21 the fiscal year ending June 30, 1972, and for each succeed-
22 ing fiscal year thereafter. There is authorized to be appro-
23 priated annually to the Surgeon General such sums as may be
24 necessary to carry out his responsibilities under this section.
25 Such sums shall remain available until expended.

TRAINING AND EDUCATION

1
2 SEC. 402. (a) The Secretary shall expand programs
3 for the education and training of coal mine operators, agents
4 thereof, and miners in—

5 (1) the recognition, avoidance, and prevention of
6 accidents or unsafe or unhealthful working conditions in
7 coal mines, and

8 (2) in the use of flame safety lamps, permissible
9 methane detectors, and other means approved by the
10 Secretary for accurately detecting gases.

11 (b) The Secretary shall, to the greatest extent possible,
12 provide technical assistance to each operator of a coal mine
13 in meeting the requirements of this Act and in further im-
14 proving the health and safety conditions and practices at
15 such mine.

STATE PLANS

16
17 SEC. 403. (a) In order to assist the States where coal
18 mining takes place in developing and enforcing effective
19 health and safety laws and regulations applicable to such
20 mines consistent with the provisions of section 407 of this
21 Act and to promote Federal-State coordination and coopera-
22 tion in improving the health and safety conditions in the
23 Nation's coal mines, the Secretary shall approve any plan
24 submitted under this section by such State, through its official
25 coal mine inspection or safety agency, which—

1 (1) designates such State coal mine inspection or
2 safety agency as the sole agency responsible for admin-
3 istering the plan throughout the State and contains satis-
4 factory evidence that such agency will have the author-
5 ity to carry out the plan;

6 (2) gives assurances that such agency has or will
7 employ an adequate and competent staff of trained in-
8 spectors qualified under the laws of such State to make
9 mine inspections within such State;

10 (3) sets forth the plans, policies, and methods to
11 be followed in carrying out the plan;

12 (4) provides for the extension and improvement of
13 the State program for the improvement of coal mine
14 health and safety in the State, and that no advance no-
15 tice of an inspection will be provided any operator or
16 agent of an operator of a coal mine;

17 (5) provides such fiscal control and fund account-
18 ing procedures as may be appropriate to assure proper
19 disbursement and accounting of grants made to the
20 State under this section;

21 (6) provides that the designated agency will make
22 such reports to the Secretary, in such form and con-
23 taining such information, as the Secretary may from
24 time to time require; and

25 (7) meets additional conditions which the Secre-

1 tary may prescribe by rule in furtherance of and con-
2 sistent with the purposes of this section.

3 (b) The Secretary shall approve any State plan or any
4 modification thereof which complies with the provisions of
5 subsection (a) of this section. He shall not finally disap-
6 prove any State plan or modification thereof without first
7 affording the State agency reasonable notice and opportunity
8 for a hearing.

9 (c) Whenever the Secretary, after reasonable notice and
10 opportunity for a hearing, finds that in the administration of
11 an approved State plan there is (1) a failure to comply sub-
12 stantially with any provision of the State plan, or (2) a
13 failure to afford reasonable cooperation in administering the
14 provisions of this Act, the Secretary shall by decision incor-
15 porating his findings therein notify such State agency of his
16 withdrawal of approval of such plan and upon receipt of such
17 notice such plan shall cease to be in effect.

18 (d) Any State aggrieved by the Secretary's decision
19 under subsection (c) of this section may file within thirty
20 days from the date of such decision with the United States
21 Court of Appeals for the District of Columbia a petition
22 praying that such action be modified or set aside in whole
23 or in part. A copy of the petition shall forthwith be sent
24 by registered or certified mail to the Secretary, and

1 thereupon the Secretary shall certify and file in such court
2 the record upon which the Secretary made his decision, as
3 provided in section 2112, title 28, United States Code. The
4 court shall hear such appeal on the record made before the
5 Secretary. The findings of the Secretary, if supported by
6 substantial evidence on the record considered as a whole,
7 shall be conclusive. The court may affirm, vacate, or remand
8 the proceedings to the Secretary for such further action as it
9 directs. The filing of a petition under this subsection shall not
10 stay the application of the Secretary's decision, unless the
11 court so orders.

12 (e) The Secretary is authorized to make grants to any
13 State where there is an approved State plan (1) to carry
14 out the plan, including the cost of training State inspectors;
15 and (2) to assist the States in planning and implementing
16 other programs for the advancement of health and safety in
17 coal mines. Such grants shall be designed to supplement,
18 not supplant, State funds in these areas. The Secretary shall
19 cooperate with such State in carrying out the plan and shall,
20 as appropriate, develop facilities for, and finance a pro-
21 gram of, training of Federal and State inspectors jointly.
22 The Secretary shall also cooperate with such State in estab-
23 lishing a system by which State and Federal inspection re-
24 ports of coal mines located in the State are exchanged for

1 the purpose of improving health and safety conditions in
2 such mines.

3 (f) The amount granted to any State for a fiscal
4 year under this section shall not exceed 80 per centum of the
5 sum expended by such State in such year for carrying out
6 the State coal mine health and safety enforcement program.

7 (g) There is authorized to be appropriated \$3,000,000
8 for fiscal year 1970 and \$5,000,000 annually in each suc-
9 ceeding fiscal year to carry out the provisions of this section
10 which shall remain available until expended. The Secretary
11 shall provide for an equitable distribution of sums appropri-
12 ated for grants under this section to the States where there
13 is an approved plan. The Secretary shall coordinate with
14 the Secretaries of Labor and Health, Education, and Wel-
15 fare in making grants under this section.

16 RELATED CONTRACTS AND GRANTS

17 SEC. 404. In carrying out the provisions of sections 201
18 (b), 401, and 402 of this Act, the Secretary and the Sur-
19 geon General may enter into contracts with, and make grants
20 to, public and private agencies and organizations and indi-
21 viduals.

22 INSPECTORS; QUALIFICATIONS; TRAINING

23 SEC. 405. The Secretary may, subject to the civil service
24 laws, appoint such employees as he deems requisite for the

1 administration of this Act and prescribe their duties. Persons
2 appointed as authorized representatives of the Secretary shall
3 be qualified by practical experience in the mining of coal or
4 by experience as a practical mining engineer or by education.
5 Persons appointed to assist such representatives in the taking
6 of samples of dust concentrations for the purpose of enforcing
7 title I of this Act shall be qualified by training or experi-
8 ence. The provisions of section 201 of the Revenue and
9 Expenditure Control Act of 1968 (82 Stat. 251, 270) shall
10 not apply with respect to the appointment of such authorized
11 representatives of the Secretary or to persons appointed to
12 assist such representatives, and, in applying the provisions of
13 such section to other agencies under the Secretary and to
14 other agencies of the Government, such appointed persons
15 shall not be taken into account. Such persons shall be ade-
16 quately trained by the Secretary. The Secretary shall develop
17 programs with educational institutions and operators designed
18 to enable persons to qualify for positions in the administra-
19 tion of this Act. In selecting persons and training and re-
20 training persons to carry out the provisions of this Act, the
21 Secretary shall work with appropriate educational institu-
22 tions, operators, and representatives of employees in develop-
23 ing adequate programs for the training of persons, particu-
24 larly inspectors. Where appropriate, the Secretary shall co-
25 operate with such institutions in carrying out the provisions

1 of this section by providing financial and technical assistance
2 to such institutions.

3 ADVISORY COMMITTEES

4 SEC. 406. (a) (1) The Secretary shall appoint an ad-
5 visory committee on coal mine safety research composed of—

6 (A) the Director of the Office of Science and
7 Technology or his delegate, with the consent of the
8 Director;

9 (B) the Director of the National Bureau of Stand-
10 ards, Department of Commerce, or his delegate, with
11 the consent of the Director;

12 (C) the Director of the National Science Foun-
13 dation or his delegate, with the consent of the Director;
14 and

15 (D) such other persons as the Secretary may
16 appoint who are knowledgeable in the field of coal mine
17 safety research.

18 The Secretary shall designate the chairman of the committee.

19 (2) The advisory committee shall consult with, and
20 make recommendations to, the Secretary on matters in-
21 volving or relating to coal mine safety research. The Secre-
22 tary shall consult with and consider the recommendations of
23 such committee in the conduct of such research, the making
24 of any grant, and the entering into of contracts for research.

1 (3) The chairman of the committee and a majority of
2 the persons appointed by the Secretary pursuant to para-
3 graph (1) (D) of this subsection shall be individuals who
4 have no economic interests in the coal mining industry, and
5 who are not operators, miners, or officers or employees
6 of the Federal Government or any State or local government.

7 (b) (1) The Surgeon General shall appoint an advisory
8 committee on coal mine health research composed of—

9 (A) the Director, Bureau of Mines, or his delegate,
10 with the consent of the Director;

11 (B) the Director of the National Science Founda-
12 tion or his delegate, with the consent of the Director;

13 (C) the Director of the National Institutes of Health
14 or his delegate, with the consent of the Director; and

15 (D) such other persons as the Surgeon General may
16 appoint who are knowledgeable in the field of coal mine
17 health research.

18 The Surgeon General shall designate the chairman of the
19 committee.

20 (2) The advisory committee shall consult with, and
21 make recommendations to, the Surgeon General on matters
22 involving or relating to coal mine health research. The Sur-
23 geon General shall consult with and consider the recommen-
24 dations of such committee in the conduct of such research, the

1 making of any grant, and the entering into of contracts for
2 research.

3 (3) The chairman of the committee and a majority of
4 the persons appointed by the Surgeon General pursuant to
5 paragraph (1) (D) of this subsection shall be individuals
6 who have no economic interests in the coal mining industry,
7 and who are not operators, miners, or officers or employees
8 of the Federal Government or any State or local government.

9 (c) The Secretary or the Surgeon General may ap-
10 point other advisory committees as he deems appropriate to
11 advise him in carrying out the provisions of this Act. The
12 Secretary or the Surgeon General, as the case may be, shall
13 appoint the chairman of each such committee, who shall be
14 an individual who has no economic interests in the coal min-
15 ing industry, and who is not an operator, miner, or an
16 officer or employee of the Federal Government or any State
17 or local government. A majority of the members of any
18 such advisory committee appointed pursuant to this sub-
19 section shall be composed of individuals who have no eco-
20 nomic interests in the coal mining industry, and who are
21 not operators, miners, or officers or employees of the Federal
22 Government or any State or local government.

23 (d) Advisory committee members, other than em-
24 ployees of Federal, State, or local governments, while per-

1 forming committee business shall be entitled to receive
2 compensation at rates fixed by the Secretary or the Surgeon
3 General, as the case may be, but not exceeding \$100 per
4 day, including travel time. While so serving away from their
5 homes or regular places of business, members may be paid
6 travel expenses and per diem in lieu of subsistence at rates
7 authorized by section 5703 of title 5, United States Code, for
8 persons intermittently employed.

9

EFFECT ON STATE LAWS

10 SEC. 407. (a) No State law in effect upon the effec-
11 tive date of this Act or which may become effective thereafter
12 shall be superseded by any provision of this Act or order
13 issued or standard established or promulgated thereunder,
14 except insofar as such State law is in conflict with this Act
15 or with any order issued or standard established or promul-
16 gated pursuant to this Act.

17 (b) The provisions of any State law or regulation in
18 effect upon the effective date of this Act, or which may
19 become effective thereafter, which provides for more strin-
20 gent health and safety standards applicable to coal mines
21 than do the provisions of this Act or any order issued or
22 standard established or promulgated thereunder shall not
23 thereby be construed or held to be in conflict with this Act.
24 The provisions of any State law or regulation in effect upon
25 the effective date of this Act, or which may become effective

1 thereafter, which provide for health and safety standards
2 applicable to coal mines for which no provision is contained
3 in this Act or any order issued or standard established or
4 promulgated thereunder, shall not be held to be in conflict
5 with this Act.

6 (c) Nothing in this Act shall be construed or held to
7 supersede or in any manner affect the workmen's compensa-
8 tion laws of any State, or to enlarge or diminish or affect in
9 any other manner the common law or statutory rights,
10 duties, or liabilities of employers and employees under State
11 laws in respect of injuries, occupational or other diseases,
12 or death of employees arising out of, or in the course of,
13 employment.

14 ADMINISTRATIVE PROCEDURES

15 SEC. 408. Except as otherwise provided in sections 201
16 (d), 303 and 308 (a) of this Act, the provisions of sections
17 551-559 and sections 701-706 of title 5 of the United States
18 Code, shall not apply to the making of any order or decision
19 pursuant to this Act, or to any proceeding for the review
20 thereof.

21 REGULATIONS

22 SEC. 409. The Secretary, the Surgeon General, and the
23 Panel are authorized to issue such regulations as each deems
24 appropriate to carry out any provisions of this Act.

ECONOMIC ASSISTANCE

1
2 SEC. 410. (a) Section 7 (b) of the Small Business Act,
3 as amended, is amended—

4 (1) by striking out the period at the end of para-
5 graph (4) and inserting in lieu thereof “; and”; and

6 (2) by adding after paragraph (4) a new para-
7 graph as follows:

8 “(5) to make such loans (either directly or in
9 cooperation with banks or other lending institutions
10 through agreements to participate on an immediate or
11 deferred basis) as the Administration may determine to
12 be necessary or appropriate to assist any small business
13 concern operating a coal mine in effecting additions to
14 or alterations in the equipment, facilities, or methods
15 of operation of such mine to requirements imposed
16 by the Federal Coal Mine Health and Safety Act of
17 1969, if the Administration determines that such concern
18 is likely to suffer substantial economic injury without
19 assistance under this paragraph.”

20 (b) The third sentence of section 7 (b) of such Act is
21 amended by inserting “or (5)” after “paragraph (3)”.

22 (c) Section 4 (c) (1) of the Small Business Act, as
23 amended, is amended by inserting “7 (b) (5),” after “7 (b)
24 (4),”.

25 (d) Loans may also be made or guaranteed for the

1 purposes set forth in section 7 (b) (5) of the Small Business
2 Act, as amended, pursuant to the provisions of section 202
3 of the Public Works and Economic Development Act of
4 1965, as amended.

5 TITLE V—INTERIM EMERGENCY COAL MINE
6 HEALTH DISABILITY BENEFITS

7 PURPOSE

8 SEC. 501. Based on a recent study conducted by the
9 United States Public Health Service, Congress finds and de-
10 clares that there are a significant number of inactive coal
11 miners living today who are totally disabled and unable to be
12 gainfully employed due to the development of complicated
13 pneumoconiosis while working in one or more of the Nation's
14 coal mines; that there also are a number of surviving widows
15 and children of coal miners whose death was attributable to
16 this disease; that few States provide benefits for disability
17 from this disease to inactive coal miners and their depend-
18 ents; and that, in order to give the States time to enact laws
19 to provide such benefits or to improve those laws where
20 token or minimal benefits are provided, it is, therefore, the
21 purpose of this title to provide, on a temporary and limited
22 basis, interim emergency health disability benefits, in coop-
23 eration with the States, to any coal miner who is totally dis-
24 abled and unable to be gainfully employed on the date of
25 enactment of this Act due to complicated pneumoconiosis

1 which arises out of, or in the course of, his employment in
2 one or more of the Nation's coal mines; to the widows and
3 children of any coal miner who, at the time of his death, was
4 totally disabled and unable to be gainfully employed due to
5 complicated pneumoconiosis arising out of, or in the course
6 of, such employment; and to develop further and detailed
7 information and data on the extent to which past, present,
8 and future coal miners are or will be totally disabled by com-
9 plicated pneumoconiosis and unable to be gainfully employed,
10 on the extent to which assistance to such miners and their
11 dependents is needed, and the most effective method for as-
12 suring such assistance.

13 **INTERIM DISABILITY BENEFIT STANDARDS**

14 **SEC. 502.** The Secretary of Health, Education and
15 Welfare (hereinafter referred to in this title as "the Sec-
16 retary") shall develop and promulgate interim disability
17 benefit standards governing the determination of persons
18 eligible to receive emergency coal mine health disability
19 benefits under this title and the methods and procedures to be
20 used in disbursing such benefits to such persons. Such stand-
21 ards shall take into consideration the length of employment
22 in coal mines considered sufficient to establish a claim for
23 such benefits; reasonable and equitable means, methods, and
24 procedures for filing and establishing proof of disability,
25 consistent with the purpose of this title, by the coal miner or,

1 as appropriate, his survivor to enable such person to receive
2 benefits as soon as possible after enactment of this Act; and
3 such other matters as the Secretary deems appropriate. Such
4 standards shall be effective upon publication in the Federal
5 Register, unless the Secretary prescribes a later date which
6 date shall not be more than ninety days after the operative
7 date of this title. The provisions of section 553 of title 5 of
8 the United States Code shall apply to the promulgation of
9 such standards.

10

ASSISTANCE TO STATES

11 SEC. 503. (a) Upon publication of the interim disability
12 standards by the Secretary under this title, the Secretary
13 shall enter into agreements with any State pursuant to which
14 he shall provide financial assistance, in accordance with the
15 provisions of this title, to the States to carry out the purpose
16 of this title, and the States shall receive and adjudicate, in
17 accordance with such standards, claims for interim emer-
18 gency coal mine health disability benefits from any eligible
19 person who is a resident of such State. Such State shall also
20 agree to pay one-half of such benefits during the fiscal years
21 ending June 30, 1972, and June 30, 1973. Such agreements
22 shall, in addition to such other conditions as the Secretary
23 deems appropriate, include adequate assurances that the State
24 shall provide such fiscal control and fund accounting pro-
25 cedures as may be appropriate to assure proper disbursement

1 and accounting of grants made to the State under this sec-
2 tion; and that the State will make such reports to the Secre-
3 tary, in such form and containing such information, as the
4 Secretary may from time to time require.

5 (b) Beginning after the effective date of any agreement
6 entered into with a State under this section and ending on
7 June 30, 1973, the Secretary, subject to the provisions of
8 this section, shall, from sums available therefor for any fiscal
9 year, make grants to such State equal to the estimated sums
10 needed by such State to pay all such benefits to eligible per-
11 sons through June 30, 1971, and to pay one-half of such
12 benefits to eligible persons during the fiscal years ending
13 June 30, 1972, and June 30, 1973. No benefits shall be
14 paid under this section to an eligible person if the State,
15 after the enactment of this Act, reduces the benefits for dis-
16 ability caused by complicated pneumoconiosis to which such
17 person is otherwise entitled under such State's laws or regu-
18 lations. Benefits paid to an eligible person under this section
19 shall be reduced by an amount equal to any payment made
20 to such person under any other provision of law for a dis-
21 ability directly caused by complicated pneumoconiosis aris-
22 ing out of, or in the course of, employment in one or more
23 of the Nation's coal mines.

24 (c) Interim emergency coal mine health disability bene-
25 fits shall be paid under this section to persons determined by

1 the State pursuant to such standards to be eligible to receive
2 such benefits. Such benefits shall be paid as soon as possible
3 after a claim is filed therefor and eligibility determined,
4 except that such benefits shall terminate when such person
5 is no longer eligible, or on June 30, 1973, whichever date is
6 first. The amount of benefits payable to an eligible person
7 under this section shall be determined as follows:

8 (1) In the case of total disability, such eligible
9 person shall be paid benefits during the period of such
10 disability up to a rate equal to 50 per centum of the
11 minimum monthly payment to which an employee in
12 grade GS-2 with one or more dependents, who is totally
13 disabled, is entitled under the provisions of sections 8105
14 and 8110 of title 5, United States Code;

15 (2) In the case of the death of a miner resulting
16 from such disease, an eligible widow shall be paid bene-
17 fits at the rate the deceased miner would be entitled
18 to receive such benefits if such miner were totally dis-
19 abled until such widow dies or remarries; and

20 (3) In the case of any eligible person entitled to
21 benefits under clauses (1) or (2) of this subsection
22 who has one or more dependents, such benefits shall be
23 increased at a rate of 50 per centum of the benefits
24 to which such person is entitled under clauses (1) or
25 (2) of this subsection, if such person has one dependent.

1 75 per centum, if such person has two dependents, and
2 100 per centum, if such person has three dependents;
3 except that such increased benefits for a child, brother,
4 sister, or grandchild, shall cease if such dependent dies
5 or remarries or becomes eighteen years of age, or if
6 over age eighteen and incapable of self-support becomes
7 capable of self-support.

8 (d) There is hereby authorized to be appropriated from
9 funds in the Treasury for the fiscal year ending June 30,
10 1970, not to exceed \$10,000,000, and for the fiscal year
11 ending June 30, 1971, not to exceed \$30,000,000, and for
12 the fiscal years ending June 30, 1972, and June 30, 1973,
13 not to exceed \$15,000,000 annually for the purposes of this
14 title. If the amounts appropriated for any fiscal year are
15 less than the amounts necessary to enable the Secretary to
16 make the full amount of grants to all States which have en-
17 tered into agreements with him under this title, the grants
18 to each State for such fiscal year, and the payments to
19 eligible persons required to be made during such fiscal year
20 under such agreements, shall be proportionately reduced.

21

STUDY

22 SEC. 504. The Secretary shall immediately undertake
23 a study to determine the extent to which coal miners are
24 or will be totally disabled due to complicated pneumoconiosis
25 developed during the course of employment in the Nation's

1 coal mines and unable to be gainfully employed; the extent
2 to which the States provide benefits to active and inactive
3 coal miners and their dependents for such disability; the
4 adequacy of such benefits, the need for, and the desirability
5 of, providing any Federal, State, or private assistance for
6 such disability; the need for, and the desirability of, extend-
7 ing the provisions of this title for persons eligible for benefits
8 under this title; and such other facts which would be helpful
9 to the Congress following completion of this study, as the
10 Secretary deems appropriate. In carrying out this study, the
11 Secretary shall consult with, and, to the greatest extent pos-
12 sible, obtain information and comments from, the Secretary
13 of the Interior, the Secretary of Labor, and other interested
14 Federal agencies, the States, operators, representative of the
15 miners, insurance representatives, and other interested per-
16 sons. The Secretary shall submit a report on such study,
17 together with such recommendations, including appropriate
18 legislative recommendations, as he deems appropriate, to
19 the Congress not later than October 1, 1970.

20 TITLE VI—MISCELLANEOUS

21 JURISDICTION; LIMITATION

22 SEC. 601. In any proceeding in which the validity of
23 any interim mandatory health or safety standard set forth in
24 this Act is in issue, no justice, judge, or court of the United
25 States shall issue any temporary restraining order or prelim-

1 inary injunction restraining the enforcement of such standard
2 pending a determination of such issue on its merits.

3 **OPERATIVE DATE AND REPEAL**

4 **SEC. 602.** The provisions of titles I through III and
5 title V of this Act shall become operative one hundred and
6 twenty days after enactment. The provisions of the Federal
7 Coal Mine Safety Act, as amended, are repealed on the op-
8 erative date of those titles, except that such provisions shall
9 continue to apply to any order, notice, or finding issued
10 under that Act prior to such operative date and to any pro-
11 ceedings related to such order, notice, or finding. All other
12 provisions of this Act shall be effective on the date of enact-
13 ment of this Act.

14 **SEPARABILITY**

15 **SEC. 603.** If any provision of this Act, or the application
16 of such provision to any person or circumstance, shall be held
17 invalid, the remainder of this Act, or the application of such
18 provision to persons or circumstances other than those as to
19 which it is held invalid, shall not be affected thereby.

20 **REPORTS**

21 **SEC. 604.** Within one hundred and twenty days follow-
22 ing the convening of each session of Congress, the Secretary
23 and the Surgeon General shall submit through the President
24 to the Congress separate annual reports upon the subject

1 matter of this Act, the progress concerning the achievement
2 of its purposes, the needs and requirements in the field of coal
3 mine health and safety, and any other relevant information,
4 including any recommendations either deems appropriate.

Passed the Senate October 2, 1969.

Attest:

FRANCIS R. VALEO,

Secretary.

91ST CONGRESS
1ST SESSION

S. 2917

AN ACT

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

OCTOBER 6, 1969

Ordered to be printed as passed

(Excerpts Only)

91ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 91-563

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

OCTOBER 13, 1969.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY, SUPPLEMENTAL, AND SEPARATE VIEWS

[To accompany H.R. 13950]

The Committee on Education and Labor, to whom was referred the bill (H.R. 13950) to provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

During the early hours of November 20, 1968, an explosion rocked Consolidation Coal Co.'s No. 9 mine near Farmington, W. Va. When the mine was sealed several days later, it became the tomb for 78 miners working that tragic midnight shift who could not escape and for whom no rescue operation could succeed. Since Farmington, over 170 additional miners have lost their lives in the much less publicized—yet equally outrageous—accidents that continue to make coal mining the most hazardous occupation in the United States. Moreover, countless thousands have suffered and died or presently suffer from the ravages of coal workers' pneumoconiosis—the dread miners disease caused by the inhalation of excessive amounts of coal dust.

It is the purpose of the bill H.R. 13950¹ to protect the health and safety of coal miners, and to combat the steady toll of life, limb, and lung, which terrorizes so many unfortunate families.

BACKGROUND

Some recognition of the dangers inherent in coal mining came at the Federal level as long ago as 1865, when a bill to create a Federal Mining Bureau was introduced in the Congress. Little more was done, however, until a series of serious coal mine disasters after the turn of the century aroused public demand for Federal action. Consequently, the Bureau of Mines was created within the Department of the Interior on July 1, 1910, and was charged with making—

* * * diligent investigation of the methods of mining, especially in relation to the safety of miners, and the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the treatment of ores and other mineral substances, the use of explosives and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to said industries. * * *

A glaring but deliberate omission in the new Bureau's spectrum of responsibility was the lack of authority to conduct mine inspections. In fact, the act specifically denied "any right or authority in connection with the inspection or supervision of mines * * * in any State" by any Bureau employee.

This significant inadequacy was recognized by the Congress and Public Law 49, 77th Congress, was enacted in 1941. Federal inspectors were given authority to enter and inspect for health and safety hazards all anthracite, bituminous coal, and lignite mines in the United States.

Despite this new authority to make "annual or necessary inspections and investigations," however, the Bureau lacked authority to establish standards for coal mines or to enforce compliance with the standards and recommendations of the Secretary of the Interior.

The death of 119 miners in an explosion at West Frankfort, Ill., late in December 1951, aroused public concern again and led to the enactment of Public Law 552, 82d Congress, in 1952.

This act, which refined further the machinery for approaching mine safety, left much to be desired. President Truman said as much in signing the bill when he commented:

This measure is a significant step in the direction of preventing the appalling toll of death and injury to miners in underground mines.

¹ Mr. Dent is the sponsor of H.R. 13950. Cosponsors of that and identical bills are: Mr. Burton of California, Mr. Perkins, Mr. Pucinski, Mr. Hawkins, Mrs. Mink, Mr. Stokes, Mr. Clay, Mr. Powell, Mr. Gaydos, Mr. Bell of California, Mr. Hansen of Idaho, Mrs. Green of Oregon, Mr. Thompson of New Jersey, Mr. Daniels of New Jersey, Mr. Brademas, Mr. O'Hara, Mr. Reid of New York, Mr. Morgan, Mr. Flood, Mr. Saylor, Mr. Staggers, Mr. Slack, Mr. Kee, Mr. Mollohan, Mr. Carey, Mr. William D. Ford, Mr. Hathaway, Mr. Scheuer, Mr. Meeds, Mr. McDade, Mr. Nix, Mr. Berrett, Mr. Rooney of Pennsylvania, Mr. Vigorito, Mr. Podell, Mr. Clark, Mr. Moorhead, Mr. Williams, Mr. Helstoski, Mr. Karth, Mr. Annunzio, Mr. Dulski, Mr. Giamino, Mr. Corbett, Mr. St Germain, Mr. Rodino, Mr. Price of Illinois, Mr. Byrne of Pennsylvania, Mr. Burke of Massachusetts, Mr. Gibbons, Mr. Coughlin, Mr. Brown of California, Mr. Ryan, Mr. Fraser, Mr. Biester, Mr. Eichhardt, Mr. Edwards of California, Mr. Yatron, Mr. Mikva, Mr. Burton of Utah, Mr. Don H. Clausen, Mr. Patten, Mr. Gallagher, Mr. Ellberg, Mr. Rees, Mr. Ruppe, Mr. Leggett, Mr. Roybal, Mr. Ortinger, Mr. Brasco, Mr. Murphy of Illinois, Mr. Kluczynski, Mr. Hays, Mr. Moss, Mr. McFall, Mr. Green of Pennsylvania, Mr. Feighan, Mr. Oisen, Mr. Anderson of California, Mr. Udall, Mr. Obey, and Mr. Jacobs.

* * * Nevertheless, the legislation falls short of the recommendations I submitted to the Congress to meet the urgent problems in this field.

There were many deficiencies in the 1952 law and legislative attempts to correct them were made during the ensuing years. The prime objective was the elimination of the exemption enjoyed by small mines (those employing 14 or fewer persons underground).

Continuing mine disasters inspired the establishment of a task force to investigate mine safety and make recommendations. The report of the task force was submitted in August 1963.

Public Law 89-376 (1966) was a response to yet another mine disaster and incorporated some of the recommendations of the task force. The most significant change made by the 1966 law was the deletion of the exemption of small mines from the act.

Even after the 1966 amendments, however, the larger number of causes of fatalities and accidents remain beyond the reach of the Federal statute. This broader, non-Federal area of coal mine safety was left by the Congress in 1952 to be embraced by State laws and the Federal Mine Safety Code. By doing so, the Congress intended to attack fatalities by major disaster. The remaining 90 percent of accident occurrences resulting in death or injury were left covered only by State law and the safety code.

The death of 222 miners in 1967, 311 in 1968, the Farmington disaster, and the death of over 170 miners in nondisaster type accidents since Farmington now surrounds the consideration of this legislation.

COMMITTEE CONSIDERATION

The General Subcommittee on Labor conducted 10 days of public hearings on coal mine health and safety proposals. Included in the hearing record are the views of representatives of operators of large coal mines; operators of small coal mines; the mine workers' union; individual mine workers; interested parties; and Administration personnel. The hearings are further enhanced by testimony on coal workers' pneumoconiosis presented by several medical researchers, all of whom are internationally recognized experts in their field. In addition to the presentations of public witnesses; statements and supplementary materials were submitted to the subcommittee and inserted in the record.

Two investigatory trips were made by the subcommittee to observe coal mining operations and the atmosphere in mines; and to learn what the British Government—the leading nation in pneumoconiosis research—had concluded from its studies of the relationship between pneumoconiosis and exposure to excessive coal dust and its recommendations on controlling dust, protecting miners from dust exposure, and the treatment of miners who have contracted the disease.

On February 27, the subcommittee toured two coal mines—a deep shaft mine and a smaller drift mine—in western Pennsylvania. The tours consisted of surface and underground observations of mining operations and discussions with company officials and workers. Members indicated the tours resulted in their better understanding of the unique conditions that make coal mine health and safety requirements different from those of any other industry.

The subcommittee devoted 4 days—May 12 through 15—in Great Britain engaged in consultations with officials of the National Coal Board and medical research staffs. The members attended several seminars at the National Coal Board where they were apprised of the medical problems involved in pneumoconiosis research and treatment; details of the Board's studies; medical and scientific control, including dust standards and evaluations; and engineering problems of dust control methods. During field trips to several pneumoconiosis research laboratories, further information was elicited relative to dust control procedures, medical evaluations, and procedures for medical and engineering control. A visit was also made to an English colliery.

In addition, the full committee held 1 day of hearings on September 9, to obtain further testimony on issues which had arisen subsequent to subcommittee action.

The subcommittee held 8 days of open and executive sessions to consider a subcommittee print which was a composite of the major proposals, with amendments based on recommendations from the hearings and investigatory trips.

On August 6, the subcommittee voted to amend H.R. 1047—a coal mine health and safety bill introduced by the subcommittee chairman—by substituting the approved language of the subcommittee print, and to report the bill to the full committee.

The committee met 3 days in open session and on September 18, by a 29-to-3 vote, ordered H.R. 1047, as amended, reported to the House as a clean bill. On September 24, the committee met, pro forma, and voted 30 to 4 to report the clean bill, H.R. 13950, to the House.

NEED FOR THE LEGISLATION

In September 1968, President Johnson proposed a strong new Federal Coal Mine Health and Safety Act. In March, President Nixon submitted a proposal which was similar to that of his predecessor. In doing so, President Nixon said:

The workers in the coal mining industry and their families have too long endured the constant threat and often sudden reality of disaster, disease, and death. This great industry has strengthened our Nation with raw material of power. But it has also frequently saddened our Nation with news of crippled men, grieving widows, and fatherless children.

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.

The time has come to replace this fatalism with hope by substituting action for words. Catastrophes in the coal mines are not inevitable. They can be prevented, and they must be prevented

* * * * *

Secretary of the Interior Walter J. Hickel testified in support of the administration proposal before the General Subcommittee on Labor on March 4. At that time, the Secretary said:

The need for this legislation is unmistakable—there has been no improvement in the overall fatality rate since 1947. On the other hand, since passage of the Federal Coal Mine Safety Act with its antidisaster provisions in 1952, the fatality rate from major disasters has been cut by about 50 percent. This should provide some idea of the potential inherent in enforceable laws.

Clearly, if we are to have any impact on the day-to-day accidents that cause most of our coal mine injuries and deaths, we need a law that gives broader enforcement powers to the inspector and thereby provides stronger incentives for management and labor to think safety at all times. We must reduce injuries and eliminate the accidents that kill miners by the ones, twos, or threes as well as prevent major disasters.

To us, it seems that the cold, statistical, day-to-day record of death and disease among our coal miners is reason enough for positive and immediate action, and in the proposal I have just outlined our convictions have been clearly voiced.

There is more at stake here than the lives and health of 144,000 coal miners, though they surely merit our most strenuous efforts on their behalf. The problems that we are wrestling with have an impact that extends beyond any coal mine. If we fail, those problems can weaken the physical and moral fiber of our whole society.

Coal is our most abundant fuel resource. Right now, it supplies nearly a fourth of our total energy demand and 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 exorbitant 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 access to a resource that has an almost inexhaustible potential for industrial, economic, and social good.

The adequacy of a major industry's work force is at stake here. If we cannot today assure coal miners a safe and healthful working environment and educate them in the practices that will keep it safe and healthful, our mines tomorrow will be unable to attract the workers they need, and the industry will sicken for want of qualified manpower.

Already, as you know, real difficulties are being encountered in recruiting young men as coal miners. Let this trend continue and our future energy supplies, along with all the benefits that are implicit in them, will be jeopardized.

As a people we have always placed human values at the summit of our esteem. We pride ourselves on our resourcefulness and our efficiency. Yet, the way that we mine coal today is not humanitarian, resourceful, or efficient. It is

inexcusably wasteful of our most precious asset—the human being.

* * * * *

Following Secretary Hickel, John F. O’Leary, Director of the Bureau of Mines, testified. In discussing the fatality rate in coal mines, he said:

Whereas that rate did drop following the enactment of the 1941 law—from an average of 1.5 per million man-hours between 1932 and 1941, to an average of 1.2 per million man-hours between 1942 and 1951—the downward trend in the rate stopped in 1947 and there has been virtually no detectable improvement since then.

When discussing the Code, which is not enforceable by the Bureau, Director O’Leary said:

In this context it is significant to note that while we are able to achieve virtually 100-percent compliance with the mandatory provisions of the Federal Coal Mine Safety Act, compliance during the inspections with the nonenforceable code provisions leaves much to be desired. Although such compliance ranges as high as 90 percent in some of the captive mines of the steel companies, the average is about 65 percent for large coal mines. At the small coal-producing operations, compliance with code provisions was as high as 33 percent in one State, but was as low as 7 percent in another.

For these reasons we are convinced that conditions in our coal mines cannot be significantly improved without new and stronger health and safety legislation. The Bureau needs broader authority, and it needs it now, in order to bring coal mine injury and fatality rates into line with those of other major industries, and to assure that our coal miners do not escape accidental injuries only to fall victim to an insidious occupational disease. * * *

* * * * *

The committee fully subscribes to the foregoing positions, as evidenced by the product of its intensive and extensive deliberations—H.R. 13950.

For too long the Congress has countenanced the passage of piecemeal measures which have failed to provide the Bureau with the enforcement power it needs. Too many injuries and too many lives have filled the gap left by inadequate laws. A strong law is necessary to protect the men who extract one of our Nation’s most vital resources. Coal miners deserve the safest, healthiest work environment our technology will enable us to provide.

SUMMARY OF MAJOR PROVISIONS

TITLE I—GENERAL

Establishment of Mandatory Health and Safety Standards

Section 101 establishes the procedures for the promulgation of mandatory health and safety standards by the Secretary of the Interior (hereinafter referred to as the “Secretary”). The Secretary promulgates

all mandatory standards, but is responsible for developing and revising only mandatory safety standards. The Secretary of Health, Education, and Welfare is responsible for developing and revising mandatory health standards. All proposed standards are required to be published in the Federal Register and are subject to review by the Federal Coal Mine Health and Safety Board of Review (established in section 106) prior to promulgation by the Secretary. No standard promulgated by the Secretary shall reduce the protection afforded miners below that afforded by the interim mandatory health and safety standards contained in title II and title III. These interim standards apply to underground coal mines. Standards for surface coal mines shall be proposed by the Secretary not later than 12 months after the date of enactment of this act.

The committee was persuaded by the history of coal mine safety enforcement and the facts presented to it to vest authority for the promulgation of mandatory standards in the executive branch. Any law establishing health and safety requirements for an industry as complex and as subject to constant technological change as coal mining, certainly demands flexibility. Too often, standards are enacted only to become almost immediately inadequate in the face of changing conditions.

The committee has, however, provided detailed interim health and safety requirements which are delineated in titles II and III. It has also stated clearly the health and safety goals to be achieved.

The committee gave careful consideration to a variety of proposals as to the appropriate agency to administer provisions of the act. It gave most careful consideration to placing the responsibility for developing, revising, and promulgating both mandatory health and safety standards within the Department of the Interior, but decided the Department of Health, Education, and Welfare should develop and revise all health standards. It is felt that this agency is the best equipped with the necessary scientific and medical technicians and professionals to assure healthy working standards for miners. Although the Secretary of the Interior is responsible for promulgating all mandatory standards, in the case of mandatory health standards he acts only to give official status to those which are developed or revised by the Secretary of Health, Education, and Welfare.

In the case of all proposed standards, however, interested persons have the right of filing objections and requesting a public hearing on such objections.

Inspections and Investigations

Section 103 authorizes and requires representatives of the Secretary to make frequent inspections and investigations in coal mines each year for information gathering and enforcement purposes. Each underground mine shall be inspected at least four times a year. The Secretary of Health, Education, and Welfare is also authorized entry to coal mines to enable him to carry out his functions and responsibilities under the act.

Section 103 also empowers the Secretary or his authorized representative with authority, in the event of an accident, to take whatever action he deems appropriate to protect the life of any person and to be consulted regarding any plan to recover any person in the mine.

This section further provides opportunity for a miner to request the Secretary to conduct a special investigation to determine if an immi-

nent danger or violation of a standard exists in a mine, and for the representative of miners at a mine to accompany an authorized representative of the Secretary—at no loss in pay—on any inspection of the mine.

No advance notice of an inspection shall be given to the operator or the representative of miners at a mine.

When affording the representative of miners at a mine the opportunity to accompany him on an inspection of the mine, the authorized representative of the Secretary shall first notify a member of the mine's safety committee working during the shift such inspection is to be made in the case of a mine which has such a committee.

Findings, Notices, and Orders

Section 104 establishes improved procedural mechanisms for finding dangerous conditions or violations of standards in a mine, and for the issuance of notices and orders with respect to them.

Subsection (a) deals with the finding of a condition of imminent danger by an authorized representative of the Secretary during an inspection. When this occurs, the representative will determine the area where the danger exists and immediately issue an order requiring the mine operator to withdraw all persons, except those necessary to take corrective action, from the affected area until the danger is abated.

Subsection (b) deals with the finding of a violation of a mandatory health or safety standard during an inspection. When this occurs, the representative will immediately issue a notice fixing a reasonable time for the abatement of the violation. If the violation is not abated at the end of that period, and if the representative finds that the period should not be extended, he shall issue an order requiring the operator to withdraw all persons, except those necessary to take corrective action, from the area affected by the violation until the violation has been abated.

Subsection (c) deals with the unwarrantable failure of an operator to comply with a mandatory health or safety standard. When a representative finds a violation of a standard and further finds that the violation is caused by an unwarrantable failure on the part of the operator in complying with the particular standard, he includes such additional finding in the notice issued under subsection (b). Within 90 days of the time the notice is issued, the mine is reinspected to determine if the violation continues to exist. If it does, and the operator has again unwarrantably failed to comply with the standard, the withdrawal procedures described in subsection (b) will be followed. If such withdrawal order has been once issued, it will continue to be issued upon the finding of similar violations during subsequent inspections. Once an inspection is made which discloses no such similar violation, the continuous closure provisions of subsection (c) no longer apply and the initial procedures are again applicable.

Subsection (h) deals with the finding, upon inspection, of conditions in a mine which have not yet resulted in imminent danger but which cannot be effectively abated through the use of existing technology and which may result in imminent danger. When this occurs, the representative will determine the area in which the conditions exist, and issue a notice to the operator with copies to the Secretary and the miners. The Secretary shall thereupon cause such further investigation to be made as he deems appropriate and provide an opportunity

for a hearing. The Secretary will then make findings of fact and require that either the notice issued be canceled, or an order be issued causing all persons, except those necessary to take corrective action, to be withdrawn from and prohibited from entering the affected area until he determines—after a hearing—that the conditions responsible for the order have been abated.

Subsection (i) deals with the finding of a violation of a health standard by atmospheric samples taken as required by section 202(a). When such sample discloses a violation, the Secretary or his authorized representative shall find a reasonable time within which to take corrective action and shall immediately issue a notice fixing a reasonable time for the abatement of the violation. If at the expiration of the period of time as originally fixed or subsequently extended the violation has not been abated, and if it is found that the period of time for compliance should not be further extended, a withdrawal order shall be issued and continue in effect until the violation has been abated. If it is found that the period of time for compliance should be further extended, another notice of violation must be issued.

Review by the Secretary

An operator or miner affected by an order issued under section 104 may apply to the Secretary for review of the order within 30 days of its receipt. The Secretary will then make whatever investigation he deems appropriate as well as provide an opportunity for a hearing. He will make findings of fact and issue a written decision vacating, affirming, modifying, or terminating the order complained of. Pending completion of his investigation, the Secretary may, upon application and after a hearing, grant temporary relief from an order.

Federal Coal Mine Health and Safety Board of Review

Section 106 establishes the Board. Current members of the existing Federal Coal Mine Safety Board of Review would be members of the new Board until the expiration of their terms. New and additional members will be appointed by the President, by and with the advice and consent of the Senate.

For the purpose of reviewing orders and penalties, the Board is composed of five regular members. One member shall be representative of the viewpoint of the operators of small mines; one of the operators of large mines; one of the workers in small mines; and one of the workers in large mines. The Chairman shall be drawn from the public generally and shall not have had any interest in or association with the coal industry for 5 years prior to his appointment.

For the purpose of carrying out the review of proposed mandatory health and safety standards, and for carrying out the provisions of sections 401 (Research) and 412 (Special Report), the Board is composed of eight members. In addition to the five regular members, there will be one member with a public health background, and two others who have a background in coal-mining technology. The additional members shall not have had any interest in or association with the coal-mining industry for 1 year prior to their appointment.

Review by the Board

An operator may apply directly to the Board for review of an order issued under section 104 or an operator may appeal an order issued

under section 104 to the Secretary and then ask the Board to review the decision made by the Secretary pursuant to section 105. Such application must be made within 30 days of receipt of the order or decision. If an appeal to the Board is made from the Secretary's review, the evidence is considered to establish a prima facie case against the operator although either side may produce additional evidence. When an appeal is made directly from an order issued under section 104, the Board is not bound by any previous findings of fact and the burden of proof is on the Secretary. After a hearing, the Board shall make findings of fact and issue a written decision affirming, vacating, modifying, or terminating the order or decision complained of. Pending completion of the hearing, the Board may, upon application, grant temporary relief from an order or decision.

The Board's functions are:

- (1) Review of violations of mandatory health and safety standards.
- (2) Review of penalties.
- (3) Review of proposed mandatory health and safety standards.
- (4) Establish research objectives.
- (5) Conduct special study into possible Federal-State cooperative arrangement.

Only in the case of (1) and (2) does the Board have any authority. In the case of (3), (4), and (5), the Board's capacity is purely advisory and procedural.

In giving consideration to continuing the Board as an overall instrument in assuring effective but fair enforcement of health and safety standards, the committee studied actions of the present Board. Although the existing Federal Coal Mine Safety Board of Review has no authority to review penalties (no penalty provisions exist in the present law), it does have authority to review violations on appeal.

Since 1952, when the existing Board was created, until the present, there have been 22 litigated cases. The Board fully upheld the Bureau of Mines in 10, upheld it in part in one, reversed it in five, and six cases were settled upon agreement of the parties after a hearing. Of the cases fully litigated and decided the Bureau was upheld in whole or in part in 69 percent, and reversed in 31 percent of the cases. Five of these cases were appealed to the U.S. courts of appeals (three by operators and two by the Bureau), and the Board's decisions were affirmed in four cases, and in one case the appeal by the Bureau was dismissed as untimely filed. All decisions of the Board were unanimous, except in *Princess Elkhorn* (1955), in which a worker representative dissented, and in *St. Marys Sewer Pipe* (1958), in which an operator representative dissented; both majority decisions were affirmed unanimously by the courts of appeals.

In addition to these, there were a number of other cases involving disputes which were filed formally or informally, and which were resolved without a hearing. There were also a large number of State plan cases which were decided upon stipulation and without dispute of the parties.

The concept of the Board was proposed in bills recommended to the Congress by the previous and present administrations. The Board chartered in this bill has more responsibilities and functions than the existing Board. The "regular" Board is substantially identical to the existing Board, but additional technicians are added as members

when the Board meets to review proposed mandatory health and safety standards, establish research objectives, and conduct the Federal-State cooperative plan study.

In highly technical fields, such as coal mine safety, metal mine safety, and transportation safety, the legislatures have sought to delegate the initial review of administrative orders to quasi-judicial boards, rather than to the courts. Unlike the courts, these boards are equipped with the special competence to resolve technical conflicts, and can act with the speed and uncomplicated procedures particularly adapted to the problems involved.

Judicial Review

Any decision issued by the Board upon review of an order or decision by the Secretary shall be subject to judicial review by the U.S. court of appeals for the circuit in which the affected coal mine is located. The court shall hear the 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 and the court may affirm, vacate, or modify any decision or may remand the proceedings to the Board for further action as it directs. The court may also grant such temporary relief as may be appropriate pending final determination of the appeal. The judgment of the court shall be subject only to review by the Supreme Court of the United States.

Injunctions

The Secretary may request the Attorney General to institute a civil action for relief against an operator who impedes the execution of the act or refuses to comply with its provisions and requirements.

Penalties

The operator of a mine found in violation of a mandatory health or safety standard or who violates any provision of the act shall be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Whoever knowingly violates or fails or refuses to comply, with an imminent danger withdrawal order or with any final decision on any other order shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or by both. The penalty for a repeat conviction is a fine of not more than \$20,000 and/or imprisonment for not more than 1 year. These same provisions apply to directors, officers, or agents of corporate operators who authorize, order, or carry out the violation. In addition, whoever knowingly makes any false statements or representations relative to this act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or by both.

Any penalty assessed under this section is, upon request, subject to review by the Board. The Secretary may initiate the collection of any penalty by civil action in the appropriate district court of the United States.

The committee expended considerable time in discussing the role of an agent of a corporate operator and the extent to which he should be penalized and punished for his violations of the act. At one point, it was agreed to hold the corporate operator responsible for any fine levied against an agent. It was ultimately decided to let the agent stand on his own and be personally responsible for any penalties or punishment meted out to him.

The committee recognizes, however, the awkward situation of the agent with respect to the act and his supervisor, the corporate operator, and his position somewhere between the two. The committee chose to qualify the agent as one who could be penalized and punished for violations, because it did not want to break the chain of responsibility for such violations after penetrating the corporate shield. The committee does not, however, intend that the agent should bear the brunt of corporate violations. It is presumed that the agent is often acting with some higher authority when he chooses to violate a mandatory health or safety standard or any other provision of the act, or worse, when he knowingly violates or fails or refuses to comply with an imminent danger withdrawal order or any final decision on any other order.

Entitlement of Miners

Section 112(a) provides for limited pay guarantees to miners idled by a closure order issued under section 104. All miners working during the shift when the order is issued who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the balance of the shift. If the order is not terminated prior to the next working shift, all miners idled by the order on that shift are entitled to such compensation for 4 hours of the shift. Whenever an operator violates or fails or refuses to comply with a withdrawal order issued under section 104, all miners who would be idled by the order are entitled to such compensation, in addition to pay received for work performed after the order is issued, for the period beginning when the order is issued and ending when it is complied with, vacated, or terminated.

Subsection (b) provides payments to miners totally disabled from complicated pneumoconiosis and to the widows of miners who suffered from complicated pneumoconiosis at the time of death. The disease must have arisen out of or in the course of the individual's employment in a coal mine. If he was so employed for 10 years or more, there is a rebuttable presumption that the disease so arose; if he was not, the individual must demonstrate that his disease so arose.

Payments are based upon the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under provisions of Federal law relating to Federal employees (sec. 8112, title 5, United States Code). In the case of total disability, the disabled individual is entitled to payment at a rate equal to 50 percent of such minimum monthly amount. The widow of a miner entitled to payment would be eligible to receive the same amount. This represents approximately \$136 per month. The payment would be increased to allow for up to three dependents. The first dependent would increase the basic payment by 50 percent; the second dependent by 75 percent; and the third dependent by 100 percent. The maximum monthly payment, therefore, to which an eligible individual is entitled under this subsection is equal to the minimum monthly payment such Federal employee is entitled to.

Payments made under this subsection shall be reduced by any amount the individual receives under the workmen's compensation, unemployment compensation, or disability insurance laws of his State, and the amount by which the payment would be reduced on account of excess earnings under section 203 (b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of that act.

The Secretary of Labor shall enter into agreements with the Governors of the States under which the State will receive and adjudicate claims under this subsection from its residents and under which the payments will be made. Each Governor will implement the agreement in any manner he determines will best effectuate the provisions of this subsection. If the Secretary of Labor is unable to enter into an agreement with a Governor or if a Governor requests him to do so the Secretary may make payments directly. When the Secretary of Labor has an agreement with a State he will make a grant to the State for the purpose of making the individual payments.

Payments under this subsection are for retroactive cases only, and not for prospective cases. No claim will be considered unless it is filed (1) within 1 year after the date an employed miner received the results of his first chest roentgenogram as provided under section 203, or, if he did not receive such a chest roentgenogram, the date he was first afforded an opportunity to do so under that section, or (2) in the case of any other claimant, within 3 years from the date of enactment of this act, or, in the case of a claimant who is a widow, within 1 year after the death of her husband or within 3 years from the date of enactment of this act, whichever is the later.

No payments shall be made under this subsection to the residents of any State which, after the date of enactment of this act, reduces the benefits payable to persons eligible to receive payments under this subsection, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. Moreover, it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for the death, injury, or illness of workers.

These provisions of the bill are a limited response in the form of emergency assistance to the miners who suffer from, and the widows of those who have died with, complicated pneumoconiosis.

Complicated pneumoconiosis is a serious disease of the lungs caused by the excessive inhalation of coal dust. The patient incurs progressive massive fibrosis as a complex reaction to dust and other factors, which may include tuberculosis and other infections. The disease in this form usually produces marked pulmonary impairment and considerable respiratory disability.

Such respiratory disability severely limits the physical capabilities of the individual, can induce death by cardiac failure, and may contribute to other causes of death. Once the disease is contracted, it is progressive and irreversible.

One of the compelling reasons the committee found it necessary to include this program in the bill was the failure of the States to assume compensation responsibilities for the miners covered by this program. State laws are generally remiss in providing compensation for individuals who suffer from an occupational disease as it is, and only one State—Pennsylvania—provides retroactive benefits to individuals disabled by pneumoconiosis.

Also, it is understandable that States which are not coal-producing have no wish to assume responsibility for residents who may have

contracted the ailment mining coal in another State. The substantial reduction in the number of miners actually employed in mines following World War II caused a dispersal of men throughout the country—many into States which have few, if any, mines. These men took with them an irreversible disease, but because of their present location are denied benefits.

The committee also recognized the problems inherent in requiring employers to assume the cost of compensating individuals for occupational diseases contracted in years past.

The resolution of this dilemma, consistent with the desperate financial need of individuals eligible to receive payments under this bill, was the inevitable inclusion of section 112(b), and the requirement that the payments be made from general revenues.

It is hoped that the health standards prescribed in title II will eliminate conditions in mines which cause the disease. Also, it is expected that the States will assume responsibility in their respective compensation plans for miners who contract the disease in the future.

Reports

All accidents are required to be investigated by the operator, and records of such accidents and investigations required to be kept by the operator. The operator is also required to establish and maintain such records and make such reports as the Secretary may reasonably require.

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TITLE IV—ADMINISTRATION

Research

Section 401 requires the Board to establish objectives for the conduct of appropriate studies, research, experiments, and demonstrations. Activities to meet the objectives in the area of coal mine health will be carried out by the Secretary of Health, Education, and Welfare. Those in the area of coal mine safety will be carried out by the Secretary of the Interior. Results of such studies and research will be available to the general public. The committee intends that until healthful and safe conditions in coal mines are assured, research in these areas must be substantially expanded.

Funds for the research shall be distributed to the Secretaries from moneys the Board shall receive from operators, appropriations, and the States. Each operator is required to contribute an amount equal to 2 cents for each ton of coal he produces. The Board may reduce this amount when it determines it has sufficient funds from other sources

with which to carry out its activities. In addition, the Federal Government will contribute an amount equal to 2 cents for each ton of coal produced by operators. States may also contribute and the Federal Government will match such contributions up to an amount equal to 1 cent per ton of coal produced in the respective State.

Prior to distributing any funds derived under this section, the Board must first assure the payment of the chest roentgenograms and other tests provided for under section 203(a).

The committee believes the Board should consider, as the first priority item in establishing objectives for the conduct of studies, research, experiments, and demonstrations, the establishment of a respiratory disease center. The medical information gathered in Great Britain is comprehensive and impressive, and was derived largely because a central repository for the collection and interpretation of relevant data was established.

Assistance to States

The Secretary 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 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.

For this purpose there is authorized to be appropriated for the fiscal year ending June 30, 1970, and each of the succeeding fiscal years, the sum of \$1 million.

Equipment

Under section 404, the Secretary is authorized to make loans to operators of coal mines to enable them to procure or convert equipment needed by them to comply with the provisions of this act. The loans shall not have maturities beyond 20 years and shall bear interest at a rate adequate to cover (1) the cost of the funds to the Treasury, (2) the cost of administering the loans, and (3) probable losses. The Secretary shall use the services of the Small Business Administration to the greatest extent possible in carrying out this section.

Inspectors; Qualification; Training

Section 405 establishes qualifications for inspectors and requires the Secretary to provide for the adequate training and continuing education of such personnel.

The requirements of the Federal mine safety acts impose an immediate and urgent need to upgrade and expand the inspectorate that must carry out the provisions of the acts. The only way to meet this emergency is to institute an intensive educational and training program for the inspectors. The immediate goal of the education and training program is to upgrade the existing staff, a parallel objective is to supplement the present staff as soon as possible with well-trained and properly educated additional personnel. The ultimate objective is to establish a fully professionalized inspection staff that can be deployed to insure fulfillment of the purpose of the Federal Mine Safety Acts. These men must be trained and educated to understand the highly technical conditions they will meet in the mines today and be able to cope with new technology as it is introduced in the future.

These duties are not simple routine inspection but require engineering knowledge and the ability to judge and evaluate the complex conditions that can be encountered in an operating mine.

The committee fully expects the Secretary to undertake a comprehensive and exhaustive program of recruiting, training, and continually educating persons employed as his authorized representatives or in other capacities. The Secretary should also initiate programs for the training and retraining of inspectors by appropriate educational institutions and operators. The committee believes that adequate funding for these activities must be provided at the earliest possible date.

Special Report

The Board shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal mine health and safety and report to the Congress as soon as practicable on the results of its study.

Operative Date and Repeal

The provisions of titles I and III of this act become operative 90 days after enactment. The provisions of title II become operative 6 months after enactment. The provisions of the Federal Coal Mine Safety Act are repealed on the operative date of titles I and III of this act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the act may be cited as the "Federal Coal Mine Health and Safety Act of 1969".

Section 2. Declaration of purpose

In this section the Congress declares that—

(1) the first priority and concern of those in the coal mining industry must be the health and safety of its miners,

(2) occupationally caused death, illness, or injury of a miner causes grief and suffering and is also a serious impediment to the growth of the industry,

(3) more effective means for improving the working conditions and practices in our coal mines must be provided in order to prevent death and serious physical harm and to control the causes of occupational diseases,

(4) the existence of unsafe and unhealthy conditions and practices in coal mines cannot be tolerated,

(5) the operators, assisted by the miners, have primary responsibility to prevent unsafe and unhealthful conditions and practices in coal mines,

(6) the disruption of production and the loss of income as a result of coal mine accidents or occupationally caused disease unduly impedes and burdens commerce, and

(7) it is the purpose of the act to provide for the establishment of mandatory health and safety standards with which operators and the miners must comply.

Section 3. Definitions

This section contains definitions of terms used in the act. Of these, the following are of special significance.

"Secretary" will mean the Secretary of the Interior.

"Operator" will mean any owner, lessee, or other person who operates, controls, or supervises a coal mine.

"Agent" means any person having responsibility for the operation of all or part of a coal mine or the supervision of employees in a coal mine.

"Coal mine" is defined to mean an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and all other property, real or personal, placed on, under, or above the surface of such land by any person, if it is used or to be used in, or results from, the work of extracting bituminous coal, lignite, or anthracite by any means or method, and the work of preparing the coal so extracted. The term includes custom coal preparation facilities.

"Work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and any other work of preparing the coal which is usually done by the operator of the coal mine.

"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.

"Accident" includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any person.

Section 4. Mines subject to act

This section provides that every coal mine the products of which enter interstate or foreign commerce, or the operations or products of which affect interstate or foreign commerce, shall be subject to this act. It requires each operator of, and every person working in, such a mine to comply with the provisions of this act and the regulations of the Secretary promulgated under it.

TITLE I—GENERAL

Section 101. Health and safety standards; review

Subsection (a) of this section requires the Secretary, in the manner described later, to develop, promulgate, and revise mandatory safety standards for the protection of life and the prevention of injuries in coal mines subject to the act. He is also required to promulgate the mandatory health standards which are transmitted to him by the Secretary of Health, Education, and Welfare, as hereafter described. No mandatory health or safety standard may be so promulgated which reduces the protection afforded miners below that afforded by the standards contained in title II and III of the act.

Subsection (b) provides that when he develops mandatory safety standards, the Secretary must consult with interested persons and organizations, including the Federal Coal Mine Health and Safety Board of Review, other Federal agencies, representatives of States, and appropriate representatives of coal mine operators and miners. In developing safety standards, in addition to the attainment of the highest degree of safety protection for the miners, other considerations should be the latest available scientific data in the field, technical feasibility of the standards, and experience gained under this and other safety statutes.

Subsection (c) of this section directs the Secretary of HEW to develop and revise mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners. In developing and revising these standards, the Secretary is required to base them upon research, demonstrations, and experiments, and such other information as may be appropriate. When he has developed or revised a mandatory health standard, the Secretary of HEW will transmit it to the Secretary of the Interior who will publish it as a proposed mandatory health standard.

Subsection (d) requires the Secretary to publish proposed mandatory health and safety standards in the Federal Register and to allow interested persons at least 30 days to submit written data or comments. Thereafter, unless an objection is filed as provided in subsection (e), the Secretary may, in the case of a mandatory standard which is a safety standard, after consideration of all the data and comments which have been submitted, promulgate the standard with any modifications he deems appropriate. In the case of a mandatory standard which is a health standard, unless an objection is filed, the Secretary of HEW may, upon the expiration of such 30-day period, and after consideration of all relevant data and comments transmitted to him, direct the Secretary to promulgate the standard with such modification as the Secretary of HEW may deem appropriate.

Subsection (e) provides that during the period fixed for submission of written data and comments as described in the preceding subsection any interested person may file written objection to the proposed standards stating the ground therefore and requesting a public hearing by the Federal Coal Mine Health and Safety Board of Review. The Secretary will then publish in the Federal Register a notice specifying the proposed standard to which objections have been filed and hearing requested and will refer the standards and objections to the Board for review as provided in subsection (f).

Subsection (f) provides that the Federal Coal Mine Health and Safety Board of Review shall, as soon as a matter is referred to it, issue notice and hold a public hearing. Within 60 days after it has finished the hearing, the Board must issue a report to the Secretary setting forth findings of fact and appropriate recommendations. The report will be made public. When he receives such a report, in the case of a safety standard, the Secretary may, upon consideration of the Board's findings of fact and recommendations, promulgate the mandatory safety standard with such modifications as he deems appropriate. When he receives such a report, in the case of a mandatory health standard, he will transmit it to the Secretary of HEW who may, after consideration of the Board's findings of fact and recommendations, direct the Secretary to promulgate the health standard with any modifications the Secretary of HEW deems appropriate. In any case in which either such Secretary does not adopt the Board's recommendations, he shall publish his reasons therefor.

Subsection (g) provides that mandatory standards promulgated as described above will be effective upon publication in the Federal Register unless the Secretary specifies a later date.

Subsection (h) requires the Secretary to develop and publish proposed mandatory safety standards for surface coal mines within 12 months after the enactment of the act.

Section 102. Advisory committees

This section authorizes the Secretary to appoint advisory committees to advise him in carrying out the act. Members of advisory committees who are not governmental employees will be paid on a per diem basis at a rate not in excess of that prescribed for grade GS-18 in the general schedule.

Section 103. Inspections and investigations

Subsection (a) of this section provides that there shall be frequent inspections and investigations in coal mines by authorized representatives of the Secretary. These inspections and investigations shall be made for the following purposes:

- (1) Obtaining, utilizing, and disseminating information relating to health and safety conditions, causes of accidents, and causes of diseases and physical impairments originating in coal mines.
- (2) Gathering information with respect to health and safety standards.
- (3) Determining whether an imminent danger exists in a coal mine.
- (4) Determining whether or not there is compliance with the mandatory health and safety standards or with any notice or order issued under this title.

For purposes of determining whether an imminent danger exists in a mine and determining whether or not there is compliance with a mandatory health and safety standard or with a notice or order issued under the title, no advance notice of the inspection shall be provided the operator, and the representatives of the Secretary are required to make inspections of each mine throughout its entirety at least four times a year.

Subsection (b) of this section provides that the Secretary or his authorized representative shall have a right of entry to a coal mine for the purpose of making inspections or investigations. It also provides that the provisions of the act relating to inspections, investigations, and records shall be available to the Secretary of HEW in carrying out his functions under the act.

Subsection (c) authorizes the Secretary, by agreement, to utilize the services, personnel, and facilities of any Federal agency in carrying out the act.

Subsection (d) provides that in making investigations relating to health or safety in a coal mine, the Secretary may hold public hearings and may issue subpoenas which are enforceable in the U.S. district courts.

Subsection (e) requires the operator of a coal mine in which an accident occurs to notify the Secretary and to take appropriate action to prevent the destruction of evidence relating to the cause thereof. The Secretary or his authorized representative is required to take appropriate action to protect the life of any person where an accident occurs in a coal mine and rescue and recovery work is necessary. In such a case he may, if he deems it appropriate, supervise and direct rescue and recovery activity.

Subsection (f) authorizes representatives of the Secretary to issue appropriate orders to insure the safety of persons in coal mines in which an accident has occurred. The operator of such a mine must

obtain the approval of such a representative, in consultation with State representatives, when feasible, 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.

Subsection (g) authorizes miners and their authorized representatives, where they believe a violation of a mandatory health or safety standard exists or an imminent danger exists, to notify the Secretary of the violation or danger. Upon receipt of the notification the Secretary or his authorized representative may make a special investigation.

Subsection (h) authorizes representatives of the miners to accompany the authorized representatives of the Secretary on his inspections of a coal mine.

Section 104. Findings, notices, and orders

Subsection (a) of this section provides that if an authorized representative of the Secretary finds that an imminent danger exists in a coal mine he shall forthwith issue an order requiring all persons to be withdrawn immediately from the mine or the area of the mine throughout which he determines the danger exists. Such persons are prohibited from reentering such area until the representative determines that the imminent danger no longer exists. An exception is made for persons, described in subsection (d), whose presence in the mine is needed.

Subsection (b) provides that whereupon any inspection of a coal mine an authorized representative of the Secretary finds there has been a violation of a mandatory health or safety standard which has not created an imminent danger he will issue a notice fixing a reasonable time for its abatement. If the violation has not been abated by the end of the period fixed (or subsequently extended, and such period has not been further extended) he shall issue an order requiring the operator to immediately withdraw all persons from the area of the mine affected by the violation. They will thereafter be prohibited from reentering such area until it is determined that the violation has been abated. Again, an exception is made for certain persons described in subsection (d).

Paragraph (1) of subsection (c) provides that if, when inspecting a coal mine, one of the Secretary's authorized representatives finds that a mandatory health or safety standard is being violated but in a manner which does not cause an imminent danger, that the violation could significantly and substantially contribute to a mine accident, and that the violation is caused by an unwarrantable failure to comply with such standards, the representative shall include such findings in the notice given the operator under subsection (b) of this section. Within 90 days thereafter the Secretary shall cause the mine to be reinspected to determine if a similar violation exists, such reinspection to be in addition to any special inspection required under subsection (b) or under section 105. If any special inspection relating to the violation or the reinspection shows a similar violation does exist and that it was caused by an unwarrantable failure of the operator to comply with mandatory health or safety standards, he shall issue an order requiring all persons to be withdrawn from the areas affected and prohibited from entering such areas until the authorized representative determines the violation has been abated. Again, the persons listed in subsection (d) are not affected by the withdrawal order.

Paragraph (2) of this subsection provides that where a withdrawal order has been issued as described above, thereafter a withdrawal order shall be issued forthwith by a duly authorized representative of the Secretary who finds on any subsequent inspection that a violation exists in the mine similar to that which resulted in the issuance of a withdrawal order before. In such a case, persons will be debarred from entering the affected areas until an inspection discloses no similar violations, and then the provisions of paragraph (1), described above, will be again applicable to that mine.

Subsection (d) contains a list of persons who may enter an area affected by a withdrawal order. These are (1) persons whose presence is necessary to eliminate the condition, (2) public officials in pursuance of their official duties, (3) representatives of employees who in the judgment of the operator are qualified to make coal mine inspections or who are accompanied by such a person and whose presence in the area affected is necessary for the investigation of the conditions described, and (4) any consultant to any of those listed above.

Subsection (e) requires notices and orders issued under this section to contain a description of the conditions or practices which cause an imminent danger or a violation of a mandatory standard, and a description of the area of the mine from which persons must be withdrawn and prohibited from entering.

Subsection (f) requires notices and orders to be given promptly to the operator and that they shall be in writing and signed.

Subsection (g) authorizes authorized representatives of the Secretary to modify or terminate any order issued under the section.

Subsection (h) provides that if an authorized representative of the Secretary finds that conditions exist in a mine which have not yet resulted in imminent danger, cannot be effectively abated with existing technology, and reasonable assurance cannot be provided that the continuance of mining operations will not result in imminent danger, he must issue a notice thereof to the operator and file a copy thereof, incorporating his findings, with the Secretary and with the representative of the miners. Upon receipt thereof the Secretary will cause an investigation to be made which will include an opportunity for the operator and representatives of the miners to present information. If, after the investigation, and an opportunity for a hearing by an interested person, the Secretary shall make findings of fact and either cancel the notice issued by his representative or issue an order requiring the operator to withdraw all persons from the affected area. If they are withdrawn, they may not reenter such area until the Secretary, after a hearing affording all interested persons an opportunity to present their views, determines that the conditions have been abated.

Subsection (i) provides that when the samples of respirable dust taken and analyzed as required by section 202(a) show that the applicable dust level exceeds the health standards established by section 202(b), the Secretary must find a reasonable time within which to take corrective action to reduce the concentration of respirable dust to the miners in the area of the mine in which such standard was exceeded and must fix a reasonable time for the abatement of the violation. During that time, the operator of the mine is required to cause samples of respirable dust to be taken as described in section 202(a) in the affected area during each production shift. If, upon the expiration of the prescribed period of time, the Secretary finds that the violation

has not been totally abated, he will issue a new notice of violation if he finds that such period of time should be further extended. If he finds that the period should not be further extended, he will issue an order requiring the withdrawal of all persons from the area affected by the violation. They will not be permitted to reenter until test procedures show that the violation has been abated.

Section 105. Review by the Secretary

This section describes the manner in which interested persons may obtain a review by the Secretary of orders issued as described in the preceding section.

Subsection (a) permits each operator and each representative of miners in any mine affected by an order issued under section 104, or any modification or termination of such an order, to apply for review of the order within 30 days. When he receives an application for review, the Secretary will cause an investigation to be made. The investigation must provide an opportunity for a hearing at the request of the applicant or a representative of persons working in the mine.

Subsection (b) provides that when the Secretary receives a report of the investigation he must make findings of fact and, if it is an order issued under subsection (a) of section 104, find whether or not an imminent danger existed at the time of the order and whether or not it existed at the time of the investigation, and, in the case of orders issued under subsections (b), (c), and (i) of section 104, he will find whether or not there was a violation of any mandatory health or safety standard described in the order and whether or not it was abated at the time of the investigation. When he has made such findings, he will issue a written decision with respect to the order complained of and incorporate his findings therein.

Subsection (c), citing the urgent need for prompt decision of these matters, requires the Secretary to carry out these duties as promptly as practicable, consistent with adequate consideration of the issues involved.

Subsection (d) permits applicants for review to file requests for temporary relief and permits the Secretary to grant such relief on such conditions as he may prescribe after affording a hearing.

Section 106. Federal Coal Mine Health and Safety Board of Review

This section establishes the Federal Coal Mine Health and Safety Board of Review (hereinafter referred to as the "Board").

Subsection (a) provides that for purposes of carrying out its functions under sections 107 and 111 (relating to the review of orders and the imposition of penalties) the Board will be composed of five members (referred to in the bill as regular members) to be appointed by the President, by and with the advice and consent of the Senate.

Subsection (b) provides that for the purpose of carrying out the functions set forth in sections 107, 401, and 412 and matters related thereto (review of mandatory standards, prescribing the nature of research to be undertaken, and the making of a special study) the Board will include three additional members who are also to be appointed by the President, by and with the advice and consent of the Senate. Of the additional members, one will have a public health background and the others will have a background in coal mining technology. The additional members may not have had an interest in or connection with the coal mining industry for a year prior to their appointment.

Subsection (c) provides that the term of office of members of the Board will be 5 years, except that a person filling a vacancy will serve only for the remainder of the term of the member whom he succeeds. Members of the existing Federal Coal Mine Safety Board of Review in office on the effective date of the act will automatically become regular members of the new Board.

Subsection (d) provides that members of the Board will receive a per diem compensation at the rate prescribed for persons in grade GS-18 of the general schedule. They will be fully reimbursed for travel, subsistence, and related expenses.

Subsection (e) prescribes the required qualifications of regular members of the Board. It requires that the membership of the Board include a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of each of the following: operators employing 14 or fewer employees, operators employing 15 or more employees, miners in mines employing 14 or fewer employees, and miners in mines employing 15 or more employees. In addition, there would be one member drawn from the public generally who will be Chairman of the Board. The Chairman may not have had a pecuniary interest in or have been employed or engaged in the mining of coal or have regularly represented either miners or operators, or have been an official of the Department of the Interior for the last 5 years. This same requirement would apply while he is Chairman of the Board.

Subsection (f) provides that the principal office of the Board is in the District of Columbia, but that the Board may hold hearings or conduct other proceedings at any other place in specified circumstances. If a mine operator or a representative of miners requests it, the Board may hold hearings or conduct other proceedings on an application filed under section 107 at the county seat of the county in which the mine is located or at any other place mutually agreed to.

Subsection (g) of this section authorizes the Board to hire a secretary and legal counsel without regard to the civil service laws. Other employees of the Board are to be hired in conformity with the civil service laws.

Subsection (h) of this section provides that in carrying out its functions of reviewing the Secretary's order and of prescribing penalties, the Board may take action only on the affirmative vote of at least three regular members, except that where the mine involved has not more than 14 employees employed underground—referred to as small mines—the participation of the small mine operators' representative and the small mine workers' representative is required. Similarly, where such action involves mines with more than 14 individuals employed underground, the participation of the large mine operators' representative and the large mine workers' representative is required. The subsection also permits, if the Board so orders, a special panel to conduct a hearing and to submit a transcript thereof to the entire Board for its action. In such a case an opportunity to appear before the Board or the panel shall be afforded the parties prior to final action. The Board may afford the parties an opportunity to submit additional evidence.

Subsection (i) requires official acts of the Board to be entered on the record and its hearings and records to be open to the public. It prohibits the Board from inspecting coal mines for the purpose of determining any application.

Subsection (j) authorizes the Board to make rules for its proceedings which shall include adequate notice of hearings to all parties. The rules of the Federal Coal Mine Safety Board of Review in effect on the date of enactment of this act will constitute the rules of the new Board until superseded or modified. Three members of the Board shall constitute a quorum for purposes of carrying out its functions under sections 107 and 111—relating to review of the Secretary's orders and the assessment of penalties. In carrying out its other functions five members of the Board shall constitute a quorum.

Subsection (k) gives subpoena power to the Board.

Subsection (l) permits the Board to take testimony by deposition with reasonable protection for the interests of all parties.

Subsection (m) provides that subpoenas issued by the Board may be enforced in Federal district courts.

Section 107. Review by the Board

This section deals with the review by the Board of orders of the Secretary or his authorized representatives.

Subsection (a) provides that a coal mine operator may apply to the Board for annulment or revision of an order made pursuant to subsection (a), (b), (c), (h), or (i) of section 104. Such an application must be made within 30 days after receipt of the order. It may be made without first seeking its annulment or revision by the Secretary under section 105. Where the Secretary has reviewed an order under section 105, an operator may apply to the Board for a review of that decision within 30 days after its receipt.

Subsection (b) of this section provides that in proceedings for review by the Board the operator of the mine will be the applicant and the Secretary will be the respondent. Provision is made for giving appropriate notice to the respondent and to miners' representatives of the nature of the decision or order complained of. The Board is required to permit all interested persons to intervene in the proceedings.

Subsection (c) provides that if the appeal is made to the Board directly from an order issued by a representative of the Secretary, without a prior appeal to the Secretary, the Board is not to be bound by previous findings of fact, the burden of proof is upon the Secretary, and evidence may be offered by the parties to the proceedings. If the application is made to the Board from a decision issued by the Secretary under section 105 the record and decision of the Secretary will be received into evidence and his findings, including the decision, will constitute a prima facie case for the issuance of the decision complained of and the burden of rebutting such prima facie case will be upon the applicant, but either party may produce additional evidence.

Subsection (d) of this section provides that when the Board concludes its hearings it shall make a finding as to whether or not the alleged imminent danger, violation of a mandatory standard, or condition described in section 104(h)(1) existed at the time of issuance of such order and whether or not such danger or such violation existed at the time of the application. It will issue a written decision incorporating such finding therein and affirming, vacating, modifying, or terminating the order or decision issued under section 104 or 105.

Subsection (e) requires decisions of the Board to show the date upon which made, be signed by the concurring members, and entered on its official record.

Subsection (f) provides that while a case is pending before the Board, the Board may grant temporary relief, but only after a hearing in which all parties are given an opportunity to be heard.

Subsection (g) directs the Board to take action under the appellate provisions as promptly as practicable consistent with adequate consideration of the issues involved.

Section 108. Judicial review

This section provides that any decision issued by the Board under section 107 shall be subject to judicial review in the U.S. court of appeals for the circuit in which the affected mine is located. The review will be on petition by the Secretary or by the operator aggrieved. The court will hear the appeal on the record made before the Board, and the rulings of the Board, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may to the extent necessary to prevent irreparable injury, after affording due notice to and hearing of the parties to the appeal, may grant appropriate temporary relief pending the final determination. The judgment of the court shall be subject only to review by the Supreme Court upon certiorari or certification. The commencement of proceedings for judicial review will not unless so ordered by the court operate as a stay of the Board's decision.

Section 109. Posting of notices and orders

Subsection (a) of this section requires that there be maintained at each coal mine an office and a bulletin board near the entrance of the mine where notices may be posted which are required by law. Any notice or order required by the act to be given to an operator may be delivered to the office of the mine and a copy shall then be immediately posted on the bulletin board by the operator.

Subsection (b) requires the Secretary to cause a copy of any notice or order required by this title to be given to the operator to be mailed immediately to the representatives of persons working in the affected mine and to the public official or agency of the State concerned.

Subsection (c) of this section permits the Secretary to deliver any notice or order to an agent of the operator of a mine, and the agent is required to take appropriate measures to insure the compliance with the notice or order.

Subsection (d) requires each mine operator to file with the Secretary, and keep current, the name and address of the mine and the name and address of the person who controls or operates the mine. Each operator is required to designate an official at such mine as the principal officer in charge of health and safety at the mine. Where the mine is subject to control of a person not directly involved with its daily operation, there shall be filed with the Secretary the name and address of both the person who controls the mine and of the person having overall responsibility for the health and safety program at the mine.

Section 110. Injunctions

This section authorizes the Secretary to request the Attorney to institute civil action for relief, including permanent or temporary injunctions, restraining orders, or other appropriate orders, in the U.S. district court in which a coal mine is located or in which the operator has his principal office, in a number of specified instances. These civil actions will be brought whenever such operator or his agent—

- (1) Violates an order issued under section 104 or a decision issued under this title,
- (2) Interferes with, hinders, or delays the Secretary or his authorized representative from carrying out the act.
- (3) Refuses to admit such representative to the mine,
- (4) Refuses to permit inspection of the mine,
- (5) Refuses to furnish information requested by the Secretary,
- (6) Refuses to permit access to and copying of records.

It is provided that no temporary restraining order may be issued without notice unless it is alleged that substantial and irreparable injury to miners in a mine will be unavoidable. Such a temporary restraining order shall be effective for no longer than 1 week. It is also provided that where an order issued under this section to enforce an order issued under section 104 unless set aside or modified prior to by district court granting such injunctive relief shall not be in effect after the completion or final termination of all proceedings for review of such order as provided in this title if it is determined on such review that such order was invalid.

Section 111. Penalties

Subsection (a) of this section provides that the operator of a coal mine in which a violation occurs of a mandatory health or safety standard, or who violates any provision of this act, shall be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense. In fixing the amount of the penalty, the Secretary is required to consider the operator's history of previous violations, the appropriateness of the penalty to the size of the business, its effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith in rapidly complying after notification of violation. The penalties will not be assessed pending the final termination of all proceedings for review under this title.

Subsection (b) of this section gives the operator an opportunity to obtain a hearing before the Board before being required to comply with an order assessing a penalty.

Subsection (c) provides that where an operator fails to pay a civil penalty, the Secretary may request the Attorney General to institute a civil action in a district court to collect the penalty.

Subsection (d) provides that any person who knowingly violates any order issued under section 104(a) or any final decision on any other order issued under the title shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than 6 months, or both. If the conviction is for a second violation, the punishment shall be a fine of not more than \$20,000 or imprisonment for not more than 1 year, or both.

Subsection (e) provides that when a corporate operator violates a mandatory health or safety standard or violates any provision of the act, any director, officer, or agent of the corporation who authorized, ordered, or carried out the violation shall be subject to the provisions of subsection (a). Similarly, when a corporate operator knowingly violates any order issued under section 104(a) or any final decision on any other order any such director, officer, or agent who authorized, ordered, or carried out the violation shall be subject to the provisions of subsection (d).

Subsection (f) provides that any person who knowingly makes a false statement or representation in any document filed or maintained in accordance with the provisions of this act or any mandatory health or safety standard of this act or any order issued under the act shall be fined not more than \$10,000 or imprisoned not more than 6 months, or both.

Section 112. Entitlement of miners

This section contains two major provisions. The first of these, contained in subsection (a), relates to compensation for miners who are idled by reason of an order issued under section 104. The second of these, contained in subsection (b), relates to compensation in respect of total disability of an individual from complicated pneumoconiosis which arose out of or in the course of his employment in a coal mine and in respect of the death of any individual who at the time of his death was suffering from complicated pneumoconiosis which so arose.

It is provided in subsection (a) that, if a mine or a portion of a mine is closed by an order issued under section 104, all miners working during the shift when the order was issued who are idled by the order will receive full compensation for the period they are idled but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all miners on that shift who are idled by the order will receive full compensation for the period they are idled but not for more than 4 hours of the shift. Whenever an operator violates or refuses to comply with an order issued under section 104, all miners at the affected mine who would be withdrawn or prevented from entering the mine as a result of such order shall be paid full compensation, in addition to pay received for work performed after the order was issued, for the period beginning when the order was issued and ending when the order is complied with, vacated, or terminated.

Paragraph (1) of subsection (b) of this section provides for payments of compensation in respect of total disability of an individual from complicated pneumoconiosis which arose out of or in the course of his employment in a coal mine, and in respect of the death of an individual who, at the time of his death, was suffering from complicated pneumoconiosis which so arose. It is provided that if an individual who is suffering or suffered from complicated pneumoconiosis was employed for 10 or more years in a coal mine, there is a rebuttable presumption that his disease arose out of or in the course of such employment. This presumption does not affect applicability of the first paragraph in the case of claims on account of death or total disability of an individual who has not worked for so long as 10 years in a coal mine. All persons who suffer from complicated pneumoconiosis will be deemed, for purposes of this subsection, to be totally disabled.

Paragraph (2) of this subsection specifies the amount of compensation to be paid.

(1) If an individual is totally disabled he will be paid at a rate equal to one-half the minimum monthly compensation to which a U.S. employee in grade GS-2 of the general schedule who is totally disabled is entitled at the time of payment under the provisions of Federal law relating to Federal employees' compensation.

(2) In the case of a death, compensation will be paid to the widow at the rate the deceased individual would receive if he were totally disabled.

(3) If a person is entitled to compensation as described in either paragraph (1) or paragraph (2) has dependents, his compensation will be increased 50 percent, if he has one dependent, 75 percent if he has two, and 100 percent if he has three. Compensation payable will be reduced by any payment the individual receives under a workmen's compensation, unemployment compensation, or disability insurance law of his State, and also by the amount by which such payment would be reduced on account of excess earnings under sections 203 (b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such act.

Paragraph (3) of this subsection directs the Secretary of Labor to enter into agreement with the Governors of the States under which the State will receive and adjudicate claims from its residents and will make payments to claimants from grants made to the State under this subsection. The Governor is authorized to implement the agreement in such manner as he determines will best carry out the provisions of the subsection, but he will make reports to the Secretary of Labor subject to such verification as may be necessary to insure that Federal grants are used for their intended purpose.

Paragraph (4) directs the Secretary to make payments of compensation directly to residents of States where the Governor has requested him to do so or where he is unable to enter into an agreement as provided in paragraph (3). In such a case the administrative provisions for carrying out the Federal employees' compensation program contained in title 5, United States Code, will apply with respect to claims under this paragraph.

Paragraph (5) provides that claims must be filed within 1 year after the date an employed miner receives the results of his first chest roentgenogram provided for under section 203 or, if he did not receive such a chest roentgenogram, the date he was first afforded an opportunity to do so under that section. In the case of other claimants, the claim must be filed within 3 years from the date of enactment of this act, or, in the case of a claimant who is a widow, within 1 year after the death of her husband or within 3 years from the date of enactment of the act, whichever is later.

Paragraph (6) provides that compensation will be denied residents of States which after the date of enactment of this act reduce the benefits payable to persons eligible to receive compensation hereunder, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, and disability insurance.

Paragraph (7) contains definitions. It provides that subsection (b) will apply only to underground coal mines. It defines the term "complicated pneumoconiosis" to mean an advanced stage of a chronic coal dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one or more large opacities (greater than 1 centimeter in diameter) that would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lungs, or (3) when diagnosis is made by other means would be a condition which could reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in a manner described in those clauses. The term "dependent" will mean a wife or child who is a dependent as defined in section

8110 of title 5, United States Code. The term "widow" will mean a wife living with, or dependent for support on, the decedent at the time of his death, or living apart for reasonable cause or because of his desertion but has not remarried.

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TITLE IV—ADMINISTRATION

Section 401. Research

Subsection (a) requires the Board to establish objectives for the conduct of such studies, research, experiments, and demonstrations as may be appropriate to—

- (1) Improve working conditions and practices, prevent accidents, and control the causes of occupational diseases,
- (2) Develop new or improved methods recovering persons after an accident in a coal mine,
- (3) Develop methods of communication from the surface to the underground portion of a mine,
- (4) Develop new or improved means and methods for reducing concentrations of respirable dust in a mine,
- (5) Study the relationship between coal mine environments and occupational diseases of coal mine workers, and
- (6) For such other purposes as it deems necessary.

Subsection (b) provides that the Board, to accomplish the objectives described above, must distribute funds available to it after reserving the funds necessary for carrying out section 203(a) (relating to roentgenograms for miners) as equally as practical to the Secretaries of HEW and of Interior. Activities under this section in the field of coal mine health will be carried out by the Secretary of HEW while activities in the field of coal mine safety will be carried out by the Secretary of the Interior. In carrying out this section the Secretaries may use the services of public and private agencies and individuals, and must cooperate with the Board on specific projects and programs. All information developed under the authority of this act must be made available to the general public, unless an exception or limitation is made by the Secretary of the Interior or the Secretary of HEW.

Subsection (c) if this section relates to payments of royalties by operators. Paragraph (1) provides that each operator must pay to the United States a royalty equal to 2 cents for each ton of coal he produces. The Board may reduce this royalty if it determines that the funds available under the paragraph next described are sufficient to provide the chest roentgenograms required by section 203(a) and to carry out the activities under subsection (b) relating to research. The royalties so paid are automatically made available to the Board for its use in carrying out this section. If an operator fails to pay the royalty he is liable to the United States for double the amount he failed to pay. The Board is given sufficient authority to obtain the information necessary for the effective enforcement of this provision.

Paragraph (2) of this subsection provides that in addition to the amount paid under paragraph (1) there is authorized to be appropriated for each fiscal year an amount equal to 2 cents for each ton of coal so produced during the preceding fiscal year, such funds to be used by the Board in carrying out the section. In addition, there is

authorized to be appropriated for carrying out this section an amount equal to any grants by a State to the Board. The appropriations based on a State's grant may not exceed an amount equal to 1 cent per ton of coal produced.

Section 402. Training and education

This section requires the Secretary to expand programs for education and training of coal mine operators, agents thereof, and miners in coal mines.

Section 403. Assistance to States

This section directs the Secretary, in coordination with the Secretaries of Labor and of HEW, to make grants to States to conduct studies and to carry out plans designed to improve State workmen's compensation and occupational disease laws as they relate to compensation for pneumoconiosis and injuries in coal mine employment, and to assist them in planning and implementing other programs for the advancement of health safety in coal mines.

Subsections (b) and (c) provide that these grants may not extend beyond a period of five years after the effective date of the act, and that Federal grants shall be made only to States which have plans approved by the Secretary.

Subsection (d) provides for approval of State plans which—

- (1) provide for making appropriate reports to the Secretary and keeping necessary records,
- (2) provide fiscal control and fund accounting procedures,
- (3) contain assurances that the State will maintain its effort with respect to pneumoconiosis and related conditions, and
- (4) meets any other conditions the Secretary may prescribe by rules.

Subsection (e) provides that the Secretary may not disapprove a State plan without affording a hearing, and that the amount granted to any State may not exceed 80 percent of the amount expended in carrying out the program, studies, and research. To carry out this section, there is authorized to be appropriated \$1 million for each fiscal year.

Section 404. Equipment

This section authorizes the Secretary, for a period of 5 years, to make loans to operators to enable them to obtain or convert equipment needed to comply with the provisions of this act. These loans will have maturities specified by the Secretary, but not in excess of 20 years. They will bear interest at a rate determined by the Secretary to be adequate to cover the cost of the funds to the Treasury, the cost of administering the section, and probable loss. The Secretary is directed to use the services of the Small Business Administration in carrying out the section, pursuant to agreements between himself and the Administrator.

Section 405. Inspectors; qualifications; training

This section authorizes the Secretary to appoint any personnel he deems necessary to carry out the act. Persons appointed as "authorized representatives" of the Secretary must be qualified by practical experience in the mining of coal or by experience as a practical coal mining engineer and by education. These persons must be adequately trained by the Secretary. The Secretary is directed to seek to develop

programs with educational institutions and with operators to enable persons to qualify for positions in the administration of the act. The Secretary is directed to work with appropriate educational institutions in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and to cooperate with such institutions in the conduct of such programs by providing financial and technical assistance.

Section 406. Effect on other law

Subsection (a) of this section provides that no State law shall be superseded by any provision of this act or any order issued or standard promulgated thereunder, except insofar as the State law conflicts therewith.

Subsection (b) provides that any State law or regulation which provides for more stringent health and safety standards than do the provisions of this act or any order issued or standard promulgated thereunder shall not be construed to be in conflict with this act. Similarly, where a State law or regulation provides health and safety standards 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.

Section 407. Administrative procedures

This section provides that the provisions of title 5 of the United States Code, commonly known as the Administrative Procedure Act, shall not apply to the making of any order or decision under this act or any proceeding for the review thereof.

Section 408. Regulations

This section authorizes the Secretary to issue administrative regulations to carry out the act.

Section 409. Operative date and repeal

Under this section, the provisions of titles I and III of this act will become operative 90 days after its enactment. The provisions of title II will become operative 6 months after enactment. The section repeals the provisions of the existing Coal Mine Safety Act on the operative date of titles I and III of this act, except that the repeal shall not affect any action taken prior to the effective date or any proceedings being carried on on such date. All other provisions of this act will become effective on the date of its enactment.

Section 410. Separability

This section contains the usual provision to insure that if any provision of the act is held invalid the remainder of the act will not be affected.

Section 411. Reports

Subsection (a) requires the Secretary to submit to the President, to the Congress, and to the Office of Science and Technology an annual report on the subject matter of this act, progress concerning the achievement of its purpose, and the needs and requirements in the field of coal mine health and safety, the amount and status of each loan made under section 404, a description and the anticipated cost of each project and program he has undertaken under section 401, and any other relevant information he deems appropriate.

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MINORITY VIEWS OF MR. ASHBROOK, MR. SCHERLE,
MR. COLLINS, AND MR. LANDGREBE

We are opposed to the enactment of the Federal coal mine health and safety bill as reported by the committee, primarily because of the inclusion therein of two provisions which we regard as wholly unacceptable.

The first of these would impose on the owner of every coal mine, a royalty of 2 cents for each ton of coal he produces for use or sale. This impost would be paid to the United States and used to finance the medical examinations for miners and the research activities for which the bill provides.

The other provision sets up a system of providing Federal benefits to those coal miners or their surviving widows who are occupationally disabled as a result of coal dust pneumoconiosis contracted as a result of working in a coal mine.

The first of these provisions is clearly a governmental tax and the imposition of Federal taxes does not fall within this committee's jurisdiction. Moreover, it is a method of financing a Federal benefit program which is well-nigh unique in the annals of our National Government.

The second provision, in actual effect, establishes a system of Federal workmen's compensation for a special and relatively small category of occupational damage to workers. Hence, it is not only discriminatory as to all other injured or ailing workers, but an intrusion by the Federal Government into the field of workmen's compensation which since its inception about a half-century ago, has always been the exclusive jurisdiction of the several States. It thereby represents a foot in the door, a possible first step toward the ultimate federalization of the entire system of workmen's compensation.

Increasingly, and in ever wider circles, the complaint is heard that the Federal Government by its constant expansion is reducing local and State governments to mere administrative subdivisions of itself, and that the concept of local and State control and sovereignty are thereby, for all practical purposes, doomed to disappear. We are profoundly opposed to this trend and resolved to combat it wherever it appears, as it does so brazenly in the committee bill.

We have stated our dissenting views briefly. However, we fully approve the critical analysis of and the detailed reasons for condemning these two provisions which are set forth by our minority colleagues in their supplemental views. Should amendments striking those provisions prove unsuccessful, it is our intention to vote against the enactment of the bill.

JOHN M. ASHBROOK.
WILLIAM J. SCHERLE.
JAMES M. COLLINS.
EARL F. LANDGREBE.

SUPPLEMENTAL VIEWS OF MR. AYRES, MR. QUIE, MR.
ERLENBORN, MR. ESHLEMAN, MR. LANDGREBE, AND
MR. RUTH

Many of us who join in these views voted to report the committee bill favorably. We felt, despite certain reservations, that the bill, by and large, was essentially satisfactory, and constituted a long step forward in protecting the health and safety of workers employed in underground coal mines. We fully agree with the views of the President and his administration that the American coal miner is not only one of the most important contributors to the successful functioning of our economy, but that the risks he takes each day of his working life make him a heroic figure whose well-being should be of prime concern to the people and the Government of the United States.

We feel that, except for certain shortcomings in the bill which we shall describe herein, this measure is consistent with the aim of the administration to attain the highest possible degree of protection for our coal mine workers.

In addition, we wish to point out that a number of provisions in the committee bill which strengthen safeguards to health and safety and provide due process and equitable treatment for both employees and employers as well, were included on the initiative of members of the minority in the committee and subcommittee.

The most significant of these amendments are those which require the measurement of coal dust concentrations to be taken over several shifts in order to arrive at the average concentration, which provide a more extensive and uniform species of medical examinations for coal miners, and amendments which set forth in considerable but not exclusive detail the scope of research into the ailments of miners which are to be carried on by the appropriate Government agencies.

Furthermore, with respect to safety, provisions were added narrowly limiting the use of "open flame" devices and the extraction of coal from any coal seam located within a specified distance from a natural gas or oil well, whether producing or abandoned.

These, together with procedures for review, both administrative and judicial, of the standard setting and enforcement activities provided in the bill, constitute a significant contribution to the substantial improvement of the committee bill.

SHORTCOMINGS IN THE COMMITTEE BILL

Nevertheless, as we have indicated, there are a number of serious weaknesses in the bill which we attempted to correct by offering appropriate amendments in both the committee and subcommittee, all of which were rejected by the majority. The following are the most important of these defects.

I. Setting of health standards

The committee bill provides that both safety and health standards shall be promulgated by the Secretary of the Interior, under whose authority the Bureau of Mines has administered the existing Federal Coal Mine Safety Act since its enactment in 1952. The committee bill retains this historic authority by the Secretary of the Interior with respect to safety standards, but denies it to him for the setting of health standards. Instead it provides that the Secretary of Health, Education, and Welfare shall develop health standards and upon their transmission to the Secretary of the Interior, the latter must promulgate them as submitted by HEW.

There are several serious objections to this division of authority within a single legislative field between two Cabinet officers of equal rank. Generally, such a division of authority in the same legislative area is virtually nonexistent in the Federal Government structure, and is almost universally regarded as a sure prescription for interagency conflict and poor administration.

More specifically, HEW through its Public Health Service is, and as research is carried on, most certainly will become genuinely expert in its knowledge of the diseases of coal miners and of the environmental factors related to such diseases. But it has neither the experience nor the technical nor technological know-how to determine whether the health standards it establishes are technologically achievable in the coal mining industry.

Thus, to use a hypothetical example, admittedly extreme for purposes of illustration, HEW might decide as soon as the bill permits that every underground mine, without exception, must be entirely 100 percent, free from coal dust. Under the bill, the Secretary of the Interior would be compelled to promulgate this requirement as a mandatory health standard, despite the fact that no major underground coal mine in the entire country would be able to comply, and that nothing in the existing technology indicated that such compliance would be attainable in the foreseeable future. The result would be a cutting off of the major source of power for the Nation's entire economic system.

We offered an amendment, along the lines of the administration bill, H.R. 7976, to retain the final authority in the Secretary of the Interior to promulgate both health and safety standards, but directing HEW to develop such health standards and recommend them to the Secretary of the Interior, who would unquestionably give them the greatest weight, but would be free to modify them in the light of their attainability. The amendment was rejected.

II. Shutting down mines for health reasons

The bill contains many enforcement procedures and sanctions against coal mine operators who violate health and safety standards. These include administrative cease-and-desist orders, judicial decrees enforcing such orders, civil penalties, criminal penalties, injunctions, and the shutting down of mines under certain conditions, primarily those which constitute a risk of imminent danger of death or serious bodily harm to those working in the affected areas of the mine.

With respect to assuring safety, the shutting down of a mine is clearly indicated in conditions which constitute an imminent danger. The near possibility of an explosion, ignition, roof fall, or fire, are examples of such conditions. But with regard to the protection of

health as set forth in the bill, no such risk of imminent danger is even conceivable. As a matter of fact, virtually the only health problem for which the bill provides is protection against excessive concentration of respiratory dust and these can never constitute an imminent danger to health because they take many years to develop and no relatively brief exposure to dust can itself possibly give rise to an imminent danger. Thus the mandatory closing of a mine which violates the permissible standard of dust concentration is nothing but an additional punitive sanction (like a civil or criminal penalty), wholly unrelated to eliminating a condition which has not existence in fact—i.e., an imminent danger to health.

We would have preferred to see the provisions for mine closure for violation of a health standard completely eliminated. In the subcommittee it was apparent that such a proposal would not be approved. We therefore decided to offer in full committee a compromise which retained the closure procedure, but modified it to provide some degree of flexibility before it was applied.

In the course of preparing these views we received a copy of a letter and report from Mr. H. S. Stephenson, H.M. Chief Inspector of Mines and Quarries in the Ministry of Power in the British Government. It may be recalled that earlier this year several members of this committee visited Great Britain and spent several days of intensive research and examination to learn what the British were doing in connection with controlling the incidence of coal-dust pneumoconiosis. The British have been the pioneers in this field and were the first to isolate this form of pneumoconiosis and establish it scientifically as a separate, identifiable disease. Thus, much of what is in the bill dealing with coal dust results from what we learned from the experts with whom we met and consulted in Great Britain.

The letter and report referred to above may be briefly summarized as follows:

The Ministry of Power which enforces the health and safety standards applicable to British coal mines has adopted coal-dust standards regarded as safe, but has not made them mandatory. Moreover these standards are set at higher permissible levels than those provided in the committee bill, and the checkup procedures are much less rigorous than those proposed in the committee measure.

The level for operation in coal mines is 8.0 mg. per cubic meter measured "in the return roadway or approximately 77 yards from the coal face line." Sampling of coal-dust concentration is to be done in the mines once each month, once each quarter, once each half year, or once each year, depending on the type of operation. Approval is determined on the basis of the mean of multiple measurements. This means an exposure for coal mine face workers of 5.7 mg. per cubic meter.

Thus the British have selected a much higher dust level than the 4.5 mg. and eventual 3.0 mg. level imposed by the committee bill; the standards set are not mandatory, an average or mean is used in determining compliance, and the intervals between sampling are much longer.

It seems to us therefore that serious consideration should be given to reexamining the bill's provisions on permitted dust levels, but in any event, the Congress should adopt our proposed amendment permitting the Secretary of the Interior to refrain from closing mines which exceed

the prescribed dust levels while these mines are taking the necessary steps, in good faith, to correct the situation as quickly as possible.

Thus our amendment authorizes the Secretary of the Interior to waive the closure provisions whenever he determines that there is a basis for continuing operations without creating a threat to the health of the miners, and imposing procedures for the operation of such a mine designed to give the miners effective health protection while remedial steps were being taken expeditiously to correct the violations of the health standard.

Such flexibility, desirable in itself, becomes absolutely imperative if the final authority, in fact, to promulgate health standards is given, to the Secretary of HEW with its potentiality for the setting of unattainable or unreasonable health standards as indicated in the discussion above of our previous rejected amendment. Unfortunately, this proposal too, was not accepted by the committee.

III. Administrative review of grants of time extensions for compliance

We find it most gratifying that we on the minority side contributed substantially to assuring due process in most of the procedures for enforcing the requirements of the bill. Administrative orders and decisions, imposition of civil penalties, promulgation of standards, are all subject to either administrative or judicial review or both. But there is one type of authority given to the Secretary of the Interior which is subject to no review at all and in which his decision is final. The Secretary may grant limited extensions of time for complying with the prescribed levels of dust concentration under title II, or for the use of prescribed or "permissible" equipment under title III. His decision to grant or deny such extensions is conclusive.

We offered an amendment permitting the operator of a mine or a representative of the employees of such mine to secure from the Federal Coal Mine Health and Safety Board a review of the Secretary's decision to grant or deny such a time extension. Under the bill, the Board performs such review functions in connection with enforcement orders and promulgation of standards—there seems to be no valid reason for not providing a similar review in the case of time extensions for compliance. Failure to so provide, we believe, constitutes a serious omission of an important aspect of due process. Nevertheless, our amendment was rejected.

IV. Stationing Government inspectors permanently at certain mines

Subsection 317(j) of the bill requires the Secretary of the Interior to station an inspector to make inspections during each day of its operation in a coal mine which liberates an excessive quantity of explosive gas, if in the opinion of the Secretary such conditions are likely to present dangers of explosion.

This provision would be not only extremely costly but very difficult to administer because of the lack of preciseness in the concept of "excessive quantities of explosive gas." If this level were set very low, the number of inspectors required would be tremendous. If set too high, the intended safeguard would not be very useful.

But the primary concern caused by this provision is that it will actually reduce the safety protection given the miner. Rather than placing the responsibility on the operator and the miner to maintain the safety standards established by the bill, this provision allows this responsibility in excessively gassy mines to be placed on the Fed-

eral inspector. Likewise, in all other underground mines, the operator and the miner will have a tendency to relax the maintenance of the established safety standards.

The prime responsibility for safety must rest, as it always has in coal mines or in any other industry, within the day-to-day exercise of care and responsibility by the operator and the miners. The operator must provide safe working conditions and let his foreman and miners know that he insists that they practice "safety first." The miner, since his supervisor cannot be with him at all times, has the major role in seeing that he works safely—for his own protection as well as that of his coworkers.

For these reasons, and primarily because this provision would weaken the realization of the need for both operators and miners to be safety conscious, we offered an amendment to strike this provision. Our amendment was rejected.

V. Financing research by means of a royalty on production

The bill contains a provision imposing a royalty of 2 cents for each ton of coal produced for use or sale to be paid by the owner to the U.S. Government. This royalty would be used solely for the purpose of financing the medical examinations for miners and the research activity on health and safety in coal mines which are provided for in other sections of the bill. This impost is clearly a Federal user tax on the production of coal.

The Bureau of Mines has been engaged in a program of research and development in connection with the coal industry since 1910. Many of the health and safety innovations in that industry were developed by the Bureau of Mines, such as the introduction of the widespread use of roof bolts. Until recently, the Bureau's research and development budget for health and safety has been about \$2 million annually, a substantial portion of which has been devoted to "testing" rather than research. In fiscal year 1970, however, that budget has been increased by the Bureau to \$3.3 million. It is widely recognized that there is a need for more health and safety research in the coal industry, and the present administration fully shares that conviction. But we doubt that a system which taxes the production of coal and earmarks the revenues for health and safety research is the most appropriate method to meet this need.

Experience has shown that coal mining, indeed all mining, is a complex system, all parts of which must be considered simultaneously—health, safety, productivity, environmental control, etc. The effect of a particular improved mining technique on productivity cannot be considered apart from its effect on the health and safety of the miner or its effect on environmental pollution. An effective research program must, therefore, be designed to study the entire mining operation. The proposed user tax, in contrast, would tend to separate the health and safety function into a separate category which is essentially artificial.

The royalty imposed by the bill would apply to all coal mining firms without regard for their methods of mining or for their past health and safety records. This raises the serious issue as to whether such a levy should be imposed on only a single commodity or a single industry.

For example, other inherently dangerous industries, such as the nuclear industry, which incidently is a competitor of the coal industry, are not required by law to pay separately and directly for health and safety research in their own industry. The proposal would tend inevitably to confine the entire research and development effort in connection with safety and health to the activities of the Federal Government. In our opinion, such research and development, if it is to attain maximum usefulness, should not be carried on by the Government alone, or even in major part. Industry should be encouraged to assume, on an industrywide basis, a greater role in this area. This provision would not provide such encouragement—to the contrary it would have a dampening effect on the private research efforts of industry.

This type of user tax, a tax which is included in legislation introduced, developed, and reported by a House standing committee which has jurisdiction of the subject matter in connection with which the tax is imposed, is most unusual and very rarely resorted to in the legislative activities of the House.

It bypasses the Ways and Means Committee which normally deals with tax legislation, and it is our opinion, that this usual type of procedure should have been followed in this case. The tax is discriminatory because it singles out a single aspect of a single industry for this special treatment, and imposes on it a burden which weakens its competitive position vis-a-vis other industries not so burdened.

And finally, we believe that a tax on the coal industry for health and safety research development should not be imposed without thorough study of its impact on the industry and a serious consideration of possible alternative approaches. As far as we know, such study and consideration has not been done at any time heretofore.

VI. Federalization of workmen's compensation for coal miners' pneumoconiosis

The bill provides for the Federal Government to grant compensation to coal miners presently completely disabled by complicated pneumoconiosis resulting from exposure to coal dust while working in coal mines, and to the widows and other dependents of coal miners so disabled. Our principal objection to this provision has been well stated by Assistant Secretary of Labor Arthur A. Fletcher in his testimony before the Select Subcommittee on Labor on June 3, 1969. We quote:

Workmen's compensation is undoubtedly one of our economy's very important income replacement programs. In 1967, benefits paid under all programs in the United States aggregated some \$2.2 billion * * *.

It is also one of our social insurance systems that has always been handled completely by State law since its inception in the early days of this century. We now have 50 State laws which customarily provide financial and medical assistance to employees for work-connected injuries by requiring employers to insure themselves through private companies or as self-insurers, or through contributions to State funds administered by State agencies.

The proposal you are considering departs substantially from this established philosophy of State workmen's compensation law for private employment * * *.

In many States benefits are inadequate and other deficiencies are evident in workmen's compensation laws. States, themselves recognize this, and consequently, scores of bills are introduced in legislatures each year to strengthen workmen's compensation programs. A pattern of progress emerges as some of these bills are enacted into law, which gives us encouragement.

There are 50 State laws and a number of special Federal workmen's compensation laws which contain a wide variety of complex provisions. The Department of Labor believes that this whole area of workmen's compensation laws should be carefully and thoroughly studied before any Federal legislation is considered which would materially change a long-established legal system with intricate interrelationships reaching into every State.

Actually, Assistant Secretary Fletcher understates the progress which the States have made in improving their workmen's compensation laws. A few examples suffice to demonstrate this progress. Thus, in the last 2 years, 44 States have substantially increased their benefits, and this does not include increases which have been enacted or will be this year when many legislatures are or have been in session.

On the average, maximum weekly compensation for temporary total disability amounts to 68 percent of average take-home pay after allowing for Federal income and social security taxes. In addition, medical benefits are unlimited in most States. In a number of States maximum weekly benefits are adjusted upward automatically, each year, in relation to average weekly wages in the State, thus assuring that compensation levels correspond to prevailing wage levels.

Similarly, the scope of workmen's compensation laws has constantly been extended. Coal miners are covered by every workmen's compensation law in the country. Compensation for occupational disease is also being extended. Originally, workmen's compensation laws covered only accidental injuries. Today, occupational disease coverage in some form is provided in all the States. In 38 of them such coverage is quite broad. In the others, compensable diseases are listed in a schedule which is also quite broad.

Dust diseases or pneumoconiosis, giving the term its widest and most general meaning, were among the early occupational diseases recognized. At first, special interest centered on silicosis which was deemed to be the primary hazard. Today all States provide compensation for this form of pneumoconiosis.

Over the years great progress has been made in the prevention of dust diseases particularly silicosis. In 1965, Dr. Murray C. Brown, Chief of the Division of Occupational Health in the U.S. Public Health Service stated:

Generally these programs have been effective and have drastically reduced the incidence of the traditional dusty trade diseases.

We believe that today, coal miners disabled from complicated pneumoconiosis would be entitled to workmen's compensation in nearly all States either under broad occupational disease provisions or under provisions specifically referring to the disease or under judicial decisions. In a relatively few States the question of compensability is

not completely clear, but none of these are substantial coal mining States. Where causal connection between disability and employment is clear, both compensation administrators and the courts usually construe the law broadly to hold that compensation is payable.

We believe that the long standing and ever improving State system of workmen's compensation will be in serious danger of ultimate reduction to a mere subordinate appendage of a federalized system of workmen's compensation or even of complete elimination.

In this connection, the statement made before the Select Subcommittee on Labor earlier this year by Mr. John V. Keaney, chairman of the Maine Industrial Accident Commission, and speaking on behalf of the International Association of Industrial Accident Boards and Commissions is indeed appropriate. He declared:

The bills under consideration call for abandonment of our 55-year-old workmen's compensation system. The latter is one of the few fields of protective labor law which is in the exclusive care of the States. It developed at the State level; it is financed and administered there and is patterned to meet the needs of a particular locale. The health, safety, and well-being of all workers, with few exceptions, is a matter of State concern. Workmen's compensation administration is a professional specialty demanding experience and dedication and an intimate knowledge of local problems. This proposed legislation would replace local control with a centralized administration impairing development in the various regions of this country.

In addition to constituting an improper intrusion by the Federal Government into what should properly be left to the States, as it always has been, and constituting a real threat of further intrusion into this field hereafter, there are a number of serious substantive defects in the proposal.

The provision will inevitably discourage the States from improving their own systems of compensation for coal miners pneumoconiosis. Although States are denied participation in the program, and their coal miners thereby denied the benefits thereunder, if the States reduce their own level of benefits, there is nothing to require them to increase these benefits (as a number have already been doing).

The natural tendency will be for those States to refrain from such increases for as long as the Federal Government, under this provision, provides them at a higher level instead. In fact, if a State has no provision compensating miners for disability from coal dust, the Federal Government will shoulder the entire burden of providing these benefits, and the State would not be required to expend a single penny for that purpose. Inasmuch as these Federal benefits will be paid for out of Federal tax receipts, the unfortunate result will be that the States that do attempt to meet the problem by increasing their benefits will be helping to pay for those States that are doing little or nothing along these lines.

The provision not only has the effect of penalizing the more cooperative States and rewarding those which are laggard, but it discriminates against occupations other than coal mining, and even within the occupation of coal mining itself.

The inadequacies in existing workmen's compensation programs which the bill allegedly seeks to correct are just as applicable to

workers injured in other industries and trades. Why coal mining and not building construction and high risk factory jobs? Beryllium, for example, is a highly toxic metal which was used in the manufacture of fluorescent light bulbs until chronic beryllium poisoning was recognized as a health hazard to workers, just as we have recently found complicated coal miners pneumoconiosis to be.

Again there are 3½ million American workers exposed to asbestos in their jobs. They face a dual threat—asbestosis, a serious respiratory ailment, and lung cancer. Half of the men who had worked in the trade had X-ray evidence of asbestosis. There are other industries whose workers run an extremely high risk of respiratory disease. Uranium miners and workers, other than coal miners, are exposed to silica dust in their handling of rocks, soils, sands, and clay.

For years it was generally believed that byssinosis, the lung disease caused by inhaling cotton dust, was not a problem for American textile workers. Even though British workers using American cotton came down with this lung disease, we did not believe we had a problem. Now we are discovering that our hundreds of thousands of cotton textile workers are susceptible to it. Talc, diatomite, carborundum, sugarcane fiber, even dust from moldy silage can, and often do, cause lung damage to those who work with these materials. Yet the committee bill deals solely with coal-dust pneumoconiosis when it comes to providing Federal disability compensation.

Even within the coal mining industry itself, the bill is discriminatory as between miners who were disabled by coal-dust pneumoconiosis and those whose disability resulted from any other cause, when it comes to receiving compensation. A coal miner who is totally disabled by loss of limbs, serious head injury, or even a respiratory disease not caused by coal dust, such as silicosis, will in a number of States receive less than one who is totally disabled by coal-dust complicated pneumoconiosis, and receives a larger benefit because of the Federal participation provided by this bill.

Thus there is a serious inequity of treatment as between two miners, both totally disabled because of their engaging in the same occupation. Moreover, this disparity of treatment violates the fundamental principle of sound workmen's compensation philosophy, which is that the level of benefit shall be the same where the degree of occupational disability is the same, regardless of the differences in the cause or source of such disability. Thus, we fear that not only does this provision in the bill threaten the demise of the State system of workmen's compensation, but it promises to replace that system with one which perverts the essential concepts on which sound workmen's compensation programs are all based.

There are other defects in this provision, not so elemental perhaps as those enumerated above, but significant nevertheless. The provision requires that the Federal benefit granted to a disabled miner shall be reduced by the sum which such miner receives under the workmen's compensation, unemployment compensation, or disability insurance laws of his State, or by any reduction in his social security benefits because of excess earnings as provided in the Social Security Act. However, it does not require reduction by the amount an individual receives for a disability under the provisions of that act, nor is there a reduction in the Federal payment for medicare benefits.

piece of legislation. We reserve the right to offer amendments on the floor designed to remedy these shortcomings, as well as a few other weaknesses which are relatively minor in character. Should our amendments be approved, and no substantial changes adopted which in our opinion impair other significant provisions of the measure, we would have no hesitation in voting in favor of its enactment.

WILLIAM H. AYRES.
ALBERT H. QUIE.
JOHN N. ERLBORN.
EDWIN D. ESHLEMAN.
EARL F. LANDGREBE.
EARL B. RUTH.

SEPARATE VIEWS OF MR. BELL AND MR. HANSEN OF
IDAHO

We are in substantial agreement with the supplemental views but
we support the compensation provisions of the bill.

ALPHONZO BELL.
ORVAL HANSEN.

(100)

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(Excerpts Only)

Calendar No. 410

91ST CONGRESS }
1st Session }

SENATE

{ REPORT
{ No. 91-411

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

SEPTEMBER 17, 1969.—Ordered to be printed

Mr. WILLIAMS of New Jersey, from the Committee on Labor and Public Welfare, submitted the following

REPORT together with INDIVIDUAL VIEWS

[To accompany S. 2917]

The Committee on Labor and Public Welfare, having had under consideration legislation to improve the health and safety conditions of persons working in the coal mining industry of the United States, reports an original bill and recommends that it do pass.

Purpose of the Bill

The coal mining industry recognizes that "there can be no question that the health and safety of employees in the coal mining industry must be given first priority." This enlightened declaration was made of record by Mr. John Corcoran, chairman of the National Coal Association, in his appearance before the Department of the Interior's Coal Mine Safety Conference in December, 1968. The essence of the declaration was reaffirmed in the Senate hearings when the president of the National Coal Association, Mr. Stephen F. Dunn, testified that the coal mining industry "does not believe profits should be put ahead of the health and safety of mineworkers."

To achieve these admirable industrial goals calls for major changes throughout the coal mine industry for—

While the coal mining industry has made giant strides in its ability to extract the natural resource coal from the depths of the earth, it has lagged behind other industries in protecting its most valuable resource—the miner.

So stated the Department of the Interior on March 3, 1969, in Senate hearings, in proposing the repeal of the current Coal Mine Safety

Union Calendar No. 234

91ST CONGRESS
1ST SESSION

H. R. 13950

[Report No. 91-563]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 1969

Mr. DENT (for himself, Mr. BURTON of California, Mr. PERKINS, Mr. PUCINSKI, Mr. HAWKINS, Mrs. MINK, Mr. STOKES, Mr. CLAY, Mr. POWELL, Mr. GAYDOS, Mr. BELL of California, Mr. HANSEN of Idaho, Mrs. GREEN of Oregon, Mr. THOMPSON of New Jersey, Mr. DANIELS of New Jersey, Mr. BRADEMAS, Mr. O'HARA, Mr. REID of New York, Mr. MORGAN, Mr. FLOOD, Mr. SAYLOR, Mr. STAGGERS, Mr. SLACK, Mr. KEE, and Mr. MOLLOHAN) introduced the following bill; which was referred to the Committee on Education and Labor

OCTOBER 13, 1969

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Coal Mine
4 Health and Safety Act of 1969".

5 DECLARATION OF PURPOSE

6 SEC. 2. Congress declares that—

7 (a) the first priority and concern of all in the coal

1 mining industry must be the health and safety of its
2 most precious resource—the miner;

3 (b) the occupationally caused death, illness, or
4 injury of a miner causes grief and suffering, and is a seri-
5 ous impediment to the future growth of this industry;

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

12 (d) the existence of unsafe and unhealthful con-
13 ditions and practices in such mines cannot be tolerated;

14 (e) the operators of such mines with the assistance
15 of the miners have the primary responsibility to prevent
16 the existence of such conditions and practices in such
17 mines;

18 (f) the disruption of production and the loss of
19 income to operators and miners as a result of a coal
20 mine accident or occupationally caused disease unduly
21 impedes and burdens commerce; and

22 (g) it is the purpose of this Act to provide for the
23 establishment of mandatory health and safety stand-
24 ards and to require that the operators and the miners

1 comply with such standards in carrying out their re-
2 sponsibilities.

3 **DEFINITIONS**

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

5 (a) “Secretary” means the Secretary of the In-
6 terior;

7 (b) “commerce” means trade, traffic, commerce,
8 transportation, or communication among the several
9 States, or between a place in a State and any place
10 outside thereof, or within the District of Columbia or a
11 possession of the United States, or between points in
12 the same State but through a point outside thereof;

13 (c) “State” includes a State of the United States,
14 the District of Columbia, the Commonwealth of Puerto
15 Rico, the Virgin Islands, American Samoa, Guam, and
16 the Trust Territory of the Pacific Islands;

17 (d) “operator” means any owner, lessee, or other
18 person who operates, controls, or supervises a coal mine;

19 (e) “agent” means any person charged with re-
20 sponsibility for the operation of all or part of a coal mine
21 or the supervision of the employees in a coal mine;

22 (f) “person” means any individual, partnership,
23 association, corporation, firm, subsidiary of a corporation,
24 or other organization;

1 (g) “miner” means any individual working in a
2 coal mine;

3 (h) “coal mine” means an area of land and all
4 structures, facilities, machinery, tools, equipment, shafts,
5 slopes, tunnels, excavations, and other property, real or
6 personal, placed upon, under, or above the surface of
7 such land by any person, used or to be used in, or result-
8 ing from, the work of extracting in such area bituminous
9 coal, lignite, or anthracite from its natural deposits in the
10 earth by any means or method, and the work of prepar-
11 ing the coal so extracted, and includes custom coal prep-
12 aration facilities;

13 (i) “work of preparing the coal” means the break-
14 ing, crushing, sizing, cleaning, washing, drying, mixing,
15 storing, and loading of bituminous coal, lignite, or anthra-
16 cite, and such other work of preparing such coal as is
17 usually done by the operator of the coal mine;

18 (j) “imminent danger” means the existence of any
19 condition or practice in a coal mine which could reason-
20 ably be expected to cause death or serious physical harm
21 before such condition or practice can be abated;

22 (k) “accident” includes a mine explosion, mine
23 ignition, mine fire, or mine inundation, or injury to, or
24 death of, any person;

25 (l) “inspection” means the period beginning when

1 an authorized representative of the Secretary first enters
2 a coal mine and ending when he leaves the coal mine
3 during or after the coal-producing shift in which he
4 entered; and

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

7 MINES SUBJECT TO ACT

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

14 TITLE I—GENERAL

15 HEALTH AND SAFETY STANDARDS; REVIEW

16 SEC. 101. (a) The Secretary shall, in accordance with
17 the procedures set forth in this section, develop, promulgate,
18 and revise, as may be appropriate, mandatory safety stand-
19 ards for the protection of life and the prevention of injuries
20 in a coal mine, and shall, in accordance with the procedures
21 set forth in this section, promulgate the mandatory health
22 standards transmitted to him by the Secretary of Health,
23 Education, and Welfare. No mandatory health or safety
24 standard promulgated under this title shall reduce the pro-

1 tection afforded miners below that afforded by the standards
2 contained in titles II and III of this Act.

3 (b) In the development of such mandatory safety
4 standards, the Secretary shall consult with the Board, other
5 interested Federal agencies, representatives of States, ap-
6 propriate representatives of the coal mine operators and
7 miners, other interested persons and organizations, and such
8 advisory committees as he may appoint. In addition to the at-
9 tainment of the highest degree of safety protection for the
10 miner, other considerations shall be the latest available
11 scientific data in the field, the technical feasibility of the
12 standards, and experience gained under this and other
13 safety statutes.

14 (c) The Secretary of Health, Education, and Welfare
15 shall, in accordance with the procedures set forth in this
16 section, develop and revise, as may be appropriate, manda-
17 tory health standards for the protection of life and the pre-
18 vention of occupational diseases of coal miners. Such devel-
19 opment and revision shall be based upon research, demon-
20 strations, experiments, and such other information as may
21 be appropriate. In the development of mandatory health
22 standards, the Secretary of Health, Education, and Welfare
23 may consult with appropriate representatives of the operators
24 and miners, other interested persons, the States, advisory
25 committees, and, where appropriate, foreign countries. Man-

1 datory health standards which the Secretary of Health,
2 Education, and Welfare develops or revises shall be trans-
3 mitted to the Secretary, and shall thereupon be published
4 by the Secretary as proposed mandatory health standards.

5 (d) The Secretary shall publish proposed mandatory
6 health and safety standards in the Federal Register and shall
7 afford interested persons a period of not less than thirty days
8 after publication to submit written data or comments. In
9 the case of mandatory safety standards, except as provided
10 in subsection (e) of this section, the Secretary may, upon
11 the expiration of such period and after consideration of all
12 relevant matter presented, promulgate such standards with
13 such modifications as he may deem appropriate. In the case
14 of mandatory health standards, except as provided in subsec-
15 tion (e) of this section, the Secretary of Health, Education,
16 and Welfare may, upon the expiration of such period and
17 after consideration of all relevant matter presented to the
18 Secretary and transmitted to the Secretary of Health, Educa-
19 tion, and Welfare, direct the Secretary to promulgate such
20 standards with such modifications as the Secretary of Health,
21 Education, and Welfare may deem appropriate and the Sec-
22 retary shall thereupon promulgate such standards.

23 (e) On or before the last day of any period fixed for
24 the submission of written data or comments under subsec-
25 tion (d) of this section, any interested person may file with

1 the Secretary written objections to a proposed standard,
2 stating the grounds therefore and requesting a public hearing
3 by the Board on such objections. As soon as practicable
4 after the period for filing such objections has expired, the
5 Secretary shall publish in the Federal Register a notice
6 specifying the proposed standards to which objections have
7 been filed and a hearing requested, and shall refer such
8 standards and objections to the Board for review in accord-
9 ance with subsection (f) of this section.

10 (f) Promptly after any matter is referred to the Board
11 by the Secretary under subsection (e) of this section, the
12 Board shall issue notice of and hold a public hearing for the
13 purpose of receiving relevant evidence. Within sixty days
14 after completion of the hearing, the Board shall issue a report
15 to the Secretary setting forth findings of fact on such matter
16 and appropriate recommendations thereon and shall make
17 such report public. Upon receipt of such report, in the case
18 of mandatory safety standards, the Secretary may, upon con-
19 sideration of the Board's findings of fact and recommenda-
20 tions, promulgate the mandatory safety standards with such
21 modifications as he deems appropriate. Upon receipt of such
22 report, in the case of mandatory health standards, the Secre-
23 tary shall transmit such report to the Secretary of Health,
24 Education, and Welfare who may, upon consideration of the
25 Board's findings of fact and recommendations, direct the

1 Secretary to promulgate the mandatory health standards with
2 such modifications as the Secretary of Health, Education,
3 and Welfare deems appropriate and the Secretary shall there-
4 upon promulgate the mandatory health standards. In any
5 instance in which either Secretary does not adopt the Board's
6 recommendations, he shall publish his reasons therefor.

7 (g) Any mandatory standard promulgated under this
8 section shall be effective upon publication in the Federal
9 Register unless the Secretary specifies a later date.

10 (h) Proposed mandatory safety standards for surface
11 coal mines shall be developed and published by the Secretary
12 not later than twelve months after the enactment of this Act.

13 **ADVISORY COMMITTEES**

14 **SEC. 102.** (a) The Secretary may appoint one or more
15 advisory committees to advise him in carrying out the provi-
16 sions of this Act. The Secretary shall designate the chairman
17 of each such committee.

18 (b) Advisory committee members, other than employ-
19 ees of Federal, State, or local governments, shall be, for each
20 day (including travel time) during which they are perform-
21 ing committee business, entitled to receive compensation at
22 rates fixed by the Secretary but not in excess of the maxi-
23 mum rate of pay for grade GS-18 as provided in the General
24 Schedule under section 5332 of title 5 of the United States
25 Code, and shall, notwithstanding the limitations of sections

1 5703 and 5704 of title 5 of the United States Code, be fully
2 reimbursed for travel, subsistence, and related expenses.

3 INSPECTIONS AND INVESTIGATIONS

4 SEC. 103. (a) Authorized representatives of the Secre-
5 tary shall make frequent inspections and investigations in
6 coal mines each year for the purpose of (1) obtaining,
7 utilizing, and disseminating information relating to health
8 and safety conditions, the causes of accidents, and the causes
9 of diseases and physical impairments originating in such
10 mines, (2) gathering information with respect to health and
11 safety standards, (3) determining whether an imminent
12 danger exists in a coal mine, and (4) determining whether
13 or not there is compliance with the mandatory health and
14 safety standards or with any notice or order issued under this
15 title. In carrying out the requirements of clauses (3) and
16 (4) of this subsection, no advance notice of an inspection
17 shall be provided the operator of a mine. In carrying out the
18 requirements of clauses (3) and (4) of this subsection in
19 each underground coal mine, such representatives shall make
20 inspections of the entire mine at least four times a year.

21 (b) (1) For the purpose of making any inspection or in-
22 vestigation under this Act, the Secretary or any authorized
23 representative of the Secretary shall have a right of entry
24 to, upon, or through any coal mine.

25 (2) The provisions of this Act relating to inspections,

1 investigations, and records shall be available to the Secre-
2 tary of Health, Education, and Welfare to enable him to
3 carry out his functions and responsibilities under this Act.

4 (c) For the purpose of carrying out his responsibilities
5 under this Act, including the enforcement thereof, the Sec-
6 retary may by agreement utilize with or without reimburse-
7 ment the services, personnel, and facilities of any Federal
8 agency.

9 (d) For the purpose of making any investigation of
10 any accident or other occurrence relating to health or
11 safety in a coal mine, the Secretary may, after notice, hold
12 public hearings, and may sign and issue subpoenas for the
13 attendance and testimony of witnesses and the production
14 of relevant papers, books, and documents, and administer
15 oaths. Witnesses summoned shall be paid the same fees
16 and mileage that are paid witnesses in the courts of the
17 United States. In case of contumacy or refusal to obey a
18 subpoena served upon any person under this section, the dis-
19 trict court of the United States for any district in which such
20 person is found or resides or transacts business, upon appli-
21 cation by the United States and after notice to such person,
22 shall have jurisdiction to issue an order requiring such per-
23 son to appear and give testimony before the Secretary or
24 to appear and produce documents before the Secretary or

1 both, and any failure to obey such order of the court may
2 be punished by such court as a contempt thereof.

3 (e) In the event of any accident occurring in a coal
4 mine, the operator shall notify the Secretary thereof and
5 shall take appropriate measures to prevent, to the greatest
6 extent possible, the destruction of any evidence which would
7 assist in investigating the cause or causes thereof. In the
8 event of any accident occurring in a coal mine where rescue
9 and recovery work is necessary, the Secretary or an au-
10 thorized representative of the Secretary shall take whatever
11 action he deems appropriate to protect the life of any person,
12 and he may, if he deems it appropriate, supervise and direct
13 the rescue and recovery activity in such mine.

14 (f) In the event of any accident occurring in a coal
15 mine, an authorized representative of the Secretary, when
16 present, may issue such orders as he deems appropriate to
17 insure the safety of any person in the coal mine, and the
18 operator of such mine shall obtain the approval of such
19 representative, in consultation with appropriate State rep-
20 resentatives, when feasible, of any plan to recover any person
21 in the mine or to recover the mine or to return affected areas
22 of the mine to normal.

23 (g) If a miner or an authorized representative, if any,
24 of the miners believes that a violation of a mandatory health
25 or safety standard exists, or an imminent danger exists, in a

1 mine, he may notify the Secretary or his authorized repre-
2 sentative of such violation or danger. Upon receipt of such
3 notification the Secretary or his authorized representative
4 may make a special investigation to determine if such
5 violation or danger exists.

6 (h) At the commencement of any inspection of a coal
7 mine by an authorized representative of the Secretary, the
8 authorized representative, if any, of the miners at the mine
9 at the time of such inspection shall be given an opportunity
10 to accompany the authorized representative of the Secretary
11 on such inspection.

12 FINDINGS, NOTICES, AND ORDERS

13 SEC. 104. (a) If, upon any inspection of a coal mine,
14 an authorized representative of the Secretary finds that an
15 imminent danger exists, such representative shall determine
16 the area throughout which such danger exists, and there-
17 upon shall issue forthwith an order requiring the operator
18 of the mine or his agent to cause immediately all persons,
19 except those referred to in subsection (d) of this section,
20 to be withdrawn from, and to be prohibited from entering,
21 such area until an authorized representative of the Secre-
22 tary determines that such imminent danger no longer exists.

23 (b) If, upon any inspection of a coal mine, an author-
24 ized representative of the Secretary finds that there has been
25 a violation of any mandatory health or safety standard but

1 the violation has not created an imminent danger, he shall
2 issue a notice fixing a reasonable time for the abatement of
3 the violation. If, upon the expiration of the period of time
4 as originally fixed or subsequently extended, an authorized
5 representative of the Secretary finds that the violation has
6 not been totally abated, and if he also finds that the period
7 of time should not be further extended, he shall find the
8 extent of the area affected by the violation and shall promptly
9 issue an order requiring the operator of such mine or his
10 agent to cause immediately all persons, except those referred
11 to in subsection (d) of this section, to be withdrawn from,
12 and to be prohibited from entering, such area until an au-
13 thorized representative of the Secretary determines that the
14 violation has been abated.

15 (c) (1) If, upon the inspection of a coal mine, an
16 authorized representative of the Secretary finds that any
17 mandatory health or safety standard is being violated, and
18 if he also finds that, while the conditions created by such
19 violation do not cause imminent danger, such violation is
20 of such nature as could significantly and substantially con-
21 tribute to the cause or effect of a mine accident, and if he
22 finds such violation to be caused by an unwarrantable failure
23 of such operator to comply with such mandatory health and
24 safety standards, he shall include such finding in the notice
25 given to the operator under subsection (b) of this section.

1 Within ninety days of the time such notice was given to
2 such operator, the Secretary shall cause such mine to be
3 reinspected to determine if any similar such violation
4 exists in such mine. Such reinspection shall be in
5 addition to any special inspection required under subsec-
6 tion (b) of this section, or section 105. If, during any special
7 inspection relating to such violation or during such reinspec-
8 tion, a representative of the Secretary finds such similar vio-
9 lation does exist, and if he finds such violation to be caused by
10 an unwarrantable failure of such operator to comply with the
11 provisions of the mandatory health or safety standards, he
12 shall forthwith issue an order requiring the operator to cause
13 all persons in the area affected by such violation, except
14 those persons referred to in subsection (d) of this section,
15 to be withdrawn from, and to be debarred from entering, such
16 area until an authorized representative of the Secretary deter-
17 mines that such violation has been abated.

18 (2) If a withdrawal order with respect to any area
19 in a mine has been issued pursuant to paragraph (1) of
20 this subsection, thereafter a withdrawal order shall promptly
21 be issued by a duly authorized representative of the Sec-
22 retary who finds upon any following inspection the existence
23 in such mine of violations similar to those that resulted in
24 the issuance of the withdrawal order under paragraph (1)

1 of this subsection until such time as an inspection of such
2 mine discloses no similar violations. Following an inspection
3 of such mine which discloses no similar violations, the pro-
4 visions of paragraph (1) of this subsection shall again be
5 applicable to that mine.

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

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

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

14 (3) any representative of the employees of such
15 mine who is, in the judgment of the operator, qualified
16 to make coal mine examinations or who is accompanied
17 by such a person and whose presence in such area is
18 necessary for the investigation of the conditions de-
19 scribed in the order; and

20 (4) any consultant to any of the foregoing.

21 (e) Notices and orders issued pursuant to this section
22 shall contain a detailed description of the conditions or
23 practices which cause and constitute an imminent danger or
24 a violation of any mandatory health or safety standard and,
25 where appropriate, a description of the area of the coal mine

1 from which persons must be withdrawn and prohibited from
2 entering.

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

8 (g) A notice or order issued pursuant to this section
9 may be modified or terminated by an authorized representa-
10 tive of the Secretary.

11 (h) (1) If, upon any inspection of a coal mine, an
12 authorized representative of the Secretary finds (A) that
13 conditions exist therein which have not yet resulted in an
14 imminent danger, (B) that such conditions cannot be effec-
15 tively abated through the use of existing technology, and
16 (C) that reasonable assurance cannot be provided that the
17 continuance of mining operations under such conditions will
18 not result in an imminent danger, he shall determine the area
19 throughout which such conditions exist, and thereupon issue
20 a notice to the operator of the mine or his agent of such
21 conditions, and shall file a copy thereof, incorporating his
22 findings therein, with the Secretary and with the representa-
23 tive of the miners of such mine, if any. Upon receipt of
24 such copy, the Secretary shall cause such further investiga-

1 tion to be made as he deems appropriate, including an
2 opportunity for the operator or a representative of the miners,
3 if any, to present information relating to such notice.

4 (2) Upon the conclusion of such investigation and an
5 opportunity for a hearing upon request by any interested
6 party, the Secretary shall make findings of fact, and shall
7 require that either the notice issued under this subsection
8 be canceled, or that an order be issued by such authorized
9 representative of the Secretary requiring the operator to
10 cause all persons in the area affected, except those persons
11 referred to in subsection (d) of this section, to be with-
12 drawn from, and be prohibited from entering, such area until
13 the Secretary, after a hearing affording all interested persons
14 an opportunity to present their views, determines that such
15 conditions have been abated.

16 (i) If, based upon samples taken and analyzed and re-
17 corded pursuant to section 202 (a) of this Act, the applicable
18 health standard established under section 202 (b) of this Act
19 is exceeded and thereby violated, the Secretary or his author-
20 ized representative shall find a reasonable period of time
21 within which to take corrective action to reduce the average
22 concentration of respirable dust to the miners in the area of
23 the mine in which such standard was exceeded, and shall
24 issue a notice fixing a reasonable time for the abatement of
25 the violation. During such time, the operator of such mine

1 shall cause samples described in section 202 (a) of this Act
2 to be taken of the affected area during each production shift.
3 If, upon the expiration of the period of time as originally
4 fixed or subsequently extended, the Secretary or his author-
5 ized representative finds, based upon such samples or upon
6 an inspection, that the violation has not been totally abated,
7 he shall issue a new notice of violation if he finds that such
8 period of time should be further extended. If he finds that
9 such period of time should not be further extended, he shall
10 find the extent of the area affected by the violation and shall
11 promptly issue an order requiring the operator of such mine
12 or his agent to cause immediately all persons, except those
13 referred to in subsection (d) of this section, to be withdrawn
14 from, and to be prohibited from entering, such area until the
15 Secretary or his authorized representative determines
16 through such test procedures conducted in such area as he
17 may require, including production and sampling, that the
18 violation has been abated.

19

REVIEW BY THE SECRETARY

20 SEC. 105. (a) An operator notified of an order issued
21 pursuant to section 104 of this title, or any representative of
22 miners in any mine affected by such order or any modifica-
23 tion or termination of such order pursuant to section 104 (g),
24 may apply to the Secretary for review of the order within
25 thirty days of receipt thereof or within thirty days of its

1 modification or termination. The operator shall send a copy
2 of such application to the representative, if any, of persons
3 working in the affected mine. Upon receipt of such applica-
4 tion, the Secretary shall cause such investigation to be
5 made as he deems appropriate. Such investigation shall pro-
6 vide an opportunity for a hearing, at the request of the appli-
7 cant or a representative of persons working in such mine, to
8 enable the applicant and the representatives of persons work-
9 ing in such mine to present information relating to the issu-
10 ance and continuance of such order.

11 (b) Upon receiving the report of such investigation,
12 the Secretary shall make findings of fact, and (1), in the
13 case of an order issued under subsection (a) of section 104
14 of this title, he shall find whether or not the imminent
15 danger as set out in the order existed at the time of issu-
16 ance of the order and whether or not the imminent danger
17 existed at the time of the investigation, and (2), in the
18 case of an order issued under subsection (b), (c), or (i) of
19 section 104 of this title, he shall find whether or not there
20 was a violation of any mandatory health or safety standard
21 as described in the order and whether or not such violation
22 had been abated at the time of such investigation, and upon
23 making such findings he shall issue a written decision vacat-
24 ing, affirming, modifying, or terminating the order com-
25 plained of and incorporate his findings therein.

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

6 (d) Pending completion of the investigation required
7 by this section, the applicant may file with the Secretary a
8 written request that the Secretary grant temporary relief
9 from any order issued under section 104 of this title, to-
10 gether with a detailed statement giving reasons for granting
11 such relief. The Secretary may issue a decision granting
12 such relief, under such conditions as he may prescribe, only
13 after a hearing in which all parties are given an opportunity
14 to be heard.

15 FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF
16 REVIEW

17 SEC. 106. (a) The Federal Coal Mine Health and
18 Safety Board of Review is hereby established. For the pur-
19 pose of carrying out its functions under sections 107 and 111
20 of this title, the Board shall be composed of five members,
21 hereafter referred to as "regular members", who shall be
22 appointed by the President, by and with the advice and
23 consent of the Senate.

24 (b) For the sole purpose of carrying out the review
25 functions set forth in section 101, and for carrying out the

1 provisions of sections 401 and 412 of this Act and matters
2 related thereto, there shall be included on the Board three
3 additional members, hereafter referred to as "additional
4 members", appointed by the President by and with the
5 advice and consent of the Senate, at least one of whom shall
6 have a public health background and the others of whom
7 shall have a background, either by reason of previous train-
8 ing, education, or experience, in coal-mining technology.
9 All additional members shall not have had any interest in,
10 or connection with, the coal-mining industry for at least one
11 year prior to their appointment.

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

25 (d) Members of the Board shall be, for each day

1 (including traveltime) during which they are engaged in
2 the business of the Board, entitled to receive compensation
3 at the maximum rate of pay for grade GS-18 as provided
4 in the General Schedule under section 5332 of title 5 of the
5 United States Code, and shall, notwithstanding the limita-
6 tions of sections 5703 and 5704 of title 5 of the United States
7 Code, be fully reimbursed for travel, subsistence, and related
8 expenses.

9 (e) The regular members of the Board shall consist of
10 one person who by reason of previous training and experience
11 may reasonably be said to represent the viewpoint of opera-
12 tors employing fourteen or fewer employees, one person who
13 by reason of previous training and experience may reasonably
14 be said to represent the viewpoint of operators employing
15 fifteen or more employees, one person who by reason of
16 previous training and experience may reasonably be said to
17 represent the viewpoint of miners in mines employing four-
18 teen or fewer employees, one person who by reason of
19 previous training and experience may reasonably be said to
20 represent the viewpoint of miners in mines employing fifteen
21 or more employees, and one person drawn from the public
22 generally, who shall be Chairman of the Board. The Chair-
23 man shall not, within five years from his appointment as a
24 member of the Board, have had a pecuniary interest in, or

1 have been regularly employed or engaged in, the mining of
2 coal, or have regularly represented either coal mine operators
3 or coal mine workers, or have been an officer or employee
4 of the Department of the Interior. Similarly, while he is
5 Chairman of the Board, he shall not have a pecuniary in-
6 terest in, or be employed or engaged in, the mining of
7 coal, or represent either coal mine operators or coal mine
8 workers, or be an officer or employee of the Department of
9 the Interior.

10 (f) The principal office of the Board shall be in the
11 District of Columbia. Whenever the Board deems that the
12 convenience of the public or of the parties may be pro-
13 moted, or delay or expense may be minimized, it may hold
14 hearings or conduct other proceedings at any other place.
15 At the request of the operator of a mine involved in a hear-
16 ing or proceeding before the Board, or of a representative
17 of miners employed in such a mine, the Board may hold such
18 hearings or conduct such proceedings on an application filed
19 under section 107 of this title at the county seat of the county
20 in which such mine is located or at any place mutually agreed
21 to by the Chairman of the Board and such operator or repre-
22 sentative. The Board shall have an official seal which shall be
23 judicially noticed and which shall be preserved in the custody
24 of the Secretary of the Board.

25 (g) The Board shall, without regard to the civil service

1 laws, appoint and prescribe the duties of the Secretary of
2 the Board and such legal counsel as it deems necessary.
3 Subject to the civil service laws, the Board shall appoint
4 such other employees as it deems necessary in exercising its
5 powers and duties. The compensation of all employees ap-
6 pointed by the Board shall be fixed in accordance with
7 chapter 53 of title 5, United States Code.

8 (h) For the purpose of carrying out its functions under
9 sections 107 and 111 of this title, official action can be
10 taken only on the affirmative vote of at least three regular
11 members, except that, in any official action involving mines
12 in which no more than fourteen individuals are regularly
13 employed underground, the participation of the small mine
14 operators' representative and small mine workers' represent-
15 ative shall be required, and in any official action involving
16 mines in which more than fourteen individuals are regularly
17 employed underground the participation of the large mine
18 operators' representative and large mine workers' representa-
19 tive shall be required; but a special panel composed of one or
20 more regular members, upon order of the Board, shall con-
21 duct any hearing provided for in sections 107 and 111 of this
22 title and submit the transcript of such hearing to the entire
23 Board for its action thereon. Such transcript shall be made
24 available to the parties prior to any final action of the Board.
25 An opportunity to appear before the Board or such panel

1 shall be afforded the parties prior to any final action and the
2 Board may afford the parties an opportunity to submit addi-
3 tional evidence as may be required for a full and true dis-
4 closure of the facts.

5 (i) Every official act of the Board shall be entered of
6 record, and its hearings and records thereof shall be open to
7 the public. The Board shall not make or cause to be made
8 any inspection of a coal mine for the purpose of determining
9 any pending application.

10 (j) The Board is authorized to make such rules as are
11 necessary for the orderly transaction of its proceedings, which
12 shall provide for adequate notice of hearings to all parties.
13 The existing rules of the Federal Coal Mine Safety Board
14 of Review shall constitute the rules of the Board until super-
15 seded or modified by the Board. For purposes of carrying
16 out its functions under sections 107 and 111 of this title,
17 three regular members of the Board shall constitute a quorum,
18 and for carrying out its other functions, five members of
19 the Board shall constitute a quorum.

20 (k) Any member of the Board may sign and issue sub-
21 penas for the attendance and testimony of witnesses and
22 the production of relevant papers, books, and documents,
23 and administer oaths. Witnesses summoned before the Board
24 shall be paid the same fees and mileage that are paid wit-
25 nesses in the courts of the United States.

1 (1) The Board may order testimony to be taken by
2 deposition in any proceeding pending before it at any stage
3 of such proceeding. Reasonable notice must first be given in
4 writing by the party or his attorney of record, which notice
5 shall state the name of the witness and the time and place
6 of the taking of his deposition. Any person may be com-
7 pelled to appear and depose, and to produce books, papers
8 or documents, in the same manner as witnesses may be
9 compelled to appear and testify and produce like documen-
10 tary evidence before the Board, as provided in subsection
11 (k) of this section. Witnesses whose depositions are taken
12 under this subsection, and the persons taking such deposi-
13 tions, shall be entitled to the same fees as are paid for like
14 services in the courts of the United States.

15 (m) In the case of contumacy by, or refusal to obey a
16 subpoena served upon, any person under this subsection,
17 the Federal district court for any district in which such per-
18 son is found or resides or transacts business, upon application
19 by the United States, and after notice to such person and
20 hearing, shall have jurisdiction to issue an order requiring
21 such person to appear and give testimony before the Board
22 or to appear and produce documents before the Board, or
23 both; and any failure to obey such order of the court may
24 be punished by such court as a contempt thereof.

1 REVIEW BY BOARD

2 SEC. 107. (a) Within thirty days after receipt of an
3 order made pursuant to subsection (a), (b), (c), (h), or
4 (i) of section 104, an operator may apply to the Board for
5 annulment or revision of such order without seeking its annul-
6 ment or revision under section 105 of this title. Within thirty
7 days after the receipt of a decision made by the Secretary
8 pursuant to section 105 of this title, an operator may apply
9 to the Board for a review of the decision.

10 (b) The operator shall be designated as the applicant in
11 such proceeding, and the application filed by him shall recite
12 the order or decision complained of and other facts sufficient
13 to advise the Board and the Secretary of the nature of the
14 proceeding. The Secretary shall be the respondent in such
15 proceeding, and the applicant shall send a copy of such appli-
16 cation by registered or certified mail to the respondent and
17 to the representative, if any, of the persons working in the
18 affected mine. Immediately upon the filing of such an appli-
19 cation, the Board shall fix the time for a prompt hearing
20 thereof. The Board shall permit any interested person to
21 intervene in such proceedings.

22 (c) (1) If the application is made to the Board directly
23 from an order issued under section 104 of this title, the Board
24 shall not be bound by any previous findings of fact by any
25 representative of the Secretary, the burden of proof shall be

1 upon the respondent, and evidence relating to the making
2 of the order complained of and other pertinent matters may
3 be offered by the parties to the proceeding.

4 (2) If the application is made to the Board from a
5 decision issued under section 105 of this title, the record and
6 the decision of the Secretary shall be received in evidence
7 and the findings of the Secretary included in the decision
8 shall constitute a prima facie case for the issuance of the
9 decision complained of and the burden of rebutting such
10 prima facie case shall be upon the applicant, but either party
11 may adduce additional evidence.

12 (d) Upon conclusion of the hearing, the Board shall
13 find, with respect to the order or decision, whether or not
14 the alleged imminent danger, violation of a mandatory health
15 or safety standard, or the condition described in section
16 104 (h) (1) existed at the time of issuance of such order
17 and whether or not such danger or such violation existed
18 at the time of filing the application, and shall issue a written
19 decision incorporating such finding therein and affirming,
20 vacating, modifying, or terminating the order or decision
21 issued under section 104 or 105 of this title.

22 (e) Each decision made by the Board shall show the
23 date on which it is made, and shall bear the signatures of
24 the members of the Board who concur therein. Upon issu-
25 ance of a decision under this section, the Board shall cause

1 a true copy thereof to be sent by registered or certified mail
2 to all parties and their attorneys of record. The Board shall
3 cause each decision to be entered on its official record,
4 together with any written opinion prepared by any members
5 in support of, or dissenting from, any such decision.

6 (f) Pending the hearing required by this section for re-
7 view of an order or decision issued under section 104 or 105
8 of this title, the applicant before the Board may file with
9 the Board a written request that the Board grant temporary
10 relief from the order or decision, together with a detailed
11 statement giving reasons for granting such relief. The Board
12 may issue a decision granting such relief, under such con-
13 ditions as it may prescribe, only after a hearing in which all
14 parties are given an opportunity to be heard.

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

20 JUDICIAL REVIEW

21 SEC. 108. (a) Any decision issued by the Board under
22 section 107 of this title shall be subject to judicial review
23 by the United States court of appeals for the circuit in which
24 the affected mine is located, upon the filing in such court
25 within thirty days from the date of such decision of a

1 petition by the Secretary or by the operator aggrieved by
2 the decision praying that the action of the Board be modi-
3 fied or set aside in whole or in part. A copy of the petition
4 shall forthwith be sent by registered or certified mail to the
5 other party and to the Board, and thereupon the Board shall
6 certify and file in such court the record upon which the
7 decision complained of was issued, as provided in section
8 2112, title 28, United States Code.

9 (b) The court shall hear such appeal on the record
10 made before the Board. The findings of the Board, if sup-
11 ported by substantial evidence on the record considered as a
12 whole, shall be conclusive. The court may affirm, vacate, or
13 modify any decision or may remand the proceedings to the
14 Board for such further action as it directs.

15 (c) Upon such conditions as may be required and to
16 the extent necessary to prevent irreparable injury, the court
17 may, after due notice to, and hearing of, the parties to the
18 appeal, issue all necessary and appropriate process and grant
19 such other relief as may be appropriate pending final deter-
20 mination of the appeal.

21 (d) The judgment of the court shall be subject only to
22 review by the Supreme Court of the United States upon
23 certiorari or certification as provided in section 1254 of title
24 28, United States Code.

25 (e) The commencement of a proceeding under this sec-

1 tion shall not, unless specifically ordered by the court,
2 operate as a stay of the Board's decision.

3 POSTING OF NOTICES AND ORDERS

4 SEC. 109. (a) At each coal mine there shall be main-
5 tained an office with a conspicuous sign designating it as the
6 office of the mine and a bulletin board at such office or at
7 some conspicuous place near an entrance of the mine, in
8 such manner that notices required by law or regulation to
9 be posted on the mine bulletin board may be posted thereon,
10 be easily visible to all persons desiring to read them, and
11 be protected against damage by weather and against unau-
12 thorized removal. A copy of any notice or order required by
13 this title to be given to an operator shall be delivered to the
14 office of the affected mine, and a copy shall be immediately
15 posted on the bulletin board of such mine by the operator or
16 his agent.

17 (b) The Secretary shall cause a copy of any notice or
18 order required by this title to be given to an operator to be
19 mailed immediately to a duly designated representative of
20 persons working in the affected mine, and to the public
21 official or agency of the State charged with administering
22 State laws, if any, relating to health or safety in such mine.
23 Such notice or order shall be available for public inspection.

24 (c) In order to insure prompt compliance with any
25 notice or order issued under section 104 of this title, the

1 authorized representative of the Secretary may deliver such
2 notice or order to an agent of the operator and such agent
3 shall immediately take appropriate measures to insure com-
4 pliance with such notice or order.

5 (d) Each operator of a coal mine shall file with the
6 Secretary the name and address of such mine and the name
7 and address of the person who controls or operates the mine.
8 Any revisions in such names or addresses shall be promptly
9 filed with the Secretary. Each operator of a coal mine shall
10 designate a responsible official at such mine as the principal
11 officer in charge of health and safety at such mine and such
12 official shall receive a copy of any notice, order, or decision
13 issued under this Act affecting such mine. In any case, where
14 the coal mine is subject to the control of any person not di-
15 rectly involved in the daily operations of the coal mine, there
16 shall be filed with the Secretary the name and address of such
17 person and the name and address of a principal official of
18 such person who shall have overall responsibility for the con-
19 duct of an effective health and safety program at any coal
20 mine subject to the control of such person and such official
21 shall receive a copy of any notice, order, or decision issued
22 affecting any such mine. The mere designation of a health or
23 safety official under this subsection shall not be construed as
24 making such official subject to any penalty under this Act.

INJUNCTIONS

1
2 SEC. 110. The Secretary may request the Attorney
3 General to institute a civil action for relief, including a
4 permanent or temporary injunction, restraining order, or
5 any other appropriate order, in the district court of the
6 United States for the district in which a coal mine is located
7 or in which the operator of such mine has his principal
8 office, whenever such operator or his agent (a) violates or
9 fails or refuses to comply with any order issued under
10 section 104 of this title or decision issued under this title,
11 or (b) interferes with, hinders, or delays the Secretary or
12 his authorized representative in carrying out the provisions
13 of this Act, or (c) refuses to admit such representative to
14 the mine, or (d) refuses to permit the inspection of the
15 mine, or an accident, injury, or occupational disease occur-
16 ring in, or connected with, such mine, or (e) refuses to
17 furnish any information or report requested by the Secre-
18 tary, or (f) refuses to permit access to, and copying of,
19 records. Each court shall have jurisdiction to provide such
20 relief as may be appropriate: *Provided*, That no temporary
21 restraining order shall be issued without notice unless the
22 petition therefor alleges that substantial and irreparable
23 injury to the miners in such mine will be unavoidable and
24 such temporary restraining order shall be effective for no
25 longer than seven days and will become void at the expira-

1 tion of such period: *Provided further*, That any order issued
2 under this section to enforce an order issued under section
3 104, unless set aside or modified prior thereto by the district
4 court granting such injunctive relief, shall not be in effect after
5 the completion or final termination of all proceedings for re-
6 view of such order as provided in this title if such is deter-
7 mined on such review that such order was invalid.

8

PENALTIES

9 SEC. 111. (a) The operator of a coal mine in which
10 a violation occurs of a mandatory health or safety standard
11 or who violates any provision of this Act shall by order be
12 assessed a civil penalty by the Secretary which penalty shall
13 not be more than \$10,000 for each such violation. Each occur-
14 rence of a violation of a mandatory health or safety standard
15 may constitute a separate offense. In determining the amount
16 of the penalty, the Secretary shall consider the operator's
17 history of previous violations, the appropriateness of such
18 penalty to the size of the business of the operator charged,
19 the effect on the operator's ability to continue in business,
20 the gravity of the violation, and the demonstrated good faith
21 of the operator charged in attempting to achieve rapid com-
22 pliance after notification of a violation. No penalty shall be
23 assessed under this subsection pending the final termination,
24 expiration, or completion of all proceedings, administrative
25 or judicial, for review of an order or decision under this title.

1 (b) Upon written request made by an operator within
2 thirty days after receipt of an order assessing a penalty under
3 this section, the Board shall afford such operator an oppor-
4 tunity for a hearing and, in accordance with the request, de-
5 termine by decision whether or not a violation did occur or
6 whether the amount of the penalty is warranted or should be
7 compromised.

8 (c) Upon any failure of an operator to pay a penalty
9 assessed under this section, the Secretary may request the
10 Attorney General to institute a civil action in a district court
11 of the United States for any district in which such person is
12 found or resides or transacts business to collect the penalty,
13 and such court shall have jurisdiction to hear and decide any
14 such action.

15 (d) Whoever knowingly violates or fails or refuses to
16 comply with any order issued under section 104 (a) of this
17 title or any final decision on any other order issued under
18 this title shall, upon conviction, be punished by a fine of
19 not more than \$10,000, or by imprisonment for not more
20 than six months, or by both, except that if the conviction is
21 for a violation committed after the first conviction of such
22 person, punishment shall be by a fine of not more than
23 \$20,000 or by imprisonment for not more than one year,
24 or by both.

1 (e) Whenever a corporate operator violates a mandatory
2 health or safety standard of this Act, or violates any provi-
3 sion of this Act, any director, officer, or agent of such cor-
4 poration who authorized, ordered, or carried out such viola-
5 tion shall be subject to the provisions of subsection (a).

6 Whenever a corporate operator knowingly violates or fails or
7 refuses to comply with any order issued under section
8 104 (a) of this title or any final decision on any other order
9 issued under this title, any director, officer, or agent of such
10 corporation who authorized, ordered, or carried out such
11 violation, failure, or refusal shall be subject to the provisions
12 of subsection (d).

13 (f) Whoever knowingly makes any false statements or
14 representations in any application, records, reports, plans,
15 or other documents filed or required to be maintained in
16 accordance with this Act or any mandatory health or safety
17 standard of this Act or any order issued under this Act
18 shall, upon conviction, be punished by a fine of not more
19 than \$10,000, or by imprisonment for not more than six
20 months, or both.

21

ENTITLEMENT OF MINERS

22 SEC. 112. (a) If a mine or portion of a mine is closed
23 by an order issued under section 104, all miners working dur-
24 ing the shift when such order was issued who are idled by

1 such order shall be entitled to full compensation by the oper-
2 ator at their regular rates of pay for the period they are idled,
3 but for not more than the balance of such shift. If such order
4 is not terminated prior to the next working shift, all miners
5 on that shift who are idled by such order shall be en-
6 titled to full compensation by the operator at their regular
7 rates of pay for the period they are idled, but for not more
8 than four hours of such shift. Whenever an operator violates
9 or fails or refuses to comply with an order issued under sec-
10 tion 104, all miners employed at the affected mine who
11 would be withdrawn or prevented from entering such mine
12 or portion thereof as a result of such order shall be entitled
13 to full compensation by the operator at their regular rates of
14 pay, in addition to pay received for work performed after
15 such order was issued, for the period beginning when such
16 order was issued and ending when such order is complied
17 with, vacated, or terminated.

18 (b) (1) Compensation shall be paid under this sub-
19 section in respect of total disability of an individual from
20 complicated pneumoconiosis which arose out of or in the
21 course of his employment in a coal mine, and in respect of the
22 death of any individual who, at the time of his death, was
23 suffering from complicated pneumoconiosis which so arose.
24 For purposes of this subsection, if an individual who is suffer-
25 ing or suffered from complicated pneumoconiosis was em-

1 ployed for ten years or more in a coal mine there shall be a
2 rebuttable presumption that his complicated pneumoconiosis
3 arose out of or in the course of such employment, but this
4 sentence shall not be deemed to affect the applicability of
5 the first sentence of this paragraph in the case of claims under
6 this subsection on account of death or total disability of an
7 individual when such individual has not worked for as much
8 as ten years in a coal mine. For purposes of this subsection,
9 any individual who suffers from complicated pneumoconiosis
10 shall be deemed to be totally disabled.

11 (2) (A) Subject to the provisions of subparagraph (B),
12 compensation shall be paid under this subsection as follows:

13 (i) In the case of total disability, the disabled individual
14 shall be paid compensation during the disability at a rate
15 equal to 50 per centum of the minimum monthly payment to
16 which a Federal employee in grade GS-2, who is totally
17 disabled is entitled at the time of payment under the provi-
18 sions of Federal law relating to Federal employees' compen-
19 sation (section 8112, title 5, United States Code).

20 (ii) In the case of death, compensation shall be paid
21 to the widow at the rate the deceased individual would
22 receive such compensation if he were totally disabled.

23 (iii) In the case of an individual entitled to compensa-
24 tion under clause (i) or (ii) of this subparagraph who has

1 one or more dependents, his compensation shall be increased
2 at the rate of 50 per centum of the compensation to which he
3 is so entitled under clause (i) or (ii) of this subparagraph
4 if such individual has one dependent, 75 per centum if such
5 individual has two dependents, and 100 per centum if such
6 individual has three dependents.

7 (B) Notwithstanding subparagraph (A), compensa-
8 tion under this paragraph shall be reduced by an amount
9 equal to any payment which the payee receives under the
10 workmen's compensation, unemployment compensation, or
11 disability insurance laws of his State, and the amount by
12 which such payment would be reduced on account of excess
13 earnings under section 203 (b) through (l) of the Social
14 Security Act if the amount paid were a benefit payable under
15 section 202 of such Act.

16 (3) (A) The Secretary of Labor shall enter into agree-
17 ments with the Governors of the States under which the
18 State will receive and adjudicate claims under this subsec-
19 tion from any resident of the State and under which com-
20 pensation will be paid as provided by this subsection from
21 grants made to pay compensation under this subsection. Such
22 Governor shall implement the agreement in such manner as
23 he shall determine will best effectuate the provisions of this
24 subsection. The Governor shall make such reports to the
25 Secretary of Labor, subject to such verification, as may be

1 necessary to assure that Federal grants under this subsection
2 are used for their intended purpose.

3 (B) The Secretary of Labor shall make grants under
4 this subsection to States with which he has an agreement
5 under subparagraph (A) in the amount necessary to en-
6 able them to pay the compensation required by this sub-
7 section.

8 (4) If the Secretary of Labor is unable to enter into
9 an agreement under paragraph (3), or if the Governor
10 of the State requests him to do so, he shall make payments
11 of compensation directly to residents of such State as re-
12 quired by this subsection. The administrative provisions for
13 carrying out the Federal employees' compensation programs
14 which are contained in sections 8121, 8122 (b), and 8123
15 through 8135, title 5, United States Code, shall apply with
16 respect to claims under this paragraph.

17 (5) No claim under this subsection shall be considered
18 unless it is filed (1) within one year after the date an
19 employed miner received the results of his first chest roent-
20 genogram provided under section 203 of this Act, or, if he
21 did not receive such a chest roentgenogram, the date he
22 was first afforded an opportunity to do so under such sec-
23 tion, or (2) in the case of any other claimant, within three
24 years from the date of enactment of this Act, or, in the case

1 of a claimant who is a widow, within one year after the
2 death of her husband or within three years from the date
3 of enactment of this Act, whichever is the later. Payment of
4 compensation under this subsection shall commence with the
5 date the claim is filed.

6 (6) No compensation shall be paid under this subsec-
7 tion to the residents of any State which, after the date of
8 enactment of this Act, reduces the benefits payable to
9 persons eligible to receive compensation under this sub-
10 section, under its State laws which are applicable to its
11 general work force with regard to workmen's compensation,
12 unemployment compensation, or disability insurance.

13 (7) For purposes of this subsection—

14 (A) The term "coal mine" includes only underground
15 coal mines.

16 (B) The term "complicated pneumoconiosis" means an
17 advanced stage of a chronic coal dust disease of the lung
18 which (i) when diagnosed by chest roentgenogram, yields
19 one or more large opacities (greater than one centimeter in
20 diameter) and would be classified in category A, B, or C in
21 the International Classification of Radiographs of the Pneu-
22 moconioses by the International Labor Organization, (ii)
23 when diagnosed by biopsy or autopsy, yields massive lesions
24 in the lung, (iii) when diagnosis is made by other means,
25 would be a condition which could reasonably be expected to

1 yield results described in clause (i) or (ii) if diagnosis had
2 been made in a manner described in clause (i) or (ii).

3 (C) The term "dependent" means a wife or child who
4 is a dependent as that term is defined for purposes of section
5 8110, title 5, United States Code.

6 (D) The term "widow" means the wife living with or
7 dependent for support on the decedent at the time of his
8 death, or living apart for reasonable cause or because of his
9 desertion, who has not remarried.

10

REPORTS

11 SEC. 113. (a) All accidents, including unintentional
12 roof falls (except in any abandoned panels or in areas which
13 are inaccessible or unsafe for inspections), shall be investi-
14 gated by the operator or his agent to determine the cause
15 and the means of preventing a recurrence. Records of such
16 accidents, roof falls, and investigations shall be kept and the
17 information shall be made available to the Secretary or his
18 authorized representative and the appropriate State agency.
19 Such records shall be open for inspection by interested per-
20 sons. Such records shall include man-hours worked and shall
21 be reported for periods determined by the Secretary, but at
22 least annually.

23 (b) Every operator of a coal mine and his agent
24 shall (1) establish and maintain, in addition to such records

1 as are specifically required by this Act, such records, and
2 (2) make such reports and provide such information, as
3 the Secretary may reasonably require from time to time to
4 enable him to perform his functions under this Act. The
5 Secretary is authorized to compile, analyze, and publish,
6 either in summary or detailed form, such reports or informa-
7 tion so obtained. Except to the extent otherwise specifically
8 provided by this Act, all records information, reports, find-
9 ings, notices, orders, or decisions required or issued pursuant
10 to or under this Act may be published from time to time
11 and released to any interested person, and shall be made
12 available for public inspection.

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3 TITLE IV—ADMINISTRATION

4 RESEARCH

5 SEC. 401. (a) The Board shall establish objectives for
6 the conduct of such studies, research, experiments, and dem-
7 onstrations as may be appropriate—

8 (1) to improve working conditions and practices,
9 prevent accidents, and control the causes of occupational
10 diseases originating in the coal-mining industry;

11 (2) to develop new or improved methods of recov-
12 ering persons in coal mines after an accident;

13 (3) to develop new or improved means and meth-
14 ods of communication from the surface to the under-
15 ground portion of the mine;

16 (4) to develop new or improved means and meth-
17 ods of reducing concentrations of respirable dust in the
18 mine. Such research shall consist primarily, but not ex-
19 clusively, of (I) studies of the relationship between coal
20 mine environments and occupational diseases of coal
21 mine workers; (II) epidemiological studies to (i) iden-
22 tify and define positive factors involved in the diseases
23 of coal miners, (ii) provide information on the incidence

1 and prevalence of pneumoconiosis and other respiratory
2 ailments of coal miners, and (iii) develop criteria on the
3 basis of which coal mine standards can be based; (III)
4 medical prevention and control of diseases of coal miners,
5 including tests for hypersusceptibility and early detec-
6 tion; (IV) evaluation of bodily impairment in connec-
7 tion with occupational disability of coal miners; (V)
8 development of methods, techniques, and programs of ef-
9 fective rehabilitation of coal miners injured or stricken
10 as a result of their occupation; and (VI) setting the re-
11 quirements, extent and specifications for the medical ex-
12 aminations provided in section 203 of this Act, and utiliz-
13 ing and studying the material, data, and findings of such
14 examinations for the preparation and publication, from
15 time to time, of reports on all significant aspects of the
16 diseases of coal miners as well as on the medical aspects
17 of injuries other than diseases, which are revealed by the
18 research carried on pursuant to this subsection;

19 (5) to study the relationship between coal mine
20 environments and occupational diseases of coal mine
21 workers; and

22 (6) for such other purposes as it deems necessary
23 to carry out the purposes of this Act.

1 (b) To accomplish the objectives established in subsec-
2 tion (a), the Board shall distribute funds available to it after
3 reserving funds necessary for carrying out section 203 (a) as
4 equally as practicable to the Secretaries of Health, Educa-
5 tion, and Welfare and of Interior. Activities under this sec-
6 tion in the field of coal mine health shall be carried out by the
7 Secretary of Health, Education, and Welfare, and activities
8 under this section in the field of coal mine safety shall be car-
9 ried out by the Secretary of the Interior. In carrying out
10 activities under this section the Secretaries of Health, Edu-
11 cation, and Welfare and of the Interior may enter into con-
12 tracts with, and make grants to, public and private agencies
13 and organizations and individuals. Such Secretaries shall
14 consult and cooperate with the Board on specific projects and
15 programs. No research shall be carried out, contracted
16 for, sponsored, cosponsored, or authorized under authority of
17 this Act, unless all information, uses, products, processes,
18 patents, and other developments resulting from such research
19 will (with such exception and limitation, if any, as the Sec-
20 retary or the Secretary of Health, Education, and Welfare
21 may find to be necessary in the interest of national security)
22 be available to the general public.

23 (c) (1) Each operator of a mine shall, at such times
24 as the Board may prescribe, pay to the United States a
25 royalty equal to 2 cents for each ton of coal he produces for

1 use or sale. When the Board determines funds available to it
2 under paragraph (2) of this subsection are sufficient to carry
3 out section 203 (a) and the activities under subsection (b)
4 of this section, it may reduce the royalty required in the first
5 sentence of this paragraph for such periods as it deems
6 appropriate. The royalties so paid are hereby appropriated
7 to the Board for use by it in carrying out this section. In
8 the event an operator fails to pay the royalty required by
9 this section, he shall be liable to the United States in an
10 amount equal to double the amount he failed to pay. The
11 Board may require such reports and shall have such access
12 to the books and records of the operator as may be neces-
13 sary for the effective enforcement of this paragraph.

14 (2) In addition to the amount made available under
15 paragraph (1), there is authorized to be appropriated to
16 the Board for each fiscal year an amount equal to 2 cents
17 for each ton of coal produced for use or sale by operators
18 during the preceding fiscal year for use by it in carrying
19 out this section. In addition, there is authorized to be ap-
20 propriated each fiscal year to the Board for use by it in
21 carrying out this section, an amount equal to any amount
22 granted by any State to the Board for such fiscal year for
23 carrying out this section, except that the appropriation based
24 on the State's grant may not exceed an amount equal to 1

1 cent per ton of coal produced for use or sale from coal mines
2 in such State during the preceding fiscal year.

3 TRAINING AND EDUCATION

4 SEC. 402. The Secretary shall expand programs for the
5 education and training of coal mine operators, agents there-
6 of, and miners in—

7 (1) the recognition, avoidance, and prevention of
8 accidents or unsafe or unhealthful working conditions
9 in coal mines; and

10 (2) in the use of flame safety lamps, permissible
11 methane detectors, and other means approved by the
12 Secretary for accurately detecting gases.

13 ASSISTANCE TO STATES

14 SEC. 403. (a) The Secretary, in coordination with the
15 Secretaries of Labor and of Health, Education, and Welfare,
16 is authorized to make grants to any State, in which coal
17 mining takes place—

18 (1) to conduct research and planning studies and
19 to carry out plans designed to improve State work-
20 men's compensation and occupational disease laws and
21 programs, as they relate to compensation for pneu-
22 moconiosis and injuries in coal mine employment; and

23 (2) to assist the States in planning and implement-
24 ing other programs for the advancement of health and
25 safety in coal mines.

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

4 (c) Federal grants under this section shall be made
5 to States which have a plan or plans approved by the
6 Secretary.

7 (d) The Secretary shall approve any plan which—

8 (1) provides that reports will be made to the Sec-
9 retary, in such form and containing such information,
10 as may reasonably be necessary to enable him to review
11 the effectiveness of the program or programs involved,
12 and that records will be kept and afford such access
13 thereto as he finds necessary or appropriate to assure
14 the correctness and verification of such reports;

15 (2) provides such fiscal control and fund account-
16 ing procedures as may be necessary to assure proper
17 disbursement and accounting for Federal funds paid to
18 the State;

19 (3) contains assurances that the State will not in
20 any way diminish existing State programs or benefits
21 with respect to pneumoconiosis and related conditions;
22 and

23 (4) meets any additional conditions which the Sec-
24 retary may prescribe by rule in furtherance of the pro-
25 visions of this section.

1 (e) The Secretary shall not finally disapprove any State
2 plan, or modification thereof, without affording the State
3 reasonable notice and opportunity for a hearing.

4 (f) The amount granted any State for a fiscal year
5 under this section may not exceed 80 per centum of the
6 amount expended by such State in such year for carrying
7 out such programs, studies, and research.

8 (g) There is hereby authorized to be appropriated for
9 the fiscal year ending June 30, 1970, and each of the suc-
10 ceeding fiscal years for carrying out this paragraph, the sum
11 of \$1,000,000.

12 EQUIPMENT

13 SEC. 404. The Secretary is authorized, during the period
14 ending five years after the date of enactment of this Act, to
15 make loans to operators of coal mines to enable them to
16 procure or convert equipment needed by them to comply
17 with the provisions of this Act. Loans made under this sec-
18^a tion shall have such maturities as the Secretary may deter-
19 mine, but not in excess of twenty years. Such loans shall
20 bear interest at a rate which the Secretary determines to be
21 adequate to cover (1) the cost of the funds to the Treasury,
22 taking into consideration the current average yields of out-
23 standing marketable obligations of the United States having
24 maturities comparable to the maturities of loans made by the
25 Secretary under this section, (2) the cost of administering

1 this section, and (3) probable losses. In carrying out this
2 section, the Secretary shall to the extent feasible use the
3 services of the Small Business Administration pursuant to
4 agreements between himself and the Administrator thereof.

5 INSPECTORS; QUALIFICATIONS; TRAINING

6 SEC. 405. The Secretary may, subject to the civil serv-
7 ice laws, appoint such employees as he deems requisite for
8 the administration of this Act and prescribe their duties. Per-
9 sons appointed as authorized representatives of the Secretary
10 under the provisions of this section shall be qualified by
11 practical experience in the mining of coal or by experience
12 as a practical mining engineer and by education. Such per-
13 sons shall be adequately trained by the Secretary. The Secre-
14 tary shall seek to develop programs with educational institu-
15 tions and operators designed to enable persons to qualify for
16 positions in the administration of this Act. In selecting per-
17 sons and training and retraining persons to carry out the
18 provisions of this Act, the Secretary shall work with appro-
19 priate educational institutions and operators in developing and
20 maintaining adequate programs for the training and continu-
21 ing education of persons, particularly inspectors, and, where
22 appropriate, shall cooperate with such institutions in the con-
23 duct of such programs by providing financial and technical
24 assistance.

EFFECT ON OTHER LAW

1

2 SEC. 406. (a) No State law in effect upon the effective
3 date of this Act or which may become effective thereafter,
4 shall be superseded by any provision of this Act or order
5 issued or standard promulgated thereunder, except insofar as
6 such State law is in conflict with this Act or with any order
7 issued or standard promulgated pursuant to this Act.

8 (b) The provisions of any State law or regulation in
9 effect upon the effective date of this Act, or which may be-
10 come effective thereafter, which provide for more stringent
11 health and safety standards applicable to coal mines than do
12 the provisions of this Act or any order issued or standard
13 promulgated thereunder shall not thereby be construed or
14 held to be in conflict with this Act. The provisions of any
15 State law or regulation in effect upon the effective date of this
16 Act, or which may become effective thereafter, which pro-
17 vide for health and safety standards applicable to coal mines
18 for which no provision is contained in this Act or any order
19 issued or standard promulgated thereunder, shall not be held
20 to be in conflict with this Act.

21

ADMINISTRATIVE PROCEDURES

22

23 SEC. 407. The provisions of sections 551-559 and sec-
tions 701-706 of title 5 of the United States Code shall not

1 apply to the making of any order or decision made pursuant
2 to this Act, or to any proceeding for the review thereof.

3
4 **REGULATIONS**

5 **SEC. 408.** The Secretary is authorized to issue such
6 administrative regulations as he deems appropriate to carry
7 out any provision of this Act.

8
9 **OPERATIVE DATE AND REPEAL**

10 **SEC. 409.** The provisions of titles I and III of this Act
11 shall become operative 90 days after enactment. The pro-
12 visions of title II of this Act shall become operative six
13 months after enactment. The provisions of the Federal Coal
14 Mine Safety Act, as amended, are repealed on the operative
15 date of titles I and III of this Act, except that such provi-
16 sions shall continue to apply to any order, notice, or finding
17 issued under that Act prior to such operative date and to any
18 proceedings related to such order, notice, or finding. All
19 other provisions of this Act shall be effective on the date of
20 enactment of this Act.

21
22 **SEPARABILITY**

23 **SEC. 410.** If any provision of this Act, or the applica-
24 tion of such provision to any person or circumstance, shall
25 be held invalid, the remainder of this Act, or the application
26 of such provision to persons or circumstances other than

1 those as to which it is held invalid, shall not be affected
2 thereby.

3

REPORTS

4 SEC. 411. (a) Within one hundred and twenty days
5 following the convening of each session of Congress, the Sec-
6 retary shall submit through the President to the Congress
7 and to the Office of Science and Technology an annual report
8 upon the subject matter of this Act, the progress concerning
9 the achievement of its purposes, the needs and requirements
10 in the field of coal mine health and safety, the amount and
11 status of each loan made under section 404, a description
12 and the anticipated cost of each project and program
13 he has undertaken under section 401, and any other
14 relevant information, including any recommendations he
15 deems appropriate.

16 (b) Within one hundred and twenty days following
17 the convening of each session of Congress, the Secretary of
18 Health, Education, and Welfare shall submit through the
19 President to the Congress, the Secretary, and to the Office
20 of Science and Technology an annual report upon the health
21 matters covered by this Act, including the progress toward
22 the achievement of the health purposes of this Act, the
23 needs and requirements in the field of coal mine health,
24 a description and the anticipated cost of each project and
25 program he has undertaken under section 401, and any other

1 relevant information, including any recommendations he
2 deems appropriate. The first such report shall include the
3 recommendations of the Secretary of Health, Education,
4 and Welfare as to necessary health standards, including his
5 recommendations as to the maximum permissible individual
6 exposure to coal mine dust during a working shift.

7

SPECIAL REPORT

8 SEC. 412. (a) The Board shall make a study to deter-
9 mine the best manner to coordinate Federal and State
10 activities in the field of coal mine health and safety so as to
11 achieve (1) maximum health and safety protection for
12 miners, (2) an avoidance of duplication of effort, (3)
13 maximum effectiveness, (4) reduce delay to a minimum,
14 and (5) permit most effective use of Federal inspectors.

15 (b) The Board shall make a report of the results of
16 its study to the Congress as soon as practicable after the
17 date of enactment of this Act.

[Report No. 91-563]

A BILL

To provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes.

By Mr. DENT, Mr. BURTON of California, Mr. PERKINS, Mr. PUCINSKI, Mr. HAWKINS, Mrs. MINK, Mr. STOKES, Mr. CLAY, Mr. POWELL, Mr. GAYDOS, Mr. BELL of California, Mr. HANSEN of Idaho, Mrs. GREEN of Oregon, Mr. THOMPSON of New Jersey, Mr. DANIELS of New Jersey, Mr. BRADEMAS, Mr. O'HARA, Mr. REID of New York, Mr. MORGAN, Mr. FLOOD, Mr. SAYLOR, Mr. STAGGERS, Mr. SLACK, Mr. KEE, and Mr. MOLLOHAN

SEPTEMBER 23, 1969

Referred to the Committee on Education and Labor

OCTOBER 13, 1969

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

I certainly would be derelict in my responsibility if I did not pay tribute to the distinguished gentleman from Pennsylvania (Mr. DENT) and his entire subcommittee. Never in my time have I seen a committee work so untiringly and diligently and persevere on subject matter day in and day out as did JOHN DENT and his General Labor Subcommittee.

Mr. Chairman, in taking up H.R. 13950—the Federal Coal Mine Health and Safety Act of 1969—we are considering major legislation which deals comprehensively with the health and safety problems of the Nation's most dangerous occupation.

As we proceed with our deliberations today, the safety and health of the men who work in the mines must at all times remain our prime consideration.

I envision ever expanding job opportunities for miners in the eastern Kentucky congressional district it is my privilege to represent. I have growing concern, however, that the people of this area and particularly the young people may not look upon work in the coal mines as an attractive opportunity because of the risks involved.

The work of the miner should be a highly rewarding lifetime occupation, one in which the worker in addition to a good income could take pride in making an important and substantial contribution to the growth and development of this Nation. The production of energy is basic to our wealth and economic growth and coal, a major source of that energy, must continue to play a significant role in the increasing productivity of this Nation. If the miner were not constantly faced with danger from roof falls, explosions, fires, and all manner of accidents, if each day in the mine did not increase the likelihood that his life would be choked off by the dreaded "black lung" disease, if, in short, his work could be made tolerably safe, more miners would stay with mining, and more importantly, miners and their wives will stop discouraging their sons from working in the mines.

Mr. Chairman, I believe that the legislation we consider today will make mining a safer and a healthier occupation. It will make mining more attractive particularly to the young people. It will increase the likelihood that experienced miners will remain in the industry. It will increase the likelihood that young people will enter it. If, on the other hand, we fail in the task we have set for ourselves, if coal mines are permitted to remain unhealthy and unsafe then the average age of miners will continue to rise and eventually there will be no men to work the mines. That would be a tragedy—for the miners, for the operators, and for the Nation.

HISTORY OF MINE SAFETY LAW

Like almost all legislation on this subject, the bill before us was triggered by a coal mine disaster—one in which 78 men lost their lives. Every significant advance in Federal coal mine safety law has required that men die—that they die dramatically and in substantial numbers—before the Congress would undertake to afford them a greater measure of protection.

The majority of coal miners killed on

the job, however, do not lose their lives in dramatic disasters. They die by ones and twos in accidents that do not generate national headlines. And more, many more, are killed not on the job but by the job, victims of the insidious "black lung" disease that results from the daily breathing of coal dust.

Since the 78 miners died at Farmington, W. Va., last November—less than a year ago—another 144 have lost their lives in day-to-day, undramatic accidents. No one knows how many more have died, or will die, from black lung.

It took the deaths of more than 3,100 miners between 1900 and 1910 to move Congress to authorize the establishment of a Federal Bureau of Mines. Even then, for three full decades, the Bureau was equipped only with advisory powers. It was denied the most basic authority—to enter and inspect coal mines. When the right of entry finally was provided by law in 1941, it was not accompanied by any authority to establish safety standards, or to require compliance with an inspector's safety recommendations.

Even limited enforcement powers were not given to the Bureau until 1952, and, again, only after a major disaster in which 119 miners died. The law that gave those powers, once amended in 1966, is the law under which the Bureau operates today. When he signed it, former President Truman pointed out its glaring deficiencies. "A sham," he called it.

Those same deficiencies exist today.

The 1952 law was directed only at the prevention of major disasters. The day-to-day accidents, which still cause roughly 90 percent of all coal mines fatalities, were not to be a concern of the Federal Government. Despite a record which showed that the States were not discharging their responsibilities and were unlikely to do so, despite their weak standards and weaker enforcement, the chief responsibility for mine safety was left with the States.

Because of the procedural complexities with which it is burdened relating to inspections, orders, and appeals, the law has proved to be extremely difficult to administer.

In the law's favor it may be said, however, that for the first time the Bureau could require that specific hazardous conditions to be corrected, and that men be withdrawn from a mine if there were "imminent danger" of a disaster.

In 1966, the 1952 law was extended to cover small coal mines, which until then had been exempted from its mandatory provisions. The Bureau also received additional enforcement powers for use in instances where there was "unwarrantable failure" of an operator to comply with those provisions.

In spite of almost 60 years of periodic congressional concern, however, and in spite of past legislative efforts, all of us are painfully aware of the poor safety record of the coal mining industry in this country. From 1952 through 1968 nearly 5,000 men were killed and 200,000 injured in underground coal mines.

For much too long the cliché "coal mining is a dangerous business" has served as an excuse for inaction on the part of the industry and the States. It must no longer serve as an excuse for

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 13950) to provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Kentucky.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 13950, with Mr. SREED in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Kentucky (Mr. PERKINS) will be recognized for 1½ hours, and the gentleman from Illinois (Mr. ERLBORN) will be recognized for 1½ hours.

The Chair recognizes the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, H.R. 13950, a bill to provide for the protection of the health and safety of persons working in the coal mining industry in this country, to my way of thinking, is one of the most important health safety measures ever brought before this Congress, if not the most important.

inaction on the part of the Congress. When the fatality rate for one industry is 10 or more times the rate for all industry, improvement must be considered not only desirable but mandatory. And that is the case with underground coal mining.

THE 1969 ACT

The Federal Coal Mine Health and Safety Act of 1969 which we are considering today deals comprehensively with both the health and safety problems of the mines. It corrects the deficiencies of the 1952 act, takes account of past experience and provides for the development and implementation of safeguards against hazards that may develop in the future.

The bill, H.R. 13950, establishes an extensive array of interim mandatory health and safety standards. The standards included in the bill are minimum standards. Necessary changes need not await statutory amendments for the bill permits and encourages administrative changes where experience proves them necessary and desirable. The bill expands coverage of the law to afford protection against all hazards to the miners—not just against those likely to kill five or more at a time.

Adequate enforcement is assured by provision of administrative and judicial processes of both civil and criminal nature. The rights of the operator and the miners are protected.

The bill also requires an expansion of the sadly deficient Bureau of Mines' safety and health research program.

* * * * *

cal evidence is overwhelming. Furthermore, as productivity continues to rise—as it has so dramatically over the past 20 years—the dust exposure of miners will be even greater, with even more deadly consequences.

There is no cure for this disease. Prevention, by reducing the exposure levels, is the only known protective measure.

The statistical evidence that we have indicates that the likelihood of death from black lung is twice as great as that of being fatally injured in an underground coal mine accident. This bill will establish dust standards that can dramatically reduce the fatality rate from black lung. Dust concentration levels will be reduced to less than half the level now encountered by the average miner working at the face in an underground mine.

The bill would establish a statutory maximum level of coal dust permitted in a mine. That level would be reduced over time.

Title II thus provides that the average concentration of respirable coal dust to which each miner is exposed would be kept at or below 4.5 milligrams per cubic meter of air. Six months after the date of enactment that level is reduced to 3 milligrams per cubic meter of air. The operator will be granted a limited extension where he can prove he is doing his best to comply, but cannot for technical reasons beyond his control.

On the basis of British X-ray evidence, a coal miner exposed to the high concentrations of dust found in coal mines today has almost a 35 percent probability of contracting simple black lung during a 35-year working life. This bill can make it possible to reduce that probability to less than 10 percent.

Further reduction to a much lower probability level will be attainable with the X-ray program provided for in the bill. Such a program will permit the identification of miners who show susceptibility to black lung, so they can be relocated in parts of a mine where dust concentrations are lower.

Although the dust standard incorporated in the bill is designed to give the lowest concentrations possible with today's technology, we realize that even lower concentrations must be achieved if black lung is to be eliminated. We have left to the discretion of the Secretary of Health, Education, and Welfare the times when lower levels of dust concentration shall become mandatory. We have made it clear, however, that these lower levels shall be attained as quickly as possible.

* * * * *

prices lower than it could have been if compensation costs had been paid at the time that the disability was incurred. Consequently, compensation for past damage to a coal miner's health can, we believe, logically be considered a national responsibility. The bill provides for payments to miners where the State does not assume responsibility or where the payments are inadequate.

The level of benefits are low but they will be a help. A miner disabled by "black lung" would receive a benefit equal to one-half the amount paid a totally disabled Federal employee at a GS-2 rate—\$136 per month. This amount would be offset by other income by way of State workmen's compensation, unemployment compensation, social security disability benefits, and so forth.

* * * * *

COMPENSATION

Existing State compensation laws are in most instances inadequate to meet the real needs of miners disabled by black lung. Even where compensation payments are made, they are frequently below the minimum subsistence level, or miners disabled by the disease are ineligible on the basis of some technicality. For example, they may have worked in a State other than that in which they reside when the disease catches up to them, or the number of employers they worked for makes it difficult to assign the costs of compensation to those who might be held legally responsible for the disability.

One thing is clear, however. The coal produced by these victims of black lung was sold throughout the United States at

OTHER MATTERS

Under the amendment, the Secretary of Health, Education, and Welfare would oversee the X-ray program and both the Secretary and the Secretary of Health, Education, and Welfare shall carry out the health and safety research program prescribed in the bill. The royalty payments would be available to both Secretaries for the X-ray program and research. Finally, the study required by section 412 of the bill would be carried out by the Secretary.

Mr. Chairman, at this point I would like to insert in the RECORD amendments to title III of H.R. 13950, that I am advised by the distinguished chairman of the subcommittee, the gentleman from Pennsylvania (Mr. DENT) will offer at the appropriate time. The insertion which follows is in such form that language not changed by the amendment is shown in roman type, the portions which the amendments would eliminate are enclosed in black brackets, and new language is shown in italic. These amendments are acceptable to me and it is my understanding that they are likewise acceptable to Members on both sides of the aisle:

* * * * *

* * * * *

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the distinguished gentleman from Wisconsin, a member of the subcommittee, who has worked diligently on this legislation.

Mr. STEIGER of Wisconsin. I appreciate the gentleman from Kentucky yielding to me.

In your remarks you directed the attention of the Members of the House to the question of compensation for persons suffering from black lung disease, about which there will be some controversy. The chairman knows that I supported the inclusion of this compensation section, but I simply want to see if the distinguished chairman of the full committee agrees with the statement appearing in the committee report:

It is clearly not intended to establish a Federal prerogative or precedent in the area of payments for the death, injury, or illness of workers.

Does the gentleman agree with that statement.

Mr. PERKINS. Let me follow the gentleman a little closer. Let me get the report. I want to make sure that that is not intermingled with other sentences.

Mr. STEIGER of Wisconsin. It is on page 13.

The CHAIRMAN. The time of the gentleman from Kentucky has again expired.

Mr. PERKINS. Mr. Chairman, I yield myself 1 additional minute.

The CHAIRMAN. The gentleman is recognized for 1 additional minute.

Mr. PERKINS. On page 13? Where on page 13?

Mr. STEIGER of Wisconsin. The middle of the page.

It starts out by saying:

This program of payments—

Mr. PERKINS. All right. "This program of payments"—

Mr. STEIGER of Wisconsin. It states:

This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan.

I am sure that the chairman would clearly agree with that statement.

Mr. PERKINS. It is not a workmen's compensation plan even though it is included in the bill because the committee found workmen's compensation statutes in various States totally inadequate to compensate the victims of black lung. It is a special compensation plan because of the hazardous nature of the employment of coal miners.

Mr. STEIGER of Wisconsin. I understand.

Mr. PERKINS. There is no other occupation to my knowledge or thinking as hazardous and as dangerous. It is for this reason, because of the insidious nature of this disease, that we wrote the com-

pensation provisions into this bill—knowing that many of the States would never provide compensation for the coal miners when they may have contracted the disease in those States—they would never write a statute.

The CHAIRMAN. The time of the gentleman from Kentucky has again expired.

Mr. PERKINS. Mr. Chairman, I yield myself 1 additional minute.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield further?

Mr. PERKINS. I yield further to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. I simply want to again point to the one sentence that I think is the key and I want to make sure that the legislative record is clear for all to see, that this is not intended to serve as a precedent. It is on that point that I have asked the gentleman from Kentucky to make his comment about that sentence in the committee report.

Mr. PERKINS. This is intended—I let me put it in my own words—as a Federal compensation statute to take care of a group of employees that has been ostracized by most of the State workmen's compensation statutes. It is a special statute because of the hazardous nature of the work.

Mr. STEIGER of Wisconsin. I appreciate the gentleman yielding.

The CHAIRMAN. The time of the gentleman from Kentucky has again expired.

Mr. ERLENBORN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, we are here today considering H.R. 13950, the Federal Coal Mine Health and Safety Act of 1969 in an atmosphere of some emotion as a result of the terrible disaster in West Virginia's Consolidation Coal Co.'s No. 9 mine near Farmington, W. Va.

It is unfortunate that this would be true, that one of the major reasons that this bill comes out onto the floor for consideration and that we are presently considering the health and safety of the coal miners is as the result of such a disaster.

It does make it more difficult as well in considering this bill to make the kind of dispassionate valid judgments that one must make in order to legislate effectively.

Mr. Chairman, a little over a year ago 78 miners were killed in an explosion and fire at the Farmington mine. As was pointed out by the chairman of our committee (Mr. PERKINS) the one thing that goes unheralded—is that over 170 men have died in coal mine accidents since the Farmington disaster, more than double the number that died in that disaster.

Mr. Chairman, this points up, I think, the fact that this is an extremely hazardous occupation.

But unfortunately we do not look at the hazards that exist day by day. Most people are not aware, except when there

are demonstrations or strikes against the State legislatures, most people are not aware of the disease pneumoconiosis—which I could not even pronounce at the beginning of this session, and was not aware of it. It comes trippingly off my tongue now because I have talked about pneumoconiosis and studied it for the better part of this year—but most people are not aware of this disabling disease, how it comes about, and what we might do to see that miners are protected from the onset of this disease.

I believe it is a sad commentary that we here in the United States, being one of the greatest coal-producing nations in the world, have not done the job of research that should have been done years ago into the causes and prevention of the disease pneumoconiosis. Because of this, our subcommittee while considering this legislation felt that we should go to the source of valid information since it was not available through our own research, and some members of our subcommittee did go to England where for the last 20 or 30 years they have made a very detailed study of pneumoconiosis. They have taken readings over a period of a number of years on the concentration of respirable dust in the coal mines, and have developed the relationship between the concentration of respirable dust and the length of time a miner is exposed to it, and the possibility or probability that the miner would contract the disease pneumoconiosis.

We had some difficulty in relating the information we got there to our situation in the United States for several reasons.

One is that historically the British had made a particle count to determine the prevalence of respirable dust. In other words, they would take a measurable amount of air and actually count the particles that were deposited upon a filter. We in the United States had used what is called a gravimetric measurement, that is, we gathered the particles within a measured volume of air, and weighed them. So we talked about milligrams of a certain weight of respirable dust in a cubic meter of air, and the English were talking about hundreds of particles in a given volume of air.

Since our trip, the English have changed over to the type of measurement that we have, the gravimetric measurement, and they have for the first time promulgated standards of dust concentration for the purpose of limiting the chance of contracting the disease pneumoconiosis. I think it has a real bearing on what we are proposing to do in this bill, as to the interim mandatory standards which appear in title II, and I will talk about that later.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I am very much interested in the standards of respirable dust promulgated and fixed in England recently, what is that standard at the present time?

Mr. ERLENBORN. The English have just recently established a standard of

5.7. It would relate in the same terms to what we use of 5.7 milligrams per cubic meter of air, whereas the standards proposed to be established upon the operative date of this bill will be 4.5 milligrams, and within a year this would be reduced to 3 milligrams.

Mr. CARTER. In a recent letter from the Mining Board in England I believe I read that a standard of 8 milligrams per cubic meter would be required this year.

Mr. ERLENBORN. The gentleman is right. The standard set is 8 milligrams per cubic meter in England, but they measure at a different point than we do, and I think relating this to the standards and the method of measurement in the United States, if the gentleman will look at page 91 of the report of the committee, in the supplemental views, the gentleman will see that this would correspond to 5.7 milligrams concentration of coal dust.

Mr. CARTER. Is it not true that England has done a great deal more research work in this field than we have up to the present time?

Mr. ERLENBORN. There is no question about that. Up until a few years ago we had done practically no research in the United States. In the last 25 years or more extensive research has been conducted in England.

Mr. CARTER. Then, with an amount of research, less than that of England we are setting a standard today in the United States which is lower than that of England; is that not true?

Mr. ERLENBORN. The gentleman is correct.

Mr. CARTER. I thank the distinguished gentleman.

Mr. ERLENBORN. I intend to address myself to that later in my remarks.

Mr. CARTER. I thank the gentleman.

Mr. ERLENBORN. Mr. Chairman, the history of coal mine legislation at the Federal level relates itself to safety legislation only. This bill will for the first time put the Federal Government into the business that they should be in, in my opinion, and that is looking to the health of the coal miners.

As I say, over the years, actually over 100 years, we have had some legislation in the field of coal mine safety. The first real authority, I think, to inspect mines and to go into the business of safety for coal miners occurred in 1941.

In 1951 additional legislation was adopted that extended this authority.

In 1966 for the first time all of the mines were covered, and we brought in the smaller mines under the authority of this coal mine safety legislation.

At that time it was made quite clear that a valid distinction existed between the gassy mines, those liberating large amounts of methane gas and other mine that were not liberating excessive amounts of methane gas or enough methane gas to cause an explosive combination in the mine atmosphere.

An exemption was made for these nongassy mines so they would not have to comply with the very expensive requirement for permissible equipment, that equipment designed according to specifications required by the Secretary of the Interior and the Bureau of Mines in suc

a way that it would not cause sparks or cause an ignition. It is contemplated under this bill to eliminate the nongassy classification and to bring all mines under the same requirement for the use of permissible equipment.

But to follow the historic progression of the legislative efforts of the Congress, as I say, in 1966 the last amendment was made bringing the small mines under the Federal legislation.

Then in 1968, we had the Farmington disaster and here in 1969 we are considering the question of coal mine health and safety legislation.

One of the first items in the bill, section 101 relates to the setting of standards—interim standards for health are established in title II and interim standards for safety are established in title III.

But these are meant only to be interim standards until the Secretary through investigation and through advancements in technology decides that different standards should apply—more rigid standards should apply—that will help eliminate accidents and health problems.

I might mention again for reemphasis that we have never been in the field of health in the Federal jurisdiction in this area and this bill, for the first time, puts us in the area of health. But to make this clear, what we are talking about in the field of health for coal miners, is the disease of pneumoconiosis and the concentration of respirable dust.

This is a very technical field. The majority of the subcommittee and the majority of our full committee felt it was one which was within the unique expertise and knowledge of the Secretary of Health, Education, and Welfare.

I admit that the research that has been taking place now and what research has been conducted is under the auspices of the Secretary of Health, Education, and Welfare. I admit that the Secretary of Health, Education, and Welfare is uniquely qualified through the Surgeon General and through the National Institutes of Health to further this research.

But I have maintained and I continue to maintain and reiterate, and I hope the majority of Members of the House will agree with me, that the Secretary of the Interior through the Bureau of Mines is uniquely qualified to know what is technologically and technically feasible in the setting of standards and in the enforcement of those standards. In this bill the majority of our committee has provided a most unique procedure, I think an unprecedented procedure, for the establishment of health standards, giving the authority to the Secretary of Health, Education, and Welfare to develop these standards, and then the Secretary of Health, Education, and Welfare will direct the Secretary of the Interior to promulgate and to enforce those standards. That puts us in the most unique position—I think ridiculous position—of having one Cabinet-level Secretary dictating to another Cabinet-level Secretary, having one Cabinet-level Secretary developing standards, those standards being mandatory, and then the enforcement of the standards put in the hands of the Secretary of the Interior, a different authority.

At the proper time I intend to offer an amendment which would recognize the role that HEW can play in this field. It would provide that the Secretary of Health, Education, and Welfare would recommend the standards, but the actual development and promulgation of those standards would be by the Secretary of the Interior, who knows what is desirable from the reports given to him by the Secretary of Health, Education, and Welfare, but also will be armed with the knowledge as to what is possible, and he could relate the two together, so that the standards that would be promulgated would be really attainable, because the Secretary of the Interior knows that he is going to have to enforce them.

For the first time this bill also puts the Secretary of the Interior and the Bureau of Mines in the field of day-by-day safety. Up until this time the Secretary of the Interior and the Bureau of Mines have had no real authority in the field of the day-by-day accident—the roof falls and the other things that occur—which really account for many more lives than the great disasters. Those have not been within the jurisdiction of the Bureau of Mines, and this bill will expand the Secretary's authority so that he can really get into the most important field of day-by-day safety regulations.

The bill also provides carefully drawn provisions for judicial review of the decisions that are made by the Secretary of the Interior. The Secretary has some rather broad authority in the enforcement of interim health and safety standards, in the closure of mines, in the imposition of criminal penalties of up to \$10,000, and 6 months in jail, in seeking the closure of a mine through an order of the Secretary. All of this should be subject to review. The Secretary can also enforce many of the provisions of this act through the use of injunctions. If the operator violates or refuses to comply with a valid order of the Secretary, the Secretary can go into the Federal District Court and get an injunction to enforce compliance. If the operator hinders or delays the representative of the Secretary or the mine inspector—refuses to allow him into the mine or will not show him his books and records—again the Secretary can go into the Federal District Court and obtain an injunction to enforce compliance.

I have mentioned penalties. The penalties are stiff. The penalties include not only closing a mine and getting injunctions, but, as I mentioned before, criminal penalties of up to \$10,000 and 6 months in jail, and civil penalties will be up to \$10,000 and for a repeated violation, a fine of not more than \$20,000 a year and/or imprisonment for not more than one year.

The interim mandatory health standards, as they are called—again, I reiterate this really does not get into any broad questions of health—only the one question of respirable dust and the onset from which could be caused pneumoconiosis.

As has been pointed out already in the colloquy with the gentleman from Kentucky, England has conducted research in this field and they have come up with standards, which measured in the same

places, would relate to the standards set in this bill of 5.7 milligrams per cubic meter. We are requiring in this bill, within 6 months after the passage of the bill, that is, the operative date of title II, 4.5 milligrams, a much lower standard than the English. Then 6 months thereafter, in other words, 1 year after the passage of the bill, we require 3 milligrams. Then we require the Secretary to reduce that even further as the technology becomes available.

These are very harsh limitations. They are meant really for the protection of the health of the miners. We should have very stringent standards.

I doubt whether anyone really knows if we can obtain the standards set in the act. I know it is desirable to do so. It is desirable that we have the toughest standards that are attainable.

My own inclination originally was to hold out for higher figures, those which would be more in keeping with what the English have established, but what is even more important—and this is something Members should realize—there is no imminent danger to the health or safety of the miners because of an extra large concentration of dust in the mine. Many people relate the dust standards to such things as concentration of methane. If we have a concentration above 5 percent, between 5 percent and 15 percent of methane in the atmosphere of a mine, it is an explosive situation. A spark can set it off. People can be killed in a disaster. But the concentration of coal dust in a mine constitutes no imminent danger to the mine, the mine operator, or the owner.

The fact is, a person would have to be subjected day in and day out to exposure over 15 or 20 years or more before evidence of pneumoconiosis would even begin to be ascertainable by X-ray and lung function tests.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. ERLNBORN. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, first I compliment the distinguished gentleman from Illinois (Mr. ERLNBORN) for the outstanding job he has done, for being so diligent in his efforts to try to write a coal mine safety bill.

However, I do feel the 4.5 dust level figure in the House bill requires reduction to the 3.0 dust level within 12 months, with waivers for an additional 6 months. Based on recent tests that the gentleman heard discussed this morning, does the gentleman not think that timetable is achievable?

Mr. ERLNBORN. Mr. Chairman, first of all, I thank the chairman of the committee for his contribution. As the gentleman from Kentucky knows, we did have a meeting with representatives of the Bureau of Mines. They detailed for us some investigations they have made in the last few months that make it very hopeful these standards would be attained. I feel as a result of that meeting that, although it may not be entirely certain, it is more hopeful that these standards can be reached within the period of time set forth in this bill.

I was about to say that even though I think our standards are harsh and may-

be not attainable, I am not going to attack the standards and try to increase the 4.5 to some higher number or to reduce it.

Mr. PERKINS. Mr. Chairman, I am glad to hear the gentleman make that statement. We set no time in the bill as to the time when the 3.0 should be reached, but we leave that to the discretion of the Secretary, as I think it should be. I am glad the gentleman makes the observation that he does not intend to try to amend the standards.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Mr. Chairman, I listened with great interest to the remarks of the gentleman from Illinois.

I do not want this time to pass without noting for the benefit of Members of the House the fantastic contribution made by the gentleman in the well. On our side we consider this a subject in which many of us have at least a peripheral interest, but clearly the gentleman from Illinois (Mr. ERLENBORN) has been the man who has spent the time and effort and energy and intelligence to do the most detailed and exhaustive study on the question of coal mine safety. He has spent hour after hour in studying what is a very complex and detailed piece of legislation. He has been extremely influential in shaping and forming the bill that is before the House today.

I believe it is important to note that the gentleman from Illinois has no coal mines in his district. This is not a subject in which, representing his constituency, he might have an interest. But as a member of the Committee on Education and Labor and as the ranking minority member on this subcommittee he has done his job, which he has handled, I believe, exceptionally well, in making sure the bill before us came to us, in the first place, and is in the shape it is in, in the second place.

I intend to support a number of the amendments he has talked about. I do not intend to support all of the amendments the gentleman from Illinois or others might offer, as he knows.

But I want to make sure that the record is here, and I wish to express my tribute to the work of the gentleman in the well, who has contributed so much to this kind of bill. If it passes, as I hope it will in the shape the gentleman from Illinois discussed in most details, it will be in large part due to the efforts of the gentleman from Pennsylvania (Mr. DENT) and the gentleman from Illinois (Mr. ERLENBORN) who together have done a magnificent job.

Mr. ERLENBORN. I thank the gentleman for that kind endorsement.

Mr. BROTZMAN. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I am happy to yield to the gentleman from Colorado.

Mr. BROTZMAN. Mr. Chairman, I do not have the privilege of serving on the committee, as does the prior speaker, but I have been sitting here on the House floor today listening to the very lucid explanation of a very complex subject by the gentleman from Illinois.

I represent a State that does have coal mining. In fact, I do have some coal mines in my particular district.

On behalf of those people who expose themselves to great risks on a daily basis to mine coal, I should like to congratulate the gentleman not only on qualifying himself so expertly but also on explaining, as he has today, to the Members of this House this complicated proposal.

I should like to take this opportunity to express my gratitude and say that I too, intend to support this particular bill. I will have to listen to all the debate relative to the various amendments.

Mr. ERLENBORN. I thank the gentleman for his kind remarks.

Mr. PUCINSKI. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I am happy to yield to my colleague from Illinois.

Mr. PUCINSKI. Is it the gentleman's intention to place the proposed amendments in the RECORD today, so that there will be an opportunity to study them tomorrow as we begin debating the various amendments? I know they are undoubtedly very complicated amendments. This is a very complicated bill.

I believe it would be helpful to all of us to have an opportunity to review them in the RECORD tomorrow as we go into the discussion of them.

Mr. ERLENBORN. I thank the gentleman for that suggestion. I may well do that. My amendments are not very complicated. For the most part they are very simple.

Mr. PUCINSKI. The gentleman knows that we on the subcommittee who wrote this bill, with his very good help and assistance, have learned over the past year that everything we touch in this bill is of immense complexity. There are no easy provisions in the bill. I believe this was one of the toughest bills we have ever had to work with.

I myself feel it is a good bill as it is. I am going to be very reluctant to support any amendments. That is why I suggested to the gentleman he might place his amendments in the RECORD, so that we could have an opportunity to study them.

Mr. ERLENBORN. Again I thank the gentleman for that suggestion.

I am encouraged by the gentleman's observation that this was the most complicated bill we had to consider. Because of my limited experience on the committee, I did not realize that. This was one of the most complicated bills I would care to handle, and I am happy to know there will not be others that are worse.

Mr. HECHLER of West Virginia. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from West Virginia.

Mr. HECHLER of West Virginia. I commend the gentleman from Illinois for his presentation and for his obvious knowledge of this subject.

The gentleman from Illinois mentioned that he has an amendment which would transfer jurisdiction back to the Department of the Interior for the control of dust standards and recommendations for control of pneumoconiosis.

What disturbs me in this whole area of coal mine health and safety is the fact

that if the Bureau of Mines and the Department of the Interior had been doing their job over the years we would not have to be debating at such great length the measure we are debating today and tomorrow. Because the Bureau of Mines and the Department of Interior are production oriented in their approach and the emphasis in the expenditure of their funds has been almost entirely on production rather than health and safety, I wonder if the gentleman would not support an amendment to transfer jurisdiction to the Department of Labor, which is more sympathetic toward employees and coal miners.

Mr. ERLENBORN. Mr. Chairman, first of all let me say that I respectfully disagree with the gentleman about his observation concerning the Bureau of Mines.

My colleagues on the subcommittee know that I am not an apologist for the Bureau of Mines. I have had my differences with them. But the gentleman's assertion that if the Bureau of Mines had done their job over the years we would not be in the situation of having to give them the additional powers I do not think recognizes the facts.

As a matter of fact, we never gave them jurisdiction to go into anything except major disaster situations. We never gave the Bureau of Mines jurisdiction to go into any health-related situation. This bill, I believe, represents a great step forward in giving jurisdiction to the Bureau of Mines. It has not been a matter of emphasis, or a lack of their desire. We have not given them the funds to hire a sufficient number of inspectors to do the job that they should do. We have not given them the jurisdiction necessary to protect the coal miners. That is exactly what we intend to do with this bill.

The point that I make about setting of mandatory standards I still consider to be a very valid point. Whether you are talking about the Department of the Interior or HEW or any other department in this Government, you should not have one Secretary dictating to another Secretary. You should not have this conflict within the President's Cabinet. You should not have one department of the executive branch setting standards without any need to relate this to the achievability of those standards and without having to stand up in the final analysis and apply those standards. HEW, even though I am sure they will try to act in the most reasonable manner, has no jurisdiction and has no responsibility to enforce the standards that they will dictate to the Secretary of the Interior. This is bad from an organizational standpoint. It will not be good for the miners or the mines, and I hope my amendment on this will be adopted.

Mr. HECHLER of West Virginia. Mr. Chairman, recognizing our disagreement, if the gentleman will yield briefly, I will join the gentleman in supporting adequate funding for those additional responsibilities that we are placing on the departments.

I thank the gentleman for yielding.

Mr. ERLENBORN. I thank the gentleman for his contribution.

Mr. MORGAN. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. I am happy to yield to the gentleman from Pennsylvania.

Mr. MORGAN. I am interested in section 317(j), the section dealing with Government inspectors in certain mines. I represent a district that has many gaseous mines. In the last 50 years we have had at least five or six major mine explosions in my district. I just read the supplemental views, and I see one of the reasons given for opposing this is these provisions will not only be costly but difficult to administer. Do you intend to offer in your series of amendments one amendment which will be an amendment to 317(j)?

Mr. ERLÉNORN. An amendment to 317(j) will be offered to make it more workable. As the gentleman is probably aware from reading the report, it requires a mine inspector or a representative of the Bureau of Mines to be present on every working shift in the mine. There are just not enough Federal inspectors to do this job. In the second place, it turns the attention of the mine operators and the miners away from what is really their basic job, to see that safe rules are followed and standards are followed to avoid explosions, injuries, and deaths.

Mr. BURTON of California. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. Yes. I yield to the gentleman from California.

Mr. BURTON of California. Is it not the case that the requirement that a mine inspector be present every single day mandates the utilization of the already limited inspector manpower? It precludes the Bureau of Mines from using those inspectors in situations that on the facts may be more hazardous yet given the current requirement that there be an inspection every quarter may make that mandate impossible to comply with? And it also runs the unhealthy risk that the inspector will no longer be able to maintain an arm's length relationship with those operating the mines, because he will be there day in and day out and will virtually become a part of the management and thereby run the risk that management might default in its responsibility and turn over to the inspector every decision affecting mine safety which should essentially be a management function?

Mr. ERLÉNORN. I agree with everything that the gentleman from California has said. This is one of those things that at first blush appears to be a great thing for safety, but as a matter of fact upon sober consideration my view of this is that it will not increase safety. It will probably do just the opposite. It will use up this limited manpower. There are many other inspections which should be made for the general safety of the miners.

Mr. BURTON of California. Mr. Chairman, if the gentleman will yield further, is it not the case that virtually every safety expert in the field agrees that a regular spot check procedure is infinitely more desirable on all counts than this permanent stationing of a mine inspector at a mine?

Mr. ERLÉNORN. The gentleman is correct.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. Yes, I yield to the gentleman from Kentucky.

Mr. PERKINS. Did I understand the gentleman from Illinois to say that he intended to offer an amendment to divest the Department of Health, Education, and Welfare of the authority to promulgate health standards?

Mr. ERLÉNORN. Yes.

Mr. PERKINS. And place that authority with the Secretary of Interior?

Mr. ERLÉNORN. Yes. I would be happy to repeat that and then I will have to move along with the balance of my statement.

Mr. PERKINS. Let me just make this observation: I personally feel that the provision in the bill is sound. I cannot see any conflict. We simply provide in the bill that the Secretary of Interior shall promulgate health standards that are called to his attention and approved by the Secretary of Health, Education, and Welfare.

Now, the Secretary of Health, Education, and Welfare is in a position to promulgate the health standards and the Secretary of Interior does not have that know-how around him.

Mr. ERLÉNORN. I cannot yield further to the gentleman. I am running short of time. However, I would like to explain my position.

Mr. PERKINS. Well, I shall be glad to yield the gentleman 1 additional minute if he needs it.

Mr. ERLÉNORN. I yield to the gentleman.

Mr. PERKINS. Let me say to the gentleman that there is no conflict between the Secretaries here. We just require the Secretary of the Interior to publish those standards in the Federal Register promulgated by the Secretary of Health, Education, and Welfare. We are not going to have any division of authority here anywhere along the line. That is the point I want to get across.

I certainly hope that the gentleman, if he presently intends to offer the amendment, will reconsider and not offer it, because I feel we have taken the best approach.

Mr. ERLÉNORN. Well, I do intend to offer the amendment. I hope my good chairman will in the meantime reconsider his position and support my amendment.

Mr. MORGAN. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. I cannot yield any further at this time because we just do not have the time. There are other Members on my side who are seeking time and I do not wish to use all of it. However, I would like to proceed with my statement.

Mr. Chairman, before the colloquy with several Members we were talking about the dust standards, and to finish my thought on that, it is not my intention to vary the numbers in the bill. But I would call to the attention of the Members the fact that there is no other coal mining country in the world that closes mines because of dust. Those who have had their attention called to this know that the concentration of dust is

harmful and they require that standards be set and that the operators try to attain those standards. Unless there is an imminent danger situation they do not close the coal mines. So, I intend to offer an amendment that will give the Secretary greater latitude in working with the operators to achieve these standards rather than closing the mines, which is not going to be of any use whatever to the coal miners.

If they are working in a dusty situation they will have two choices, either to lose their job because the mine is closed, or to work with the Secretary of the Interior and the operator to reduce the dust concentration so that they can work in a healthful atmosphere. I think that latter objective is what we should seek.

On the interim safety standards, the most plagueing question before our subcommittee and the full committee was the question of the limitation of the nongassy classification. Suffice it to say that after an awful lot of effort on the part of all of those who were concerned we have come up in the bill that is before the House with a provision that will soften the impact of this. It takes into consideration the fact that you cannot overnight acquire all of the expensive permissible equipment necessary to equip all of the mines in the United States. Some 4,500 mines. Even if the manufacturers of this equipment began tomorrow to produce at the fastest rate possible all of the permissible equipment that would be required, it would take years, and the Bureau of Mines has told us this, it would take 4 or 5 or 6 years within which to acquire all of the permissible equipment necessary to equip all of these mines.

So, taking this practical consideration into consideration, we worked out an extended period of time, taking into consideration the safety of the miners. We have immediately eliminated any open flame equipment. We eliminated the use of nonpermissible small hand drills and other of the small and easily acquired permissible equipment. We eliminated the use of this nonpermissible equipment from being used at the coal mine face, and we have taken into consideration the safety of the miners and the practicalities of the situation, and hope that this agreement will be maintained in the bill.

Another very important part of the consideration of our committee, and it was the result, really, of the efforts of our subcommittee, it was not recommended either by the administration or by others interested, is the provision for pneumoconiosis research. It provides for periodic chest X-rays of the miners.

The bill of the other body requires an X-ray every year. Medical evidence is that this would be not only useless but I think we might be killing our miners with radiation rather than pneumoconiosis. I think the most practical approach is the one in our bill which requires every 5 years a full chest X-ray of all of the miners. And under the agreement that has been reached recently the cost of these X-rays will be borne by the mine operators, and not by the miners or not by the general public.

In conclusion, let me say that I feel that on the whole this bill not only is necessary because of the inattention in the past to the day-by-day safety consideration of the coal miners. But in addition we will be going into the whole area of health research and control of the atmosphere in the mines that is very necessary, and which we should have done years ago. Instead of that, we have let other countries get way ahead of us in this field, and I think it is a disgrace that we did not do this many years before.

I intend to support this bill. I did when it was reported from our full committee. I hope some of the amendments that I have discussed and others that I will discuss in more detail under the 5-minute rule will be adopted to make this a better bill.

I want all of you to know that that is my sole intention—to see that we get the best possible workable bill out of the House, and one that can be sustained in conference with the other body.

Mr. PERKINS. Mr. Chairman, I yield to the distinguished chairman of the subcommittee, the gentleman from Pennsylvania (Mr. DENT), such time as he may consume.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, before I say too much I would like to thank those who served with me in some of the longest hours of work that I have put in in my 37 years as a legislator.

Mr. Chairman, this legislation while it has been considered before, having held some hearings on it last year and the year before, and having passed a bill in 1966 including the title I mines for the first time under Federal regulations, the impetuous for action at this time came about during the early hours of the morning of November 20 last year when an explosion rocked the Consolidation Coal Co.'s No. 9 mine at Farmington, W. Va., when 78 men lost their lives.

The first body was removed just last Thursday.

Those of us who feel responsible for legislating a law—the best law we can—are very much aware of the atmosphere that we had to operate in. We knew the minute this mine exploded that it would give rise to demagogues and those who prior to this time had done little or nothing or said anything concerning mine safety and that they would soon be front-running as great leaders for a mine safety law.

Those of us who have records of some 30-odd years of working in the area of mine safety have tried to do the job that had to be done, namely, to pass legislation that would be economically sound to the country and the industry and the communities in which the mines are situated and, yet, would give the greatest measure of safety of life and limb and safety of lungs to the miners of this country of ours.

While the Farmington disaster was a great disaster and the shock, I know, created a great deal of feeling in this area, we know that 78 miners lost their lives and we also know that over 170 miners have lost their lives from that

day to this in other accidents that have not been so well publicized as the catastrophies that happen in a disaster-type accident.

The largest mine disaster that I knew about personally was in my own community of Mammoth, Pa., when 210 miners lost their lives in one explosion. But these 210 are just a small number in that community who died in comparison to those I can recall over the years from roof falls, haulage accidents, and the normal accidents that go into the production of any particular product, and especially so in the mines.

There has been talks about the safety features of this act. I believe at this moment, that with some departmental amendments that will be asked for tomorrow, that we have written the best type of safety promoting legislation that has been written anywhere in the world.

Your general subcommittee on labor, accompanied by members of the United Mine Workers and accompanied by members of the industry and Department officials from the Department of Health, Education, and Welfare, and the Department officials from the Department of the Interior and its Bureau of Mines, visited Great Britain for 5 days. These members went down into the coal mines, 3,200 feet deep in Wales, and they visited coal mines in this country from 28- to 7-inch coal—from Cadillac type mines that have all of the safety features available today, to mines that are still running with their old time timbering and shooting from the solid into coal.

We have in this country some 4,000 mines and we are producing coal today to the tune of 600-odd million tons a year with 135,000 miners where not too long ago we had about 600,000 miners producing less than 400 million tons of coal.

While I am on that subject, let me state the basic argument for the pneumoconiosis payment provision contained in the bill. First, I should say that I know of only one State that has adequately tried to meet the problems arising as a result of the pneumoconiosis disease scourge. Our State of Pennsylvania passed a bill which made pneumoconiosis an occupational disease back in the days when I was a State senator. I had the privilege of introducing that legislation.

Scattered all over the United States are 300,000 miners who no longer work in the mines. Some of them are in Western States which have no coal or coal problems. Yet those men are crippled with a lung disease, and there is no place to which they can go to claim any kind of compensation. The coal-mining States have neglected to pass legislation that would provide them with compensation. So these men, and in many cases now, their widows, are living on nothing but direct relief. Every other kind of injury is compensable.

One of the reasons the States could not get around to passing legislation on the subject was that until this decade the experts had never been able to isolate pneumoconiosis so that they could, with absolute certainty, say that the disease stems from coal mining.

Many of us in our communities thought

that black lung was a form of cancer. It has been known by various names throughout my lifetime. It has been known as night disease, black damp in the lungs, black lung, silicosis, anthracosis, and all kinds of other names. Finally, it was discovered to be a disease peculiar to coal mining, and was nothing more or less than a deposit of actual coal dust within the lungs.

This disease proceeds in four stages. There is a Stage 1, a Stage 2, and a Stage 3 of simple pneumoconiosis. However, none of those stages are related to each other nor are those three stages usually progressive. It is only when the victim reaches the fourth stage, known as progressive massive fibrosis or complicated pneumoconiosis, that he has a fatal, incurable and irreversible disease. At that time he is destined to die from the disease. In some cases the men live a longer time. In some cases they live a shorter time, depending, I guess, on their constitution and how badly involved their lungs are.

So now we know the conditions in this area. We have studied the British figures and the history of mining in Britain, where they have had a history of 30 years of pneumoconiosis research. And, contrary to what I believe is the understanding of my good friend from Illinois, the Secretary of the Interior has had the absolute right, authority, and mandate since 1941 to do what he could in promoting inspections and investigations into occupational diseases and injuries in the mining industry. This was reemphasized in 1966, and the Federal Coal Mining Safety Act carries in it such language as this, and this is the original language: "For the purpose of obtaining information relating to health and safety conditions in such mines and the various causes of accidents involving bodily injury or the causes of occupational diseases originating in such mines."

That language has been in the law since 1941, when the first mine inspection law was passed. However, when we passed that inspection law we were not able to give the mine inspectors any authority to enforce any of the rules.

Mr. CARTER. Mr. Chairman, will the distinguished gentleman yield?

Mr. DENT. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I thank the distinguished gentleman for yielding.

Certainly I agree that we do have thousands of people who suffer from pneumoconiosis who are living throughout our country. Further, I do think they should be compensated. As I go through the mining areas I find it not too difficult to recognize people who have this condition. It can be seen in their poor breathing, in their gasping efforts.

Certainly these people have been unfortunate because when they were working in the mines, they were not covered by workmen's compensation. Neither have the unions taken them on. They were not members of a union at that time.

I feel, as the distinguished gentleman from Pennsylvania does, that we must do something to help these people who are not helped at this time by our Government or any other agency.

Mr. DENT. Mr. Chairman, I thank the gentleman from Kentucky for his contribution.

Mr. Chairman, this is a one-shot effort. This is not a continuing compensation arrangement to establish Federal-based compensation for this or any other industry. We are only taking on those who are now afflicted with pneumoconiosis in the fourth stage—complicated pneumoconiosis. In the first three stages, or simple pneumoconiosis, those afflicted are debilitated and are often disabled, but not with the same devastating frequency as are those with complicated pneumoconiosis.

However, what are we doing in this law? We are doing something that has never even been thought of before. We are giving the new miner, who applies for a job, a medical examination. We require an examination of his lungs by the best-known method that has been found to be such by the British, and that is by X-ray examination and whatever other supplemental tests may be required. Then if the new miner is acceptable, he goes into the mine, and within a year he is given another examination to see if during that year there has been any change in his lung structure. Then he goes from that time to the next period. The British have said it should be every 5 years—and I have every reason to believe them, especially after I have been to the laboratory where they have 30,000 specimens of miners' lungs from autopsies. I am convinced they made every human effort to find out what they could about the lungs of a human being, especially those of a coal miner.

Based on their experience, we require that every 5 years the miner shall have an examination, because they found that changes generally take place in 5-year periods.

We cannot force an old miner against his wishes to undergo an X-ray examination. However, we can so force the new miner.

If a miner who is presently working in the mines refuses to take an examination to determine whether he has pneumoconiosis, then a year from the date he was offered the opportunity to take that examination, and he has not done so, he is not eligible for the compensation payments provided by the bill.

Those already out of the mines have a period of 3 years within which to make their claims, because they may as examiners be in the State of California or Colorado or some other State, so they have 3 years. The widow has 1 year after the death of her husband or 3 years after the date of enactment of this act, whichever is the later date.

However, this is only one shot. I want to say this today and I want to have it placed in the record indelibly. I sincerely believe if the criteria of this act are followed, if the Bureau of Mines and the Secretary of Health, Education, and Welfare do their duty as prescribed in this act, there will never be a new case of pneumoconiosis in the coal mines of America, because prevention is the answer and examination is the answer, and we provide for both.

Remember, we have established in this particular act that if a miner is found to

have substantial pneumoconiosis, he must be offered an opportunity to work in an area of the mine that has relatively little dust. When that miner may be moved from what might be a mine face job at higher pay and he is moved into a lower pay but dust-free area, he must be paid the higher rate. Certainly, this is a burden on the industry, but black lung is a scourge to the people who have it.

Do Members know why we cannot get miners to agree to examination? It is just a simple matter of their not wanting their neighbors and family or anyone else to know—when he already knows he has pneumoconiosis in a progressive stage.

In some of the coal mining communities they think it is a cancer, so he does not want his family to know he has it, so many of them will refuse to have the examination. We cannot force them to.

But we have said to them, "If you want relief, you can get it under this act."

I pray that whatever we do in this Congress we will not destroy this section of the bill.

There are three sections of this bill that have more value to the coal miners and to the mining industry than all the rest of the language put together. One is on the lung disease compensation; another is the section dealing with the mine dust standard; and another is the section dealing with the safety standards.

Warning is what we need in the coal mine. Given an opportunity to get out, the miner knows how to get out. Given an opportunity to know there is imminent danger, that miner knows how to get out, and he will get out.

We have set in motion necessary legislation, even additions in this law, to make it possible for the miner to get out.

There is one feature of this act that I am especially proud of. I am proud of the committee for taking it. I want to say to the gentleman from Illinois, not once did he question this particular feature of the act, never contained in any legislation before, yet it was highly controversial at the time because of the cost.

I am talking about a piece of machinery developed by the Bureau of Mines that is known as an automatic methane monitor. This particular piece of machinery is continuously working, always constantly on guard. After there is an accumulation of methane gas to a trigger point below the explosion point of that gas, this monitor flashes lights as a warning to the miner that there is excess gas in the mine. It also deenergizes the equipment in order that no spark can come from the equipment that may ignite the gas.

We have tried to write law that will be at least as safe as legislation can make coal mining, which is the most hazardous industry in our country.

Insofar as this old piece of machinery is concerned, we believe we now have outmoded it. It is cumbersome. It is not accurate. It does not always function. But it has been something of an early warning system.

We now have in our possession another piece of equipment. I had it here a while ago, but, as is said, "There is many a slip twixt the cup and the lip." Somebody

turned the battery on over the weekend, and I will have to go out and get another battery. But I will show the Members this great piece of equipment, developed. I understand, since we started talking about methane monitors and all the equipment working in the coal mines.

The cost of this old equipment is between \$1,800 and \$2,000, or in that area, and we can understand the tremendous cost to these 4,000 mines being put under this new status in coal mining, that will be compelled under this law to put this kind of equipment in. We can imagine the cost to a mine producing a very small tonnage of coal.

We have been lucky enough to find in our research something that will take the place of this, where the cost is not exorbitant.

We have also increased the flow of air from 6,000 to 9,000 cubic feet. We have gone further than that, and for the first time intend to have a requirement of 100 feet per minute of velocity, of wind and clean air across the miner operating machinery, and 3,000 cubic feet of air at the working face.

In examinations already made by our own Bureau of Mines of recent date, and in my State of Pennsylvania of recent date, we are not disturbed about reaching the 3 milligram level of mine dust in the mines of this country within a reasonable time, and we are hopeful we can do so within less than the time prescribed in the bill.

I have before me a list of some 23 mines that were examined. These mines have made little or no effort in this area because the law is not yet in being. Here we have a continuous miner producing as low as 2.4 milligrams of dust at its face. We are requiring 4.5 milligrams after the first 6 months and 3 milligrams after the next 6 months, and also from then on lower levels to be set by the Secretary of Health, Education, and Welfare, who under this bill does have the authority to do what it has been said he did not have. He has the authority to send inspectors into the mines with authority to act. He may set the standard lower as the technology and equipment and methods of operation in the mines warrant his setting it.

Mr. Chairman, the British told us that when mine dust reaches a level of 2.2 milligrams per cubic meter of air, there is virtually a zero probability of a miner with 35 years of exposure to that level contracting stage 2 or above of pneumoconiosis. We are hoping that this is right and we are praying that it is right.

Once we can lower the methane gas danger in the mine by having an early warning system and circuitbreakers and deenergizers on all working equipment and make all the mines in the country come under the law of a gassy mine just by the presumption that they are a gassy mine—if we can do all these things, then we are reducing the dangers when it comes to deaths caused by explosions and fire in mines. By changing the law on roof bolting—and I want to show you a picture of this, because some people wonder what roof bolting is—we can help to cure this situation also. There are now innovations that have come into this rather recently. Roof bolting is the

latest, up until recently, method of holding the roof up above the workers' heads. In the old days there was nothing but cross timbers sitting on posts.

Now they send a pattern, a copy of their diagram of that working area with a description of the kind of overburden that will be above the coal, and they then set a pattern for how many bolts there will have to be and the spacing and at what intervals it will have to be and how deep the bolt will go into the overburden, and all of this is subject to approval by the Secretary. There is a flanged nut at the end of a large bolt with a 8 by 10 or a 2 by 12 piece of hardwood, and the bolt is put through it after the hole is drilled, and they tighten the nut underneath. That acts as a hanging strap to hold up the roof. They have developed a new crossbar type which will be bolted into the side next to the roof, and with a turnbuckle arrangement it will pull the roof this way. So you have the stress both ways to keep the mine roof up. If they can lift the mine roof, they will not only cut down the deaths by all of these causes that occur in the mines now, but they will make coal mining a little safer and more respectable for the fellow who values his life.

Mr. Chairman, it is my humble opinion that coal mining today is on the verge of an explosion of activity. It is still the cheapest source of fuel in the United States per B.t.u. or, for that matter, anywhere else in the world. It is without a doubt the whole energy impulse of our entire industrial complex. We are going to mine 600 million tons and we can even reach 700 million tons in the near future. I have been told by reliable sources that there is going to be a need for about 15,000 new coal miners within the next 2 years.

And, a third generation of immigrant coal miners is not going into the mines any more. What you have to do is pass this kind of legislation, or better if you can conceive of better legislation, in order to give these men a reasonable hope that they can live from the beginning of the shift to the end of the shift and that their life will not be plagued with the lung disease that sends them to an early grave or a miserable life in their elderly years.

So, I say to you insofar as the legislation itself is concerned I was grieved to learn where some said that there were giant loopholes in the bill. Well, the loopholes we are talking about are figments of the imagination. I would put it kindly that way.

I read one particular item quite a bit and oh—well, as first I was a little hot, being a fellow that has a little temper I get a little hot—but when I considered all of the ramifications as to why the statements were made and who was interested in the statements and realized that we had this bill up for consideration during a very difficult time when there is a fight on between the mineworkers as to who is going to be the president of that great international union and because in those campaigns a lot of things are generated and there is great latitude of expression. In other words, we do not always mean what we say and we do not always say what we mean in our campaign.

However, I am sorry to say I defy anyone to find in this legislation now pending before you a loophole that in any way endangers the life or hurts the miner, and if it can be made better within the conditions under which we are working, I do not know how but I will support the effort.

It has been said that we gave 4 years for the acquisition of the necessary so-called permissible equipment. This committee held the hearings. Every witness who appeared before us, representing either the mines or the manufacturers of the permissible equipment stated that they would have to have 7 to 12 years during which to provide the equipment.

Well, let us look at it now upon a realistic basis. There are about 500 mines in the country today which are using permissible equipment and the manufacturers of this particular type of equipment are tooled to produce for that many mines. In some instances with reference to certain types of equipment, due to the expansion of the coal industry, it will take anywhere from 6 months to a year and a half or better. We will have many mines for these manufacturers to produce equipment. It is just commonsense that it is going to take time to acquire the equipment. What do we do in order to safeguard the miners? We say that no replacement of the present nonpermissible equipment can be made, unless it is made with permissible equipment. And, we state that the small equipment which is in use every day shall be permissible because it is available and can be bought now.

So, Mr. Chairman, we have covered the nongassy mines and put them into the so-called permissible equipment state of operation to make sure that no more accidents of ignition or explosion will be caused by the use of nonpermissible equipment in those mines.

We believe we have proceeded correctly. We have given 4 years on an industry basis. But the Secretary knows that every 6 months he has to report to the mines and to this committee on the progress of making all equipment in these mines permissible.

I honestly believe that the nonpermissible equipment manufacturers will swing over and make permissible equipment and that thereby we can probably have equipment for all the mines in the country in a period of less than 4 years. But I do not believe in asking you to vote for legislation that I cannot honestly say to you is feasible. We have allowed some time because until now this type of mine was not even under the act insofar as permissible equipment is concerned.

In 1966 when I had the title I bill up, I was defeated in trying to classify all mines as nongassy and thereby require all mines to use permissible equipment.

I said at that time that the issue would be back within 5 years, and that you would have to have permissible equipment or you would not be able to hire any coal miners, and that is exactly what has happened in this country of ours. They are not able to hire coal miners. Why, even some of the Members—and I will not mention who they are—whom I have invited to go with me into a coal mine, they will not even go to the

tipple, let alone go into the entrance-way, because raining is dangerous. You are walking into an unknown quantity.

Let me tell you this about mining: when I was a boy I never saw my father until Sunday morning. When he went to work in the morning it was before I got up, and when he got back in the evening it was after I had gone to bed. It was not an easy life. It was a hard life, and if they could produce a ton and a half of coal in a day in those days they were doing a good job.

Today it has come to the point where one machine working on a 24-hour shift has produced something like 4,000 tons of coal in that 24-hour shift.

So machinery has come into the mines and that is what has produced the dust. Because in the old days when they would shoot the coal in the mines, the lump coal would come out in large sizes and it was not broken up into small pieces, and therefore did not liberate the same quantity of methane gas. Methane gas comes from mining coal. Dust comes from mining coal. Methane gas blows up the coal mines, kills the miners. Dust also kills miners though in a more subtle way. So with all of our technology we have failed to take into consideration the health of the miners for too many years, and in many instances the safety of the miners. Now we have come face to face and square on the problem—what do we do about it? We pass legislation that, as I said, is not economically unsound for the community or the operator, but it is the best kind of legislation that we have been able to conceive of—and I am here to buy any amendment that will better it so as to protect the lives of our miners and to improve their working conditions.

Mr. Chairman, I want to thank my subcommittee for their patience and for the many hours that they have put in, both those on the minority side and on the majority side. I also want to thank the chairman of our full committee for his tolerance and understanding, and in allowing me to have as much time as we had, and to put in as much effort as we put in our effort without any criticism on his part.

He would say to me, "When can you have it? What is your target date?" And I would tell him, and then if we could not make it I would go back and tell the chairman, and he always understood that we were trying to write the kind of legislation that would help the miners. And he has always been for that.

For the information of the minority who asked the question, I would refer them to page 19 of the committee report, and they will see the number of mines meeting the criteria levels based on occupation of the miners, and they will be surprised at the number of occupations within the mines today where the level of dust is less than that which we have set forth in the act. I believe we can live with it.

I have some doubts as to whether we are doing the right thing in eliminating the board. I do not know that it is best to go for your authority to one man, and then have to go to the courts. Let me cite you one example of what happened when

we went to the courts before we had the Review Board.

On January 19, 1953, the judge of the district court of the State of Iowa in and for Monroe County handed down a temporary injunction forbidding two Federal employees from going into the Lavilla Coal Co. mine, and restraining that miner from operating or enforcing their closure order. They later appealed, and asked that the jurisdiction be taken—or, rather, they asked that the case be taken before a Federal court. The U.S. district court sustained the motion to dismiss and dissolve the restraining order, and the injunction. That was done on March 30, 1953, some 2½ months after the injunction order was handed down by the local court.

On that day, March 30, when the Federal court dissolved the injunction and ordered the coal operator to allow these men to enforce the rule—that mine blew up and five men were killed. I do not know how you are going to get around it, but so far as I am concerned, I have never been wedded to the Board in this bill. Virtually the same Board has been in existence since 1953. So I have no pride of authorship in it. I do say though, do not force these miners, either the operators or the coal miners, to have to go directly to the court and petition the Federal court with its backlog of cases on a closure order.

When imminent danger is involved, you cannot wait for time scheduling of the case before a judge. At least in a review proceeding of some kind, I do not care how you write it and if you do not like the characters in it, then get rid of them—but let us not jump into this thing without giving it some careful consideration.

I also ask you to study carefully the proposal to take out of the hands of the Secretary of Health, Education, and Welfare the writing of criteria and the promulgating of rules for the dust standards or health measures in the mines.

The Secretary of the Interior has had that responsibility for so many years. He has never used it. I found that once we started to get the Health Department into it, we have here the only information on dust standards and lung disease anywhere in our country only of recent date because the Health Department went into Appalachia and made a study not too long ago and has now been working on dust standards.

In all these years the Department of the Interior has had millions of dollars under the Saylor-Dent mine research bill to spend on research and specifically spell out research for health standards. They spent most of that money developing how to make oil out of coal. Pretty soon oil will be running out and we will be making oil out of coal.

The CHAIRMAN. Will the gentleman from Pennsylvania (Mr. DENT) yield so that the Committee may rise and the House receive a message from the President?

Mr. DENT. Yes, Mr. Chairman.

Accordingly the Committee rose; and the Speaker resumed the chair.

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FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 13950) to provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Kentucky.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 13950, with Mr. STEED in the chair.

The CHAIRMAN. When the Committee rose on yesterday, the Clerk had read through section 1, ending on page 1, line 4. If there are no amendments to that section, the Clerk will read.

The Clerk read as follows:

DECLARATION OF PURPOSE

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, illness, 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 cause of occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthy 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.

DEFINITIONS

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

(a) "Secretary" means the Secretary of the Interior;

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and 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, Guam, and the Trust Territory of the Pacific Islands;

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal mine;

(e) "agent" means any person charged with responsibility for the operation of all or part of a coal mine or 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;

(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.

MINES SUBJECT TO ACT

Sec. 4. Each coal mine, the products of which enter commerce, or the operations or products 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.

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 safety standards for the protection of life and the prevention of injuries in a coal mine, and shall, in accordance with the procedures set forth in this section, promulgate the mandatory health standards transmitted to him by the Secretary of Health, Education, and Welfare. No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners below that afforded by the standards contained in titles II and III of this Act.

(b) In the development of such mandatory safety standards, the Secretary shall consult with the Board, other interested Federal agencies, representatives of States, 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 safety protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other safety statutes.

(c) The Secretary of Health, Education, and Welfare shall, in accordance with the procedures set forth in this section, develop and revise, as may be appropriate, mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners. Such development and revision shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In the development of mandatory health standards, the Secretary of Health, Education, and Welfare may consult with appropriate representatives of the operators and miners, other interested persons, the States, advisory committees, and, where appropriate, foreign countries. Mandatory health standards which the Secretary of Health, Education, and Welfare develops or revises shall be transmitted to the Secretary, and shall thereupon be published by the Secretary as proposed mandatory health standards.

(d) The Secretary shall 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. In the case of mandatory safety standards, 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. In the case of mandatory health standards, except as provided in subsection (e) of this section, the Secretary of Health, Education, and Welfare may, upon the expiration of such period and after consideration of all relevant matter presented to the Secretary and transmitted to the Secretary of Health, Education, and Welfare, direct the Secretary to promulgate such standards with such modifications as the Secretary of Health, Education, and Welfare may deem appropriate and the Secretary shall thereupon promulgate such standards.

(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 sub-

section (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 matter and appropriate recommendations thereon and shall make such report public. Upon receipt of such report, in the case of mandatory safety standards, the Secretary may, upon consideration of the Board's findings of fact and recommendations, promulgate the mandatory safety standards with such modifications as he deems appropriate. Upon receipt of such report, in the case of mandatory health standards, the Secretary shall transmit such report to the Secretary of Health, Education, and Welfare who may, upon consideration of the Board's findings of fact and recommendations, direct the Secretary to promulgate the mandatory health standards with such modifications as the Secretary of Health, Education, and Welfare deems appropriate and the Secretary shall thereupon promulgate the mandatory health standards. In any instance in which either 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.

(h) 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.

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, shall be, for each day (including travel time) during which they are performing committee business, entitled to receive compensation at rates fixed by the Secretary but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

INSPECTIONS AND INVESTIGATIONS

SEC. 103. (a) Authorized representatives of the Secretary shall make frequent inspections and investigations in coal mines each year for the purposes 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) gathering information with respect to 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 or with any notice or order issued under this title. In carrying out the requirements of clauses (3) and (4) of this subsection, no advance notice of an inspection shall be provided the operator of a mine. 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 four times a year.

(b) (1) 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.

(2) The provisions of this Act relating to inspections, investigations, and records shall

be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this Act.

(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 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 subpoenas 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 subpoena 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. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(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, when feasible, 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.

(g) If a miner or an authorized representative, if any, of the miners believes that a violation of a mandatory health or safety standard exists, or an imminent danger exists, in a mine, he may notify the Secretary or his authorized representative of such violation or danger. Upon receipt of such notification the Secretary or his authorized representative may make a special investigation to determine if such violation or danger exists.

(h) At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative, if any, of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Secretary on such inspection.

FINDINGS, NOTICES, AND ORDERS

SEC. 104. (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 forthwith 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 but the violation has not created an imminent danger, he shall 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 representative 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 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 or effect of a mine accident, 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 special inspection required under subsection (b) of this section, or section 105. If, during any special 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, 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 until an authorized representative of the Secretary determines that such violation has been abated.

(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 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.

(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;

(3) 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; and

(4) any consultant to any of the foregoing.

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

(h) (1) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine, if any. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners, if any, to present information relating to such notice.

(2) Upon the conclusion of such investigation and an opportunity for a hearing upon request by any interested party, the Secretary shall make findings of fact, and shall require that either the notice issued under this subsection be canceled, or that an order be issued by such authorized representative of the Secretary requiring the operator to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated.

(1) If, based upon samples taken and analyzed and recorded pursuant to section 202 (a) of this Act, the applicable health standard established under section 202(b) of this Act is exceeded and thereby violated, the Secretary or his authorized representative shall find a reasonable period of time within which to take corrective action to reduce the average concentration of respirable dust to the miners in the area of the mine in which such standard was exceeded, and shall issue a notice fixing a reasonable time for the abatement of the violation. During such time, the operator of such mine shall cause samples described in section 202 (a) of this Act to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative finds, based upon such samples or upon an inspection, that the violation has not been totally abated, he shall issue a new notice of vio-

lation if he finds that such period of time should be further extended. If he finds that such 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 the Secretary or his authorized representative determines through such test procedures conducted in such area as he may require, including production and sampling, that the violation has been abated.

REVIEW BY THE SECRETARY

Sec. 105. (a) An operator notified of an order issued pursuant to section 104 of this title, or any representative of miners in any mine affected by such order or any modification or termination of such order pursuant to section 104(g), may apply to the Secretary for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. 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 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 104 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), (c), or (1) of section 104 of this title, he shall find whether or not there was a violation of any mandatory health or safety standard 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 other issued under section 104 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. 106. (a) The Federal Coal Mine Health and Safety Board of Review is hereby established. For the purpose of carrying out its functions under sections 107 and 111 of this title, the Board shall be composed of five members, hereafter referred to as "regular members", who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) For the sole purpose of carrying out the review functions set forth in section

101, and for carrying out the provisions of sections 401 and 412 of this Act and matters related thereto, there shall be included on the Board three additional members, hereafter referred to as "additional members", appointed by the President by and with the advice and consent of the Senate, at least one of whom shall have a public health background and the others of whom shall have a background, either by reason of previous training, education, or experience, in coal-mining technology. All additional members shall not have had any interest in, or connections with, the coal-mining industry for at least one year prior to their appointment.

(c) The terms of office of all 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 regular members of the Board established by this title 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 such 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) Members of the Board shall be, for each day (including traveltime) during which they are engaged in the business of the Board, entitled to receive compensation at the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of section 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

(e) The regular members of the Board 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 drawn from the public generally, who shall be Chairman of the Board. The Chairman shall not, within five years from 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. Similarly, while he is Chairman of the Board, he shall not have a pecuniary interest in, or be employed or engaged in, the mining of coal, or represent either coal mine operators or coal mine workers, or be 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 the operator of a mine involved in a hearing or proceeding before the Board, or of a representative of miners employed in such a mine, the Board may hold such hearings or conduct such proceedings on an application filed under section 107 of this title at the county seat of the county in which such mine is

located or at any place mutually agreed to by the Chairman of the Board and such operator or representative. 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 the 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 107 and 111 of this title, official action can be taken only on the affirmative vote of at least three regular 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 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 regular members, upon order of the Board, shall conduct any hearing provided for in sections 107 and 111 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 or such panel 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. For purposes of carrying out its functions under sections 107 and 111 of this title, three regular members of the Board shall constitute a quorum, and for carrying out its other functions, five members of the Board shall constitute a quorum.

(k) Any member of the Board may sign and issue subpoenas 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 subpoena 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. 107. (a) Within thirty days after receipt of an order made pursuant to subsection (a), (b), (c), (h), or (i) of section 104, an operator may apply to the Board for annulment or revision of such order without seeking its annulment or revision under section 105 of this title. Within thirty days after the receipt of a decision made by the Secretary pursuant to section 105 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 104 of this title, the Board shall not be bound by any previous findings 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 105 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 alleged imminent danger, violation of a mandatory health or safety standard, or the condition described in section 104(h)(1) 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 104 or 105 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 104 or 105 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 issues involved.

JUDICIAL REVIEW

SEC. 108. (a) Any decision issued by the Board under section 107 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 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. 109. (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. Such notice or order shall be available for public inspection.

(c) In order to insure prompt compliance with any notice or order issued under section 104 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.

(d) Each operator of a coal mine shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine and such official shall receive a copy of any notice, order, or decision issued under this Act affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health or safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

INJUNCTIONS

SEC. 110. 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 104 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: *Provided*, That no temporary restraining order shall be issued without notice unless the petition therefor alleges that substantial and irreparable injury to the miners in such mine will be unavoidable and such temporary restraining order shall be effective for no longer than seven days and will become void at the expiration of such period: *Provided further*, That any order issued under this section to enforce an order issued under section 104, unless set aside or modified prior thereto by the district court granting such injunctive relief, shall not be in effect after the completion or final termination of all proceedings for review of such order as provided in this title if such is determined on such review that such order was invalid.

PENALTIES

SEC. 111. (a) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any provision of this Act shall by order be assessed a civil penalty by the Secretary which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory 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, 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. No penalty shall be assessed under this subsection pending the final termination, expiration, or completion of all proceedings, administrative or judicial, 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 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 104(a) of this title or any final decision on any other order 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 of not more than one year, or by both.

(e) Whenever a corporate operator violates a mandatory health or safety standard of this Act, or violates any provision of this Act, any director, officer, or agent of such corporation who authorized, ordered, or carried out such violation shall be subject to the provisions of subsection (a). Whenever a corporate operator knowingly violates or fails or refuses to comply with any order issued under section 104(a) of this title or any final decision or any other order issued under this title, any director, officer, or agent of such corporation who authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the provisions of subsection (d).

(f) Whoever knowingly makes any false statements or representations in any application, records, reports, plans, or other documents filed or required to be maintained in accordance with this Act or any mandatory health or safety standard of this Act or 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 six months, or both.

ENTITLEMENT OF MINERS

SEC. 112. (a) If a mine or portion of a mine is closed by an order issued under section 104, all miners working during the shift when such order was issued who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. Whenever an operator violates or fails or refuses to comply with an order issued under section 104, all miners employed at the affected mine who would be withdrawn or prevented from entering such mine or portion thereof as a result of such order

shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

(b) (1) Compensation shall be paid under this subsection in respect of totally disability of an individual from complicated pneumoconiosis which arose out of or in the course of his employment in a coal mine, and in respect of the death of any individual who, at the time of his death, was suffering from complicated pneumoconiosis which so arose. For purposes of this subsection, if an individual who is suffering or suffered from complicated pneumoconiosis was employed for ten years or more in a coal mine there shall be a rebuttable presumption that his complicated pneumoconiosis arose out of or in the course of such employment, but this sentence shall not be deemed to affect the applicability of the first sentence of this paragraph in the case of claims under this subsection on account of death or total disability of an individual when such individual has not worked for as much as ten years in a coal mine. For purposes of this subsection, any individual who suffers from complicated pneumoconiosis shall be deemed to be totally disabled.

(2) (A) Subject to the provisions of subparagraph (B), compensation shall be paid under this subsection as follows:

(i) In the case of total disability, the disabled individual shall be paid compensation during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled is entitled at the time of payment under the provisions of Federal law relating to Federal employees' compensation (section 8112, title 5, United States Code).

(ii) In the case of death, compensation shall be paid to the widow at the rate the deceased individual would receive such compensation if he were totally disabled.

(iii) In the case of an individual entitled to compensation under clause (i) or (ii) of this subparagraph who has one or more dependents, his compensation shall be increased at the rate of 50 per centum of the compensation to which he is so entitled under clause (i) or (ii) of this subparagraph if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three dependents.

(B) Notwithstanding subparagraph (A), compensation under this paragraph shall be reduced by an amount equal to any payment which the payee receives under the workmen's compensation, unemployment compensation, or disability insurance laws of his State, and the amount by which such payment would be reduced on account of excess earnings under section 203 (b) through (i) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(3) (A) The Secretary of Labor shall enter into agreements with the Governors of the States under which the State will receive and adjudicate claims under this subsection from any resident of the State and under which compensation will be paid as provided by this subsection from grants made to pay compensation under this subsection. Such Governor shall implement the agreement in such manner as he shall determine will best effectuate the provisions of this subsection. The Governor shall make such reports to the Secretary of Labor, subject to such verification, as may be necessary to assure that Federal grants under this subsection are used for their intended purpose.

(B) The Secretary of Labor shall make grants under this subsection to States with which he has an agreement under subpara-

graph (A) in the amount necessary to enable them to pay the compensation required by this subsection.

(4) If the Secretary of Labor is unable to enter into an agreement under paragraph (3), or if the Governor of the State requests him to do so, he shall make payments of compensation directly to residents of such State as required by this subsection. The administrative provisions for carrying out the Federal employees' compensation programs which are contained in sections 8121, 8122 (b), and 8123 through 8135, title 5, United States Code, shall apply with respect to claims under this paragraph.

(5) No claim under this subsection shall be considered unless it is filed (1) within one year after the date an employed miner received the results of his first chest roentgenogram provided under section 203 of this Act, or, if he did not receive such a chest roentgenogram, the date he was first afforded an opportunity to do so under such section, or (2) in the case of any other claimant, within three years from the date of enactment of this Act, or, in the case of a claimant who is a widow, within one year after the death of her husband or within three years from the date of enactment of this Act, whichever is the later. Payment of compensation under this subsection shall commence with the date the claim is filed.

(6) No compensation shall be paid under this subsection to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive compensation under this subsection, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(7) For purposes of this subsection—

(A) The term "coal mine" includes only underground coal mines.

(B) The term "complicated pneumoconiosis" means an advanced stage of a chronic dust disease of the lung which (i) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (ii) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, (iii) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (i) or (ii) if diagnosis had been made in a manner described in clause (i) or (ii).

(C) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110, title 5, United States Code.

(D) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

REPORTS

Sec. 113. (a) All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported for periods determined by the Secretary, but at least annually.

(b) Every operator of a coal mine and his agent shall (1) establish and maintain, in addition to such records as are specifically required by this Act, such records, and (2)

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. The Secretary is authorized to compile, analyze, and publish, either in summary or detailed form; such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time and released to any interested person, and shall be made available for public inspection.

Mr. PERKINS (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point. That is to line 12, page 44.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

AMENDMENTS OFFERED BY MR. PERKINS

Mr. PERKINS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. PERKINS: On page 5, strike out lines 5 and 6, and insert the following:

"(m) 'Panel' means the Interim Compliance Panel established by this Act."

On page 5, after line 13, insert the following:

"INTERIM COMPLIANCE PANEL"

"Sec. 5. (a) There is hereby established the Interim Compliance Panel; which shall be composed of five members as follows:

"(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

"(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

"(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

"(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

"(5) Director of the National Science Foundation, or his delegate.

"(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

"(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, Secretary of Commerce, the Secretary of Labor, and the Secretary of the Interior shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

"(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

"(e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section 3105 of title 5 of the United States Code shall be applicable to hearing examiners appointed pursuant to this subsection.

"(f) (1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to sections 202 and 305 of this Act and to provide an opportunity for a hearing,

after notice, at the request of an operator of the affected mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel under this subsection may file a petition for review of such decision under section 108 of this Act. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under sections 202 and 305 of this Act. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5 of the United States Code.

"(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate."

On page 6, line 4, strike "the Board, other".
On page 8, line 3, strike "by the Board".
On page 8, line 7, change the comma to a period and strike out all thereafter through the period on line 9.

On page 8, line 10, strike all through page 9, line 6, and substitute the following:

"(f) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (e) of this section, the Secretary, in the case of mandatory safety standards, or the Secretary of Health, Education, and Welfare, in the case of mandatory health standards, shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary who held the hearing shall make findings of fact which shall be public. In the case of mandatory safety standards, the Secretary may promulgate such standards with such modifications as he deems appropriate. In the case of mandatory health standards, the Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the mandatory health standards with such modifications as the Secretary of Health, Education, and Welfare deems appropriate and the Secretary shall thereupon promulgate the mandatory health standards. In the event the Secretary or the Secretary of Health, Education, and Welfare determines that a proposed mandatory standard should not be promulgated or should be modified, he shall within a reasonable time publish his reasons for his determination."

On page 19, line 20, insert "(1)" after "(a)".

On page 20, after line 10, insert the following:

"(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code."

Beginning with line 15 on page 21, strike out everything down through line 24 on page 27.

And remember the sections which follow accordingly.

Beginning with line 1 on page 28, strike out everything down through line 19 on page 30.

And remember the sections which follow accordingly.

Beginning with page 30, line 21, strike all through page 31, line 14, and substitute the following:

"Sec. 108. (a) Any decision issued by the Panel under section 5 or the Secretary under section 105 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 operator or a rep-

presentative of the miners aggrieved by the decision praying that the decision 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 Secretary or the Panel as appropriate, and thereupon the Secretary or the Panel, as appropriate, 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 petition on the record made before the Secretary or the Panel, as appropriate. The findings of the Secretary or the Panel, as appropriate, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any such decision or may remand the proceedings to the Secretary or the Panel, as appropriate, for such further action as it may direct."

On page 31, line 18, after "appeal" insert the following: "from a decision of the Secretary or the Panel, as appropriate, except a decision from an order issued under section 104(a) of this title."

On page 32, line 2, strike out "Board's" and insert "Secretary's or Panel's".

On page 36, line 3, strike out "Board" and insert "Secretary".

On page 44, line 25, strike out "sections 105, 107, and 108 of".

On page 46, in lines 13 and 16, strike out "Secretary" and insert "Panel".

On page 47, in lines 5 and 8, strike out "Secretary" and insert "Panel".

On page 48, in lines 10 and 14, strike out "Board" and insert "Secretary of Health, Education, and Welfare".

On page 49, line 9, strike out ", the Board."

On page 51, lines 22 and 23, strike "sections 105, 107, and 108 of".

On page 72, line 15, strike out "Secretary" and insert "Panel".

On page 72, lines 16 and 19, strike out "he" and insert "it".

On page 73, lines 8, 11, and 23, strike out "Secretary" and insert "Panel".

On page 73, lines 10 and 13, strike out "he" and insert "it".

On page 106, line 5, strike all through line 7, and substitute the following:

"Sec. 401. (a) The Secretary and the Secretary of Health, Education, and Welfare, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate."

On page 108, strike out lines 2, 3, 4, and 5 and insert the following: "tion (a), the Secretary shall distribute funds available to him under this section as equally as practicable between himself and the Secretary of Health, Education, and Welfare. Activities under this sec-".

On page 108, beginning in line 13, strike out "Such Secretaries shall consult and cooperate with the Board on specific projects and programs."

On page 108, line 24, strike out "Board" and insert "Secretary".

On page 109, in line 1, strike out "Board" and insert "Secretary", and strike out "it" and insert "him".

On page 109, line 2, after "sufficient" insert "for the Secretary of Health, Education, and Welfare".

On page 109, line 4, strike out "it" and insert "he".

On page 109, line 5, strike out "it" and insert "he".

On page 109, in line 7, strike out "Board" and insert "Secretary", and strike out "it" and insert "him".

On page 109, line 11, strike out "Board" and insert "Secretary".

On page 109, line 16, strike out "Board" and insert "Secretary".

On page 109, line 18, strike out "it" and insert "him and the Secretary of Health, Education, and Welfare".

On Page 109, line 20, strike out "Board" and insert "Secretary", and strike out "it" and insert "him and the Secretary of Health, Education, and Welfare".

On page 109, line 22, strike out "Board" and insert "Secretary".

On page 114, line 22, strike out "The" and insert "Except as otherwise provided in this Act, the".

On page 117, line 8, strike out "Board" and insert "Secretary".

On page 117, line 15, strike out "Board" and insert "Secretary".

On page 117, line 16, strike "its" and insert "his".

Mr. PERKINS (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be dispensed with, that they be considered as read and printed in the RECORD, and that the amendments be considered en bloc, they are conforming amendments that run into other titles of the bill.

Mr. HALL. Mr. Chairman, I will be constrained to object to that unless there is some explanation about what at least the first amendment is and at least the constitution of the panel as read by the Clerk.

Mr. PERKINS. Mr. Chairman, I withdraw my unanimous-consent request. Let the Clerk read the amendments.

The CHAIRMAN. The Clerk will read. The Clerk proceeded to read the amendments.

Mr. ERLBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be dispensed with and that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. HALL. Mr. Chairman, reserving the right to object, I have had the chance now to see this particular amendment and I understand that it has been previously agreed to.

However, Mr. Chairman, I want to state that this damages the representative process when in this body we do as we did last week and have six amendments that are considered read and printed in the RECORD and accepted and passed without time for the individual Member to know the substance and with utterly no discussion.

In this case I believe it is all right, but I should like to serve notice that we cannot legislate and provide evidence of the House working its will under such tactics, so in the future I shall object unless there is either an explanation or the amendment is read.

Mr. Chairman, I withdraw my reservation.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. KYL. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Sixty-eight Members are present, not a quorum. The Clerk will call the roll.

Mr. PERKINS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. STEED, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 13950) to provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes, had come to no resolution thereon.

* * * * *

mining industry of the United States, and for other purposes.

The **SPEAKER**. The question is on the motion offered by the gentleman from Kentucky.

The motion was agreed to.

IN THE COMMITTEE ON THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 13950, with Mr. **STEED** in the chair.

The Clerk read the title of the bill.

The **CHAIRMAN**. When the Committee rose on yesterday, title I of the bill was subject to amendment at any point, and amendments had been offered by the gentleman from Kentucky (Mr. **PERKINS**) and considered as read.

The Chair recognizes the gentleman from Kentucky for 5 minutes in support of his amendments.

Mr. **PERKINS**. Mr. Chairman, during the course of general debate on Monday, specifically as reported on pages H10031 through H10033 of the **CONGRESSIONAL RECORD** for October 27, 1969, I submitted the complete text of the amendments and at that time explained the effect of the amendments. In essence, these amendments delete the Board from the bill and substitute in its place an Interim Compliance Panel whose sole function would be to review and act upon requests by mines for waiver of dust standards and for the waiver of the use of permissible mining equipment.

Since 1952, when the Board was created, it has operated as a very effective administrative mechanism for reviewing actions of the Bureau of Mines in administering the Federal coal mine safety law. This has been possible because the Board consisted of representatives of the miners and representatives of the coal industry who worked to make the Board effective in carrying out the objective of the act. Now the committee has received information to the effect that one of the interested groups represented on the Board and directly concerned believes that the Board is no longer necessary. It is obvious that the Board's ability to effectively operate as an administrative instrument may be impaired. Hence this amendment to delete it.

As I pointed out yesterday the amendment assures appropriate review procedures of orders and decisions of the Secretary in administering the act.

First, an Interim Compliance Panel is created to review requests by mines for waiver of dust standards and to review requests for waiver of the use of permissible—nonspark—mining equipment.

Second, a public hearing will be held by the Secretary as a matter of right for any persons objecting to proposed regulations on health and safety standards. The standards are further subject to review in court.

Third, the amendment retains procedures for appealing any closing orders issued by a Federal inspector to the Secretary and makes the adjudication provisions of the Administrative Procedures

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Mr. **PERKINS**. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 13950) to provide for the protection of the health and safety of persons working in the coal

Act applicable to the appeal which are, of course, then reviewable by the courts.

Fourth, the amendment permits, on a limited basis, temporary relief from any closing order except those dealing with imminent danger—while an appeal is being taken.

Further, powers that were formerly under the Board with respect to the imposition of civil penalties for violation of mandatory standards are now reposed in the Secretary. He is required by the terms of the amendment to conduct appropriate hearings on request in connection with his assessment of any civil penalties. Appeal to the courts is provided where the proceedings would be de novo.

Other functions formerly assigned to the Board under the amendment with respect to overseeing the X-ray program would be assigned to the Secretary of Health, Education, and Welfare. Those functions with respect to health and safety research programs would be assigned to both the Secretary of Health, Education, and Welfare and the Secretary of the Interior.

Mr. Chairman, that is the basis of the amendment. I have discussed it with the minority, and, so far as I know, the minority intends to accept this amendment. I think the gentleman from Illinois (Mr. ERLENBORN) should speak on that point.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. Yes. I yield to the distinguished gentleman from Illinois.

Mr. ERLENBORN. The statement just made by the gentleman from Kentucky, the chairman of the full committee, is correct. I have gone over this amendment with the chairman, the gentleman in the well, and I support this amendment, which removes the board of review and places in the legislation the compliance panel with provision for extension of the dust standards and acquisition of permissible equipment. I commend the gentleman for offering this amendment and I do support it.

Mr. PERKINS. And we agree that the amendments should be considered en bloc?

Mr. ERLENBORN. That is right.

Mr. HUNT. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Seventy-two Members are present, not a quorum. The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names.

[Roll No. 247]

Ashbrook	Daddario	Monagan
Ashley	Dawson	Moorhead
Earing	Foley	O'Neill, Mass.
Earrett	Ford	Ottinger
Bell, Calif.	William D.	Patman
Bingham	Garmatz	Pepper
Blatnik	Gubser	Pirnie
Boland	Heckler, Mass.	Powell
Brown, Calif.	Hollifield	Preyer, N.C.
Burton, Utah	Jarman	Pucinski
Byrne, Pa.	Kirwan	Rees
Cahill	Lipscomb	Reid, N.Y.
Carey	Long, Md.	Robison
Cederberg	McClory	Rosenthal
Clark	McCulloch	Rostenkowski
Clausen.	Mailliard	Scheuer
Don H.	Mikva	Skubitz
Colmer	Miller, Calif.	Stuckey

Udall
Ullman

Van Deerlin
Weicker

Whalley

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. SREEN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 13950, and finding itself without a quorum, he had directed the roll to be called, when 374 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting. Mr. HECHLER of West Virginia. Mr. Chairman, I rise in support of the amendments.

Mr. Chairman, I desire to commend the chairman of the Committee on Education and Labor, the gentleman from Kentucky, the sponsor of these amendments, and also the gentleman from Pennsylvania (Mr. DEW), the chairman of the subcommittee. I should like to ask the gentleman from Kentucky a couple of questions concerning the amendments.

Does this Interim Compliance Panel, provided for in these amendments, include any private citizens?

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to the distinguished gentleman from Kentucky, my neighbor from the adjoining district to mine.

Mr. PERKINS. It does not include private citizens. It includes a group of select Federal officials or their delegates.

They are: First, the Assistant Secretary of Labor for Labor Standards; second, the Director of the Bureau of Standards of the Department of Commerce; third, the Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare; fourth, the Director of the Bureau of Mines; and fifth, the Director of the National Science Foundation. There are no private citizens on the Panel.

Mr. HECHLER of West Virginia. Does this Panel include any power or authority to veto penalties or mine closures for safety violations? Can the Panel override the decisions of members of the President's Cabinet?

Mr. PERKINS. This panel has nothing to do with vetoing any action of the Secretary and has no authority in the areas that the gentleman just mentioned.

Mr. HECHLER of West Virginia. I thank the chairman of the full committee for his clear answers.

Mr. PERKINS. This is an Interim Panel that goes out of existence when its duties have been carried out.

Mr. HECHLER of West Virginia. I thank the gentleman from Kentucky and commend him for sponsoring these amendments.

Mr. Chairman, I support the amendments.

For months I have been calling attention to the shortcomings of this Board of Review, which could have become the real Achilles heel of the new legislation had it remained in the bill. In the Oc-

tober 21 RECORD at page H9772, I placed in the RECORD the texts of five letters from distinguished experts in administrative law, calling attention to the unsound features of the device of allowing special-interest representatives to overrule the considered decisions of a responsible member of the President's Cabinet. Since having these letters printed, I have received responses from several other experts, including Prof. Kenneth Culp Davis, University of Chicago Law School; Dean Leo A. Nuard of the School of Law, University of Santa Clara, Calif.; Prof. Arthur Earl Benfield, College of Law of the University of Iowa; and Prof. Walter Gellhorn, Columbia University School of Law.

Dean Huard in general supports the concept of the Board, unlike all the rest of his colleagues. He also makes some interesting and useful comments concerning the need for incorporating the practices under the Administrative Procedures Act. I am very happy to note that the gentleman from Kentucky (Mr. PERKINS) has done precisely this in his amendments which tie in the interim compliance panel with the Administrative Procedures Act.

Professor Gellhorn, in his letter of October 24, 1969, generally endorses the comments of Prof. Fred Davis of the University of Missouri, a copy of which I have already had printed in the October 21 RECORD at page H9772, Professor Gellhorn adds:

A body that is supposed to make dispassionate judgments about disputed questions of fact should not be composed of partisan representatives. That type of tribunal has progressively fallen into disuse because no matter how detached might be the judgment of its individual members, its decisions remained suspect in some quarters and therefore failed to carry the force they should have.

I most enthusiastically support these amendments to abolish and finally lay to rest the Board of Review.

Mr. ERLENBORN. Mr. Chairman, I rise in support of the amendment.

As I said during the time that the gentleman from Kentucky (Mr. PERKINS) yielded to me, I support this amendment. I wish to make it clear that it is somewhat reluctant on the basis of removing the Board of Review, which has done a good job, I believe, but I see the realities of the situation. The gentleman from Kentucky is including in this amendment the provisions for a compliance panel substantially the same as is in the bill in the other body. This would make our job in the conference much easier. It is something that the Secretary of the Interior has wanted namely, the compliance panel. As the chairman of the committee pointed out, this panel will function in an area which is separate from what the Board of Review did. The Board of Review would review orders, and it has done so in the past. It reviews orders of closure and other orders issued by the Secretary based on inspectors' findings at the mines. The compliance panel will have application only to the areas of extensions of time in compliance with health and safety standards and extensions of time in the acquisition of permissible equipment. This is something that the

Secretary of the Interior has wanted, as I said. I am happy that the gentleman from Kentucky has seen fit to offer this amendment and I do support it.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Kentucky (Mr. PERKINS).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. SCHERLE

Mr. SCHERLE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SCHERLE: Beginning on page 38, line 18, through page 43, line 9, strike all of subsection 112(b).

(Mr. SCHERLE asked and was given permission to revise and extend his remarks.)

Mr. SCHERLE. Mr. Chairman, I rise to ask support of the House to delete section 112(b) of the bill under consideration. We all support safety legislation, however, to inject Federal workmen's compensation would be wrong.

This section of the bill would establish a special system of Federal workmen's compensation payments for a small group of employees in one industry who are affected by one specific disease. For humanitarian reasons alone we are all sympathetic with any employee who is afflicted with an occupational disease—or, for that matter, with any disease, whatever its origin. Everyone is in agreement that the victims of occupational diseases should be adequately compensated; however, this historic, far-reaching proposal for disabled miners is the wrong way to solve this problem.

The great dangers with this bill are twofold. First, it would undermine our State workmen's compensation system. Second, it would begin a new special social security disability program on top of our existing Federal system.

The State workmen's compensation system was our first form of social insurance. Every State has its own system of providing benefits for work-connected injuries and diseases. Such systems have been functioning successfully for over 50 years. They are still being refined and perfected. This is a continuing process.

There is universal agreement that our State workmen's compensation laws should provide adequate compensation for on-the-job diseases as well as on-the-job injuries. Thirty-eight of our States have broad occupational disease coverage for disabled employees. The remaining States list a schedule of compensable diseases. Improvements are being made in these laws by the State legislatures whenever necessary.

Section 112(b) of this bill would start a new system of Federal workmen's compensation payments for retired or active coal miners with pneumoconiosis. If this section is not struck, it will be the first step toward the ultimate federalization of all workmen's compensation.

This bill offers no incentive or encouragement to the States to further improve their occupational disease laws for coal miners. In fact, if the Federal Government is going to foot the bill, the States will be encouraged to do nothing.

The payments made would be discriminatory. They would apply only to workers suffering one specific disease in

one specific industry. This is a step backward. For 50 years we have been working in this country for broad occupational disease or disability benefits. It would be a mistake to begin legislating special payments for this or that group of employees, in this or that industry, for this or that particular disease.

The other great problem to consider is whether this type of legislation would not start a second fragmentary Federal social security disability program. We already have a broad disability program under our social security system. Our citizens are entitled to payments when they are totally disabled without regard to whether the disability arose on or off the job. Section 112(b) of this bill takes no recognition of the fact that coal miners who are totally disabled from black lung disease can apply for disability under the Social Security Act. In fact, a number of the disabled coal miners who appeared at the hearings stated they were receiving monthly social security disability payments.

The great danger here is that we would be starting a third system of governmental disability insurance on top of the already existing State workmen's compensation system and Federal social security disability system. We begin with coal miners with black lung, but where do you stop? The list of industries and occupational diseases is endless. If this legislation is adopted each Congress from now on will be faced with special pleas for special workmen's compensation payments to special categories of employees in various industries for specific diseases. Without question, workmen's compensation should remain the responsibility of the States.

This section of the bill would set an unwise precedent. For the reasons cited, I strongly urge that we not start down this dangerous road.

Mr. LANDGREBE. Mr. Chairman, I move to strike the requisite number of words.

(Mr. LANDGREBE asked and was given permission to revise and extend his remarks.)

Mr. LANDGREBE. Mr. Chairman, I rise in support of the amendment which has been offered by the gentleman from Iowa (Mr. SCHERLE).

Mr. Chairman, I support the Scherle amendment, not because I am opposed to the coal miners health and safety bill, but because I believe that the compensation measures for our various industries should remain in the States where they can best be managed and handled, perhaps better than we could possibly handle them at the Federal level.

There are many, many industries in our land; in fact, there is hardly any industry that does not have some health problems related to that industry. Of course, the industry that I know best is the motor freight industry. In this industry back sprains, back injuries of a permanent nature, heart disease, kidney and bladder problems, hernias and ulcers are all health hazards of the trucking industry. Not only that, but the trucking industry is one of the biggest industries in the country. I need not remind the Members of this body of the

importance of that particular industry. In many States it is the largest employer.

We have brown lung in the textile industry. We have lung problems in the lime quarries, grain elevators, farms, and the ammonia industry. Lead poisoning is a hazard of the gasoline industry, and of course the dairy workers and slaughterhouse workers are subject to rheumatism, a most unpleasant and crippling disease.

Then there is painters' colic, and on and on we could go. We could even mention bartenders, with that inherent health hazard of alcoholism.

I fully appreciate the coal miners' contribution to the progress and prosperity of this country, but I do believe that the Scherle amendment is right. I believe that compensation for industrial injuries and illnesses should remain with the States. Therefore, I urge my colleagues to support the amendment offered by the gentleman from Iowa (Mr. SCHERLE).

Mr. COLLINS. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the amendment offered by the gentleman from Iowa (Mr. SCHERLE).

I am not sure that all of the Members fully realize what is involved, or the particular thinking concerning this section of the bill. We are introducing for the first time the idea of workmen's compensation as a Federal responsibility. This can run into billions of dollars, and what we are doing we are doing on a single-shot basis. This raises the question, is this equity? It is not even equity to the coal miners themselves, because it is only the fellows who have black lung who get workmen's compensation. In other words, if you lost both arms or both legs you certainly would deserve workmen's compensation, but you do not get this Federal workmen's compensation. This is only for people with black lung.

Actually, we are talking about lung problems, but on only one type—black lung. That is the whole basis here. We are all very sympathetic with all lung situations because today there are probably as many as 5 million people in this country who have lung problems in one way or another.

In our section of the country we are familiar with people who have been involved with what is known as brown lung. They do not call it brown lung; some call it asthma, others consider it a chronic cough. Workers in textile mills may work with cotton, where there is cotton lint floating through the air all day. You can walk through a textile mill, and if you have on a dark suit it will be flecked all over with that cotton lint. That cotton lint has been going into the lungs of these men for years and years, and we have hundreds of thousands of men in the South who have this brown lung.

I want to tell you about another one, and that is in the asbestos industry. There are 3.5 million people in the country who work with asbestos in one form or another, and they have made X-rays of these people, and in over half of the cases of people who work with asbestos the X-rays show up with lung trouble.

Take silica. Many of you have been in some type of open mine in a rock quarry where they crush stone in one way or another and see the wind dust blowing all day long on the men working out there. These workers are developing in every case some type of lung problem.

We remember beryllium and when beryllium was considered all right to be used in fluorescent lighting. Recently, it was found out that it was poisonous. What about the people who suffered from use of beryllium?

We talk about coal being a very important item because it is a valuable national resource. Yet, take uranium. Uranium is a very highly sensitive commodity and nothing is done to provide for people involved in uranium.

From every angle this particular bill is highly partisan, highly prejudiced and this is a special interest situation. When the time comes that this country decides to take on workmen's compensation, it should take it on fairly, and should take it on equitably, and should take it on for everybody in the country who has a lung problem.

I recommend we give thorough consideration to the amendment offered by the gentleman from Iowa (Mr. SCHERLE).

Mr. ERLENBORN. Mr. Chairman, I move to strike out the last word.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, I rise in support of the Scherle amendment.

I agree with most of the arguments made by the sponsor of the amendment and those who have so far supported it. It is a rather difficult thing for me to do to get up on the floor of the House today to support this amendment because the provisions it would strike do have a humanitarian thrust. I am not unaware of that. I am not insensitive to the fact that there are people who suffer from this disease, and who are not compensated under State law.

The unfortunate thing is that this particular disease was not identified as a separate disease until recently. It used to be called by other names such as anthracosis and chronic bronchitis and it had other designations.

It was not identified as a separate disease and it did not become compensable as a separate industrial disease because of that lack of identification. Many of the States have since been hesitant to move into this field to provide compensation.

I realize, even when they do provide compensation, that many miners who have already retired will not be covered because you do not have the reserves to pay the benefits that would accrue to those miners who are already retired.

So from a humanitarian standpoint, this is a good provision in the bill—but it is a very bad precedent.

I had an interesting discussion in my office last week with some student leaders from the college community. One of the questions they asked me was, "How do your Christian principles either conform with or conflict with some of

the things that you must do in the legislative process?"

There came to my mind right away this provision in the bill for compensation for pneumoconiosis and I told them—Here is one where my Christian principles of doing right by my neighbor and seeing that people are properly compensated for disability and my feeling that we have to keep the Government structure right and do not destroy the values that we have developed in this country.

I got an interesting response from one young lady, a college student, and she said, "I do not think that is a very Christian thing to do, to use somebody else's tax money to take care of these people. The Christian thing to do would be to use your own funds."

I think this was a pretty good observation made by this young lady.

The problem I see, and this has been pointed out by some of the other speakers. We are going to establish a precedent. I know that this has been very carefully drawn to apply to only those who presently have the disease and is apparently to be self-liquidating in operation, within a certain period of time.

I commend the ideas of those speaking in favor of this provision for keeping it thus narrowly confined and if it is going to pass, apparently, it is going to be in this form. And I think it only can pass in this form. But still what is to prevent those who suffer from brown lung, byssinosis, from coming in and saying, "Now that you have established as a principle that the Federal Government will give compensation to those who have industrial diseases, perhaps no longer in an area of the country where they have this industry, that therefore the Federal Government will compensate you for these industrial diseases?" Then there is the next step, and the next step down the line, until we can see the takeover by the Federal Government of the whole system of compensation for industrial diseases and workmen's compensation. I fear the precedent established in this bill, even though I can readily commend the purposes of those who have drafted this and support this provision.

Mr. BURTON of California. Mr. Chairman, I rise in opposition to the amendment. Of all the sections of the bill, this is the one section that by no stretch of the imagination could be called in any manner, shape, or form anything but bipartisan.

It is intended, as the committee report so very emphatically and unambiguously states:

This payment program is not a Workmen's Compensation program. It is not intended to be so. It contains none of the characteristic features which mark any Workmen's Compensation plan, and it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for death, injury, or the illness of other workers.

This is what I think most of the members of the Committee on Education and Labor would agree was an honest effort to have a very narrowly drawn bill, on a one-shot basis only, the compensation to be paid only to those miners or their widows, if their predeceased spouse had

the disease at the time of death—only those miners who have complicated pneumoconiosis that has arisen as the result of breathing anthracite or bituminous coal dust.

There are several stages of pneumoconiosis, but when one has complicated pneumoconiosis, it means that the disease has reached its most serious stage.

This amendment has been worked out with key management leadership, it has the acceptance of labor, it is a one-shot effort, and I hope that the pending amendment is defeated.

Mr. Chairman, I believe that it is only fair to note—that during the early, difficult days when the payment to "black lung" miners and widows was in serious jeopardy—the only person affiliated with the Mine Workers Union that supported Chairman DEW and myself—in our successful effort to have this vital provision inserted in the subcommittee's bill—was Mr. Joseph Yablonski.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Mr. Chairman, I appreciate the gentleman from California yielding. I wish simply to reassert what I said during the general debate and what the gentleman from California has just now said so well, and that is that the provision to which the amendment refers is not a precedent. The committee report spells this out. The gentleman from California has stated it clearly and without equivocation. This is not a workmen's compensation provision.

My argument with the distinguished gentleman from Iowa, who has sponsored the amendment which I oppose, is that he is considering this a compensation plan, and it is not. It has none of the characteristics of such, and clearly ought not to be viewed by those who are concerned about this provision as being a precedent.

Mr. HANSEN of Idaho. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman from Idaho.

Mr. HANSEN of Idaho. Mr. Chairman, I appreciate the gentleman yielding. I associate myself with the remarks made by the gentleman from California and add this comment, that the bill has been worked out over a long period of time, very painfully, and we have come up with some limited response to the problem. I am aware of the precedent-setting possibilities of this bill, but I think the history has been such that those possibilities have been eliminated or virtually minimized.

When I view the problem at which this amendment is aimed, it becomes obvious that if there is no help in this bill, there is no help whatever that we can offer to a limited number of individuals who have suffered impairment of their health by reason of pneumoconiosis.

I am hopeful the amendment offered by the gentleman from Iowa will be defeated.

Mr. WAMPLER. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman from Virginia.

Mr. WAMPLER. Mr. Chairman, I thank the gentleman from California for yielding.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Iowa (Mr. SCHERLE).

Mr. Chairman, I support the intent and most of the provisions of H.R. 13950. I believe that this legislation answers the mandate which the American people have given to the Congress to abate the senseless slaughter which all too often characterizes the coal mining industry of America.

The legislation before us is tough legislation. It will impose a heavy burden on the coal mining industry. It will cost that industry money to comply with its provisions.

But, the available alternatives are even more costly, not only to the coal miner and to his family, but to the coal operators and the consumers of coal who must rely upon the productivity of the highly skilled and highly motivated work force.

This Congress is committed to passing a strong and effective health and safety bill. It is committed to including in that bill needed innovations in health and safety matters.

I would be remiss if I did not pay tribute to those people and to those sources which helped to bring this bill to the floor. I offer my congratulations to the members of the House Education and Labor Committee and the subcommittee which considered this legislation. I know full well the long and arduous task that was theirs as they took the ideas, the recommendations and the suggestions of a great many people and fashioned from these conflicting views a bill which will mean safer mines and healthier miners.

Putting this bill together was not an easy task. The committee deserves the thanks of this body and the American people.

I would be remiss if I did not pay tribute also to the officers and the members of the United Mine Workers of America. I particularly want to call to the attention of this body the efforts on behalf of the legislation by Mr. W. A. Boyle, the president of the United Mine Workers of America; Mr. Louis Evans, the safety director of the union; and Dr. Loren E. Kerr, the director of the division of occupational health. These men and the staffs which support them have given of themselves to the ultimate degree to bring the strongest possible legislation to the floor of this House where it can be enacted into a piece of legislation which can be approved by the President and made into law.

Many of the innovations contained in this bill first came from the United Mine Workers of America.

It was the United Mine Workers of America which introduced legislation calling for the establishment of a dust level of 3 milligrams of respirable dust per cubic meter of air. It was the United Mine Workers of America which urged the establishment of safety chambers to which men could go in post disaster periods. It was the United Mine Workers of America which argued for penalties on the operators who violate the law. It was

the United Mine Workers of America which established an increase in the ventilation required in mining operation. It was the United Mine Workers of America which asked that a Federal mine inspector be placed at every mine which liberated excess quantities of methane gas.

Finally, the United Mine Workers of America first suggested that a Federal compensation program be established to care for the victims of pneumoconiosis or black lung, not covered by State law. This effort was made because the union realized that many of the victims of black lung would be ineligible under State laws and would thus be denied that which rightfully should be theirs.

I also want to thank the National Coal Association, the National Independent Coal Operator's Association, other representatives of the coal industry, and members and officers of district 28 of the United Mine Workers of America, which I am privileged to represent. I appreciate their help and advice on this extremely complicated, technical, and controversial legislation.

I want to point out that while all 50 States have some sort of a workmen's compensation law, only one of these States provides retroactive benefits to individuals disabled by pneumoconiosis, and not even this State extends the benefits to the widows of these miners. Many such people are therefore forced to go on the welfare rolls. I believe such facts give evidence that the States are simply not fulfilling their responsibility in the area of workmen's compensation as it applies to pneumoconiosis.

Let me emphasize that I am a firm believer in State's rights, and I think workmen's compensation is generally a matter which should be left up to the States. However, when the States either do not act at all or do not act adequately in this area, I believe the Federal Government has a bound duty and moral obligation to bridge the gap.

Let me also point out that the proposed program of Federal payments to miners disabled by pneumoconiosis or to their widows does indeed bridge the gap, but it is not a workmen's compensation plan. As the committee report clearly states, it is not intended to be a workmen's compensation plan and it contains none of the characteristic features of any workmen's compensation plan. Furthermore, it is not intended to establish a Federal prerogative or precedent in the area of payments for the death, injury, or illness of workers.

The plan as reported by the committee provides payments for retroactive cases of pneumoconiosis only—not for prospective cases. It provides payments for complicated pneumoconiosis, which is the fourth stage of this disease.

The committee report defines complicated pneumoconiosis as a serious disease of the lungs caused by the excessive inhalation of coal dust. The individual incurs progressive massive fibrosis as a complex reaction to dust and other factors, which may include tuberculosis and other infections. The disease in this form usually produces marked pulmonary impairment and considerable respiratory disability. This respiratory disability greatly limits the physical capabilities of

the person. It can cause death by cardiac failure, and it may contribute to other causes of death as well. Once the disease is contracted, it is progressive and irreversible.

The importance of the retroactive Federal payments and the provisions for payments to the widows becomes even more evident when you consider the uniqueness of pneumoconiosis: it can take up to 10 years to develop.

Many statistics have already been given in this debate to prove the importance of the coal industry to our Nation. I want to point out that my own State of Virginia is the fifth largest coal-producing State in the country. Coal contributes from \$280 to \$300 million to the economy of Virginia. Buchanan County in my Ninth Congressional District is the largest coal-producing county in Virginia, and it has some of the deepest shaft mines on the North American Continent.

The late Charles Evans Hughes, a former Governor of New York, was the father of modern labor legislation. He once said:

We are for both the man and the dollar; but if we must choose between them, we put the man above the dollar.

Let us begin to repay our debt to those miners who have helped America prosper and grow.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield further?

Mr. BURTON of California. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Mr. Chairman, there is one other point in the committee report, and I refer the Members to the committee report. I think there is a good statement there on the question as to responsibility. When we say this is a State responsibility, it seems to me we are imposing a requirement on a State such as Wisconsin, which has no coal mines at all, to care for those who have contracted complicated pneumoconiosis in Pennsylvania or West Virginia. I am not at all sure I could recommend to the State of Wisconsin that it undertake a compensation program for a disease for which it is not responsible.

It seems to me this is a further reason for us to be in favor of retaining this provision of the bill.

Mr. BURTON of California. Mr. Chairman, the gentleman from Wisconsin has stated it much more aptly than I could possibly do.

Mr. SAYLOR. Mr. Chairman, I move to strike the requisite number of words and rise in opposition to the amendment offered by the gentleman from Iowa.

(Mr. SAYLOR asked and was given permission to revise and extend his remarks.)

Mr. SAYLOR. Mr. Chairman, I have listened with interest to the arguments advanced by my friends the gentleman from Iowa, (Mr. SCHERLE) who has offered this amendment, and by the gentleman from Indiana (Mr. LANDGREBE) and the gentleman from Texas (Mr. COLLINS) and the gentleman from Illinois (Mr. ERLBORN). The very arguments which they have given are the reasons this amendment should be defeated.

Those who suffer from this disease called pneumoconiosis which has been recognized by the medical profession—within the past several years—are spread throughout the 50 States of the Union. Yet they contracted the disease when many of them, years ago, worked in the coal mines, mostly in the Appalachian fields.

After World War II, when there were approximately 400,000 men working in the mines, the demand for coal was reduced, and the men who were there had to go elsewhere to find employment. They went where the job opportunities were given to them and spread throughout the length and breadth of this land. They are in California, Florida, Alaska, Hawaii, Maine, and in States which have absolutely no coal mining.

I could not as a member of a State legislature in any one of those States in all good conscience get up and ask for a favorable vote to take care of individuals with a specific disease which was contracted in the hills of Pennsylvania or West Virginia.

If this bill is passed—and I hope it is—in the form which has been recommended by our committee, then this disease will be attacked at its source and there will be no more cases of pneumoconiosis, because this bill provides for annual inspection by X-rays, and men who are discovered as having any lung condition whatsoever are moved out of these jobs. The dust level which in many mines has been high is going to be reduced.

The amount of air which is going to the face of the mine, is going to be increased.

So this is not a workman's compensation bill. This is a responsibility of mankind—we the Congress represent the mankind of the country—it is our responsibility to take care of this in one operation. We have provided the method whereby men suffering from this dread disease and their survivors can get some benefit. This is our responsibility as a Congress. I believe it is one of the prices we have had to pay for the mistakes of the past.

I hope that this amendment will be defeated.

Mr. ESCH. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to my colleague from Michigan.

Mr. ESCH. I thank the gentleman for yielding.

I wish to associate myself with the remarks of the gentleman from Pennsylvania and to compliment him on his leadership on this bill and on this section. As one who has a personal interest, having been born in his district and having had a father who served in the mines at the age of 14 in his district, I am aware that the gentleman in the well knows firsthand the problems of the miners and our responsibility toward them.

Hopefully this legislation in total will bring about a new era in the mines, but this amendment must be defeated so that we can give recognition to a related problem; that is, with the miners who are already afflicted from the past.

Mr. MORGAN. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to my colleague from Pennsylvania.

Mr. MORGAN. Mr. Chairman, I wish to associate myself with the gentleman. We represent the two largest active mining areas in the great State of Pennsylvania.

This is not a workman's compensation act, as it has been described by the proponents of this amendment. It contains none of the characteristic features which mark any workman's compensation plan. We are moving in this bill toward dust-free mines. The provisions in this bill are a limited response in a form of emergency assistance to the miners. This is not a permanent proposition.

I commend the gentleman from Pennsylvania for his remarks, and I associate myself with them.

Mr. Chairman, I rise in support of H.R. 13950, a bill to provide for the protection of the health and safety of persons working in the coal mining industry of the United States.

As a cosponsor of this bill, I find it far from perfect and I hope that it can be amended on the floor during the 5-minute rule. I have read both the majority and the supplemental views. If the amendments suggested by those who signed the minority report and the supplemental views are adopted, I feel it would definitely weaken the bill.

Mr. Chairman, this bill has many excellent provisions which regard to safety standards. I strongly feel, however, that dust levels should be measured once a shift. I am opposed to the weaker method of averaging such dust levels over several shifts as the present House bill provides.

Mr. Chairman, I was born in a coal mining community and have lived there all of my life. My father was a coal miner and I served as a coal miner's physician for over 25 years. During this time I was very close to the Nation's most dangerous occupation. A miner is constantly faced with many dangers such as mine fires, explosions, roof falls and the dreaded black lung or pneumoconiosis disease. If you will visit any mining town in the Nation you will see hundreds of disabled miners who were forced to stop work because of the gradual and progressive shortness of breath.

Mr. Chairman, for years in the medical profession there has been controversy as to whether coal dust was the cause of this progressive disability. I have always contended that clinical evidence was present to cause pneumoconiosis and that it will increase with the modern methods of coal mining.

Mr. Chairman, one of the matters of continuing interest in this bill is the manner in which the "black lung" or dust problem has been handled. The bill deals with both aspects of the problem of coal miner's pneumoconiosis, the prevention of the disease and the compensation of the victims.

With respect to prevention there is no question of what is needed. It is a dust-free mine. The problem is that, given what we now know about the technology of dust control, we cannot produce a dust-free environment in a coal mine. It will be some years before we can. But we can reduce the chance of a miner con-

tracting the disease to tolerable levels with what we know right now. The only problem is that it takes a little while to manufacture and install the necessary equipment.

H.R. 13950 provides that after 6 months dust atmosphere in mines must be down to 4.5 milligrams per cubic meter. After 1 year, it must be down to 3 milligrams. But the bill goes further. It also prescribes that as soon as the Secretary of Health, Education, and Welfare deems it attainable—in other words as soon as research into dust-control technology catches up with the problem—he will require a standard of 2.2 milligrams or lower, a level where there is no danger of disabling disease.

And we provide in the bill for the money to finance the necessary research.

Now, what about those whom it is now too late to save from "black lung." No one knows the number, but it is estimated that probably 100,000 active and retired coal miners have pneumoconiosis and that about half of that number, 50,000 men, are already disabled from the disease. There are only about 144,000 active miners presently working in coal mines so one can readily see, Mr. Chairman, that we are dealing with a major health crisis.

One of the major accomplishments of the work here in Congress on this bill is to bring home to an aroused public that this major health problem actually existed. Thousands of men in our coal mining States are literally dying slow deaths from lungs unable to provide enough air to sustain life. Most of them are unable to work at all. Few of them are self-supporting. Many have other diseases, like tuberculosis and heart disease.

We also have a major problem to provide support for these victims of this occupational disease. The States cannot bear this burden, but H.R. 13950 provides for such support. The amount is approximately \$136 a month for a disabled miner or for his widow, with additional amounts for dependents. A sick miner with three dependents would receive \$272 a month.

The bill makes it very simple for a miner to establish entitlement for such disability. If the miner is obviously sick and disabled, there is no question if it can be shown that the disease arises out of or in the course of his employment in a coal mine. If the miner has a history of 10 years of employment in coal mining, it is assumed that the disease arose out of the course of his work.

Almost all of the older miners suffering from the disease will experience no difficulty establishing 10 years of employment. For those with less than 10 years of employment the bill requires that the miner demonstrate that the disease arose from his employment in coal mining. Again, this is not expected to impose any difficulty for the relatively few cases contracted in less than 10 years.

Mr. Chairman, I intend to support all the amendments which would strengthen the bill because I feel it is necessary that we send a strong bill to conference. The Senate bill passed the other body unanimously, and a strong vote for an amended bill will assure the

coal miners of the Nation the first real safety bill in the history of coal mining.

(Mr. MORGAN asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, I rise in opposition to the amendment.

Monday afternoon during the debate I spent a little time on the subject matter before us today dealing with pneumoconiosis, and I tried to give the House some of the information that we gathered in our research.

I am very happy to be able to present at this time, and I shall, at the appropriate time, ask unanimous consent to include the synopsis of the work session proceedings at the spindle-top conference, the international conference attended by the best known experts in the field of dust diseases and respiratory diseases.

Mr. Chairman, what I wanted to do was to make sure that every Member of this Congress, if he so desired, could spend a few minutes reading the Record tomorrow, so that he will know as much as is possible to know as a layman at this point on the matter of this disease.

Its prevalence among the miners is about 10 percent of all working miners, and it is a slightly higher percentage of those who are no longer working in the mines simply because of the fact that they worked before there was any kind of an effort to try to reduce the dust density in the mines.

I do not want to take the time of the Members, but I want to compliment the gentlemen on the minority side who have all along given us as much help as it was possible to do in the face of the great opposition to this particular feature in the bill.

I want to reassure the gentleman from Wisconsin that this is not a compensation act in any way. It is a benefit payment for services rendered in an industry that did not take care of its problem and in the States that did not take care of their problem. This is a Federal obligation as this Congress sees it.

I want to compliment those on both sides of the aisle who have done so much to have us arrive at this stage where we can undo a damage that has been done through neglect to the coal miners of the United States of America.

Mr. SCHERLE. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Iowa.

Mr. SCHERLE. It is difficult for me to comprehend the difference of interpretation—call it what you want—benefits or compensation. To me it is compensation and is for one specific group, for the coal miners. Do you not think that we owe the same compensation to all employees regardless of disease such as those mentioned by my friend from Indian (Mr. LANDGREBE). This legislation singles out one specific group and offers compensation to no one else. This is highly discriminatory. The door is now open—watch what happens next year.

Mr. DENT. I understand your question, and I might answer it very simply. We are not going to restrict this to miners except that we are restricting it to a certain disease.

Mr. SCHERLE. That is the problem.

Mr. DENT. It is a particular type of disease. Everybody that has it will be treated. If you have some corn huskers out your way and they have developed it, we will see that they get whatever it is that you call it, whether it is compensation or something else. If the gentleman wants to introduce legislation to take care of brown lung disease or any other kind of lung disease, I will give him all of the consideration that he has given to the miners today.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the chairman of the committee.

Mr. PERKINS. Mr. Chairman, we should not lose sight of the fact that we are dealing with a special compensation statute solely because this occupation is so hazardous. There are 10 times more fatal accidents in this industry than in all other industries. We have a disease here that may have been contracted 10 or 20 years ago, but the individual will never be compensated for it because the States will never enact retroactive laws to provide compensation for it. It is because of the insidious nature of this disease, pneumoconiosis, that we are enacting this special provision. We want to see that justice is done so that we can give these individuals, who have been denied workmen's compensation for this disease all through the years, compensation to cover them. They will never be compensated unless we pass this special provision. My only reservations about the provisions in the bill go to what is now obvious from the debate and that is—we have not provided broad enough coverage for those miners who have serious respiratory diseases—nor are the benefits adequate for the miner and his dependents. I fully intend that the Education and Labor Committee will continue to study this problem and the administration of these provisions to assure that they are effective in meeting the needs.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. DENT was allowed to proceed for 1 additional minute.)

Mr. KEE. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from West Virginia.

(Mr. KEE asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, I include herewith the material which I have previously referred to:

PNEUMOCONIOSIS

PREFACE

Spindletop Research, a not-for-profit institution, chartered in the public interest, is proud of having served as the catalyst in bringing this group of eminent medical scientists together to seek new approaches to eliminating the health problems created by coal workers pneumoconiosis.

INTRODUCTION

This document contains the highlights of a series of intensive work sessions participated in by a panel of distinguished medical scientists in preparation for a conference on the medical aspects of coal workers' pneumoconiosis (CWP), to be held at Spindletop

Research, September 13, 1969. Although the technical discussions centered around the medical aspects of CWP, it should be emphasized that the often expressed motivation of the participants was to develop ways to allow the coal miner to enjoy a career in the mines without impairment to his health from dust exposure or other occupational factors.

The work sessions were attended by eminent medical scientists from the United States, Great Britain, Canada, and Germany, each well recognized as a leader in his specialized field. The work session participants were selected by Drs. R. W. B. Penman and W. H. Anderson, program co-chairmen, in consultation with an advisory staff composed of Drs. George W. Wright, Ian T. T. Higgins, Eugene P. Pendergrass, Charles E. Andrews, and Paul Gross. The program advisors and co-chairmen also participated in the work sessions. Mr. Murray Jacobson, Acting Chief of the Pittsburgh Field Health Group, U.S. Bureau of Mines also joined the discussions. A specialist in dust physics, he added substantially to synthesizing the medical aspects with the problem of the work environment. Brief biographical sketches of these men as well as other participants in the work sessions are included in the formal conference program statement.

The closed work session was held at the Dupont Lodge in the Cumberland Falls State Park in Kentucky on September 10, 11, and 12, 1969. It was divided into four sections—epidemiology, pathology, physiology, and diagnosis/clinical aspects.

Each section was chaired by an eminent scientist who was assisted by a panel of highly qualified specialists in that discipline. Each session was begun by brief presentations by the panelists designed to serve as a baseline for the subsequent discussions. From these presentations key or critical issues were identified and discussed by the entire group in the light of fundamental questions posed by the chairman. The resultant multi-disciplinary considerations provided an additional dimension to the work session discussions and the conclusions of the group.

A synopsis of each work session discussion was drafted, reviewed and debated by each group. The final drafts were then revised by all of the participants and modified until consensus was reached. Thus, the synopsis presented herein represents the combined thinking of the entire work session team.

EPIDEMIOLOGY OF CWP

Synopsis of the epidemiology session

Chairman: Philip E. Enterline, Ph. D., Professor of Biostatistics, Graduate School of Public Health, University of Pittsburgh, Pittsburgh, Pennsylvania.

Panel Members: Ian T. Higgins, M.D., Mrcp, Professor of Epidemiology, Professor of Community Health Services, School of Public Health, University of Michigan, Ann Arbor, Michigan.

Murray C. Brown, M.D., Deputy Regional Environmental Control Director, Chicago Regional Office, United States Public Health Service, Chicago, Illinois.

Professor Dr. Wolfgang T. Ulmer, Chief of the Department of Medicine, Institute of Silicosis Research of the Professional Society of Mining at Bochum, Germany; and Head of the Institute for Lung Function Research of the University of Münster at Münster, Germany.

William S. Lainhart, M.D., Deputy Director, Division of Epidemiology and Special Services, Bureau of Occupational Safety and Health, United States Public Health Service, Cincinnati, Ohio.

Reviewed and concurred with by the other work session participants.

Conclusions

Coal workers' pneumoconiosis (CWP) is caused by the inhalation of coal mine dust. For epidemiological purposes it can be de-

tected in life only by means of the chest X-ray and an occupational history. If X-rays are of good technical quality they can be classified fairly reproducibly by experienced readers into categories of increasing severity.

The classification now used by most authorities is that recommended by the international Labour Office (1958). This divides X-rays showing CWP into three categories (1, 2, and 3) of simple pneumoconiosis and three categories (A, B, and C) of progressive massive fibrosis (PMF). Simple pneumoconiosis causes little ventilatory impairment and does not appear to reduce life expectancy. It may, however, lead to the development of PMF which can cause severe disability and frequently results in premature death.

The Prevalence of CWP in the United States

Studies of random samples of coal miners in the United States have shown the prevalence of CWP among working miners to be approximately 10%. Of this, one-third is PMF. There is, however, considerable geographic variation in the prevalence of CWP. This is probably because of variations in present and past mining conditions, the age and work experience of the mining population, the rate of labor turnover in the area under study, and the quantity and quality of coal mined.

The rate at which simple pneumoconiosis gives rise to PMF and the rate of progression of PMF from its early to later stages has not been measured in the United States. In the only area (Great Britain) where this has been done, it has been found that about 1% of men with simple pneumoconiosis develop PMF each year and that of those with PMF about 5% progress. The development of PMF is much more likely to occur in those with categories 2 or 3 simple pneumoconiosis than in those with category 1. Consequently, preventing a man from developing advanced stages of simple pneumoconiosis will reduce the risk of his developing PMF.

It is well established that the development and progression of simple pneumoconiosis is due to the dosage of dust a man inhales. This, in turn, depends on the concentration of dust in the air breathed and the duration of exposure. There is less certainty about the cause of PMF. Once a certain background level of simple pneumoconiosis is present, PMF may develop irrespective of further dust exposure, and it has been suggested, that some factor other than dust is needed for the development of PMF. In the past, tuberculous infection was thought to be a frequent other factor, but the general decline in the incidence of tuberculosis has not been accompanied by a similar decline in PMF and this, along with other evidence, suggests that some other factor or factors are involved.

Other respiratory conditions related to coal mining

Coal miners are liable to all the other diseases which affect man. The most important of these in the present context are chronic bronchitis and emphysema. These diseases probably account for more disability among coal miners in this country than does CWP. The crucial question, therefore, is to what extent are they caused or aggravated by the working environment of the coal miner? Many factors, both inborn and environmental, contribute to the development of chronic bronchitis and emphysema and it is, therefore, exceedingly difficult to assess the individual importance of any one of them.

The importance of coal mining in the development of chronic bronchitis and emphysema has been assessed by comparing the prevalence of respiratory symptoms and of ventilatory lung function in representative samples of miners and ex-miners with that of men of similar age who live in the same

area but who have never worked in coal mining (non-miners).

The great majority of these studies have shown that miners and ex-miners have a higher prevalence of respiratory symptoms of chronic bronchitis than other men. Miners and ex-miners also have, on the average, lower ventilatory lung function and defects in certain other tests. In some geographic areas the differences are small, while in others, the prevalence of respiratory symptoms has been found to be 2 to 3 times higher in miners than in non-miners. Curiously, however, it has not been possible to link these changes very consistently with the amount and duration of dust exposure or to other factors in the working environment of the miner. Moreover, it has been shown that the wives of men who work in mining also have a higher prevalence of respiratory symptoms and, sometimes, a lower ventilatory lung function than the wives of other men. To some extent, therefore, the difference between miners and non-miners in these other respiratory diseases appears to be due to environmental factors outside of their occupation. It seems unlikely, however, that such factors can account for all the differences.

The Relation of CWP to Chronic Bronchitis and Lung Function

There is no close relation between the prevalence of respiratory symptoms of chronic bronchitis and emphysema or level of lung function and the X-ray category of pneumoconiosis. Usually lung function is reduced in persons with PMF and it may be severely so in those with the advanced stages. On the other hand, those with simple pneumoconiosis do not differ much either in symptoms or in lung function from those with normal X-rays.

The general health of coal miners compared with that of other workers

The principal studies carried out in the United States which bear on this subject have been studies of mortality rates among coal miners. These suggest that, in the past, the risk of death among coal miners has been nearly twice that of the general population and higher than that of any other occupational group in the United States. Contributing heavily to this excess have been deaths from accidents and respiratory diseases. The fact that the excess of respiratory disease deaths increases sharply with the age of the miner strongly suggests the importance of environmental factors. Mortality rates of coal miners for most other causes are also high, and the picture obtained from studying mortality data is one of generally poor health. Unfortunately, the latest study available is for the year 1950, and health levels may have improved considerably since that time. The mortality rates of United States coal miners contrast sharply with mortality rates published for coal miners in Great Britain. In that country, coal miners' mortality for all causes is elevated only about 15% above that for the general population, although special studies of cohorts in certain areas of Great Britain do show excesses of as much as 50%.

The role of cigarette smoking

Surveys have shown that coal miners smoke cigarettes to about the same extent as the general population. However, smoking patterns probably differ somewhat, due to restrictions on smoking while at work. Cigarette smoking has not been shown to be related to CWP. Cigarette smoking is highly related to respiratory symptoms: cough, phlegm, breathlessness, and pulmonary function. In one study where a relationship between duration of dust exposure and pulmonary function was shown, division of the population into smokers and non-smokers showed that this relationship was strongest for smokers. Thus, it appears that cigarette smoking may potentiate the effects of dust

on pulmonary function. Cigarette smoking by itself, however, is more important in the production of respiratory disease (other than CWP) than exposure to coal dust.

Needed research

Many of the statements on CWP and chronic respiratory diseases in miners, which have been made in this report, have been based on research carried out in other countries. While extrapolation to the United States is probably often justifiable, it is clear that it would have been better had it been possible to draw more on American experience. More knowledge about the natural history of the chronic respiratory and other diseases in miners in the United States is urgently needed.

The epidemiological research which should be carried out includes:

1. Further studies of the prevalence of pneumoconiosis, both simple and PMF, in different geographical regions.
2. Measurement of the factors which affect the rates of development and progression of both simple pneumoconiosis and PMF. Here dose-response relations based on adequate dust measurements and regular radiographic supervision are essential. But the importance of other factors both personal and environmental should also be assessed.
3. Further studies of the relationship of respiratory symptoms, chronic bronchitis and lung function changes to X-ray changes and to dust exposure and other etiological factors.
4. Further comparisons between miners and ex-miners and other men living in the same area of similar age of the frequency of chronic respiratory diseases and other diseases for which mortality statistics suggest miners have an excess. Such studies should not be confined to a single survey at one point in time, but should include longitudinal observations over a considerable period of time in order to study development, progression and mortality and the rate of decline in lung function, and the factors which are related to these. This should include further observations on the wives of coal miners to identify reasons for their apparent excess in respiratory disease symptoms. Those populations which have already been adequately studied in a cross sectional way, such as Mullins and Richwood, Becklay, and the communities in Marion County in West Virginia, should be followed up.
5. Further studies of the mortality of coal miners for various causes in different regions should be carried out.

We consider the study of dose-response relationships to be most needed at the present time. This is currently being started by the P.H.S. It can be outlined in more detail as follows:

1. Select a number of coal mines at random.
2. Monitor dust in a standardized and comparable manner in all of them.
3. Take pre-employment and periodic chest X-rays of all the employees.
4. Include at the time of X-ray brief information on respiratory symptoms, chest and other illnesses, occupational, residential and smoking habits.
5. Carry out tests of lung function.
6. Observe the relationship between dust and the development of disease and impairments.

One research group should be responsible for organizing and collecting all the data in different areas. This should ensure that the work is done comparably and that adequate checks of the instruments and other methods are made.

An attempt should be made to keep track of men who leave mining or move to other mines. Social security records provide some help in this respect, but cooperation with the U.M.W.A. would also be most helpful.

It is of vital importance that this study should receive adequate long term support. It should not be impaired by deflection of those involved to other activities which may appear momentarily to be of greater importance. The current legislation before the House and Senate to institute and enforce dust standards in the coal mines provides a good opportunity first to carry out a study of this kind and also to evaluate the efficacy of any dust levels which may be attained.

PATHOLOGY OF CWP

Synopsis of the Pathology Session

Chairman: Averill A. Liebow, M.D., Professor and Chairman of the Department of Pathology, University of California, San Diego School of Medicine, La Jolla, California.

Panel Members: Paul Gross, M.D., Director of Industrial Hygiene Foundation's Research Laboratory and Research Professor, Pathology of Industrial Diseases, University of Pittsburgh, Pittsburgh, Pennsylvania.

A. G. Heppleston, D.Sc., M.D., Professor and Chairman of the Department of Pathology at the University of Newcastle-upon-Tyne, England.

John P. Wyatt, M.D., Professor and Chairman of Pathology, University of Manitoba School of Medicine, Winnipeg, Canada.

Philip C. Pratt, M.D., Associate Professor of Pathology, Duke University School of Medicine, Durham, North Carolina.

Reviewed and concurred with by the other work session participants.

Conclusions

(1) Pneumoconiosis should be defined in anatomical terms. Pneumoconiosis is the accumulation of dust in the lungs and the tissue reaction to its presence. In some people it may reach a radiographically detectable level and in some it may be sufficient to cause clinical symptoms.

(2) The inhalation of coal mine dust is the cause of coal workers' pneumoconiosis. On the basis of epidemiological and pathological evidence, factors in addition to coal dust may contribute to pulmonary disease in coal workers.

(3) In general the extent of pneumoconiosis is proportional to the amount of dust retained. Only particles less than five microns are of significance in the development of coal workers' pneumoconiosis.

(4) The geometric mean size of particles in airborne coal mine dust is slightly less than one micron. According to U.S. Bureau of Mines data, water spray does not significantly decrease respirable size dust once it is airborne. Wet drilling and cutting operations however, may keep dust from becoming airborne.

(5) In coal miners whose lung dust contains 13% or more of quartz, the lesion is likely to be morphologically that of silicosis. As the quartz content decreases below 13% of the total dust content, the morphological lesion more closely resembles that of coal workers' pneumoconiosis.

(6) Dust accumulation tends to be greater in the upper than the lower portions of the lungs.

(7) The basic lesion of coal workers' pneumoconiosis, the coal macule, is essentially the same irrespective of the geographical location of the coal field.

(8) The coal macule evolves by the incorporation of dust filled macrophages into the walls of respiratory bronchioles and adjacent alveoli. In this process reticulin fibers are formed and collagen may be produced.

(9) It is generally believed that the cleansing mechanisms are 98 to 99% effective in removing inhaled dusts. Pneumoconiosis results from the imperfection of these mechanisms.

(10) While the inhaled particles are relatively widely distributed initially, they soon tend to aggregate in and around many respiratory bronchioles of all orders, by

mechanisms not well understood at this time.

(11) In many individuals respiratory bronchioles invested by dust enmeshed in fine connective tissue (the macule) can undergo dilatation, thus giving rise to the condition known as focal emphysema. As the focal emphysema becomes more severe, disruption of bronchiolar and alveolar walls may supervene.

(12) In experimental animals, clearance of dust from peripheral alveoli can occur within four days.

(13) Other types of emphysema, as encountered in the general population, are also found in coal workers. Associated pigmentation may render difficult the distinction from focal emphysema unless serial sections are studied.

(14) In more severe cases of coal workers' simple pneumoconiosis, a second manifestation may develop, progressive massive fibrosis. This is characterized by widespread consolidation composed of large amounts of dust enmeshed in connective tissue, typically in the upper parts of the lungs.

(15) There is evidence that in addition to coal mine dust, other factors such as infection, for example by mycobacteria, and immunological phenomena or both may be involved in the pathogenesis of PMF.

(16) Cor pulmonale is common in progressive massive fibrosis, but rare with simple pneumoconiosis. Severe vascular lesions are associated with the former but rarely with simple pneumoconiosis. The presence of such vascular changes is not necessarily the major cause of cor pulmonale.

(17) There is no evidence for the existence of specific extra-pulmonary lesions associated with coal workers' pneumoconiosis.

Problems

(1) Not only the mixed dust in coal mines but other potentially injurious factors in the mining environment require further investigation. Among these are gaseous atmospheric contaminants. The influence of smoking on the development and course of pulmonary disease in coal workers requires detailed analysis.

(2) The pathogenesis of the coal macule is only partly known. More information is needed regarding the role of cellular and extracellular mechanisms in dust transport and bronchoalveolar clearance. Biochemical mechanisms of tissue injury by inhaled dusts remain essentially unknown.

(3) It is questionable whether silica has been excluded as a possible etiologic factor in progressive massive fibrosis.

(4) The delayed collagenization of pulmonary lesions produced by dust requires further investigation. Possible effects of dusts on surfactant production and activity should be studied.

(5) There is need to understand the possible interrelation between pneumoconiosis and infections. Does pneumoconiosis influence the course of infection? Do infections influence the course of pneumoconiosis?

(6) Host factors have received little consideration. Do genetic factors influence pneumoconiosis? Are there acquired host factors, such as state of nutrition and alcohol intake? Can other associated diseases such as bronchitis influence susceptibility to pneumoconiosis? Are there immunological factors that influence the natural history of coal workers' pneumoconiosis, particularly progressive massive fibrosis?

(7) There is pressing need for the development of studies designed to correlate structural and functional aspects of the disease in man, as well as of experimental models. Electron microscopy has a place in these investigations. Acceptable criteria for an anatomical diagnosis of cor pulmonale must be better defined. The pathogenesis and sig-

nificance of vascular lesions require re-assessment.

The establishment of a well financed research institute situated in the geographic area of this major problem and in close association with a university will provide the best means of its solution.

PHYSIOLOGY OF CWP

Synopsis of the physiology session

Chairman: Jay A. Nadel, M.D., Senior Staff Member, Cardiovascular Research Institute; Associate Professor, School of Medicine, University of California, San Francisco, California.

Panel Members: George W. Wright, M.D., Head, Department of Medical Research, Division of Internal Medicine, Saint Luke's Hospital, Cleveland, Ohio.

Colin B. McKerrrow, M.D., FRCP, Pneumoconiosis Research Unit of the Medical Research Council, Penarth, Glamorgan, South Wales.

Robert W. Penman, M.D., Associate Professor and Director of the Pulmonary Division at the University of Kentucky, Lexington, Kentucky.

Robert E. Hyatt, M.D., Associate Professor of Physiology, Mayo Graduate School of Medicine, University of Minnesota, Rochester, Minnesota.

William K. C. Morgan, M.D., MRCP, Chief of the Appalachian Laboratories for Occupational Respiratory Diseases (ALFORD), United States Public Health Service, and Associate Professor of Medicine, West Virginia University Medical Center, Morgantown, West Virginia.

Donald L. Rasmussen, M.D., Cardio-pulmonary Laboratory, Appalachian Regional Hospital, Beckley, West Virginia.

Reviewed and concurred with by the other work session participants.

Recommendations

It is the physiologist's role in this problem to characterize the functional disorders found in the diseases of coal workers. After a consideration of the studies done to date, we conclude that present data are not adequate to characterize, in sufficient detail, the changes in cardiorespiratory function in miners. This is particularly true for the situation in the United States. The following are some questions that have been raised at this conference and need answers:

(1) What are the physiological abnormalities associated with the various roentgenologic findings in miners? For example, are punctate lesions on roentgenograms consistently associated with significant abnormalities in respiratory function?

(2) Are these abnormalities present in the dust exposed miner who has a normal chest X-ray?

(3) Do the lesions of simple coal workers pneumoconiosis potentiate the physiological abnormalities associated with bronchitis?

(4) Are there significant physiologic abnormalities of small airways (i.e. bronchioles) and blood vessels in miners?

(5) How do physiologic changes relate to total dust exposure?

(6) Are there factors which make some individuals more susceptible to lung disease from coal mining? It would be desirable to characterize bronchial reactivity and lung clearance mechanisms in men entering the mines and to study what happens to these functions with time.

(7) What are the specific effects of smoking on the physiologic abnormalities in dust exposed miners?

(8) How do physiologic changes relate to anatomic changes found in miners?

To answer these and other questions, this committee recommends that:

(1) Cardiorespiratory laboratories be developed near mines having contrasting experiences in terms of lung disease; and that these laboratories have the capability to

measure sophisticated respiratory and cardiac functions.

(2) They be adequately staffed with physiological and technical personnel.

(3) That funds be available for ad hoc consultants.

(4) That projects be granted long term funds.

(5) That parallel in-depth study of environmental factors be undertaken.

(6) That all workers of such mines be studied and that all parallel studies of non-miners (i.e. non-dust exposed men) and examiners be undertaken. A particularly important group to study is the non-smoking miner. Information obtained by such an undertaking will hopefully form the basis for intelligent periodic examinations of miners and/or further surveys that may be indicated.

We recommend that the following types of studies be undertaken:

(1) Ventilatory Studies: Pathologic data indicate that the early lesions of CWP occur in small bronchioles. Most ventilatory tests presently used to evaluate function in miners measure changes in large airways. Therefore, we recommend the following studies which are aimed primarily at evaluating the bronchioles (small peripheral airways):

(a) The expiratory flow volume loop, especially the lower one-third of this curve.

(b) The full RA-TGV curve (includes TLC, FRC and RV determination), with attention to the lower portion of the curve.

(c) Frequency dependence of $C_{l,r}$.

(d) Tests of distribution of ventilation, i.e. N_2 washout curves and xenon ventilation and perfusion studies.

(e) A-a O_2 gradients.

(f) Static P-V curves of the lungs should be measured to determine the possible presence of early lung tissue destruction and to relate recoil pressure to maximal expiratory flow.

(2) Diffusion: Some studies suggest that in simple CWP there may be a decrease in diffusing capacity in the absence of demonstrable airway obstruction. These findings require confirmation and correlation with other physiological studies and pathologic changes.

(3) Gas Transfer: Further detailed studies of O_2 and CO_2 exchange are needed, especially during moderate degrees of exercise. The studies should include determination of V_E , V_D/V_T , blood gases, and heart rate.

(4) Pulmonary Circulation: Further studies of the pulmonary circulation are recommended to evaluate: (a) possible changes in the vascular bed in simple CWP, and (b) the mechanism of cor pulmonale in progressive massive fibrosis. In selected cases consider: (1) perfusion scans (iodinated albumin), and (2) cardiac catheterization including evaluation of the effect of O_2 inhalation.

Structure-function relations

There is a glaring lack-of information on the structural basis of physiologic changes associated with miner's dust inhalation. We recommend: (1) Studies on lungs post mortem includes as detailed measurements as possible (such as recommended in physiology sections). Also measure peripheral airway resistance by retrograde catheter technique. (2) A means be developed to increase the availability of post mortem and resected lung specimens.

Contemporary data on energy expenditure of working miners need to be obtained.

An important result of the Spindletop Conference has been the exchange of ideas. Future conferences of this type could be very useful in furthering advances in this important area of endeavor.

DIAGNOSIS/CLINICAL ASPECTS OF CWP

Synopsis of the diagnosis/clinical session

Chairman: Benjamin V. Branscomb, M.D., FACP, Professor of Medicine and Associate

Professor of Physiology, Medical College of the University of Alabama, Birmingham, Alabama.

Panel Members: Eugene P. Pendergrass, M.D., Emeritus Professor of Radiology, School of Medicine and Graduate School of Medicine, University of Pennsylvania, Philadelphia, Pennsylvania.

Charles E. Andrews, M.D., Provost for Health Sciences, West Virginia University Medical Center, Morgantown, West Virginia.

William H. Anderson, M.D., Professor of Medicine, and Chief of the Pulmonary Diseases Section, University of Louisville School of Medicine, Louisville, Kentucky.

Reviewed and concurred with by the other work session participants.

Summary of diagnosis and clinical aspects

(1) Coal workers' pneumoconiosis cannot be diagnosed in the living in the absence of radiographic changes. There is no characteristic physiological derangement which is indicative of dust in the lungs.

(2) In simple pneumoconiosis no correlation has been demonstrated between X-ray category and either symptoms or physiological impairment, except for evidence that in category 3, ventilation may be slightly impaired. Thus in simple pneumoconiosis the X-ray has no value in predicting the presence or level of functional impairment in the individual miner.

(3) PMF is associated with significant morbidity, functional impairment and increased mortality in many instances.

(4) For epidemiological and comparative purposes the UICC-Cincinnati X-ray classification should be used. The PHS modification of ILO, however, is acceptable as an alternative for clinical purposes.

(5) Macroradiographic techniques do not contribute significantly in the diagnosis of pneumoconiosis and are not applicable to radiographic surveys.

(6) Lung biopsy is not useful in the diagnosis of coal workers' pneumoconiosis since this may not include involved tissue, and is not necessarily representative of the entire lung. If dust is shown in such a biopsy specimen, this indicates exposure to dust and not necessarily disease. Furthermore, the dust burden of the lung has not been adequately correlated with functional impairment.

(7) The most desirable chest radiograph for the study of pneumoconiosis or other pulmonary disease is one in which the lung is shown in greatest detail. While it is helpful to visualize the mediastinal structures as well, this is of secondary importance. Thus a film in which the vertebral bodies are faintly visible through the heart shadow will ordinarily be adequate for the study of the pulmonary detail. The maximum information can be obtained from radiographs which have a broad range of contrasts, that is, a long, gray scale. High contrast radiographs should be avoided.

The kilovoltage used ranges from approximately 110 to 140 kilovolts and exposure time is comparatively short, $\frac{1}{60}$ to $\frac{1}{30}$ second. With this technique a grid is required to reduce secondary radiation.

(a) The installation and maintenance of the radiographic equipment is of the greatest importance. The electric power source should be independent of other users. It must be of adequate capacity and should be subject to no more than a 5% fluctuation. The radiographic unit must be carefully calibrated at the time of installation and should be recalibrated periodically. Preventive maintenance at regular intervals is necessary.

(b) The generator should have a minimum capacity of 300 milliamperes at 125 kilovolts. A generator with a capacity of 150 kilovolts is

To Be Published: "Essentials of Chest Radiography," G. Jacobson, M.D., H. Bohlig, Dr. Med. and R. Kiviluoto, M.D.

strongly recommended. The generator must be full wave rectified. It should be equipped with an accurate timer plus or minus 1% capable of minimum exposure of no more than 10 milliseconds.

(c) A rotating anode tube is essential. It should have as small a focal spot as feasible for the anticipated load but in no instance should this exceed two millimeters in diameter.

(d) The total filtration, added and inherent, of the primary X-ray beam should be the equivalent of two millimeters of aluminum.

(e) The radiation should be confined by means of a collimator to the portion of the subject to be examined. This will not only decrease radiation hazard but also will improve the detail by reducing scattered radiation. The collimator should have adjustable diaphragms, a light beam for centering and be designed so the projected field cannot exceed the size of the film. Evidence of collimation should be visible at the edges of the film as cone cuts.

(f) Medium speed intensifying screens should be used. They provide the best compromise between sharper definition and short exposure. The cassettes in use must contain screens of the same speed and they must be checked periodically for screen cleanliness, contact and defects.

(g) The X-ray film should be of a general purpose type and of medium sensitivity. High speed film is not recommended. To improve collimation the film should be no larger than needed to cover both lungs including the costophrenic angles.

(h) When using kilovoltages of 80 and above, reduction of secondary radiation by a grid or other means is essential. A 10 to 100 line per inch fixed grid or an air gap of eight inches with an eight foot focal spot film distance may be used.

Technique

(a) Correct centering of the X-ray tube and careful positioning of the subject are of great importance for the proper visualization of anatomic structures and comparison of serial examinations. For the PA projection, the X-ray tube should be centered to the center of the film and the X-ray beam directed horizontally. The shoulders should be positioned so that the scapulae are outside the lungs. The exposure should be made at full inspiration and made immediately after this has been reached to avoid the Valsalva effect. It is desirable, but not essential, that all the clothes above the waist be removed.

(b) The focal spot film distance should be fixed between 5 and 6 feet (1.5 and 2.0 meters).

(c) For the reasons given above, a variable high KV, constant mAs technique is recommended. Exposure factors employed may vary somewhat with each generator and tube. The highest range of KV and shortest range of mAs obtainable should be used. For the average subject, with an AP chest diameter between 21 and 23 cm., the usual exposure factors will be 5 mAs at approximately 125 KVP. The recommended exposure time is $\frac{1}{60}$ (.017) second. It should not exceed $\frac{1}{30}$ (0.32) second. With larger diameters of the chest, additional exposure is obtained by increasing the kilovoltage. The mAs is increased only when the kilovoltage required to give a proper exposure exceeds the capability of the generator or X-ray tube. With focal spot-film distances of less than 6 feet (2.0 meters), the technique should be adjusted by decreasing the mAs.

When using a low kilovoltage technique, the exposure factors for an average subject will be approximately 300 mA, 0.05 second (15 mAs) at 75 kv. For larger subjects, greater amounts of radiation are obtained by increasing either the mAs or the kv.

(d) Phototimers are inaccurate with exposures of less than .03 second and are not

recommended with the technique suggested above since films of variable density and contrast result. Phototiming can be very useful with exposures of longer duration. The criteria above apply to both mobile and fixed installations. The application of this technique to mobile units will result in a marked decrease in the number of inadequate films obtained from such units. No attempt should be made to evaluate pneumoconiosis from technically inadequate films.

(8) The conventional chest roentgenogram has no value in establishing the presence or severity of chronic bronchitis.

(9) It generally requires an average of 15 years of underground exposure for the development of pneumoconiosis; those miners who have radiographic evidence in a shorter period of time should be considered for removal from a dusty atmosphere.

(10) No consistent relationship has been established between carcinoma of the lung and coal mine dust exposure.

(11) There is no evidence at this time that forms of emphysema other than focal emphysema can be attributed to factors encountered in coal mining.

(12) There is a geographic variation in the prevalence of pneumoconiosis among miners.

Recommendations

(1) A mechanism should be developed for the distribution in the United States of standard ILO films to any interested physician, radiology department or investigator in pneumoconiosis.

(2) It is recommended that all men in the coal industry have a pre-employment medical examination including chest radiographs and pulmonary function studies. These examinations should be repeated at least at five-year intervals. This material should be collected in a manner suitable for scientific examination as well as clinical use.

(3) Radiographic research should be encouraged in improved survey techniques, in post mortem radiography, and in inhalation and perfusion scanning methods in the various radiographic categories of pneumoconiosis.

(4) Prospective studies of the natural history of coal workers' pneumoconiosis are needed and should be correlated with all environmental factors. One goal of these studies should be to determine the relationship between the exposure and the risk of disease, resulting in a determination of guidelines for permissible safe exposure for his working lifetime.

(5) Engineering research and action directed toward improving the environmental conditions of the coal miner must continue concurrent with the medical research.

(6) Because of our lack of specific knowledge concerning carcinoma of the lung, coronary disease, tuberculosis and other diseases in the miner, we urge that future surveys be directed toward the total health of the miner in relation to his environment.

(7) Proper correlation of pathological findings with clinical, X-ray and physiological studies have been seriously impaired by the lack of autopsy material. Effective mechanisms must be developed which will provide access to autopsy material in conjunction with other studies. An adequate central facility should be available for the study of that material.

(8) Our concern is the health of the coal miner. In order to achieve this, there must be a coordinated effort and support in order to obtain, train, and utilize personnel and equipment for dust surveillance and control as well as medical research. The miner must have continuing medical care, including adequate vocational and rehabilitative services for those who are disabled.

(9) We strongly recommend that funds be recruited for distribution by an impartial, responsible research committee to competent investigators. In addition this committee should be responsible for periodic review of progress in the understanding and elimination of pulmonary problems of coal miners.

Mr. KEE. Mr. Chairman, as the Representative of the Fifth Congressional District of West Virginia, which is the largest coal-producing congressional district in the United States, I take this opportunity to highly commend Mr. DANIELS of New Jersey, chairman of the Subcommittee of the House Committee on Education and Labor, which held hearings on justly due payments to those coal miners who are suffering lung disease. Specifically lung disease due to the inhalation of dust because of exposure to dust by working underground in the mines. In addition, I commend Chairman DENT of Pennsylvania, and the most able and outstanding chairman of the House Committee on Education and Labor, my very dear friend, Congressman PERKINS, of Kentucky, and Mr. BURTON of California, for their leadership in guiding through the committee the Federal Coal Mine Health and Safety Act of 1969, which we are now considering.

Having been born and raised in a coal-producing area, it is my humble opinion, based upon experience, that section 112, subsection B, which provides payments to miners totally disabled from complicated pneumoconiosis and to widows of miners who suffered from complicated pneumoconiosis at the time of death, is the most important section of this historic legislation that we are now considering.

In simple words—this provision merely states that payments will be made to those disabled miners who are no longer physically able to continue working in the coal mines because of this dread and fatal disease. These are the men who are totally disabled but have been denied compensation by virtue of the fact that they are not covered under State workmen's compensation laws and—as such—they are denied these justly due benefits. It is important to note that this provision provides payments to the widows and eligible children of our coal miners who have gone to an early grave because their husbands and fathers contracted this dreaded disease during the course of their employment.

Mr. Chairman, this measure provides not only financial assistance but equally important, a renewed hope in the hearts of those who will be eligible for these benefits upon enactment of this section of the bill. It is my hope that justice will prevail and the Members of this House will vote overwhelmingly to retain this vital provision of the legislation now before us.

Not only the coal miners of America—but all Americans—owe a debt of gratitude to the members of the House Committee on Education and Labor—who guided this section through for our favorable consideration.

Mr. OLSEN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Montana.

(Mr. OLSEN asked and was given permission to revise and extend his remarks.)

Mr. OLSEN. Mr. Chairman, I subscribe to the views expressed by the gentleman in the well and the chairman of the committee (Mr. PERKINS). I think we should all be enthusiastically in support of the committee position and against the

amendment offered by the gentleman from Iowa.

Mr. Chairman, we are considering today legislation which meets a long standing need. H.R. 13950 provides the needed revision of the Federal coal mine health and safety bill. It provides for the first time a health standard and provisions for the regulation of dust exposure by coal miners.

This legislation is the end product of the work of a great many men and several organizations. Prominent in this effort was the contribution made by the United Mine Workers of America and by its officers and membership.

Of special note is the contribution of the Union president, Mr. W. A. Boyle, his safety director, Mr. Louis Evans, and his director of the department of occupational health, Dr. Loren E. Kerr.

These men, over the months since January, have helped to shepherd this bill through the various stages of the legislative process. They have made themselves available to every member for counsel, for information, for interpretation, and for the practical experience which we needed in our deliberations of the bill before us.

From the long tradition of the union in the health and safety field, have come many constructive suggestions which are now embodied in the legislation. For example, some of these are: 3 milligram dust level; the stationing of a Federal mine inspector at every mine considered to be liberating excessive quantities of methane; rescue chambers for post-disaster periods; an increased ventilation requirement; and Federal compensation for the victims of black lung.

These suggestions and their legislative embodiment represent both the concern of coal miners for health and safety and the expertise of officials of the United Mine Workers of America who translated theory into practical legislative language.

I would also be remiss if I did not pay tribute to the Committee on Education and Labor, which considered this legislation. That committee, under the able leadership of Congressman PERKINS and Congressman DENT, has labored long and diligently to bring out an effective coal health and safety bill.

The Coal Mine Health and Safety Board of Review came into being in 1952. It was intended then to be an appeal mechanism where operators could go in the event of closure orders by Federal mine inspectors.

Under the conditions of that time, such a mechanism may have been desirable. Federal coal mine inspectors had no regulatory authority. Their inspections were authorized only for advisory purposes and their recommendations did not have to be accepted. In 1952, the law provided for effective enforcement by the inspectors. There was a fear, a perhaps legitimate fear, that unreasonable, capricious action on the part of the Secretary or his designee would severely injure the economic position of coal mining.

The Board was an attempt to forestall such a development.

However, in the years between 1952 and 1969, Federal coal mine inspectors have gained a great deal of experience in the enforcement of the Federal law.

The Bureau of Mines, the Secretary of Interior, have a great body of practical knowledge upon which to base their decisions. No one can successfully argue that the Secretary or the Chief of the Bureau has been arbitrary or capricious in the enforcement of the Coal Mine Health and Safety Act. To the contrary, a great deal of criticism may be leveled because the Secretary or the Bureau has not been rigorous enough in enforcing the law.

In addition, the Federal Coal Mine Safety Board of Review as initially constituted, was of relatively narrow scope. Under the present bill, that scope has been significantly broadened. It includes the Board not only in the appeals procedure, but also in the review of standards and in the assessment and collection of money for research and development. I do not believe that the original support for the Board encompassed such a broad range of responsibilities for it.

The intervention of an appeal board of this type in administrative procedures is at best a compromise with effective law enforcement. Perhaps under some circumstances it may be necessary. I do not believe it necessary or desirable at this time.

The Federal Coal Mine Safety Board of Review has served its purpose. It has gotten the coal industry over the initial shock of Federal regulations, but now the coal industry must be prepared to accept Federal regulation in which neither industry or labor have a significant determining factor but rather in which the Federal Government will assume regulatory responsibilities.

Therefore, Mr. Chairman, I am happy we have stricken the Coal Mine Safety Board of Review from this bill.

Mr. PRICE of Illinois. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Illinois.

(Mr. PRICE of Illinois asked and was given permission to revise and extend his remarks.)

Mr. PRICE of Illinois. Mr. Chairman, I strongly support the Federal Coal Mine Safety Act of 1969. As a cosponsor of this legislation, I am pleased that we have the bill before us. It reflects my long standing concern for the health and safety of our miners and the well being of their families.

It is gratifying to me that we are strengthening and improving our mine safety efforts and that we are focusing on the health needs of our miners. It has been 18½ years since I introduced H.R. 268 which became the foundation for the 1952 Coal Mine Safety Act. On January 3, 1951, the first day of the 82d Congress, I introduced that bill, which later served as the basis for the hearings before the House Education and Labor Committee following the terrible West Frankfort, Ill., disaster in December 1951 and from which evolved legislation which was approved by Congress and later signed into Public Law 82-522.

But it also concerns me, Mr. Chairman, that the legislation we have before us today is the result of the Farmington, W. Va., mine disaster of last November when 78 miners lost their lives.

Why is it that the national conscience must be stricken before action is taken? There should be no question about the obligation of this House to the health and safety of our coal miners.

As I said in this House Chamber on July 2, 1952, when we considered the Federal Coal Mine Safety Act of 1952, an outgrowth of my bill H.R. 268:

It is the duty of Congress to provide adequate safeguards for the lives of those courageous men who dig the Nation's coal.

It is still our duty to do so and in doing so we must enact into law the strongest possible bill; not only from the standpoint of attempting to prevent the terrible tragedies and disasters that we have witnessed in the past but also in terms of preventing the suffering and misery that comes with the day-to-day accidents and the crippling diseases afflicting miners.

I shall not go into the provisions of the bill except to state that I feel it is imperative that we establish the soundest health and safety standards possible that adequately protect our miners and that we provide for the capability to deal with new types of hazards which might arise in the future. This bill, I feel, represents a step in that direction because it is in the interest of the coal miner.

Mr. DANIELS of New Jersey. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the chairman of the Select Education Committee.

(Mr. DANIELS of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. DANIELS of New Jersey. Mr. Chairman, it is not true that this section was approved by the full committee by a vote of 25 to 9?

Mr. DENT. That is exactly correct.

Mr. DANIELS of New Jersey. And is it not likewise true that the Senate in its consideration of the miners health and safety bill adopted on the floor a provision which is substantially in agreement with section 112(b), the matter under consideration now?

Mr. DENT. They voted for it in the Senate, with every Member of the Senate present, with 91 votes—a unanimous vote, practically—for the same proposition that is before us now.

Mr. DANIELS of New Jersey. Mr. Chairman, I rise in opposition to the amendment.

Section 112(b), "Entitlement to miners," is needed to have thousands of miners, their widows and children from a life of despair, illness and poverty.

The number of miners employed in coal mines has fallen from 650,000 in the late forties to a current figure of approximately 150,000.

In the last 20 years, approximately 1 million miners have been exposed to hazards of coal dust. As a result, some experts estimate that there are about 100,000 cases of miners' pneumoconiosis in this country today.

According to the Public Health Service, 20 percent of all inactive and 10 percent of all active miners show X-ray evidence of the disease, and of these, 3 percent of the inactive—18,000—and 3

percent of the active—4,300—miners have progressive massive fibrosis—the complicated form of the disease that causes severe disability and premature death.

Coal miners' pneumoconiosis was recognized as such in Great Britain as early as 1943 when it was defined as a disease separate from silicosis.

Pneumoconiosis was not generally recognized as such in the United States until this decade. Prevalence studies by the Pennsylvania Department of Health—1959-1961—and by the Public Health Service—1963-1965—confirmed the existence of the disease, documented its prevalence among coal miners and showed it was a widespread problem.

This Nation's failure to take cognizance of coal miners' pneumoconiosis as a separate clinical study some 20 years after this dreaded disease was recognized by Great Britain and other European countries has had five particularly unfortunate results:

First, it precluded attempts by private enterprise to control coal dust in the mines in order to prevent the effects of this insidious disease.

Second, it caused States to neglect the problem when it was in its inception and the cost of prevention could still be economically borne by State governments or private enterprise.

Third, it operated to prevent disabled coal miners from obtaining workmen's compensation, proper medical care, and other remedial action. Thus, many thousands of miners have died before their claims were processed or the statute of limitations expired which prevented many miners from proving their claims in time to receive benefits.

Fourth, it is economically impossible for most States to provide funds for retroactive claims.

Fifth, it is unconstitutional to make private employers pay these claims.

Therefore, section 112(b) is an attempt to do something about a situation which was created to a major extent by Federal neglect.

Section 112(b) is an emergency relief provision to aid thousands of miners and their widows and children.

For us to fail to provide for the future health, safety and protection of coal miners and at the same time to deny to the worker who has already given up precious years of life in this, our Nation's most hazardous occupation, would be both callous and unforgivable on our part.

We in Congress must concern ourselves with the unmet needs of the disabled miner and his family when his State, his employer, and his union have not met their responsibilities.

Section 112(b) is not intended to establish a Federal precedent in the area of payments for the death, injury or illness of workers. However, coal miners' pneumoconiosis is one of our Nation's most critical occupational health problems. It is up to us to act and to act now.

Mr. MINISH. Mr. Chairman, I rise in opposition to the amendment.

(Mr. MINISH asked and was given permission to revise and extend his remarks.)

Mr. MINISH. Mr. Chairman, I do not know how many people in this House have worked in the mines, but I had the privilege, if you want to call it that, of working in the mines. My father worked in them but died at the very early age of 36.

Mr. Chairman, I doubt that there are very many Members of Congress who would work in a mine for a full year's salary. I doubt if there is any other place of work where you actually look for rats for protection. I say this because anyone who has worked in a mine never hurts a rat. The rats can be heard moving around up in the roof of the mine, and perhaps, 2 or 3 days later you will have a cave-in. Therefore, when a miner hears a rat scurrying around in the roof of the mine, he loses no time in leaving the mine.

There is something else I want to say, Mr. Chairman, and that is this: Many of the mines are closed up now and when the disease develops, they are no longer in business. These miners, therefore, wind up on public welfare anyway.

I do not know how anyone in his right mind—I really do not—could support this amendment. It is beyond me to talk about being a Christian as the gentleman from Illinois does and not be able to support this provision of the bill. One is being a good Christian when one takes care of his brother. We are undertaking to take care of our brothers through this bill.

If you support your brother, you support the children of the miner who has been injured or disabled from this disease.

GENERAL LEAVE TO EXTEND

Mr. BURTON of California. Mr. Chairman, I ask unanimous consent that all Members may be permitted to extend their remarks in the Record on this subject of the Scherle amendment at this point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa (Mr. SCHERLE).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. ERLBORN

Mr. ERLBORN. Mr. Chairman, I offer a series of amendments and ask unanimous consent that they may be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. HALL. Mr. Chairman, reserving the right to object, I think it is only fair that the Members on the floor might know what the amendments are before the unanimous-consent request is granted.

May we have the Clerk read them?

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. HALL. I yield to the gentleman from Illinois under my reservation of objection.

Mr. ERLBORN. Before the amendments are read, I would like to state that some of the amendments I am asking

to be considered en bloc would, if adopted, amend title II which is not yet open to amendment. I serve notice that should the amendments be adopted I will move to amend the sections in title II to conform to the amendments that are being considered en bloc if such unanimous-consent request is granted.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. ERLBORN:

(Section 101(a))

On page 5, line 18, after the word "safety" insert "and health".

On page 5, line 19, after the word "injuries" insert "and ailments".

On page 5, line 20, strike the word "shall" and insert "may".

(Section 101(b))

On page 6, line 3, after the word "safety" insert "and health".

On page 6, line 9, after the word "safety" insert "and health".

On page 6, line 11, after the word "technical" insert "and economic".

On page 6, line 13, after the word "safety" insert "and health".

Beginning on page 6, line 14, section 101(c) is amended to read as follows:

"(c) Mandatory health standards proposed by the Secretary 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 States, advisory committees, miners, other interested persons, and where appropriate, foreign countries."

Beginning on page 7, line 5, section 101(d) is amended to read as follows:

"(d) The Secretary shall 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. The Secretary may, upon the expiration of such period and after consideration of all relevant matter presented, except as provided in subsection (e) of this section, promulgate such standards with such modifications as he may deem appropriate."

(Section 101(f))

On page 8, lines 17 and 18, strike the commas and the words "in the case of mandatory safety standards".

On page 8, line 20, strike the word "safety". Beginning on page 8, line 21 through page 9, line 4, strike the next to the last sentence beginning with the word "Upon" and ending with the word "standards."

On page 9, line 5, strike the word "either" and insert the word "the".

(Section 202(a))

On page 45, lines 6 and 7, strike the words "and the Secretary of Health, Education, and Welfare".

On page 45, line 9, strike the word "Secretaries" and insert in lieu thereof "Secretary".

(Section 202(b))

On page 46, lines 8, 9, 24, 25, and page 47, lines 16 and 17, strike the words "and the Secretary of Health, Education, and Welfare".

On page 47, line 11, strike the words "of Health, Education, and Welfare".

(Section 202(c))

On page 47, lines 20 and 21, strike the words "and the Secretary of Health, Education, and Welfare".

(Section 203(b))

On page 50, lines 4, 5, 8, 9, strike the words "and the Secretary of Health, Education, and Welfare".

(Section 204)

On page 50, lines 18 and 19, strike the words "and the Secretary of Health, Education, and Welfare".

(Section 205)

On page 51, line 5, strike the word "prescribe" and insert in lieu thereof "recommend"; and, on line 8, strike "shall" and insert "may".

Mr. ERLBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the series of amendments be dispensed with, and that they be printed in the Record.

I also renew my request that the series of amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLBORN. Mr. Chairman, the majority on our committee are aware of what this amendment does, other Members are not. I have asked unanimous consent that further reading be dispensed with and that these amendments be considered en bloc because it is a long series of technical amendments to accomplish only one point. Only one thing is sought to be accomplished, and I will explain that so that the Members will understand.

In the bill as introduced for the administration, and in the bills as introduced for other interested parties, the Secretary of the Interior was empowered to establish and promulgate safety and health standards. During the consideration of the bill that is now before us regarding health standards, the subcommittee, and again the full committee, saw fit to change the procedure relating to health standards. The procedure that is established in this bill is a very bad procedure in my opinion.

The bill before us would give the Secretary of Health, Education, and Welfare the authority to carry on health research. Further, it would give to the Secretary of Health, Education, and Welfare the authority to develop health standards, and to direct the Secretary of the Interior to adopt these standards, and then the Secretary of the Interior would be obligated to enforce the standards.

The problem that I see here is one of, first of all, governmental organization. I happen to be the ranking minority member on the Subcommittee on Executive and Legislative Reorganization of the Committee on Government Operations, and in this capacity I hope that I have some knowledge of the structure of our Federal Government, and as far as I am aware there is no place in the Federal Government where we have one Cabinet-level Secretary who can develop a set of rules and regulations and direct another Secretary to adopt them and enforce them, and yet that is what the committee, in reporting this bill to you, is asking you to do. It is bad organization. It has built-in conflict. The Secretary of Health, Education, and Welfare should not be able to dictate to the Secretary of the Interior.

Now, will the health standards so established be workable? I doubt in my humble opinion that they will be workable because nowhere in the establishment of the health standards will we get any input as to the technology that is available in the mines.

The Bureau of Mines within the Department of the Interior has the expertise. I know the argument is made that health expertise is in HEW. I agree that it is. But you cannot separate engineering technology from the control of dust in the mines. The only way you can control dust in the mines is through using existing or future developed technology.

What should be done is what was in the original bill, and that is what I would put back in with this amendment. Let the Secretary of Health, Education, and Welfare conduct studies relating to pneumoconiosis and the health of the miners. Let the Secretary of Health, Education, and Welfare recommend health standards, but then let there be the input from the Secretary of the Interior as to the reasonableness of those standards that can be obtained.

The argument that I have used in the supplemental views in the report—some of you may have read them—is carrying this to the extreme, and that is what, if the Secretary of Health, Education, and Welfare, looking at health only, should decide that it would be desirable to have no dust whatsoever in a coal mine, and he proposed a health standard of zero concentration of dust in the mine and directed the Secretary of the Interior to promulgate and enforce that regulation? It could not be done. We would close down every coal mine in this country if it were attempted. That is the sort of extreme result that could be accomplished through the kind of procedure that is in this bill, where the Secretary of the Interior and the Bureau of Mines have no input whatsoever in the establishment of health standards.

I would hope that the chairman of my subcommittee would support me in this because I think if we are going to get what we all want, workable health and safety legislation that can be enforced, and will do something to protect the miners, it can only be accomplished in the field of health if we have the input from both the HEW and Interior and if we have the man who is going to enforce the law being the one primarily responsible.

Mr. DENT. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, since we are breaking new ground on this particular bill, it would be well to now consider the various arguments pro and con, especially at this moment when we are establishing the guide rules that are going to govern this legislation in the future.

We did not go into this blindly nor did we do it without a great deal of research. We found only one country in the world that has a significant program on this particular subject matter before us today, namely, the question of dust standards and the question of miner's health on a national basis.

We found that the British do have what they call a National Coal Board which would be likened unto our Sec-

retary of the Interior and his Bureau of Mines. But we also found that they have an independent body that handles health standards and promulgates the rules and regulations dealing with dust standards and all of the rules and regulations and standards dealing with pneumoconiosis and the payments of benefits to miners.

It has everything to do with the health sector of the mining law of Great Britain.

However, we have a better reason for doing this. We also discovered that the result of all of the X-rays not going to a central body caused the British in the last 50 years to have chaos in the administration of their act.

So they finally brought it all under this particular health department where every miner's case history is before this particular group at all times. They have a laboratory that has 30,000 specimens of autopsies in it. They have a research bureau in Edinburgh that does nothing but research on miners' diseases. This is all done by that health department.

If we let our Department of Health, Education, and Welfare handle this program, it will be handled with the idea—and the only purpose of the act, so far as the Secretary of Health, Education, and Welfare is concerned—is the health of the miner. The Secretary can look to the provisions we put in the bill to get away from the dangers the gentleman from Illinois believes may occur. We say in section 101(c)—

The Secretary of Health, Education, and Welfare shall, in accordance with the procedures set forth in this section, develop and revise, as may be appropriate, mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners. Such development and revision shall be based upon research demonstrations, experiments, and such other information as may be appropriate. In the development of mandatory health standards, the Secretary of Health, Education, and Welfare may consult with appropriate representatives of the operators and miners, other interested persons, the States, advisory committees, and, where appropriate, foreign countries.

Mandatory health standards which the Secretary develops or revises shall be transmitted to the Secretary and shall thereupon be published by the Secretary as proposed mandatory health standards.

Now, they must be published. The Secretary must publish them in the Federal Register. It will afford interested parties a period of 30 days in which they can submit written data or comments.

We are not tying the Secretary's hands. We are not saying that one member of the Cabinet has a whip over the head of another Cabinet member. We are putting the ducks in a row. We are rendering to Caesar the things that are Caesar's and to God the things that are God's. The Department of Health, Education, and Welfare handles health matters; the Secretary of the Interior handles safety.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Illinois.

Mr. ERLBORN. Is it not true that under the provision you just read the Secretary of Health, Education, and Welfare would develop the standards; he would then transmit them to the Secre-

tary of the Interior, who must then publish them as mandatory standards?

Mr. DENT. That is correct.

Mr. ERLBORN. The Secretary of the Interior, then, would have no authority but to publish them. He would have no input at that point.

Mr. DENT. The gentleman is correct but the Secretary certainly has an input before the proposed standards are published, and it is totally unrealistic to believe the Secretaries will not be communicating with each other before the Secretary of Health, Education, and Welfare proposes a mandatory health standard.

Mr. ESCH. Mr. Chairman, I rise in support of the amendment. I recognize the sincere intent of the distinguished Chairman of our subcommittee: that is that this legislation be as strong as possible. I would, therefore, agree with the intent of his remarks.

The question that the amendment addresses itself to, however, is just this: Are we or are we not going to have administratively a bill that is strong, that is direct, and places direct responsibility for the health and safety of miners in one particular office and administration? That is the essence of the amendment.

If you believe that we should develop a two-headed monster in regard to health and safety measures, then you will reject the amendment. If you believe that we should utilize to the fullest all of the expertise available in the Department of Health, Education, and Welfare; and then having given that expertise and that research and analysis—everything that our subcommittee chairman has indicated should be done in Health, Education, and Welfare, the final responsibility should be pinpointed in one particular man so that the responsibility can be clearly delineated.

If we believe we should have a pinpointed responsibility, then we will vote for this amendment. In essence, then, this is a strengthening amendment, which will strengthen the administration of this act. It will place direct responsibility on one man, yet will in no way weaken the role of HEW from the standpoint of providing the necessary expertise. I recommend strongly to this committee that this amendment be adopted.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment and move to strike the necessary number of words.

Mr. Chairman, there is no reason to anticipate conflict in the administration of this act. By placing the authority to develop health standards in the Department of Health, Education, and Welfare, we are bringing to bear on the solution of a serious national problem all the best scientific and medical expertise available in the Government.

The bill merely states that after the Secretary of Health, Education and Welfare develops the standards, he certifies them to the Secretary of the Interior, and the Secretary of the Interior must promulgate those standards as certified.

But if anybody takes exception to the standard as unfair or inequitable, he has the right to file exceptions, and the Secretary after hearings may modify in any

way he wants to, and there is also the right to go to court.

Mr. ERLLENBORN. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Illinois.

Mr. ERLLENBORN. Mr. Chairman, I would like to straighten out that point. The chairman of the subcommittee read only a portion of that section. After the Secretary of the Interior publishes the standards, if objections are made, the Secretary of the Interior may suggest changes. He must then send those suggested changes back to the Secretary of Health, Education, and Welfare, and the final say on what are the health standards is by the Secretary of Health, Education, and Welfare, who then again directs the Secretary of the Interior to promulgate.

Mr. PERKINS. Mr. Chairman, here is the reason for this. We provide in the House bill that all mines shall achieve a 3.0-level in 6 months, with waivers for an additional 6 months. We feel the Secretary of Health, Education, and Welfare, where the technical assistance is available, is in a better position to develop the health standards and determine the effect of dust levels for example, on human health. I feel that there is no conflict here.

It is true, the Secretary of the Interior, after hearings and after modifications have been made to the standards is required to promulgate the standards as modified.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, is that not the answer to the criticism of the opposition, because they say they want to pinpoint responsibility?

Do we not then say that after the Secretary of the Interior reviews it and he believes a change ought to be made—do any of us believe that two Members working in the same Government and the same Cabinet would not be on talking terms?

Mr. PERKINS. I agree with the gentleman from Pennsylvania.

Mr. DENT. We are pinpointing it.

Mr. PERKINS. We can expect better results without a diffusion of responsibility. The Secretary of Health, Education, and Welfare in arriving at what are just and fair health standards is certainly going to consult with all interested parties. He will have resources and facilities not now available to the Secretary of the Interior.

Mr. ERLLENBORN. If the gentleman will yield, I still contend it is unprecedented to have one Secretary dictating to another.

Mr. PERKINS. This is a workable arrangement that will redound to the benefit of everyone concerned.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Illinois (Mr. ERLLENBORN).

The question was taken; and on a division (demanded by Mr. ERLLENBORN) there were—ayes 26, noes 53.

So the amendments were rejected.

The CHAIRMAN. The Clerk will read.

* * * * *

TITLE IV--ADMINISTRATION

RESEARCH

SEC. 401. (a) The Board shall establish objectives for the conduct of such studies, research, experiments, and demonstrations as may be appropriate—

(1) to improve working conditions and practices, prevent accidents, and control the causes of occupational diseases originating in the coal-mining industry;

(2) to develop new or improved methods of recovering persons in coal mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground portion of the mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine. Such research shall consist primarily, but not exclusively, of (I) studies of the relationship between coal mine environments and occupational diseases of

coal mine workers; (II) epidemiological studies to (1) identify and define positive factors involved in the diseases of coal miners, (II) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of coal miners, and (III) develop criteria on the basis of which coal mine standards can be based; (III) medical prevention and control of diseases of coal miners, including tests for hypersusceptibility and early detection; (IV) evaluation of bodily impairment in connection with occupational disability of coal miners; (V) development of methods, techniques, and programs of effective rehabilitation of coal miners injured or stricken as a result of their occupation; and (VI) setting the requirements, extent and specifications for the medical examinations provided in section 203 of this Act, and utilizing and studying the material, data, and findings of such examinations for the preparation and publication, from time to time, of reports on all significant aspects of the diseases of coal miners as well as on the medical aspects of injuries other than diseases, which are revealed by the research carried on pursuant to this subsection;

(5) to study the relationship between coal mine environments and occupational diseases of coal mine workers; and

(6) for such other purposes as it deems necessary to carry out the purposes of this Act.

(b) To accomplish the objectives established in subsection (a), the Board shall distribute funds available to it after reserving funds necessary for carrying out section 203(a) as equally as practicable to the Secretaries of Health, Education, and Welfare and of Interior. Activities under this section in the field of coal mine health shall be carried out by the Secretary of Health, Education, and Welfare, and activities under this section in the field of coal mine safety shall be carried out by the Secretary of the Interior. In carrying out activities under this section the Secretaries of Health, Education, and Welfare and of the Interior may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. Such Secretaries shall consult and cooperate with the Board on specific projects and programs. No research shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses, products, processes, patents, and other developments resulting from such research will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the interest of national security) be available to the general public.

(c) (1) Each operator of a mine shall, at such times as the Board may prescribe, pay to the United States a royalty equal to 2 cents for each ton of coal he produces for use or sale. When the Board determines funds available to it under paragraph (2) of this subsection are sufficient to carry out section 203(a) and the activities under subsection (b) of this section, it may reduce the royalty required in the first sentence of this paragraph for such periods as it deems appropriate. The royalties so paid are hereby appropriated to the Board for use by it in carrying out this section. In the event an operator fails to pay the royalty required by this section, he shall be liable to the United States in an amount equal to double the amount he failed to pay. The Board may require such reports and shall have such access to the books and records of the operator as may be necessary for the effective enforcement of this paragraph.

(2) In addition to the amount made available under paragraph (1), there is authorized to be appropriated to the Board for each fiscal year an amount equal to 2 cents for each ton of coal produced for use or sale by

operators during the preceding fiscal year for use by it in carrying out this section. In addition, there is authorized to be appropriated each fiscal year to the Board for use by it in carrying out this section, an amount equal to any amount granted by any State to the Board for such fiscal year for carrying out this section, except that the appropriation based on the State's grant may not exceed an amount equal to 1 cent per ton of coal produced for use or sale from coal mines in such State during the preceding fiscal year.

TRAINING AND EDUCATION

SEC. 402. The Secretary shall expand programs for the education and training of coal mine operators, agents thereof, and miners, in—

(1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines; and

(2) 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 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 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.

(g) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and each of the succeeding fiscal years for carrying out this paragraph, the sum of \$1,000,000.

EQUIPMENT

SEC. 404. The Secretary is authorized during the period ending five years after the date of enactment of this Act, to make loans to operators of coal mines to enable them to procure or convert equipment needed by them to comply with the provisions of this

Act. Loans made under this section shall have such maturities as the Secretary may determine, but not in excess of twenty years. Such loans shall bear interest at a rate which the Secretary determines to be adequate to cover (1) the cost of the funds to the Treasury, taking into consideration the current average yields of outstanding marketable obligations of the United States having maturities comparable to the maturities of loans made by the Secretary under this section, (2) the cost of administering this section, and (3) probable losses. In carrying out this section, the Secretary shall to the extent feasible use the services of the Small Business Administration pursuant to agreements between himself and the Administrator thereof.

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 under the provisions of this section 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 and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and, where appropriate, shall cooperate with such institutions in the conduct of such programs by providing financial and technical assistance.

EFFECT OF OTHER LAW

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.

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 made 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 and III of this Act shall become operative 90 days after enactment. The provisions of title II of this Act shall become operative six months after enactment. The provisions of the Federal

Coal Mine Safety Act as amended, are repealed on the operative date of titles I and III 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. 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. (a) Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress and to the Office of Science and Technology 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, the amount and status of each loan made under section 404, a description and the anticipated cost of each project and program he has undertaken under section 401, and any other relevant information, including any recommendations he deems appropriate.

(b) Within one hundred and twenty days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare shall submit through the President to the Congress, the Secretary, and to the Office of Science and Technology an annual report upon the health matters covered by this Act, including the progress toward the achievement of the health purposes of this Act, the needs and requirements in the field of coal mine health, a description and the anticipated cost of each project and program he has undertaken under section 401, and any other relevant information, including any recommendations he deems appropriate. The first such report shall include the recommendations of the Secretary of Health, Education, and Welfare as to necessary health standards, including his recommendations as to the maximum permissible individual exposure to coal mine dust during a working shift.

SPECIAL REPORT

SEC. 412. (a) The Board shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal mine health and safety so as to achieve (1) maximum health and safety protection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) reduce delay to a minimum, and (5) permit most effective use of Federal inspectors.

(b) The Board shall make a report of the results of its study to the Congress as soon as practicable after the date of enactment of this Act.

Mr. PERKINS (during the reading). Mr. Chairman, I ask unanimous consent that further reading of title IV be dispensed with and that it be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

AMENDMENT OFFERED BY MR. ERLÉNORN

Mr. ERLÉNORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Beginning on page 108, line 23, through page 110, line 2, subsection 401(c) is amended to read as follows:

"(c) There is hereby authorized to be appropriated for each fiscal year such sums as may be needed to carry out the purposes of section 203(a) and of this section."

On page 110, between lines 2 and 3, insert the following new subsections (d) and (e):

"(d) No payment may be required of any coal miner in connection with any examination or test given him pursuant to subsection (a) of section 203. Where such examinations or tests cannot be given due to the lack of adequate medical or other necessary facilities or personnel in the locality where the miner resides, arrangements shall be made to have them conducted in such locality by the Secretary of Health, Education, and Welfare, or by an appropriate and qualified person, agency or institution, public or private, under an agreement or arrangement between the Secretary of Health, Education, and Welfare and such person, agency or institution. Such examinations and tests shall be conducted in accordance with the provisions of subsection (a) of section 203. The operator of the coal mine shall reimburse the Secretary of Health, Education, and Welfare, or such person, agency or institution, as the case may be, for the cost of conducting each such examination or test and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

"(e) If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health, Education, and Welfare is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his next of kin. The results of such autopsy shall be submitted to the Secretary of Health, Education, and Welfare and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for the Secretary of Health, Education, and Welfare."

Mr. BURTON of California (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

(Mr. ERLÉNORN asked and was given permission to revise and extend his remarks.)

Mr. ERLÉNORN. Mr. Chairman, I would like to explain the amendment just very briefly. In the bill as reported by the clerk there was a provision for a 2-cent per ton tax to be levied on every ton of coal mined in the United States for the purpose of financing health and safety research and to cover the cost of the periodic X-rays that are required under the bill to be made by the Department of Health, Education, and Welfare.

This amendment would first of all strike the provision for the tax. It would, secondly, insert a provision that the cost of the X-rays made by the Department of Health, Education, and Welfare on a periodic basis would be reimbursed by the coal mine operator for each one of the coal miners employed by him who has an X-ray taken.

In addition, this provides that HEW would have the authority, given the consent of the next of kin of a deceased miner who had pneumoconiosis, to con-

duct an autopsy for the purpose of furthering their health research.

This amendment has been discussed with the chairman of the subcommittee and the full committee and I understand it will be agreed to by them.

Mr. BURTON of California. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. I yield to the gentleman from California.

Mr. BURTON of California. Mr. Chairman, as I understand the autopsy amendment it is the amendment that was otherwise to have been offered by the gentleman from West Virginia (Mr. HECHLER). Is that correct?

Mr. ERLÉNORN. The gentleman's understanding is correct.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, the Senate felt perhaps they might be treading on rather slim constitutional grounds, and therefore, they removed the requirement for payment of any royalty by the operator. We then challenged in various sectors whether or not this committee was out of order in that we were assessing the tax, and we do not have the jurisdiction to assess the tax. So when the gentleman from Illinois proposed we remove the 2 cents per ton royalty I took it up with certain individuals who are Members of this Congress and who have had a great deal more experience than I have had on questions of ways and means and prerogatives of our committee.

They said there was a question as to whether or not we had the right.

Therefore, I went to the gentleman and we discussed it. One thing was, if we took out the 2 cents, would the content of the amendment include that the operator must pay for all the charges made by HEW, not alone for the X-rays and the keeping of the records but in the instances where the opportunity to have the X-ray was not available for the miner at the place where he resided or worked that the miner would be reimbursed for his travel time and expenses through the same charge made to the operator.

Is that right or wrong?

Mr. ERLÉNORN. Yes, I believe the wording the gentleman refers to is contained in the amendment at the end of the second paragraph.

Mr. DENT. Yes.

Mr. ERLÉNORN. It is our understanding that the coal-mine operators will pay the cost of the X-rays and other charges which are necessary costs connected with them.

Mr. DENT. With that understanding, Mr. Chairman, I accept the amendment.

AMENDMENT OFFERED BY MR. BURTON OF CALIFORNIA TO THE AMENDMENT OFFERED BY MR. ERLÉNORN

Mr. BURTON of California. Mr. Chairman, I offer an amendment to the amendment of the gentleman from Illinois (Mr. ERLÉNORN).

The Clerk read as follows:

Amendment offered by Mr. BURTON of California to the amendment offered by Mr. ERLÉNORN: Insert the following:

"(f) On and after the operative date of this title, the standards on noise prescribed under the Walsh-Healey Public Contracts Act, as amended, in effect Oct. 1, 1969, or any such improved standards as the Secretary may prescribe shall be applicable to each coal mine and each operator of such mine shall comply with them. Beginning six months after the operative date of this title, at intervals of at least every six months thereafter, the operator of each mine shall conduct, in a manner prescribed by the Secretary, tests by a qualified person of the noise level at the mine and certify the results to the Secretary. If the Secretary determines, based on such tests or any tests conducted by his authorized representative, that such standards on noise are exceeded, such operator shall immediately undertake to install protective devices or other means of protection to reduce the noise level in the affected area of the mine, except that the operator shall not require the use of any protective device or system which the Secretary or his authorized representative finds will be hazardous or cause a hazard to the miners in such mine."

Mr. BURTON of California. Mr. Chairman, I discussed this amendment with the full committee chairman and with the subcommittee chairman, and they have indicated it is acceptable to them.

This amendment contains the current Walsh-Healey requirements set by this administration in the area of noise and provides certain minimum test check and enforcement machinery. It is something which I believe should be done, and I urge its adoption.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to my distinguished subcommittee chairman.

Mr. DENT. The Senate has a feature in its bill concerning noise in the mines. We discussed the matter, and decided to put something in the bill, so that we would have a position in the conference.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman from Illinois.

Mr. ERLENBORN. As the gentleman knows, he has explained this amendment to me. We have discussed it. I have not agreed to accept it.

Mr. BURTON of California. That is correct.

Mr. ERLENBORN. I feel that if it is within the field of health or safety the Secretary already has the authority to promulgate standards. One of the problems I see is that we would be adopting standards under the Walsh-Healey Act which probably apply to some mines already, and we will make them applicable to all mines. If it is truly a matter of health or safety the Secretary can do this without the amendment the gentleman offers.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Was this subject matter of noise covered in the hearings?

Mr. BURTON of California. No.

Mr. STEIGER of Wisconsin. If the gentleman will yield further, am I correct in the belief that if the other body has adopted a section and this House

does not, that does not foreclose consideration of that issue in the conference?

Mr. BURTON of California. That is correct.

Mr. GROSS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, I would like to address a question to the gentleman from Illinois (Mr. ERLENBORN).

Do I understand that your amendment provides for an open ended funding authorization?

Mr. ERLENBORN. Will the gentleman yield?

Mr. GROSS. Of course.

Mr. ERLENBORN. The authorization contained in my amendment is open ended in that we have not set a dollar figure as a maximum. It will allow funds to be appropriated to the Department of Health, Education, and Welfare to conduct X-ray examinations which will then be reimbursed by the mine operators. It is anticipated that there will be little or no cost involved to the Federal Government and it will become a revolving fund. We have no estimate as to how much it will take to get it started. The moneys appropriated under this authority would be reimbursed by the coal mine operators.

Mr. GROSS. And you do not anticipate that there will be a substantial expenditure as to the amendment you offered?

Mr. ERLENBORN. If the gentleman will yield, he is correct. I anticipate no substantial expenditures.

Mr. GROSS. What about the administrative costs of the total bill itself? Do we have any estimate of the costs of this legislation and of the increased personnel, if there is to be any increase in personnel?

Mr. ERLENBORN. Will the gentleman yield further?

Mr. GROSS. Yes. Of course.

Mr. ERLENBORN. There is no estimate that I can recall from the hearings. It is anticipated that there will be additional personnel to the extent that the Bureau of Mines will be successful in having its request for additional mine inspectors honored by the Bureau of the Budget or the administration. However, others on the committee may have a better recollection of it than I. I do not recall any estimate of the cost of additional inspectors.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. GROSS. Yes. I yield to the gentleman.

Mr. DENT. The only major costs which will be assessable against the Government, the Treasury, will be for the administration of the act, such as for any additional mine inspectors, and so forth, for the payments provision, for the health provisions, and for the research. However, we have to have an open-end type of appropriation so that we will have sufficient money to do the things we have to do. At this point in time, we just do not know the exact cost and we did not want to preclude any of these activities from being undertaken by specifying a dollar authorization as such.

Mr. GROSS. But the gentleman from Pennsylvania does not anticipate that there is going to be any substantial increase in moneys taken from the Federal Treasury for the administration of this act. Is that correct?

Mr. DENT. As far as what the actual administrative expense will be, I frankly do not know. We have made changes in the legislation even today, thereby affecting its administrative cost. I hope whatever is required will be appropriated.

Mr. GROSS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. BURTON) to the amendment offered by the gentleman from Illinois (Mr. ERLENBORN).

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois, as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. DENT

Mr. DENT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DENT: On page 112, line 10, strike out "paragraph" and insert "section".

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania.

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HECHLER OF WEST VIRGINIA

Mr. HECHLER of West Virginia. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HECHLER of West Virginia: On page 117, after line 17, insert: Title IV—Judicial Remedy.

"Sec. 501. Any miner in a coal mine subject to this Act who shall suffer personal injury in the course of his employment as a result of the gross negligence of the operator, may, at his election, maintain an action for damages at law, with the right of trial by jury, against the operator of the coal mine, and in such action all statutes of the United States modifying 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, against the operator of the coal mine, 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 operator resides or in which his principal office is located. This section shall not preempt any existing State statutes or other provisions of this Act which provides for compensation for coal miners. Any recovery obtained under this section shall be reduced by any amounts received under such compensation statutes."

Mr. ERLENBORN. Mr. Chairman, I reserve a point of order on this amendment until the gentleman has time to explain it.

Mr. BURTON of California. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to the gentleman from California.

Mr. BURTON of California. Is this the amendment I offered and, that appeared in the subcommittee recommendation as our title V?

Mr. HECHLER of West Virginia. That is correct.

Mr. BURTON of California. Then, I would I like to commend the gentleman from West Virginia for his interest in this matter. As the author of title V in the subcommittee deliberations obviously I thought it was well drafted and needed and I obviously support it. I am just not sure at this stage of the game what we will do with it, but I would like to commend the gentleman from West Virginia for highlighting during floor debate this very important issue as it affects the rights of those injured in their work.

Mr. HECHLER of West Virginia. I thank the gentleman from California, and I might say that this outburst of good feeling at the end of the evening is greatly appreciated, and so much so that out of deference to the subcommittee and its able chairman, the gentleman from Pennsylvania (Mr. DENT), who has done such a fine job with this bill, that I intend in 2 or 3 minutes to ask unanimous consent to withdraw my amendment.

My amendment would simply authorize suits by miners or their survivors when a miner is injured as a result of the gross negligence of the operator. Under our present State workmen's compensation laws, the compensation takes away the right of the miner to sue. He ought to have the right to sue with a trial by jury, which is a right afforded to railroad employees since 1908. And for over 60 years railroad workers have been even better protected because they only need the test of simple negligence and not gross negligence, as is contained in my amendment.

State compensation laws are totally inadequate in this area. They provide short-term payments to the injured to carry them over the period of disability, but do not compensate them fully for lost wages or pain and suffering resulting from these injuries.

I understand that experience has shown under other Federal statutes where this authority is now established that most cases are settled before they reach the trial stage. I further understand that where the employees are represented by a union contracts are generally negotiated with management whereby payments are made by management that are far higher than compensation law payments. Thus, the employee does not have to undergo the expense of lawyers' fees and the lengthy trials and appeals which might be expected to follow.

I would also like to emphasize that one of the real difficulties in the coal industry has been that there is a great economic incentive for high production. The economic incentive on the equipment manufacturers has been to produce equipment that will take the coal out faster, but will not necessarily protect those human beings who work in the coal mines. In fact the economic incentive is all against safety. I believe a provision such as the right to sue would produce a clear economic incentive on behalf of safety. It would be far cheaper to make

and keep a mine safe rather than risk the expense of suit.

I feel that a provision such as this may be premature in 1969, but I am looking toward the future. I am hopeful that Congress might look with favor on the type of provision that would make it so expensive for a coal operator to maintain an unsafe mine that he would take steps on his own initiative to maintain rigorous safety standards for the protection of all miners.

We talk about workmen's compensation laws taking care of those who lose their arms and their legs that are injured in the mines, but these are totally inadequate in their amount.

The fines and penalties in the bill bring money into the General Treasury, but why should not we help directly the miners who are hurt or killed in the mines?

I would certainly hope that in the future this type of amendment could be considered and adopted.

BENEFITS FOR PNEUMOCONIOSIS

Mr. Chairman, I would like to use just 1 minute of my time to establish an intelligible, legislative history on that wonderful provision of this bill that was written in with the assistance of many Members concerning benefits for those afflicted by pneumoconiosis.

I would like to ask the gentleman from New Jersey (Mr. DANIELS), the chairman of the Select Subcommittee on Labor, two questions. I am sure the gentleman from New Jersey appreciates the fact that this measure is a giant step in the right direction and one which is fully justified by the circumstances. On behalf of thousands of West Virginia coal miners, we thank the gentleman from New Jersey, the gentleman from California (Mr. BURTON), the gentleman from Pennsylvania (Mr. DENT), the gentleman from Kentucky (Mr. PERKINS), and all others who have participated in bringing this provision out in the bill.

There are some cases which the provisions of this bill do not seem to cover, and I would like to ask the gentleman from New Jersey whether in his opinion it would be justifiable to measure the incidence of pneumoconiosis through pulmonary function tests as well as simply and strictly by X-rays?

Mr. DANIELS of New Jersey. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to the gentleman from New Jersey.

Mr. DANIELS of New Jersey. Mr. Chairman, I appreciate the gentleman from West Virginia (Mr. HECHLER), asking that question, and I say to the gentleman that the impact of this legislation is that when diagnosis is made by means other than X-rays or biopsy that, under section 112(b)(iii), complicated pneumoconiosis can be demonstrated by a substantial loss of pulmonary functional capacity even though there was a lesser degree of X-ray abnormalities than that described in section 112(b)(1). In fact, diagnosis of complicated pneumoconiosis should include several factors:

- First, significant exposure to coal dust;
- Second, evidence of lung pathology; and

Third, symptomatology and impairment of pulmonary functions.

Mr. HECHLER of West Virginia. Mr. Chairman, I would further like to ask the gentleman from New Jersey if it is not true that there are many coal miners who may have serious discomfort and disability caused by pneumoconiosis whose X-rays for some strange reason do not clearly indicate the recognition of that disease?

Mr. DANIELS of New Jersey. If the gentleman will yield further, that is very true. As a matter of fact, we have had several doctors testify before our committee, Dr. Raymond Moore of the Environmental Control Administration of the Department of Health, Education, and Welfare, as well as Dr. H. A. Wells, Dr. Andrew Henderson, Dr. I. E. Buff, and Dr. Donald Rasmussen, physicians from coal mining regions with extensive experience in pulmonary diseases, who testified to the effect that X-ray is not the ultimate. It must be included as part of the diagnostic test. But the complete gamut of function tests, good, simple exercise function tests, can be performed simply, along with the physical examination periodically on these men.

Mr. HECHLER of West Virginia. I appreciate the answer of the gentleman from New Jersey. I would like to quote at this point the following letter from Dr. Donald Rasmussen, pulmonary specialist at the Appalachian Regional Hospital in Beckley, W. Va., who wrote as follows to Hon. JOHN DENT:

OCTOBER 6, 1969.

HON. JOHN H. DENT.

DEAR REPRESENTATIVE DENT: I write this letter as a desperate plea on behalf of many thousands of coal miners disabled from respiratory diseases of occupational origin who will be denied rightful benefits under the present provisions for compensation in the pending coal mine health and safety bill. The restrictions limiting compensation only to those miners with "complicated pneumoconiosis" are unwarranted. No more than a minority of those severely disabled miners of this area would qualify for such benefits.

I am aware that most of the testimony and additional opinion upon which this decision was based supported the concept that disabling pulmonary insufficiency is encountered only in those miners with advanced X-ray changes. It must be emphasized that these opinions were based almost entirely upon European experience. Occupational health programs with periodic medical and X-ray examinations have been in operation in coal mines for over 20 years in some European countries. Miners showing early X-ray evidence of pneumoconiosis have been removed from dusty areas. In addition, dust suppression has been employed in most European coal mines. Thus, the risk to the European miner has been significantly reduced.

You are aware of the total lack of periodic examinations of American miners and the relative lack of dust suppression in coal mines in this country. Not a single miner of the more than 4,000 evaluated in this laboratory has had periodic chest X-rays. These differences in conditions may be sufficient to explain the apparent differences between European miners and miners at least in the Southern Appalachians in this country. We have observed a number of miners who were known to have X-ray evidence of pneumoconiosis for 10 to 25 years before our evaluation. These men continued working without symptoms until perhaps the last 2 to 4 years. Most showed clear-cut evidence of significant pulmonary insufficiency on

testing in the laboratory. In only a small number did the chest X-rays reveal more than simple pneumoconiosis. In reviewing the laboratory studies of large numbers of miners and excluding all cases with significant bronchitis it is apparent that those miners with complicated pneumoconiosis on the average show somewhat more impairment than miners with only simple pneumoconiosis. There are wide variations in both groups, however. Many miners with minimal X-ray abnormalities have impairments of pulmonary functional capacity equal to or exceeding that of miners with advanced X-ray changes. On what basis, therefore, can one arbitrarily judge the miner with simple pneumoconiosis and severe incapacity to be ineligible for compensation?

I firmly believe that in addition to miners with complicated pneumoconiosis those with lesser degrees of X-ray abnormalities but with substantial loss of pulmonary functional capacity be considered eligible for compensation under the new bill.

I urge the Members of the Committee to give the above suggestions most thoughtful consideration. Without the additional inclusion the bill will provide relief far short of its intended goals.

Respectfully,

DONALD RASMUSSEN, M.D.

Mr. HALL. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to the gentleman from Missouri.

Mr. HALL. I just rise to a point of clarification.

I certainly agree with the answer to the gentleman from West Virginia's second question. But I do not believe he wants to establish a legislative record that one can determine pneumoconiosis or the involvement of the lung solely by pulmonary function itself?

Mr. HECHLER of West Virginia. That was not my intent, nor was this conveyed in the answers of the gentleman from New Jersey. We have merely established the fact that one cannot rely precisely or strictly on X-rays in determining the degree of disability from pneumoconiosis.

Mr. HALL. With that I agree, but there are many other things that can cause lung disease affecting the pulmonary function tests.

The CHAIRMAN. The time of the gentleman from West Virginia (Mr. HECHLER) has expired.

Mr. HECHLER of West Virginia. Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mrs. MINK. Mr. Chairman, I rise in support of H.R. 13950, the Federal Coal Mine Health and Safety Act of 1969. As a member of the General Labor Subcommittee of the House Committee on Education and Labor, I took part in the drafting of this long-overdue measure establishing uniform health and safety standards for the coal miners of our Nation.

For the first time under this legislation we will have mandatory standards for all underground coal mines in the amount of respirable dust allowable in the mine atmosphere.

Approximately 100,000 active and retired coal miners are presently afflicted with pneumoconiosis, also known

as black lung, a disease caused by excessive exposure to coal dust in the air over a long period of time. About half of these miners are disabled from the ailment. For many, existence in this living death is the price they must pay for the long years of hard labor in the mines.

Complicated pneumoconiosis causes progressive massive fibrosis as a complex reaction to dust and other factors, which may include tuberculosis and other infections. The disease in this form usually produces marked pulmonary impairment and considerable respiratory disability. This severely limits the physical capabilities of the individual, and may contribute to other causes of death. Once hardy and vigorous coal miners become reduced to invalids gasping for breath as they sink slowly into physical decay. When the disease is contracted, it is progressive and irreversible.

There is no specific therapy for pneumoconiosis in either its simple or complicated forms. Prevention of this disease is the only logical step. Adequate environmental dust controls, use of respirators, or removing the miners from the dusty environment as soon as they show minimal evidence of lung damage appear to be, under present technology, the only helpful preventive procedures. H.R. 13950 establishes strict environmental dust control standards and periodic medical examinations of miners as a means of combating this dread disease.

The British, after extensive study, determined that the probability of a miner contracting pneumoconiosis after 35 years of exposure to a dust concentration of 3 milligrams per cubic meter of air, is about 5 percent. This bill establishes a dust limit of 4.5 milligrams within 6 months of enactment. This level must be further reduced to 3 milligrams 6 months thereafter. The Secretary of Health, Education, and Welfare is authorized to reduce this limit further when reductions become technologically attainable.

I feel that this new safeguard will help protect the coal miners' health by lowering the amount of respirable dust they must breathe into their lungs while working in a coal mine, thereby reducing their susceptibility to contracting pneumoconiosis.

The bill also requires that respirators or other approved breathing devices be made available to all persons exposed to dust concentrations in excess of the limit established by this bill. However, the bill expressly prohibits the use of these respirators as a substitute for achieving environmental controls of the dust concentration in the mines.

Under the medical examination provision, section 203, each miner will have an opportunity to have a chest roentgenogram taken without charge at least once every 5 years. Physicians diagnose pneumoconiosis on the basis of X-ray evidence of nodules in the lungs. When a worker begins in the coal mines for the first time, he will be given a chest X-ray at the start of his employment and again 3 years later. If the second such X-ray shows evidence of the development of pneumoconiosis, the worker shall be given an additional chest X-ray 2 years

later. The Secretary of HEW is responsible for reading, classifying, and recording all readings for each miner, and may prescribe such other supplemental tests as he deems necessary.

Any miner who, in the Secretary's judgment, shows substantial evidence of the development of the disease shall, at the option of the miner, be assigned by the operator to work in a relatively dust-free area of the mine, or in any other area provided he wears respiratory equipment. Any miner so assigned shall not receive less than his regular pay. This section of the bill is of equal importance with the dust-control section, insofar as prevention of black lung.

To protect miners from explosions such as the November 20, 1968, tragedy near Farmington, W. Va., in which 78 miners lost their lives, the bill codifies Interior Department safety regulations and establishes new requirements for electrical equipment for gassy mines. After a phase-in period only electrical junctions, distribution boxes, and equipment that the Secretary of the Interior designates as permissible will be allowed.

The bill provides a delay of up to 6 years in application of these electrical safety standards to nongassy mines. I would support an amendment to reduce this time period or any other amendment which will bring all mines under this safety requirement as soon as possible.

Section 103 of the bill authorizes and requires representatives of the Secretary of Interior to make frequent inspections and investigations in coal mines each year for information gathering and enforcement purposes. Each underground mine is to be inspected at least four times a year. The Secretary of Health, Education, and Welfare is also authorized entry to coal mines to enable him to carry out his functions and responsibilities under the act. I believe this joint control over the health and safety of our coal miners is an important new element.

The bill provides for limited pay guarantees to miners idled by a mine closure due to violation of health and safety standards. Miners are also entitled to payments for total disability due to complicated pneumoconiosis, and widows of such miners are also to receive benefits.

Section 103 empowers the Interior Secretary, in the event of an accident, to take whatever action he deems appropriate to protect the life of any person and to be consulted regarding any plan to recover any person in the mine. This section further provides opportunity for a miner to request the Secretary to conduct a special investigation to determine if an imminent danger or violation of a standard exists in a mine, and for the representative of miners to accompany an authorized representative of the Secretary—at no loss in pay—on any inspection. No advance notice of an inspection needs to be given.

These are some of the worthy features in this comprehensive legislation. In sum, I believe that this bill represents a long step forward in protecting our miners from pneumoconiosis or "black lung" and from explosions of the type that have taken a steady toll of life and limb.

We must not allow these dangers to continue terrorizing our miners and their families. Only by the adoption of this workable and far-reaching legislation can we assure the American people that the men who mine our coal shall work in health and safety.

Mr. FEIGHAN. Mr. Chairman, I support H.R. 13950, a bill to insure health and safety measures for the Nation's coal miners. Coal mining is crucial to our economy, providing one-fourth of our fuel energy. Yet, at the present time, it is one of our most hazardous industries.

Hundreds of coal workers die every year from much-publicized disasters; thousands of others suffer from incurable pneumoconiosis, which renders them disabled and which significantly shortens their life expectancy. No act of Congress can ever compensate for the injury and loss of life which has already resulted from coal mine safety inadequacies. This bill, however, may, if properly amended, become an insurance policy for present and future miners who will be spared from disaster and personal injury.

H.R. 13950 authorizes the Secretary of the Interior to promulgate appropriate health and safety standards and develop safety standards. The Secretary of Health, Education, and Welfare is mandated to develop health standards. The Federal Government would have the power to investigate, set policy, and revise regulations over both large and small coal operations.

It is my feeling, however, that initial review of appeals should lie with the Secretary of the Interior in accordance with the amendment to be offered by the committee and the position of the gentleman from West Virginia (Mr. HECHLER) rather than with the proposed Federal Coal Mine Health and Safety Board of Review as outlined in the bill.

The Departments of Interior and Health, Education, and Welfare should be empowered to thoroughly and frequently investigate mines, making certain that such conditions as dust standards, electrical equipment, ventilation, roof control and fire protection are meeting minimum standards.

The miner would be further protected under the provisions of this act by being provided with examinations for lung disease and by receiving some income if he is idled by mine closure under the provisions of this act. Moreover, the miner and his family would be entitled to emergency assistance if he is afflicted with or dies from complicated pneumoconiosis.

The Federal Mine Health and Safety Act is long overdue. It is late in rectifying some of the worst personal injustices in an impersonal industrial society. We must not lose sight of our humanitarian responsibility. We must not forget the widows and children in countless Farmingtons and the thousands of miners who suffer physical disability while they are performing their jobs. H.R. 13950 will not repair the loss of yesterday's lives, but it will effectively spare today's and tomorrow's miners. I therefore urge support of this bill to express our concern for a vital and long-neglected member of our working force—the American coal miner.

Mr. REID of New York. Mr. Chairman, I am happy that the House is finally acting to revise the mine health and safety code.

Last year 730 men were electrocuted, asphyxiated, crushed to death or otherwise killed in a coal mine somewhere in the world. Each day 28 coal miners suffer disabling injuries, and each disabled miner loses on the average 144 days of work a year—more than half a year off the job.

In the 17 years since the old law was signed by President Truman, almost a million miners have been exposed to a daily dose of coal dust, and a shocking 5,500 miners have been killed.

These facts do not lend a great deal of credibility to recommend the virtues of the old bill.

At present, about 100,000 miners of the 150,000 who work the mines today suffer from black lung disease, with over half of these disabled from the disease. Dust is in their skin and their eyes and their mouths; they suck it into their lungs every day of their lives and cough and strain to breathe. This is a man-made disease that can and must be prevented. To ignore it is to ignore the No. 1 occupational health problem in U.S. coal mining, which has been ignored for far too long already.

For these reasons, I strongly support the sections of this bill which provide for payments to miners who are disabled from pneumoconiosis and to the widows of miners who suffered from the disease at the time of their death. These provisions are a limited response in the form of emergency assistance, included because of the failure of the States to assume compensation responsibilities.

Clearly, the hazards of the trade we are discussing are such that this bill should include the strongest possible health and safety provisions. This bill does include numerous provisions with these aims in mind, such as those establishing a mandatory dust standard of 3 milligrams per cubic meter, requiring medical examinations, calling for frequent inspections and investigations by qualified persons and providing realistic penalties for failure to comply.

There is one section of the bill, however, which endangers its effectiveness by entrusting what could become a veto power to a five-member Board of Review. These five men could nullify orders by Federal inspectors for the closing of unsafe mines, and they could rescind penalties assessed for violations of safety rules. These powers seriously weaken the remainder of the bill and indeed seem to challenge its very purposes. I strongly support the abolition of this Board, and hope that my colleagues will consider the welfare of thousands of miners over the power of five men.

Finally, in order to make this bill the strongest and most effective one possible, I support amendments to do the following:

To measure coal dust during one shift, instead of averaging the measurement over several shifts as the bill now provides. If the averaging method is used, a "clean-up" shift can be rushed in to bring the average down;

To require the Secretary of Health, Education, and Welfare to set medically acceptable coal dust standards which protect the health of the miner, instead of being forced to raise coal dust standards to meet pressure from considerations other than health.

To require that electrical equipment in gassy mines be made safe and spark-proof in 15 months instead of the 28 months after enactment of this bill, and to eliminate the open-ended waiver which is presently provided in the bill for all nongassy mines, large and small; and

To protect miners against losing their jobs or being discriminated against for reporting health and safety violations.

Mr. Chairman, I urge that the coal mine health and safety bill be passed with these amendments, so that in the future we will know no such disaster as that of Farmington, W. Va., in November of 1968 where mine No. 9 became the tomb for 78 men for whom no rescue operation could succeed.

Mr. MOLLOHAN. Mr. Chairman, the coal mine safety legislation we are today considering constitutes a landmark for industrial health and safety. For too many years, those of us who represent districts with a concentration of coal mining have seen the death and casualty tolls mount. Generally, it is an isolated accident that claims the life of one or two men, and little notice has been given to the overwhelming danger of coal mining.

Last year, the tragedy at Farmington took 78 lives, but the small accidents which receive little notice claimed the lives of another 230 men in the same year.

And the toll of black lung is difficult to gage because it affects almost every miner who has worked in the coal mines for more than 10 years.

The safety legislation to date is far from adequate. The health standards to date are nonexistent, the compensation, except from the union's pension fund, is next to nonexistent. Only this year did West Virginia pass a comprehensive workmen's compensation legislation, and that does not cover anyone who is presently disabled because of black lung.

This legislation before us today will be the landmark for safety and health protection and it will be the landmark for compensation of men who have lost their health to black lung.

I think the House Education and Labor Committee is to be congratulated for their work on this legislation and my colleague, Mr. JOHN DENT, is to be particularly congratulated on his efforts to bring to the floor a fair and comprehensive bill to deal with the entire area of health and safety and its consequences in the coal mining industry.

I am particularly pleased that the committee has established in this legislation a basis for continuing research in health and safety; for that, in my judgment, is where we will make the real breakthrough in mine safety.

I think it is altogether proper that we attempt through this legislation to give relief to those miners, or their widows, for disabilities arising from black lung disease.

There are some important amendments to this legislation as well, and particularly important, are those which would protect the individual miner from intimidation for reporting safety or health violations. I think the dust measurement amendment is also very important and I hope you will give it fair consideration.

There are other amendments as well which should be given serious consideration here today. But, on the whole, this legislation is well conceived, it is comprehensive and it will be effective. It represents the dedication of men who have intelligently sought better working standards and health and safety standards for years.

The passage of this bill will, to no small degree, usher in a new era of industrial safety practice.

Mr. HELSTOSKI. Mr. Chairman, as a cosponsor of legislation which would provide relief for our Nation's miners, I am pleased that the Committee on Education and Labor acted with speed to bring this legislation to the floor.

I am convinced that there is a definite need for establishing Federal health standards to protect the health of our Nation's coal miners. We are aware of the fact that many of the existing standards for safety applicable to mine operators and miners are inadequate under existing Federal laws.

If anyone needs adequate standards for safety and improved conditions for health, it is the coal miners of this Nation. The bill will provide them with a new degree of safety and a healthier atmosphere in which to work.

Mr. Chairman, I would like to point out that the whole picture as it relates to the coal mining industry has brought forth a national demand that we, right here and now, enact legislation that will bring a new and significant measure of safety to the men who mine the coal in this country. That is why we are here today—to provide these safety and health standards.

As we debate this bill today, hundreds of miners are risking their lives to reopen the mine at Farmington, W. Va., to recover the bodies of the 78 miners who died in the Consolidation Coal Co.'s No. 9 mine last November, and to determine the cause of the tragedy.

Many of our miners who are lucky enough to escape the violence of death in a mine, are subject to a peril which often causes total disability or death. These miners pay the price of having to work in an atmosphere often saturated with coal dust, which is inhaled daily into their lungs, causing respiratory disability and later death. This disease is referred to in the press and other news media as "black lung." The medical profession call it coal workers' pneumoconiosis. But no matter what it is called, the fact is that the Surgeon General estimates that over 100,000 active and retired miners are afflicted with it.

Mr. Chairman, the purpose of the pending legislation is to insure the miners that they themselves cannot cope with this problem. In this legislation we wish to insure that both the industry and the Government do, in fact, give first priority to the health and safety of the

miner; to insure an end to the annual carnage in our Nation's coal mines; and to insure that the new generation of coal miners is not ravaged by "black lung."

We have enough evidence that the miners themselves are no longer willing to accept the fatalistic attitude still prevailing in the industry—the attitude which almost accepts with the shrug of the shoulder that "mining is a hazardous occupation." The miners know that coal mining need not be a hazardous occupation if only the operators and the Government will place as high a priority on the health and safety of the miner as is placed upon the economics associated with the mining industry.

This bill provides the tools for better health and safety. This Federal Coal Mine Health and Safety Act of 1969 makes an across-the-board comprehensive attack on both the health and safety problems. It not only corrects the deficiencies in the 1952 act, it takes into account all that we have learned since 1952, and provides for the development and implementation of safeguards against hazards which may develop in the future.

For the first time it covers the health of the miner, covers surface, as well as underground coal mines; authorizes health and safety standards by regulation, not just by statute, and permits administrative change of the standards in the bill to improve health and safety; establishes an extensive array of interim mandatory health and safety standards; provides for injunctions and for civil and criminal penalties for violations; requires an expansion of the sadly deficient Bureau of Mines safety and health research program and provides for a health and safety research trust fund; and expands the coverages of the law to afford protection against all accidents; not just those that kill five or more at one time, as the 1952 act provided.

Periodically, in the past 100 years, the Nation has responded to mine disasters with legislation, but the legislation has always been too timid and ineffective. Such legislation has frequently left more undone than was done.

Mr. Chairman, H.R. 13950 is a major comprehensive measure which offers our Nation's coal miners the promise of a lifetime of productive work free from the hazards that have depleted this work force. It offers the families of our coal miners the hope of relief from the daily fears that permeate their lives.

I believe that the hazards of coal mining can be substantially reduced or eliminated. Many are due to bad practices and a failure on the part of both the industry and the Government to act vigorously years ago to change them.

We owe this bill as a memorial to the many thousands who have died in coal mine tragedies and to those who are disabled because of their hazardous work.

We owe it even more to the living and the active hard-working mine workers, and to their families. No longer should they be forced to bear the cost, in pain and suffering, of the Nation's coal production.

Mr. Chairman, for these reasons, I earnestly urge passage of H.R. 13950.

Mr. GAYDOS. Mr. Chairman, after many long weeks of hearings and deliberations we now have before us, to vote up or down, H.R. 13950. Does anyone doubt the outcome?

As one who is familiar with the history of past efforts to strengthen the role of the Federal Government in the promotion of coal mine health and safety, one amazing fact about this bill stands out. This bill, Mr. Chairman, is one of the most far-reaching bills in any field to come before the Congress in many years. It extends the field of Federal regulation of working conditions and the provision of compensation for accident and disease far into an area hitherto largely reserved for State regulation alone. And yet, despite some marginal opposition to some of these compensation features of the bill, the bill is clearly going to pass the House and pass it in substantially its present form.

Of course, Mr. Chairman, I recognize that it is very difficult to be opposed to any measure to promote health and safety. No one wants to be on record in favor of death and disaster or even to seem to question the wisdom of proposals to prevent the same. But in the past, these considerations never prevented opposition arising to the form the proposed remedies took, or, a favorite objection, that "the rights of the States were being invaded," or that "the legislation was not needed, the States were doing a good job, all they needed was a little encouragement in the form of a Federal subsidy."

We have heard such objections in recent days, Mr. Chairman. But unlike in the past, they have not been trumpeted from the house tops. I have had to strain to hear them. Their voice is muted, subdued. We live today in a world where the rights of people are, at last, considered as more important than those of institutions.

I note also, Mr. Chairman, another remarkable change. This matter of health and safety has never, I think, been an area of sharp partisan conflict. Many Members from both sides of the aisle have favored coal mine safety legislation in years past. But I do find it utterly amazing that, if I read aright the report on this bill which came to me from the committee, not only did every member of the majority party vote in support of H.R. 13950, but the minority was unable to get a majority of its 15 members to join in opposition and wound up with three additional or separate sets of views, on no one of which were they able to muster more than six votes in support.

Mr. Chairman, H.R. 13950 has my complete support. Congress should move to complete action on the Federal Coal Mine Health and Safety Act without further delay.

We all understand that what prompted the consideration by this Congress of coal mine safety legislation was the Farmington, W. Va., disaster of last fall. This made clear to the American people that the Federal Government, which was then believed to have the responsibility and ability to inspect coal mines to prevent major disasters, lacked the power to take

effective action. Since then, although there has been much work done on legislation no change has been made in the law. The Government has no greater ability today than it had last fall to prevent another major mine disaster. We have been talking about action for nearly a year. We have made progress. But we have not finished the job. The Senate has acted. We have not, as yet.

However, in the period of nearly a year since the Farmington disaster, while there has not been another major disaster, over 170 coal miners have been killed in mine accidents. This is well over two miners killed for each man who died in Consolidation Coal Co.'s No. 9 mine last November. And to prevent these non-disaster types of accident, the Federal Government does not now and never has had any power or responsibility to act.

These figures, in fact, are misleading. It is not that routine mine accidents are responsible for two deaths for every one killed in a major disaster. Major disasters account for only about 10 percent of the deaths and injuries in coal mines. The Federal law has never, even in its inadequate present form, been applicable to other than measures to prevent major disasters. And it has been too weak to accomplish even this limited objective.

Ninety percent of the accidents which have resulted in death or injury in coal mines are within the scope of State laws and the Federal Mine Safety Code, which are either inadequate, or which have not been or cannot be enforced. Many standards, including the Federal code, are advisory only and do not have the force of law.

Mr. Chairman, while we sit here discussing the details of this bill there is nothing to prevent another Farmington disaster. Nothing has been done to change the law since last November. And while we sit here men are being injured and killed by one's and two's in mines in every coal mining State in the Nation, and unless we act on H.R. 13950 nothing will be done to prevent such accidents.

H.R. 13950 offers the best hope we have to do something about coal mine disasters and accidents—all of them, major disasters and isolated rock falls. It was the result of weeks of work by a competent committee acting on the best advice of authorities here in America and from abroad. It is a bill to which no major exception has been taken on either side of the aisle. Let us act to pass it with no further delay and stop the slaughter in the mines.

Mr. CLARK. Mr. Chairman, today's debate represents a forward step for the coal miners of America and for the wives and the children of the men who work in that industry. It also represents a milestone for the thousands of coal miners who are now suffering or who are being exposed to the ravages of coal workers' pneumoconiosis and other mining related chest diseases.

I am from Pennsylvania, and thus I know first hand the great human price that has been paid for the coal produced over the years. Pennsylvania is an old coal producing State. From its mines comes both anthracite and bituminous coal. The quality of Pennsylvania coal is

known world-wide. Much of it goes into the steel industry where quality is vital.

Over the years, the production, distribution, and consumption of coal has meant much to Pennsylvania. In fact, that industry undergirds the economic health of the Commonwealth and contributes hundreds of millions of dollars each year to the economic progress of Pennsylvania.

But, such progress has not come without cost. A part of that cost, a tragic horrifying part, is seen in the number of men who have died in the mines of Pennsylvania.

The records of fatality for the production of anthracite in Pennsylvania goes back to 1870. During the period 1870 to 1968, 31,047 men died in the anthracite industry. These figures are understated because fatalities in mines employing less than five men were not recorded until 1955, when the Pennsylvania Department of Mines and Mineral Industry, under the leadership of Mr. Joseph Kennedy and Mr. Louis Evans, now the director of the UMWA Safety Division, began to keep a record of small mine fatalities.

In the bituminous industry, the record goes back to 1877. Since 1877, 20,071 miners have died in the soft coal mines in my State. This figure is understated because of the lack of reporting fatalities in small mines until 1955.

Thus, a high price in blood has been paid for the production of Pennsylvania coal; 51,118 men died for the economic value that coal has meant to Pennsylvania and to the Nation.

Mr. Chairman, this is a horrifying record. It is a dreadful indictment of the coal mining industry and of the operators who have owned and managed it over the years.

Mr. Chairman, today we consider a bill which will hopefully abate and eventually stop the wastage of human life in coal mines. We are being asked to pass legislation which will help to protect the safety of coal miners and see to it that they can live a long and useful life. We are also being asked, Mr. Chairman, to enact into legislation provisions which will begin the long task of preventing coal workers pneumoconiosis and which will provide for compensation for those men who now carry the terrible burden of that disease.

We can no longer turn a deaf ear to the demands of coal miners for relief from the dread burden of death, injury, and disease in the mining industry.

H.R. 13950 is a good piece of legislation. It has been drafted by a committee which has shown its concern for the men who work in the mines. Its language represents an acceptance of the moral obligation of the Congress to do something in the mine health and safety field.

Through the months that this legislation was pending, we of the Congress were fortunate to have the advice and counsel of the United Mine Workers of America and their able staff in our drafting efforts. The coal miner was indeed fortunate to have as his representatives here a group of his own, a group of men who have come from the pits and who worked ceaselessly to see to it that the strongest possible legislation was introduced and passed.

The imprint of the work of the United Mine Workers of America and its president, Mr. W. A. Boyle, is clear in the legislation you have before you.

The United Mine Workers of America, in January of this year, suggested a 3 milligram dust level to prevent the increasing incident of coal workers pneumoconiosis.

The bill has a 3 milligram figure in it.

The United Mine Workers of America suggested the concept of rescue chambers to which men could go in the event of a disaster. This, too, is in the bill. The United Mine Workers of America urged the increase in the ventilation in mines. We have provided for such an increase.

The United Mine Workers of America suggested that a Federal mine inspector be placed at every mine, which in the opinion of the Secretary, liberated excessive quantities of methane. This, too, is in the legislation.

We are being asked today to vote on a measure which will mean the saving of lives, the prevention of injury, and the reduction of disease. We are being asked to help to preserve the most valuable asset which the coal industry has, that is its manpower.

If we were to come before the Congress today and say that men should live rather than die, there would be no arguments. If we were to say that disease is an inherently undesirable thing, there could be no one who would dispute it. If we were to demand on the grounds of humanity that an end be put to the cost in human lives and suffering inherent in modern coal mining, we would have unanimous agreement.

Yet, when we come to the hard practical task of writing legislation, there are those who rise in opposition. There are those who still place priority and profit above priority of life. There are those who would sacrifice human beings for the expediency of production.

This bill, hopefully, will forever put an end to such a choice. It will place the coal operators of this Nation on notice that their safety and health record must improve and must improve dramatically. It will place them on record that unless they are prepared to undertake the necessary action to reduce the human toll, currently a part of the cost of production, that they must anticipate the increasing intervention of the Federal Government into their affairs.

Mr. GILBERT. Mr. Chairman, I rise in support of H.R. 13950, the coal mine health and safety bill. As you may know, I have no coal miners in my district, but I have Americans who are shocked at the frequency of mine disasters and saddened by lethal danger from illness faced by men who work in the mines. This legislation has, indeed, been too long in coming and too many men have lost their lives while it has been discussed. I am proud, as an American, to vote for a strong coal mine safety bill.

I believe the Committee on Education and Labor has written a fine bill. It gives authority to the Secretary of the Interior and the Secretary of Health, Education, and Welfare, for the first time, to investigate and inspect mines without prior notice. It improves and speeds the process for redressing health

and safety violations. It provides severe but just penalties for violation of standards. It assures miners that they will not be penalized for cooperating with the authorities on mine safety and guarantees them payment whenever mines are closed for violations.

Mr. Chairman, in 1967 a total of 533 miners died in accidents, and untold numbers died of "black lung" and other diseases. Americans cannot in good conscience permit the hazards in mines to go undetected and uncorrected any longer.

I commend the gentleman from Pennsylvania (Mr. DENT), chairman of the General Labor Subcommittee, for his efforts in behalf of a strong and effective coal mine health and safety bill. I believe H.R. 13950 represents the minimum necessary for the protection we should provide miners and I shall vote for passage of this bill.

Mr. FULTON of Pennsylvania. Mr. Chairman, strange as it seems, studies are now being made by Federal agencies and private industry to use U.S. space program techniques for mining operations.

I include in my remarks letter of October 23, 1963, to me from the National Aeronautics and Space Agency:

NATIONAL AERONAUTICS
AND SPACE ADMINISTRATION,
Washington, D.C., October 23, 1963.

HON. JAMES G. FULTON,
House of Representatives,
Washington, D.C.

DEAR MR. FULTON: This is in reply to your inquiry regarding the application of Apollo Life Support Systems to deep coal mining.

Last February, Mr. James K. Rice, President, Cyrus W. Rice and Company, wrote to NASA about a new coal mining project being proposed in Boone County, West Virginia, under the direction of the Island Creek Coal Company, in which the mine would be filled with gas containing very little oxygen. The object was to eliminate the effects of methane gas that is released as a by-product of mining coal, to reduce substantially the acid mine water pollution, and to eliminate the "Black Lung" problem. Mr. Rice was interested in ways NASA might be able to help.

On March 13, 1969, a meeting was held with officials of our Apollo Test Office, the Island Creek Coal Company, the Bureau of Mines, the Federal Water Pollution Control Administration and the C. W. Rice Company to explore the ways in which our technology would be utilized in the possible solution of coal mining problems.

As a result of this meeting, NASA was requested, and we agreed, to provide technical assistance to the C. W. Rice Company and the Island Creek Coal Company in connection with its contract with the Federal Water Pollution Control Administration.

Subsequently, we have reviewed and commented on the technological proposals and made available applicable life support data and reference material. In addition, we have put personnel from the C. W. Rice Company in touch with Bendix people at the Kennedy Space Center and their NASA counterparts concerned with life support and protective equipment used during hazardous operations.

We have enclosed additional material concerning the project.

Please let me know if you require any additional information.

Sincerely yours,

ROBERT F. ALLNUTT,
Assistant Administrator
for Legislative Affairs.

Mr. Chairman, I am also including in my remarks an article from the Washington Evening Star, as follows:

[From the Washington Evening Star, Aug. 5, 1969]

ASTRONAUT-TYPE BACKPACKS TO BE STUDIED FOR MINERS

The Interior Department has announced a research project to see if miners—like astronauts—can work in an oxygen-free environment, relying on backpack breathing equipment.

"If this new approach is successful," Interior Secretary Walter J. Hickel said yesterday, "we will be able to reduce lung diseases among coal miners, lessen the chances for explosions and fires in mines, and, at the same time, help prevent stream pollution by drainage of acids from both active and abandoned mines."

The project is being financed by grants of \$55,178 from the Federal Water Pollution Control Administration and \$15,000 from the Bureau of Mines, and a contribution of \$30,047 from Island Creek Coal Co. of Holden, W. Va.

Mr. Chairman, in order to outline the proposals and programs for use of inert gases in mines, with space suits and life-support systems used by mines and mine personnel, I am including excerpts from the original application for research and development grant to the U.S. Department of the Interior, Federal Water Pollution Control Administration, from Island Creek Coal Co., Holden, W. Va., for a demonstration of a new mining technique to prevent the formation of mine acid in an active deep coal mine under date of February 20, 1969:

A DEMONSTRATION OF A NEW MINING TECHNIQUE TO PREVENT THE FORMATION OF MINE ACID IN AN ACTIVE DEEP COAL MINE

I. INTRODUCTION

Much has been written and spoken recently relative to the effective control of wastewater pollution from the coal mining industry. From the standpoint of health, safety, and environmental management, it is evident that every effort must be made to advance technology on a national basis to encourage the stability and productivity of the industry. The development of technically feasible and economically reasonable methods to achieve this end is the prime purpose of this request to the Federal Water Pollution Control Administration (FWPCA).

This application for a Research and Development Grant is indicative of the potential for the development of new technologies on a Government-industry cooperative basis. Island Creek Coal Company (ISLAND), the applicant, recognizes the potential impact of the proposed project to the coal mining industry in the areas of water pollution abatement and personnel health and safety.

II. TECHNICAL BACKGROUND

It has been established that the oxidation of sulfidic material such as pyrites (FeS₂) leads to the production of ferrous sulfate and sulfuric acid according to the following equation:



Laboratory investigations and published studies by the deceased Dr. S. A. Braley, while at Mellon Institute, Pittsburgh, Pennsylvania, and more recently the work reported to the FWPCA by Mr. W. E. Bell, Cyrus Wm. Rice and Company, Pittsburgh, Pennsylvania, have revealed that the prevention of the entry of oxygen into a coal mine by sealing and pressurization with an oxygen-free atmosphere retards the oxida-

tion of the pyritic material to form mine acid water.

Cyrus Wm. Rice and Company (RICE) is proposed by ISLAND as their technical associates to serve as the project systems engineers and scientists. A summary description of two project-related investigations now being conducted by RICE follows:

On June 17, 1968, RICE received from the FWPCA Contract No. 14-12-404 covering chemical engineering laboratory investigations to determine the effects of various gas atmospheres on the oxidation of pyrite. The primary objective of the study is to determine the effect on acid production by the leaching of pyrites by water. The tests were to be conducted in the following atmospheres:

- Air (control).
- Pure nitrogen.
- Nitrogen plus carbon dioxide.
- Nitrogen plus ammonia.
- Nitrogen plus carbon dioxide plus ammonia.
- Nitrogen plus chlorine.

The secondary objective is to determine the effect of the particle size on acid production while exposed to the above atmospheres. This FWPCA contract is in its final stages of completion.

On June 20, 1968, RICE received a contract from the Commonwealth of Pennsylvania, Department of Mines and Mineral Industries, for a demonstration of the use of inert gas to eliminate acid pollution from abandoned deep coal mines. The contract is with the Coal Research Board and is identified by Project No. WPRD-227. The contract developed as a result of a grant application to the FWPCA by the Commonwealth of Pennsylvania. The object of the program is to demonstrate the feasibility of using inert gases as an effective deterrent to the chemical and bacteriological reaction of pyrites with air and water within abandoned deep mines. This program is now in progress.

The project proposed herein will extend the above-mentioned investigations to active deep coal mines. The project, in general, will demonstrate the use of an oxygen-free atmosphere in a deep mine specifically constructed for the project. The proposed project, while attacking the problem of mine acid formation, requires a completely new technique for coal mining. The proposed technique involves the use of life support systems for the mining personnel. While much work has been done on the use of life support systems in outer space and deep sea programs, and in a number of industrial operations, there has been no significant application of this to deep coal mining.

III. ISLAND'S PARTICIPATION

Mr. J. K. Rice, President of Cyrus Wm. Rice and Company, introduced the concept of adapting life support systems to the mining industry to Mr. William Bellano, President and Chief Administrative Officer, and Mr. William F. Diamond, Vice President-Engineering of Island Creek Coal Company, ISLAND, the third largest coal producer in the United States, is well-known for their constant searching for new and improved mining methods, safety improvements, and overall performance in labor relations, mine planning and development, maintenance of plant and equipment, and personnel health. ISLAND, being highly enthusiastic about the project potentials, agreed to make available to the project an area of a virgin coal seam in a new lease they are opening at Kohlsaat, Boone County, West Virginia. The new mine is called Pond Fork Mine, and is located approximately thirty miles south of Charleston, West Virginia. This mine is located within the Island Creek Division. Project plans were directed by Mr. Stonie Barker, Jr., President, Island Creek Division, who is the proposed project director.

IV. OTHER PARTICIPANTS

The proposed project was introduced to the FWPCA by RICE during 1967. In recent months, ISLAND and RICE met with FWPCA representatives and have discussed the project in detail with Mr. Allan Cywin and his associate Messrs. E. J. Martin, R. D. Hill, J. M. Shackelford, and D. J. O'Bryan. Mr. Cywin suggested a meeting with Mr. J. F. O'Leary, Director, Bureau of Mines, United States Department of the Interior On January 31, 1969 a meeting was held in the office of Mr. O'Leary, to discuss the project. Attending this meeting were Mr. O'Leary, Mr. H. Perry, from the Office of the Assistant Secretary (Mineral Resources), United States Department of the Interior, Messrs. A. Cywin and D. O'Bryan from the FWPCA, and ISLAND and RICE representatives.

The proposed project has been discussed in detail in meetings with Mr. J. P. Brennan, Director of Research and Marketing, United Mine Workers of America (UMW). ISLAND and RICE representatives have discussed the project with UMW Director of Safety, Mr. Lewis Evans.

It is proposed that the project be conducted with the cooperation of the State of West Virginia, Department of Natural Resources, Division of Water Resources, and the Department of Mines.

V. NEED FOR PROJECT

The critical need for the proposed project has been clearly stated by United States Senator Jennings Randolph (West Virginia), Chairman, Committee on Public Works, at the hearing on S. 1870, a Bill to amend the Federal Water Pollution Control Act in order to provide for acid pollution control demonstration projects. Senator Randolph stated when discussing the control of acid mine pollution, "We do recognize the seriousness and the urgency of the problem and we need to use the techniques now in our possession and we need to have demonstration programs, I think, of a very substantial nature in this field."

Mr. Richard B. Royce, Chief Clerk and Staff Director, Committee on Public Works, United States Senate, and Mr. William J. Van Ness, Special Counsel, Committee on Interior and Insular Affairs, United States Senate were contacted during March, 1968 to discuss the need for the inert gas projects.

The completion of the proposed project could have a world-wide impact on the coal industry resulting in major advances in environmental control, and health and safety.

VI. PROJECT OBJECTIVES

The object of the proposed project is to demonstrate that mining coal in an oxygen-free atmosphere will prevent the formation of acid mine water and that all water from the mine will be acceptable for discharge into a local stream without deleterious effect on the stream. The project will involve the investigation and demonstration of the adaptability of a life support system to conventional coal mining techniques to determine the feasibility of mining coal in an oxygen-free atmosphere.

The aerospace and underwater research programs in the past few years have proven that through the use of life support systems man can be successfully sustained in foreign environments for extended periods without detriment to his health. This life support technique has successfully been applied to several industrial manufacturing processes.

Major benefits may be derived from mining coal in an oxygen-free atmosphere including a major reduction in the amount of mine acid generated, improved working conditions from a health and safety standpoint, and availability of areas for refuge in case of emergency.

The life support system will provide dust free air for the miner and will eliminate the incidents of black lung so prevalent among the miners of today. It will also insulate

the miner from the clutter of the mining equipment and will reduce the incidents of hearing problems. Hearing problems are rivaling black lung as the major health problem in the mining industry today.

Besides preventing the generation of mine acid, the oxygen-free atmosphere will eliminate many of the hazards associated with mining. It should prevent the accumulation of explosive mixtures of methane thereby eliminating the explosion hazard. Mine fires started by electrical spark igniting coal dust are prevented due to the absence of oxygen to support combustion.

The greatest killer in the mine today is roof falls caused by the seasonal variation of the humidity and temperature of the ventilating air injected into the mine resulting in spalling and deterioration of the roof. The sealing of the mine and the elimination of large volumes of ventilating air and the ability to maintain a constant humidity in the mine will minimize roof deterioration and improve mine safety.

The installation of waystations will provide areas of refuge in case of accident as well as a place where miners may remove their protective clothing. Bore holes directly into the waystation will provide fresh air for the miners and would serve as a means of supplying emergency food, water, power, and communications.

VII. PROJECT PLAN

This section will describe in detail the proposed plan for conducting the project. In order to coordinate the construction of the demonstration mine with the development of a new ISLAND Pond Fork Mine, it is necessary to adhere to a rigid schedule. The present schedule for the Pond Fork Mine calls for the receipt of all mining equipment by July, 1970. The development of the Pond Fork Mine will be in three phases according to how rapidly the working faces in the mine become available. Maximum production from this mine is planned for July, 1970.

The mining equipment purchased for the project demonstration mine is equipment required by ISLAND for completion of the development of the third phase of their Pond Fork Mine. This equipment will be required by July, 1970. Because of the limited amount of time available, it becomes necessary to strictly adhere to the schedule established for the demonstration mine so that ISLAND may be able to complete their Pond Fork Mine development on schedule. Table I is the construction schedule for the Pond Fork Mine. Table II is the project schedule for the Pond Fork Demonstration Mine.

The demonstration mine project is divided into three phases: Phase I will include the engineering studies and construction of the mine; Phase II will be the operation of the mine; and Phase III will be the evaluation and final report on the project.

The following will describe each of the phases of the project:

Phase I. Engineering studies and demonstration mine construction

This phase involves the evaluation of the available life support systems, communication systems, and air lock principles. After selecting those systems most applicable to the project, engineering specifications will be drawn and detailed engineering will be completed to adapt these systems to the project. The engineering specifications, design, and construction of the auxiliary facilities at the mine, and the necessary equipment to sustain the life support systems will be completed prior to the opening of the mine.

A. Life Support Systems Studies

A thorough investigation will be made of the available life support systems currently being used by the governmental space agencies and industries to determine if these systems are applicable to coal mining operations. It is the intent of this study to utilize, wherever possible, existing life support sys-

tems, realizing that minor modifications may be required.

Due to the uniqueness of the mining application, the type of personnel breathing equipment required is critical. It is therefore necessary that a complete investigation be made of the various types of breathing and re-breathing apparatus available to determine their compatibility with the life support system chosen.

Encapsulating a miner within a "space" helmet isolates him from the surrounding noises of the mine. An investigation and evaluation of various communication systems are necessary to provide the miner with a means of communication with his co-worker in the mine, as well as with a monitoring and control station outside the mine. A miner is quite sensitive to in-mine noises and roof cracking noises. Therefore, it is imperative that his ability to hear within the "space" suit is as good as it would be normally. It is anticipated that each miner will have the capability of communicating directly with the monitoring and control station.

Since the miner will be encapsulated within a suit and working in an oxygen-free environment, it becomes necessary to provide an area (waystation) within the mine where the miner may go for lunch and for relief. In the waystation, he will be able to remove his breathing apparatus, and be supplied with fresh air from an external source. To enter the waystation, it will be necessary for the miners to pass through an air lock, the purpose of which is to prevent the infiltration of oxygen from the waystation into the mine and also to prevent the gaseous mixture in the mine from entering the waystation. A thorough investigation will be made of the methods of purging the air lock in order to prevent the infiltration of external gases into the air lock.

In order to evaluate the total effect of mining in an oxygen-free atmosphere, it is necessary to install gas analyzing equipment at all the critical points within the mine. A thorough study will be undertaken in order to evaluate the best way to continuously monitor the gases within the mine, air lock, and waystation to insure maximum safety.

Since large volumes of ventilating air will not be forced into the mine, the buildup of heat within the mine generated by the motors driving the mine equipment could become a problem. A thorough study is required to determine the methods of removing this heat so that adequate cooling will be provided for the mining equipment.

The development of a new type of personal lighting system is necessary as the current method of individual lighting will not be satisfactory. The present miner's light turns with the man's head so the light automatically points to where he is looking. When wearing life support clothing, it is possible for a man to move his head without the light moving. It is therefore necessary to design a lighting system which will be satisfactory for the miner's use.

Since the principle of the demonstration project is to operate the mine in an oxygen-free atmosphere, large quantities of inert gas will be required in order to operate a waystation, personal air locks, equipment air locks, etc. A thorough investigation will be made into the most economical methods of generating the inert gas, as well as the most economical methods of operating the waystation and air locks.

B. Demonstration Mine System Studies

After determining the most compatible life support system for use within the mine, it is necessary to determine what field modifications are necessary for the selected conventional mining equipment.

Having investigated the various procedures for operating the air locks, life support, and communication systems, the total support facilities required to sustain these systems

will be determined. These facilities are those external to the mine (see Drawing No. 168.12.06.4).

The selected life support and communication systems will be tested in a ventilated mine in order to determine the problems involved. Should any problems develop, the operator being trained can remove his breathing apparatus and walk out of the mine, as is current practice. It is the intent to thoroughly check all life support and communication systems within a ventilated mine prior to operation of the demonstration mine.

Mr. SCHERLE. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I take this time to alert the Members of the House that I will offer a motion to recommit the bill.

I am not convinced that Federal workmen's compensation is the responsibility of this House. I hesitate to establish a precedent which this will do and one from which there can be no retreat.

This motion will delete the section beginning on page 38, section 112(b), as I did in the Committee of the Whole.

Mr. MILLER of Ohio. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I have heard this afternoon, especially from the gentleman from California, that we were not to rewrite the bill on the floor.

Yet, I was handed title III, a complete change, which includes approximately 63 pages. I am not positive that what we are doing is correct. I am not sure who made the changes and why. There are several points that certainly should be cleared up and I believe we should have someone, the chairman of the committee, or whoever is familiar with these points to answer the questions that are necessary before we vote on the bill.

On page 82 of the original bill, under section (e); and in the amended title III, section (e)(1) it states: "underground high-voltage cables used in resistance grounded, wye-connected systems shall be equipped with metallic shields around each power conductor."

My question is: Are you aware that we may be causing more trouble in the mines than the good that we may do?

Mr. PERKINS. I have a letter from the Secretary, the Director of the Bureau of Mines, which in substance states that the overall changes in the interim standards redound to the benefit of safety.

Mr. MILLER of Ohio. Yes, but that does not answer my question.

Mr. BURTON of California. Mr. Chairman, will the gentleman yield so that I may make some modest effort to respond in part to the gentleman?

Mr. MILLER of Ohio. I yield to the gentleman.

Mr. BURTON of California. We found ourselves with identical provisions in both the House and Senate versions. Therefore, rendering unconfereable some of the safety standards.

Some of these amendments were made at the request of an industry that has electrical wiring setups that are just somewhat different from those mandated in the bill. We were not contacted until after the bill was out of the Senate and after the bill was out of the full committee. But any changes made in this type of change were surrounded with

safeguards and certified by every safety engineer participating, including all of the experts in the Bureau of Mines, that there was no sacrifice of safety.

Most importantly, we simply had to see that these matters were subject to conference. But even knowing that we had another look at the matter, we were determined not to proceed even this far without the assurance of the safety people that there was absolutely no reduction in safety afforded mine workers. I am unaware of a single mine expert in the country who would take any view other than that expressed by the Bureau of Mines today. There is no sacrifice in safety in any of these changes.

Mr. MILLER of Ohio. Then the gentleman cannot say whether there is anyone on the committee that has any background or any knowledge as to whether that particular section is correct?

Mr. BURTON of California. Just to the extent that we had experts from the industry; we had experts from the Department; we had Mr. Nader's general counsel; we had the counsel for Congressman HECHLER; we had the subcommittee counsel. We had as many people "fail safe", double, and triple check every one of these suggestions that the mind of man could contrive. And I respectfully submit that in the first instance we had an absolute obligation to see to it that this mandate was conferenceable.

Mr. MILLER of Ohio. If the gentleman is aware of what is going on, will he answer one simple question?

The CHAIRMAN. The time of the gentleman from Ohio has expired.

(By unanimous consent, Mr. MILLER of Ohio was allowed to proceed for 2 additional minutes.)

Mr. MILLER of Ohio. I refer to section (e)(1) that states that metallic shields should be around each power conductor. The current would be AC because it follows through, that it is a wye-connected system. With AC current you achieve the effect of heating when you run each conductor separately through a solid metal tubing. With that are we going to create more problems or solve problems?

Mr. BURTON of California. It is steel tubing in the first instance. I for myself, and I am sure those of us on the conference committee, if the gentleman has a fear that some of this may in some way be creating greater health safety hazard, would take up those matters. I suggest that you relay your concern to the Department. Call in the best safety engineers, and we will accept their input. From our point of view we felt an absolute responsibility, with tens and tens of millions of additional dollars involved for safety, that at least these matters in issue be conferenceable, particularly when they could be made conferenceable with our assurance that there was no sacrifice or diminution in terms of safety.

Mr. MILLER of Ohio. What we are after is information which would be helpful in enabling us to determine whether we should or should not vote for the bill. Right now we do not have the answers. We have another area where you talked about "permissible." I have heard it all afternoon. What is permissible? What are we talking about? Are

you acquainted with class 1, group D, division 1 and division 2? I think we should have someone on the floor who would have that information and could answer our questions.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Ohio. I yield to the gentleman from Illinois.

Mr. ERLENBORN. I believe the only answer that can be given to the gentleman is that we have no electrical engineers on our subcommittee or full committee that I am aware of. We have had to rely in this area on experts in the Bureau of Mines who have been approving or disapproving actual installations in the Bureau of Mines. They have looked at these requirements that they are going to have to enforce. They have approved the changes that were made in title III. We can only rely on their judgment.

If the gentleman knows of some area in which they have made a mistake, I wish he would call it to our attention so we could have them pass judgment on it, and they may be able to convince the Bureau of Mines. As the gentleman from California said, we are now in a position in which that matter could be adjusted in conference. We would appreciate your help.

Mr. MILLER of Ohio. As the gentleman said, if we are on a given section or given language, I would like to know if we are correct, whether we are in conference or back in the House.

Mr. FLOOD. Mr. Chairman, I move to strike the necessary number of words. I am advised by the chairman, we are at the close of this debate on this bill. I want to say this. I am very grateful for my people from the anthracite coal fields to this committee under the distinguished chairman, the gentleman from Kentucky (Mr. PERKINS) and to the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. DENT) we are especially grateful.

I knew the gentleman from Pennsylvania (Mr. DENT) many, many years ago, when he was a fighting, raring, tearing, bulldog minority leader of the General Assembly of Pennsylvania. In those days it was tough—but so was he.

Mr. Chairman, I appeared before two subcommittees of this distinguished committee. I appeared before the subcommittee chaired by the gentleman from New Jersey on the matter of health, and I appeared before the subcommittee chaired by the gentleman from Pennsylvania (Mr. DENT) on the matter of safety. I appeared before both subcommittees in the Senate, known as the other body, for the same purpose.

I was pleased to hear some months ago that the gentleman from New Jersey, in charge of the subcommittee dealing with health, and the gentleman from Pennsylvania (Mr. DENT) in charge of the subcommittee dealing with safety, with the approval of their general chairman, the gentleman from Kentucky, were going to merge this bill into the bill we have today.

I assure the Members that my people after 50 years, after 100 years, are grateful to all.

I conclude by saying that without the commanding insistence of the gentleman from California (Mr. BURTON) that part of the bill which in my district is perhaps most vital, the health provisions relating to the health and black lung payment provisions, would not be in the bill.

I told Members yesterday when I came here 25 years ago, I had 35,000 miners. Today I have 3,500. However, I have 20,000 pensioners and their widows and the children of these deceased miners who died from miners' hazards, such as anthracosilicosis, in the hard coal mines. Had it not been for this great, big, eloquent Californian, who insisted upon the health and black lung payment provisions, I am advised by the gentleman from Pennsylvania (Mr. DENT) and the gentleman from New Jersey, and the general chairman of the committee, the health provisions would not be in the bill. I express our humble gratitude on the part of my pensioners and their wives and their children for the insistence of this great big fellow, the gentleman from California (Mr. BURTON).

Mr. PERKINS. Mr. Chairman, I move to strike the requisite number of words.

In concluding our work on this legislation, Mr. Chairman, I think that it would be a serious oversight on my part if I did not recognize the great contribution that members of the United Mine Workers of America have made over the years in insisting that Federal legislation be developed to effectively deal with providing greater and greater safety in this most hazardous of industries. When I first came to the Congress in 1949, one of the first conferences I had was with the legislative representative of the United Mine Workers, Mr. Robert Howe. He and other representatives have been working diligently since that time in the interest of improved safety for miners. I believe that the legislation that this House is on the threshold of approving this afternoon takes another giant step forward in making this industry one which will attract many young workers because of the risks that we have taken from the occupation. The small step forward that we take in this legislation in assuring adequate levels of compensation to miners suffering from pneumoconiosis and their dependents and, in the case of those who have fallen due to this insidious disease, their widows, can in large part be attributed to the insistence by the members of the United Mine Workers for adequate compensation for their disabled members.

Mr. MILLER of Ohio. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the distinguished gentleman from Ohio.

Mr. MILLER of Ohio. I want to say that I am for a mine safety bill. I am disturbed, frankly, that we have a complete change in title III, which is the technical part of the bill, which includes almost 63 pages.

Mr. PERKINS. The gentleman well knows that title III contains the interim standards, and all the effected groups were consulted with a view to trying to get the best possible safety standards in the act temporarily. But I say to you, by and large, that the amendments that the

gentleman from Pennsylvania sponsored today strengthened mine safety and did not weaken it.

Mr. Chairman, I certainly want to pay tribute to the distinguished chairman of the subcommittee for the way he handled title III with these amendments. Proceeding as he has was the only feasible way that we could get the latest techniques and the latest suggestions of the Department of Interior, which has been working on these standards all year, incorporated in the bill.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

Mr. MILLER of Ohio. Mr. Chairman, I ask unanimous consent that the gentleman may be allowed to proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. DENT. Mr. Chairman, I object.

Mr. MILLER of Ohio. Mr. Chairman, I move to strike the last word.

I will not take the 5 minutes, Mr. Chairman. I only want to state that we need to know exactly what we are doing here. I feel title III was brought out hurriedly. We need to know that we are on the right track. I am not saying that this section is wrong. There are some doubts in my mind about certain parts of it, and I think it is important that they be clarified. When the chairman mentioned the volume of methane that comes from some coal mines, that is exactly what I am concerned about. When we find methane in relation to air with a concentration at a minimum of 5.3 percent and a maximum of 14 percent of the mixture, then we know that it is explosive. If then we have an arc or the proper heat, we find that we have started a fire in the mine. We are only trying to protect against this possibility. I think it is important that we do not have a full title such as this brought out and rewritten on the floor, especially after we had heard that we should not change the bill on the floor and then we find that we have a complete title being changed here.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Ohio. I yield to the gentleman from Illinois.

Mr. ERLBORN. Might I ask the gentleman if he had read and was familiar with the original provisions of title III?

Mr. MILLER of Ohio. I say that I have title III marked up at almost every page. I would say that, no, I am not completely familiar with every word. I do not believe that there is a person here who is completely knowledgeable. If someone is knowledgeable, I have not found anyone on the committee who would attempt to answer the questions. But I would say that I have about 25 questions to ask.

Mr. ERLBORN. If the gentleman will yield further?

Mr. MILLER of Ohio. I yield to the gentleman.

Mr. ERLBORN. As was pointed out, title III of this bill and title III of the other body were identical. If we had adopted the provisions of that title today, we would not be able to go to conference on the item. As I suggested to

the gentleman from Ohio, we welcome his help and his expertise. If he would tell us what items are questionable, we would take it up with the Bureau of Mines. They have put their stamp of approval on it. But the gentleman may be able to show where they are wrong, and we would like to work with you in the matter if we can and get the answers.

Mr. MILLER of Ohio. My main purpose in taking the time is that I am for a mine safety bill, but I want to know that what we are doing is right.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. STEED, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 13950) to provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes, pursuant to House Resolution 584, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SCHERLE

Mr. SCHERLE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. SCHERLE. I am, Mr. Speaker—in its present form.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. SCHERLE moves to recommit the bill H.R. 13950 to the Committee on Education and Labor with instructions to report the bill back forthwith with the following amendment: Beginning on page 38, line 18, through page 43, line 9, strike all of subsection 112(b).

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. ERLBORN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 389, nays 4, not voting 38, as follows:

[Roll No. 248]

YEAS—389

Abbitt	Alexander	Andrews, Ala.
Abernethy	Anderson,	Andrews,
Adair	Calif.	N. Dak.
Adams	Anderson, Ill.	Annunzio
Addabbo	Anderson,	Arends
Albert	Tenn.	Ashley

Aspinall
Ayres
Beall, Md.
Belcher
Bennett
Berry
Betts
Bevill
Blaggi
Blester
Bingham
Blackburn
Blatnik
Boggs
Boland
Bolling
Bow
Brademas
Brasco
Bray
Brinkley
Brock
Brooks
Broomfield
Brotzman
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Burke, Fla.
Burke, Mass.
Burlison, Tex.
Burlison, Mo.
Burton, Calif.
Bush
Button
Byrnes, Wis.
Cabell
Caffery
Camp
Carey
Carter
Casey
Celler
Chamberlain
Chappell
Clancy
Clausen,
Don H.
Clawson, Del
Clay
Cleveland
Cohelan
Collier
Conable
Conte
Corbett
Corman
Coughlin
Cowger
Cramer
Culver
Cunningham
Daniel, Va.
Daniels, N.J.
Davis, Ga.
Davis, Wis.
de la Garza
Delaney
Dellenback
Denney
Dent
Derwinski
Devine
Dickinson
Diggs
Dingell
Donohue
Dorn
Dowdy
Downing
Dulski
Duncan
Eckhardt
Edmondson
Edwards, Ala.
Edwards, Calif.
Edwards, La.
Ellberg
Erlenborn
Esch
Eshleman
Evans, Colo.
Evins, Tenn.
FaNon
Farbstein
Fascell
Feighan
Findley
Fish
Fisher
Flood
Flowers
Flynt
Ford, Gerald R.

Ford.
William D.
Foreman
Fountain
Fraser
Frelinghuysen
Frey
Friedel
Fulton, Pa.
Fulton, Tenn.
Fuqua
Galifianakis
Gallagher
Garnatz
Boggs
Gaydos
Gettys
Glaimo
Gibbons
Gilbert
Goldwater
Gonzalez
Goodling
Gray
Green, Oreg.
Green, Pa.
Griffin
Griffiths
Gross
Grover
Gubser
Gude
Hagan
Haley
Hall
Halpern
Hamilton
Hammer-
schmidt
Hanley
Hanna
Hansen, Idaho
Hansen, Wash.
Harrington
Harsha
Harvey
Hastings
Hathaway
Hawkins
Hays
Hébert
Hechler, W. Va.
Heckler, Mass.
Helstoski
Henderson
Hicks
Hogan
Holifield
Horton
Hosmer
Howard
Hull
Hungate
Hunt
Hutchinson
Ichord
Jacobs
Johnson, Calif.
Johnson, Pa.
Jonas
Jones, Ala.
Jones, N.C.
Karth
Kastenmeier
Kazen
Kee
Keith
King
Kleppe
Kluczynski
Koch
Kuykendall
Kyl
Kyros
Landrum
Langen
Latta
Leggett
Lennon
Lipscomb
Lloyd
Long, La.
Lowenstein
Lujan
McCarthy
McCloskey
McClure
McDade
McDonald,
Mich.
McEwen
McFall
McKneally
McMillan
Macdonald,
Mass.

MacGregor
Madden
Mahon
Mailliard
Mann
Marsh
Martin
Mathias
Matsunaga
May
Mayne
Meeds
Melcher
Meskill
Michel
Miller, Calif.
Miller, Ohio
Mills
Minish
Mink
Minshall
Mize
Mizell
Mollohan
Montgomery
Moorhead
Morgan
Morse
Morton
Mosher
Moss
Murphy, Ill.
Murphy, N.Y.
Myers
Natcher
Nedzi
Neisen
Nichols
Nix
Obey
O'Hara
O'Konski
Olsen
O'Neal, Ga.
Ottinger
Passman
Patman
Patten
Pelly
Perkins
Pettis
Philbin
Pickle
Poage
Poff
Pollock
Preyer, N.C.
Price, Ill.
Price, Tex.
Pryor, Ark.
Purcell
Quie
Quillen
Railsback
Randall
Rarick
Rees
Reid, Ill.
Reid, N.Y.
Reifel
Reuss
Rhodes
Riegle
Rivers
Roberts
Robison
Rodino
Rogers, Colo.
Rogers, Fla.
Rooney, N.Y.
Rooney, Pa.
Rosenthal
Rostenkowski
Roth
Roudebush
Roybal
Ruppe
Ruth
Ryan
St Germain
St. Onge
Sandman
Satterfield
Saylor
Schadeberg
Scheuer
Schneebeli
Schwengel
Scott
Sebelius
Shipley
Shriver
Sikes
Sisk
Skubitz

Slack
Smith, Calif.
Smith, Iowa
Smith, N.Y.
Snyder
Springer
Stafford
Staggers
Stanton
Steed
Steiger, Ariz.
Steiger, Wis.
Stephens
Stokes
Stratton
Stubblefield
Stuckey
Sullivan
Symington
Taft
Talcott
Taylor

Teague, Calif.
Teague, Tex.
Thompson, Ga.
Thompson, N.J.
Thomson, Wis.
Tiernan
Tunney
Ullman
Utt
Vander Jagt
Vanik
Vigorito
Waggoner
Waldie
Wampler
Watkins
Watson
Watts
Weicker
Whalen
White
Whitehurst

Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson,
Charles H.
Winn
Wold
Wolf
Wright
Wyatt
Wydler
Wylie
Wyman
Yates
Yatron
Young
Zablocki
Zion
Zwach

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

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. PERKINS

Mr. PERKINS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. PERKINS moves to strike out all after the enacting clause of S. 2917 and insert in lieu thereof the text of H.R. 13950, as passed, as follows:

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—
(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, illness, 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 unhealthy 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.

DEFINITIONS

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

(a) "Secretary" means the Secretary of the Interior;

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and 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, Guam, and the Trust Territory of the Pacific Islands;

(d) "operator" means any owner, lease, or other person who operates, controls, or supervises a coal mine;

(e) "agent" means any person charged with responsibility for the operation of all or part of a coal mine or 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;

(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 sur-

NAYS—4

Landgrebe
Scherie

NOT VOTING—38

Ashbrook
Baring
Barrett
Bell, Calif.
Blanton
Brown, Calif.
Buchanan
Burton, Utah
Byrne, Pa.
Cahill
Cederberg
Chisholm
Clark

Colmer
Conyers
Daddario
Dawson
Dwyer
Foley
Jarman
Jones, Tenn.
Kirwan
Long, Md.
Lukens
McClory
McCulloch

Mikva
Monagan
O'Neill, Mass.
Pepper
Pike
Pirnie
Podell
Powell
Pucinski
Udall
Van Deerlin
Whalley

So the bill was passed.

The Clerk announced the following pairs:

Mr. O'Neill of Massachusetts with Mr. Cederberg.

Mr. Monagan with Mrs. Dwyer.

Mr. Foley with Mr. Pirnie.

Mr. Podell with Mr. McCulloch.

Mr. Pike with Mr. Ashbrook.

Mr. Byrne of Pennsylvania with Mr. Cahill.

Mr. Barrett with Mr. Whalley.

Mr. Blanton with Mr. Buchanan.

Mr. Kirwan with Mr. Bell of California.

Mr. Jones of Tennessee with Mr. Lujan.

Mr. Daddario with Mr. Burton of Utah.

Mr. Pucinski with Mr. McClory.

Mr. Brown of California with Mr. Dawson.

Mr. Clark with Mr. Jarman.

Mr. Long of Maryland with Mr. Powell.

Mr. Van Deerlin with Mrs. Chisholm.

Mr. Udall with Mr. Conyers.

Mr. Pepper with Mr. Baring.

Mr. Mikva with Mr. Colmer.

Mr. ASPINALL changed his vote from "nay" to "yea."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table. * * * * *

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Mr. PERKINS. Mr. Speaker, pursuant to the provisions of House Resolution 584, I call up for immediate consideration the bill (S. 2917) to improve the health and

face 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 of 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) "Panel" means the Interim Compliance Panel established by this Act.

MINES SUBJECT TO ACT

SEC. 4. Each coal mine, the products of which enter commerce, or the operations or products 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.

INTERIM COMPLIANCE PANEL

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, Secretary of Commerce, the Secretary of Labor, and the Secretary of the Interior shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

(e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section 3105 of title

5 of the United States Code shall be applicable to this subsection.

(f) (1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to sections 202 and 305 of this Act and to provide an opportunity for a hearing, after notice, at the request of an operator of the affected mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel under this subsection may file a petition for review of such decision under section 106 of this Act. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under sections 202 and 305 of this Act. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5 of the United States Code.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

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 safety standards for the protection of life and the prevention of injuries in a coal mine, and shall, in accordance with the procedures set forth in this section, promulgate the mandatory health standards transmitted to him by the Secretary of Health, Education, and Welfare. No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners below that afforded by the standards contained in titles II and III of this Act.

(b) In the development of such mandatory safety standards, the Secretary shall consult with the Board, other interested Federal agencies, representatives of States, 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 safety protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other safety statutes.

(c) The Secretary of Health, Education, and Welfare shall, in accordance with the procedures set forth in this section, develop and revise, as may be appropriate, mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners. Such development and revision shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In the development of mandatory health standards, the Secretary of Health, Education, and Welfare may consult with appropriate representatives of the operators and miners, other interested persons, the States, advisory committees, and, where appropriate, foreign countries. Mandatory health standards which the Secretary of Health, Education, and Welfare develops or revises shall be transmitted to the Secretary, and shall thereupon be published by the Secretary as proposed mandatory health standards.

(d) The Secretary shall 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. In the case of man-

datory safety standards, 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. In the case of mandatory health standards, except as provided in subsection (e) of this section, the Secretary of Health, Education, and Welfare may, upon the expiration of such period and after consideration of all relevant matter presented to the Secretary and transmitted to the Secretary of Health, Education, and Welfare, direct the Secretary to promulgate such standards with such modifications as the Secretary of Health, Education, and Welfare may deem appropriate and the Secretary shall thereupon promulgate such standards.

(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 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.

(f) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (e) of this section, the Secretary, in the case of mandatory safety standards, or the Secretary of Health, Education, and Welfare, in the case of mandatory health standards, shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary who held the hearing shall make findings of fact which shall be public. In the case of mandatory safety standards, the Secretary may promulgate such standards with such modifications as he deems appropriate. In the case of mandatory health standards, the Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the mandatory health standards with such modifications as the Secretary of Health, Education, and Welfare deems appropriate and the Secretary shall thereupon promulgate the mandatory health standards. In the event the Secretary or the Secretary of Health, Education, and Welfare determines that a proposed mandatory standard should not be promulgated or should be modified, he shall within a reasonable time publish his reasons for his determination.

(g) Any mandatory standard promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(h) 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.

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, shall be, for each day (including travel time) during which they are performing committee business, entitled to receive compensation at rates fixed by the Secretary but not in excess of the maximum rate of pay for GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

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) gathering information with respect to 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 or with any notice or order issued under this title. In carrying out the requirements of clauses (3) and (4) of this subsection, no advance notice of an inspection shall be provided the operator of a mine. 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 four times a year.

(b) (1) 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.

(2) The provisions of this Act relating to inspections, investigations, and records shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this Act.

(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 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 subpoenas 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 subpoena 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. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(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, when feasible, 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.

(g) If a miner or an authorized representative, if any, of the miners believes that a violation of a mandatory health or safety standard exists, or an imminent danger exists, in a mine, he may notify the Secretary or his authorized representative of such violation or danger. Upon receipt of such notification the Secretary or his authorized representative may make a special investigation to determine if such violation or danger exists.

(h) At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative, if any, of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Secretary on such inspection.

FINDINGS, NOTICES, AND ORDERS

SEC. 104. (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 forthwith 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 but the violation has not created an imminent danger, he shall 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 representative 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 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 or effect of a mine accident, 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 special inspection required under subsection (b) of this section, or section 105. If, during any special 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 manda-

tory health or safety standards, 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 until an authorized representative of the Secretary determines that such violation has been abated.

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 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.

(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;

(3) 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; and

(4) any consultant to any of the foregoing.

(e) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practice which cause and constitute an imminent danger or a violation of any mandatory health or safety standard 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) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the Secretary.

(h) (1) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine, if any. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners, if any, to present information relating to such notice.

(2) Upon the conclusion of such investigation and an opportunity for a hearing upon request by any interested party, the Secretary shall make findings of fact, and shall require that either the notice issued

under this subsection be canceled, or that an order be issued by such authorized representative of the Secretary requiring the operator to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated.

(1) If, based upon samples taken and analyzed and recorded pursuant to section 202 (a) of this Act, the applicable health standard established under section 202(b) of this Act is exceeded and thereby violated, the Secretary or his authorized representative shall find a reasonable period of time within which to take corrective action to reduce the average concentration of respirable dust to the miners in the area of the mine in which such standard was exceeded, and shall issue a notice fixing a reasonable time for the abatement of the violation. During such time, the operator of such mine shall cause samples described in section 202(a) of this Act to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative finds, based upon such samples or upon an inspection, that the violation has not been totally abated, he shall issue a new notice of violation if he finds that such period of time should be further extended. If he finds that such 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 the Secretary or his authorized representative determines through such test procedures conducted in such area as he may require, including production and sampling that the violation has been abated.

REVIEW BY THE SECRETARY

SEC. 105. (a) (1) An operator notified of an order issued pursuant to section 104 of this title, or any representative of miners in any mine affected by such order or any modification or termination of such order pursuant to section 104(g), may apply to the Secretary for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. 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, enable the applicant and the representatives of persons working in such mine to present information relating to the issuance and continuance of such order.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(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 104 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), (c), or (d) of section 104 of this title, he shall find whether or not there was

a violation of any mandatory health or safety standard 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 104 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.

JUDICIAL REVIEW

SEC. 106. (a) Any decision issued by the Panel under section 5 or the Secretary under section 105 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 operator or a representative of the miners aggrieved by the decision praying that the decision 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 Secretary or the Panel, as appropriate, and thereupon the Secretary or the Panel, as appropriate, 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 petition on the record made before the Secretary or the Panel, as appropriate. The findings of the Secretary or the Panel, as appropriate, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any such decision or may remand the proceedings to the Secretary or the Panel, as appropriate, for such further action as it may direct.

(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, from a decision of the Secretary of the Panel, as appropriate, except a decision from an order issued under section 104(a) of this title, 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 or Panel's decision.

POSTING OF NOTICES AND ORDERS

SEC. 107. (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. Such notice or order shall be available for public inspection.

(c) In order to insure prompt compliance with any notice or order issued under section 104 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.

(d) Each operator of a coal mine shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine and such official shall receive a copy of any notice, order, or decision issued under this Act affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health or safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

INJUNCTIONS

SEC. 108. 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 104 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: *Provided*, That no temporary restraining order shall be issued without notice unless the petition therefor alleges that substantial and irreparable injury to the miners in such mine will be unavoidable and such temporary restraining order shall be effective for no longer than seven days and will become void at the expiration of such period: *Provided further*, That any order issued under this section to enforce an order issued under section 104, unless set aside or modified prior thereto by the district court granting such injunctive relief, shall not be in effect after the completion or final ter-

mination of all proceedings for review of such order as provided in this title if such is determined on such review that such order was invalid.

PENALTIES

Sec. 109. (a) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any provision of this Act shall by order be assessed a civil penalty by the Secretary which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory 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, 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. No penalty shall be assessed under this subsection pending the final termination, expiration, or completion of all proceedings, administrative or judicial, 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 Secretary shall afford such operator an opportunity for a hearing and, in accordance with the request, determine by decision whether or not a violation 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 104(a) of this title or any final decision on any other order 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 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 by both.

(e) Whenever a corporate operator violates a mandatory health or safety standard of this Act, or violates any provision of this Act, any director, officer, or agent of such corporation who authorized, ordered, or carried out such violation shall be subject to the provisions of subsection (a). Whenever a corporate operator knowingly violates or fails or refuses to comply with any order issued under section 104(a) of this title or any final decision on any other order issued under this title, any director, officer, or agent of such corporation who authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the provisions of subsection (d).

(f) Whoever knowingly makes any false statements or representations in any application, records, reports, plans, or other documents filed or required to be maintained in accordance with this Act or any mandatory health or safety standard of this Act or 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 six months, or both.

ENTITLEMENT OF MINERS

Sec. 110. (a) If a mine or portion of a mine is closed by an order issued under section 104, all miners working during the shift when such order was issued who are idled

by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. Whenever an operator violates or fails or refuses to comply with an order issued under section 104, all miners employed at the affected mine who would be withdrawn or prevented from entering such mine or portion thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

(b) (1) Compensation shall be paid under this subsection in respect of total disability of an individual from complicated pneumoconiosis which arose out of or in the course of his employment in a coal mine, and in respect of the death of any individual who, at the time of his death, was suffering from complicated pneumoconiosis which so arose. For purposes of this subsection, if an individual who is suffering or suffered from complicated pneumoconiosis was employed for ten years or more in a coal mine there shall be a rebuttable presumption that his complicated pneumoconiosis arose out of or in the course of such employment, but this sentence shall not be deemed to affect the applicability of the first sentence of this paragraph in the case of claims under this subsection on account of death or total disability of an individual when such individual has not worked for as much as ten years in a coal mine. For purposes of this subsection, any individual who suffers from complicated pneumoconiosis shall be deemed to be totally disabled.

(2) (A) Subject to the provisions of subparagraph (B), compensation shall be paid under this subsection as follows:

(i) In the case of total disability, the disabled individual shall be paid compensation during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled is entitled at the time of payment under the provisions of Federal law relating to Federal employees' compensation (section 8112, title 5, United States Code).

(ii) In the case of death, compensation shall be paid to the widow at the rate the deceased individual would receive such compensation if he were totally disabled.

(iii) In the case of an individual entitled to compensation under clause (i) or (ii) of this subparagraph who has one or more dependents, his compensation shall be increased at the rate of 50 per centum of the compensation to which he is so entitled under clause (i) or (ii) of this subparagraph if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three dependents.

(B) Notwithstanding subparagraph (A), compensation under this paragraph shall be reduced by an amount equal to any payment which the payee receives under the workmen's compensation, unemployment compensation, or disability insurance laws of his State, and the amount by which such payment would be reduced on account of excess earnings under section 203 (b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(3) (A) The Secretary of Labor shall enter into agreements with the Governors of the States under which the State will receive and adjudicate claims under this subsection

from any resident of the State and under which compensation will be paid as provided by this subsection from grants made to pay compensation under this subsection. Such Governor shall implement the agreement in such manner as he shall determine will best effectuate the provisions of this subsection. The Governor shall make such reports to the Secretary of Labor, subject to such verification, as may be necessary to assure that Federal grants under this subsection are used for their intended purpose.

(B) The Secretary of Labor shall make grants under this subsection to States with which he has an agreement under subparagraph (A) in the amount necessary to enable them to pay the compensation required by this subsection.

(4) If the Secretary of Labor is unable to enter into an agreement under paragraph (3), or if the Governor of the State requests him to do so, he shall make payments of compensation directly to residents of such State as required by this subsection. The administrative provisions for carrying out the Federal employees' compensation programs which are contained in sections 8121, 8122 (b), and 8123 through 8135, title 5, United States Code, shall apply with respect to claims under this paragraph.

(5) No claim under this subsection shall be considered unless it is filed (1) within one year after the date an employed miner received the results of his first chest roentgenogram provided under section 203 of this Act, or, if he did not receive such a chest roentgenogram, the date he was first afforded an opportunity to do so under such section, or (2) in the case of any other claimant, within three years from the date of enactment of this Act, or, in the case of a claimant who is a widow, within one year after the death of her husband or within three years from the date of enactment of this Act, whichever is the later. Payment of compensation under this subsection shall commence with the date the claim is filed.

(6) No compensation shall be paid under this subsection to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive compensation under this subsection, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(7) For purposes of this subsection—

(A) The term "coal mine" includes only underground coal mines.

(B) The term "complicated pneumoconiosis" means an advanced stage of a chronic coal dust disease of the lung which (i) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the pneumoconioses by the International Labor Organization, (ii) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, (iii) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (i) or (ii) if diagnosis had been made in a manner described in clause (i) or (ii).

(C) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110, title 5, United States Code.

(D) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

REPORTS

Sec. 111. (a) All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated

by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported for periods determined by the Secretary, but at least annually.

(b) Every operator of a coal mine and his agent shall (1) establish and maintain, in addition to such records as are specifically required by this Act, such records, and (2) 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. The Secretary is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time and released to any interested person, and shall be made available for public inspection.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

COVERAGE

Sec. 201. The provisions of sections 202 through 205 of this title shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by mandatory health standards promulgated by the Secretary, and shall be enforced in the same manner and to the same extent as any mandatory health standard promulgated under the provisions of section 101 of 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 105, 107 and 108 of title I of this Act.

DUST STANDARD AND RESPIRATORS

Sec. 202. (a) Each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which the miners in the active workings of such mine are exposed. Such samples shall be taken by any device approved by the Secretary and the Secretary of Health, Education, and Welfare and in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretaries shall prescribe in the Federal Register within sixty days from the date of enactment of this Act and from time to time thereafter. Such samples shall be transmitted to the Secretary at his expense in a manner established by him, and analyzed and recorded by him in a manner which will assure application of the provisions of section 104 (1) when the standard established under subsection (b) of this section is exceeded. The results of such samples shall also be made available to the operator. Each operator shall certify to the Secretary at such intervals as the Secretary may require as to the condition of the mine atmosphere in the active workings of the mine, including, but not limited to, the average number of working hours worked during each shift, the quantity of air regularly reaching the working places, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

(b) (1) Effective on the operative date of this title, each operator shall maintain the average concentration of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed at or below 4.5 milligrams per cubic meter of air (if measured with an MRE instrument over several shifts) or an equivalent amount of dust (if measured with any other instrument approved by the Secretary and the

Secretary of Health, Education, and Welfare). In the case of an operator who requests an extension of time beyond the operative date of this title in which to reduce such average concentration of respirable dust to or below 4.5 milligrams per cubic meter of air (or its equivalent) and demonstrates to the satisfaction of the Panel that he is undertaking maximum efforts to so reduce such average concentration but is unable to do so because it is not technologically feasible for him to do so, the Panel may grant such operator no more than ninety days for such purpose.

(2) Effective six months after the operative date of this title, the limit on the level of dust concentration shall be 3.0 milligrams of respirable dust per cubic meter of air (if measured with an MRE instrument over several shifts) or an equivalent amount of dust. (if measured with any other instrument approved by the Secretary and the Secretary of Health, Education, and Welfare). In the case of an operator who requests an extension of time beyond the effective date of this paragraph in which to reduce the average concentration of respirable dust to or below 3.0 milligrams per cubic meter of air (or its equivalent) and demonstrates to the satisfaction of the Panel that he is undertaking maximum efforts to so reduce such average concentration but is unable to do so because it is not technologically feasible for him to do so, the Panel may grant such operator no more than six months for such purpose.

(3) Beginning six months after the operative date of this title, the Secretary of Health, Education, and Welfare shall reduce the limit on the level of dust concentration below 3.0 milligrams of respirable dust per cubic meter of air (if measured with an MRE instrument over several shifts) or an equivalent amount of dust (if measured with any other instrument approved by the Secretary and the Secretary of Health, Education, and Welfare) as he determines such reductions become technologically attainable.

(c) Respirators or other breathing devices approved by the Secretary and the Secretary of Health, Education, and Welfare shall be made available to all persons whenever exposed to concentrations of dust in excess of concentrations of dust permitted by subsection (b). Use of respirators shall not be substituted for environmental control measures. Each underground mine shall maintain a supply of approved respirators or other breathing devices adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the limit prescribed in this section.

(d) As used in this title, 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.

MEDICAL EXAMINATION

Sec. 203. (a) The operator of an underground coal mine shall cooperate with the Secretary of Health, Education, and Welfare in making available to each miner working in an underground coal mine an opportunity to have, at least once every five years, beginning six months after the operative date of this title, a chest roentgenogram to be provided by the Secretary of Health, Education, and Welfare with funds derived under section 401(c) of this Act. Each worker who begins work in a coal mine for the first time shall be given, as soon as possible after commencement of his employment, and again three years later if he is still engaged in coal mining, a chest roentgenogram; and in the event the second such chest roentgenogram shows evidence of the development of pneumoconiosis the worker shall be given, two years later if he is still engaged in coal mining, an additional chest roentgenogram. Such chest roentgenograms shall be given in accordance with specifications and to the extent prescribed by the Secretary of Health,

Education, and Welfare and shall be supplemented by such other tests as the Secretary of Health, Education, and Welfare deems necessary. 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 and of such tests, shall be submitted to the Secretary and to the Secretary of Health, Education, and Welfare, and at the request of the worker, to his physician. Such specifications, readings, classifications, and tests shall to the greatest degree possible, be uniform for all underground coal mines and coal miners in such mines.

(b) An miner, who, in the judgment of the Secretary of Health, Education, and Welfare based upon such reading, shows substantial evidence of the development of pneumoconiosis shall, at the option of the miner, be assigned by the operator, for such periods or periods as may be necessary to prevent further development of such disease, to work 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 per cubic meter of air if measured with an MRE instrument or not more than an equivalent amount of dust if measured with any other instrument approved by the Secretary and the Secretary of Health, Education, and Welfare, or (2) in an area of the mine containing more than such 2.0 milligrams, or its equivalent, provided the miners wears respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare. Within one year after the enactment of this Act, any miner who shows 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, in any working section or other area of the mine, where the average concentration of respirable dust in the mine atmosphere to which the miner is exposed during each shift is at or below 1.0 milligrams of dust per cubic meter of air or to whatever lower level the Secretary of Health, Education, and Welfare determines is necessary to prevent any further development of such disease. Any miner so assigned shall receive compensation for such work not less than the regular rate of pay received by him immediately prior to his assignment.

DUST FROM DRILLING ROCK

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, or by any other method or device approved by the Secretary which is at least as effective in controlling such dust. Respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be provided persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons shall be taken.

DUST STANDARD WHEN QUARTZ IS PRESENT

Sec. 205. In coal mining operations where the respirable dust in the mine atmosphere of any active working place contains more than 5 per centum quartz, the Secretary of Health, Education, and Welfare shall prescribe an appropriate formula for determining the applicable dust standard under this title for such working place and the Secretary shall apply such formula in carrying out his duties under this title.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

COVERAGE

Sec. 301. (a) The provisions of sections 302 through 317 of this title shall be 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 under the provisions of section 101 of title I of this Act, 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 title I of this Act.

(b) The Secretary may, upon petition by the operator waive or modify the application of any mandatory safety standard to a mine when he determines such application will result in a diminution of safety to workers in such mine, but any action taken by the Secretary under this subsection shall be consistent with the purposes of this Act and shall not reduce the protection afforded miners by it.

(c) Upon petition by the operator, the Secretary may modify the application of any mandatory safety standard to a mine. Such petition shall state that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded miners by such standard. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the representative, if any, of persons working in the affected mine and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of such representative or other interested party, to enable the applicant and the representative of persons working in such mine or other interested party to present information relating to the modification of such standard. The Secretary shall make findings of fact and publish them in the Federal Register.

ROOF SUPPORT

Sec. 302. (a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each mine and the means and measures to accomplish such system. 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 sixty days after the operative date of this title. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. 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 and shall be available to the miners or their authorized representatives.

(b) The method of mining followed in any mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

(c) The operator shall provide at or near the working face an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof boltholes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Supports knocked

out, except in recovery, shall be replaced promptly.

(d) When permitted, installed roof bolts shall be tested in accordance with the approved roof control plan. Roof bolts shall not be recovered where complete extractions of pillars are attempted, where adjacent to clay veins, or at the locations of other irregularities, whether natural or otherwise that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan and shall be conducted by experienced miners and only where adequate temporary support is provided.

(e) Where miners are exposed to danger from falls of roof, face, and ribs the operator shall require that examinations and tests of the roof, face, and ribs be made before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

VENTILATION

Sec. 303. (a) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(b) All active underground workings 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. The minimum quantity of air in any mine 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. The minimum quantity of air in any mine reaching each working face shall be three thousand cubic feet a minute and, in the case of a mechanized mine, there shall also be a minimum velocity of one hundred feet per minute passing to within five feet of the working face and over any miner operating electrical equipment at the working face. The Secretary or his authorized representative may require in any coal mine a greater quantity and velocity of air when he finds it necessary to protect the safety of miners [Incomplete and illegible language at this point.] 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) (1) Properly installed and adequately maintained line brattice or other approved devices shall be used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement. When damaged by falls or otherwise, they shall be repaired promptly.

(2) The space between the line brattice or other approved device 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, explosive, and noxious gases, dust, and explosive fumes.

(3) Brattice cloth used underground shall be of a flame-resistant material.

(d) (1) 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 underground working place in that area and shall make tests in each such working place for accumulations of explosive gases with means approved by the Secretary for protecting explosive gases 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 underground working places; examine active roadways, travelways, and all belt conveyors on which men are carried, approaches to abandoned workings, and accessible falls in 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 and violations of the mandatory health safety standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun. 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 health or safety standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posing 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, 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 for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard.

(2) 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.

(c) At least once during each coal-producing shift, or more often if necessary for safety, each underground working section 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 explosive gases and with a permissible flame safety lamp or other means approved by the Secretary for detecting oxygen deficiency.

(f) Examination for hazardous conditions, including tests for explosive gases, and for compliance with the standards established by, or promulgated pursuant to, this title 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 aircourse in its entirety, idle workings, and, insofar as safety considerations permit, abandoned workings. Such weekly examination need not be made during any week in which the mine is idle for the entire week; except that such examination shall be made before any other miner returns to the mine. 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. Any hazardous conditions shall be corrected immediately. If a hazardous condition cannot be corrected immediately, the operator shall withdraw all persons from the area affected by the hazardous condition except those persons whose presence is required to correct the conditions. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(g) At least once each week, a qualified 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 any pair or set of developing entries and the last open crosscut in any pair or set of rooms, the volume being 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 recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(h) (1) At the start of each coal-producing shift, tests for explosive gases 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 1.0 volume per centum or more of explosive gas is detected, electrical equipment shall not be energized, taken into, or operated in, such working place until such explosive gas content is less than 1.0 volume per centum of explosive gas. Examinations for explosive gases 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 explosive gases.

(2) If the air at the underground working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains 1.0 volume per centum or more of explosive gas, changes or adjustments shall be made at once in the ventilation in such mines so that such air shall contain less than 1.0 volume per centum of explosive gas. While such ventilation improvement is underway and until it has been achieved, power to face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions will be carried out under the direction of the agent of the operator so as not to endanger other active workings.

If such air, when tested as outlined above, contains 1.5 volume per centum or more of explosive gas, 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 working place shall contain less than 1.0 volume per centum of explosive gas.

(1) If, when tested, a split of air returning from active underground workings contains 1.0 volume per centum or more of explosive gas, changes or adjustments shall be made

at once in the ventilation in the mine so that such returning air shall contain less than 1.0 volume per centum of explosive gas. 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 explosive gases.

(j) If a split of air returning from active underground workings contains 1.5 volume per centum or more of explosive gas, 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 contain less than 1.0 volume per centum of explosive gas. In virgin territory, if the quantity of air in a split ventilating the active workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section, if the air in the split returning from such workings does not pass over trolley or power feeder wires, and if a certified person designated by the mine operator is continually testing the explosive gas 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 explosive gases only when the air returning from such workings contains 2.0 volume per centum or more of explosive gas.

(k) Air which has passed by an opening of any abandoned area shall not be used to ventilate any active working place in the mine if such air contains 0.25 volume per centum or more of explosive gas. Examinations of such air shall be made during the pre-shift examination required by subsection (d) of this section. In making such tests, a certified person designated by the operator of the mine shall use means approved by the Secretary for detecting explosive gases. 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 or unsafe for inspection shall not be used to ventilate any active working place 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 working place in such mine, except that such air, if it does not contain 0.25 volume per centum or more of explosive gases, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(m) A methane monitor approved by the Secretary shall be installed and be kept operative and in operation on all electric face cutting equipment, continuous miners, long-wall face equipment, and loading machines, and such other electric face equipment as an authorized representative of the Secretary may require. Such monitor shall be set to deenergize automatically any electric face equipment on which it is required when such monitor is not operating properly. The sensing device of any such monitor shall be installed as close to the working face as possible. An authorized representative of the Secretary may require any such monitor to be set to give a warning automatically when the concentration of explosive gas reaches 1.0 volume per centum and automatically to deenergize equipment on which it is installed when such concentration reaches 2.0 volume per centum.

(n) Idle and abandoned areas shall be inspected for explosive gases 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 areas. However, persons, such as pump-

men, 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 explosive gases 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 explosive gas is present, such person shall use means approved by the Secretary for detecting explosive gases. If in such examination explosive gas is found in amounts of 1.0 volume per centum or more, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall contain less than 1.0 volume per centum of explosive gas.

(p) A ventilation system and explosive gas—and dust-control plan and revisions thereof suitable to the conditions and the mining system of the mine and approved by the Secretary shall be adopted by the operator and set out in printed form within ninety days after the operative date of this title. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every six months.

(q) Each operator of a coal mine shall provide for the proper maintenance and care of the permissible flame safety lamp by a person trained in such maintenance and before each shift care shall be taken to insure that such lamp is in a permissible condition.

(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 workings are ventilated with sufficient air to keep the air in open areas along the pillar lines below 1.0 volume per centum of explosive gas.

(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, not in excess of six months 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) In all underground areas of a mine, immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for explosive gases shall be made by a qualified person with means approved by the Secretary for detecting explosive gases. If explosive gas is found in amounts of 1.0 volume per centum or more, changes or adjustments shall be made at once in the ventilation so that the air shall contain less than 1.0 volume per centum of explosive gas. No shots shall be fired until the air contains less than 1.0 volume per centum of explosive gas.

(u) Each operator of a coal mine shall adopt a plan within sixty days after the operative date of this title 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 working sections, (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 reasonable period as set forth in the plan after the working places and other workings where explosive gas is likely to ac-

accumulate are reexamined by a certified person to determine if explosive gas in amounts of 1.0 volume per centum or more 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.

(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 foremen, 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 was taken to remedy such condition. Such book shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard.

(y) Before a mine is reopened after having been abandoned, the Secretary shall be notified and an inspection made of the entire mine by an authorized representative of the Secretary before mining operations commence.

(2) (1) In any coal mine opened after the operative date of this title, the entries used as intake and return air-courses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of explosive gas, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to the operative date of this title which has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to adequately permit the coursing of intake or return air through such entries, (1) the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate active working places, and (2) when the belt haulage entries are not necessary to ventilate the active working faces, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of explosive gas.

(2) In any coal mine opened on or after the operative date of this title, or, in the case of a coal mine opened prior to such date, in

any new working section of such mine where trolley haulage systems are maintained and where trolley or trolley feeder wires are installed, an authorized representative of the Secretary shall require a sufficient number of entries or rooms as intake air courses in order to limit, as prescribed by the Secretary the velocity of air currents on such haulageways for the purpose of minimizing the hazards associated with fires and dust explosions in such haulageways.

COMBUSTIBLE MATERIALS AND ROCK DUSTING

SEC. 304. (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 permitted to accumulate in active underground workings or on electric equipment therein.

(b) Where underground mining operations create or raise excessive amounts of dust, or water with a wetting agent added to it, or other effective methods approved by an authorized representative of the Secretary, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, or other effective methods approved by an authorized representative of the Secretary, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

(c) All underground 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 cross cuts that are less than forty feet from a working face shall also be rock dusted.

(d) Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a mine and maintained in such quantities that the incombustible contents 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 no less than 80 per centum. Where explosive gas is present in any ventilating current, the per centum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of explosive gas, where 65 and 80 per centum, respectively, of incombustibles are required.

(e) Subparagraphs (b) through (d) of this paragraph shall not apply to underground anthracite mines subject to this Act.

ELECTRICAL EQUIPMENT

SEC. 305. (a) One year after the operative date of this title—

(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 date of enactment of this Act, to continue in use for such period (not in excess of one year) as he deems necessary to obtain such permissible equipment: *Provided, however*, That the provisions of this paragraph shall not apply to any mine which is not classified as gassy; and

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

(b) (1) Four years after the operative date of this title all electric face equipment used in mines exempted from the provision of section 305(a)(1) of this Act shall be permissible and shall be maintained in a permissible condition, except that the Secretary may, upon petition, waive the require-

ments of this paragraph on an individual mine basis for a period not in excess of two years if, after investigation, he determines that such waiver is warranted. The Secretary may also, upon petition, waive the requirements of this paragraph on an individual mine basis if he determines that the permissible equipment for which the waiver is sought is not available to such mine.

(2) One year after the operative date of this title all replacement equipment acquired for use in any mine referred to in this subsection shall be permissible and shall be maintained in a permissible condition, and in the event of any major overhaul of any item of equipment in use one year from the operative date of this title such equipment shall be put in and thereafter maintained in a permissible condition, if, in the opinion of the Secretary, such equipment or necessary replacement parts are available.

(3) One year after the operative date of this title all hand held electric drills, blowers and exhaust fans, electric pumps, and other such low-horsepower electric face equipment as the Secretary may designate which are taken into or used in by the last open crosscut of any coal mine shall be permissible and thereafter maintained in a permissible condition.

(4) During the term of the use of any non-permissible electric face equipment permitted under this subsection the Secretary may by regulation provide for use of the methane monitoring devices, under such conditions as he shall prescribe, which will automatically deenergize electrical circuits providing power to electrical face equipment when the concentration of explosive gas in the atmosphere of the active workings permits, in the opinion of the Secretary, a condition in which an ignition or explosion may occur.

(c) A copy of any permit granted under this section 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. After the operative date of this title, whoever knowingly, in the case of a manufacturer, distributes, sells, offers for sale, introduces, or delivers in commerce any new electrical equipment used in coal mines, including, but not limited to components and accessories of such equipment which fails to comply with the specifications or regulations of the Secretary, or, in the case of any other person, removes, alters, modifies, or renders inoperative any such equipment prior to its sale and delivery in commerce to the ultimate purchaser, shall, upon conviction, be subject to the sanctions in section 109(f) of this Act.

(d) 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.

(e) All power-connection points, except where permissible power connection units are used, out by the last open crosscut shall be in intake air.

(f) The location and the electrical rating of all stationary electric apparatus in connection with the mine electric 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 in a location, electric rating, or setting shall be promptly shown on the map when the change is made. Such map shall be available to an authorized representative of the Secretary and to the miners in such mine.

(g) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing. Energized trolley wires may be repaired only by a person qualified to perform such repairs and the operator of such mine shall require that such person wear approved and tested insulated shoes and wireman's gloves. No work shall be performed on medium and high-voltage distribution circuits or equipment except by or under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that, in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by an agent of the operator.

(h) All electrical equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the Secretary and to the miners in such mine.

(i) All electric 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.

(j) All electrical connections or splices in conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(k) Cables shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

(l) All power wires (except trailing cables on mobile equipment, 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.

(m) Except trolley wires, trolley feeder and bare signal wires, power wires and cables installed shall be insulated adequately and fully protected.

(n) 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. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(o) 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.

(p) All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(q) Each ungrounded, exposed power conductor that leads underground shall be equipped with suitable 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 neutral grounds by a distance of not less than twenty-five feet.

(r) No device for the purpose of lighting any underground coal mine or flame which has not been approved by the Secretary or his authorized representative shall be permitted in any underground coal mine, except under the provisions of section 311(d) of this title.

(s) An authorized representative of the Secretary may require in any coal mine that face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

TRAILING CABLES

Sec. 306. (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 or other no less effective device approved by the Secretary 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 assure against connecting a trailing cable to the wrong size circuit breaker.

(d) No more than two temporary splices shall be made in any trailing cable, except that if a third splice is needed during a shift it may be made during such shift, but such cable shall not be used after that shift until a permanent splice is made. In any case in which a temporary splice is made pursuant to this subsection such splice shall, within five working days thereafter, be replaced by a permanent splice. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. 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. As used in this subsection, the term "splice" means the mechanical joining of one or more conductors that have been severed.

(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. 307. (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 effectively.

Methods other than grounding which provide equivalent protection may be permitted by the Secretary.

(b) The frames of all off-track direct current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at safe voltages by methods approved by an authorized representative of the Secretary.

(c) The frames of all stationary high-voltage equipment receiving power from ungrounded delta systems shall be grounded by methods approved by an authorized representative of the Secretary.

(d) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test, and maintain protective devices in making such repairs, to be prescribed by the Secretary prior to the operative date of this title.

(e) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

UNDERGROUND HIGH-VOLTAGE DISTRIBUTION

Sec. 308. (a) High-voltage circuits entering the underground portion of the mine shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short-circuit, and open current.

(b) High-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment 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, except that the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such portion of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(c) The grounding resistor, where required, 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 for a voltage equal to the phase-to-phase voltage of the system.

(d) High-voltage, resistance grounded, wye-connected systems 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.

(c) (1) Underground high-voltage cables used in resistance grounded, wye-connected systems shall be equipped with metallic shields around each power conductor, with one or more ground conductors having a total cross-sectional area of not less than one-half the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit.

(2) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(f) Couplers that are used with high-voltage power circuits shall be of the three-phase type with a full metallic shell, except that the Secretary may permit, under such guidelines as he may prescribe, couplers constructed of materials other than metal. Couplers shall be adequate for the voltage and current expected. All exposed metal on the metallic couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground check 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) All underground high-voltage transmission cables shall be installed only in regularly inspected aircourses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, 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, insulated, or placed to prevent contact with trolley and other low-voltage circuits.

(i) 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.

(j) Circuit breakers and disconnecting switches underground shall be marked for identification.

(k) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with section 306(e) of this title. Terminations and splices in all other high-voltage cables shall be made in accordance with the manufacturer's specifications.

(l) Frames, supporting structures, and enclosures of portable or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment shall be effectively grounded to the high voltage ground.

(m) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the Secretary may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the Secretary and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that, when such centers and transformers are moved while energized as permitted under this subsection, energized high-vol-

tage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.

UNDERGROUND LOW- AND MEDIUM-VOLTAGE ALTERNATING CURRENT CIRCUITS

SEC. 309. (a) Low- and medium-voltage power circuits serving three-phase alternating current equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

(b) Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, 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 the electrical equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 25 amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(c) Six months after the operative date of this title, low- and medium-voltage resistance grounded, wye-connected systems 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. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(d) Disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected. Trailing cables for mobile equipment shall contain one of more ground conductors having a cross sectional area of not less than one half the power conductor and, six months after the operative date of this title, an insulated conductor for the ground continuity check circuit. Splices made in the cables shall provide continuity of all components.

(e) Single phase loads shall be connected phase to phase.

(f) Circuit breakers shall be marked for identification.

(g) Trailing cable for medium voltage circuits shall include grounding conductors, a ground check conductor, and ground metallic shields around each power conductor or a grounded metallic shield over the assembly; except that on machines, employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

TROLLEY AND TROLLEY FEEDER WIRES

SEC. 310. (a) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 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 in by the last open crosscut and shall be kept at least 150 feet from pillar workings.

(d) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires; (2) on both sides of all doors and stoppings, and (3) at man-trip stations. The Secretary or his authorized representatives shall specify other conditions where trolley wires and trolley feeder wires shall be adequately protected to prevent contact by any person, or shall require the use of improved methods to prevent such contact. Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

FIRE PROTECTION

SEC. 311. (a) Each coal mine shall be provided with suitable firefighting equipment adapted for the size and conditions of the mine. The Secretary shall establish minimum requirements for the type, quality, and quantity of such equipment, and the interpretations of the Secretary relating to such equipment in effect on the operative date of this title shall continue in effect until modified or superseded by the Secretary. After every blasting operation performed on a shift, an examination shall be made to determine whether fires have been started.

(b) Underground storage places for lubricating oil and grease shall be of fireproof construction. Except for specially prepared materials approved by the Secretary, lubricating oil and grease kept in face areas or other underground working places in a mine shall be in portable, fireproof, closed metal containers.

(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. All other underground structures installed in a mine shall be of fireproof construction.

(d) All welding, cutting, or soldering with arc or flame in all underground areas of a mine shall, whenever practicable, be conducted in fireproof enclosures. Welding, cutting, or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a qualified person who shall make a diligent search for fire during and after such operations and shall immediately before and during such operations, continuously test for explosive gas with means approved by the Secretary for detecting explosive gas. Welding, cutting, or soldering shall not be conducted in air that contains 1.0 volume per centum or more of explosive gas. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(e) Within one year after the operative date of this title, fire suppression devices meeting specifications prescribed by the Secretary shall be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic systems of such equipment. Such fluids shall be used in the hydraulic systems of other underground equipment unless fire suppression devices meeting specifications prescribed by the Secretary are installed on such equipment.

(f) Deluge-type water sprays or foam generators, 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 or foam generators shall be supplied with a sufficient quantity of water to control fires.

(g) Underground belt conveyors shall be equipped with slippage and sequence

switches. The Secretary shall, within sixty days after the operative date of this title, require that devices be installed on all such belts which will give a warning automatically when a fire occurs on or near such belt. The Secretary shall prescribe a schedule for installing fire suppression devices on belt haulage ways.

(h) On or after the operative date of this title, all conveyor belts acquired for use underground shall meet the requirements established by the Secretary for flame-resistant conveyor belts.

MAPS

SEC. 312. (a) The operator of an active underground coal mine shall have, in a surface 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 as the Secretary may require. 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 are inaccessible or cannot be entered safely and on which no information is available, entries and air-courses with the direction of airflow indicated by arrows, elevation, dip of the coalbed, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and oil and gas wells, either producing or abandoned, located within five hundred feet of such mine, and such other information as the Secretary may require. 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, or to the Secretary of Housing and Urban Development, 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.

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.

(b) Explosives and detonators shall be kept in separate containers until immediately before use at the working faces. In underground anthracite mines, (1) mudcaps or other open, unconfined shake shots may be fired, if restricted to battery starting when explosive gas or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots in pitching veins may be fired, when no explosive gas or a fire hazard is present. If the taking down of loose hanging coal by other means is too hazardous; and (3) tests

for explosive gas shall be made immediately before such shots are fired and if explosive gas is present when tested in 1.0 volume per centum, such shot shall not be made until the explosive gas content is reduced below 1.0 per centum.

(c) Except as provided in this subsection, in all underground areas of a mine only permissible explosive 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.

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

(e) Explosives or detonators shall be transported in special closed containers (1) in cars moved by means of a locomotive or rope, (2) on belts, (3) in shuttle cars, or (4) in equipment designed especially to transport such explosives or detonators.

(f) When supplies of explosives and detonators for use in one or more working 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 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.

(g) Explosives and detonators stored in the working places 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 working 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.

HOISTING AND MANTRIES

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 adequately 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 recom-

mended safety factors of the ropes used. An accurate and reliable indicator of the position of the cage, platform, skip, bucket, or cars shall be provided.

(d) There shall be at least two effective methods approved by the Secretary of signaling between each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

(c) In order to be capable of stopping with the proper margin of safety each locomotive and haulage car used in an underground coal mine shall be equipped with automatic brakes, or shall be subject to speed reductions or other safeguards approved by the Secretary.

EMERGENCY SHELTERS

SEC. 315. The Secretary or an 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 an emergency for protection against hazards. Such chambers shall be properly equipped with first aid materials, an adequate supply of air and self-contained breathing equipment, an independent communication system to the surface, and proper accommodations for the men while awaiting rescue, and such other equipment as the Secretary may require. A plan for the erection, maintenance, and revisions of such chambers shall be submitted by the operators to the Secretary for his approval.

COMMUNICATIONS

SEC. 316. A two-way communication system, approved by the Secretary, shall be provided between the surface and each landing of main shafts and slopes and between the surface and each working section that is more than two hundred feet from a portal.

MISCELLANEOUS

SEC. 317. (a) (1) While pillars are being extracted in any area of a mine, such area shall be ventilated in a manner approved by the Secretary or his authorized representative. Within six months after the operative date of this title, all areas which are or have been abandoned in all mines, as determined by the Secretary or his authorized representative, shall be ventilated by bleeder entries or by bleeder systems or equivalent means or sealed, as determined by the Secretary or his authorized representative, except that the Secretary may permit, on a mine-by-mine basis, an extension of time of not to exceed six months to complete such work. Ventilation of such areas shall be approved only where the Secretary or his authorized representative is satisfied that such ventilation can be maintained so as to, continuously, dilute, render harmless, and carry away explosive gases within such areas and to protect the active workings of the mine from the hazards of such gases. When sealing is required, such seals shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine. In the case of mines opened on or after the operative date of this title, or in the case of working sections opened on or after such date in mines opened prior to such date, the mining system shall be designed, in accordance with a plan and revisions thereof approved by the Secretary and adopted by such operator, so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine, with explosion-proof seals or bulkheads. For the purpose of this paragraph, the term "abandoned" as applied to any area of a mine shall include, but not be limited to, areas of a mine which are not ventilated and inspected regularly, areas where mining has been started but not completed, areas where future mining is still possible, and areas that are deserted.

(2) Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located,

such operator shall establish and maintain barriers around such oil and gas wells in accordance with State laws and regulations, except that such barriers shall not be less than three hundred feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

(b) Whenever any working place approaches within fifty feet of abandoned workings in the mine as shown by surveys made and certified by a registered 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 to a distance of at least ten feet in advance of the advancing working 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) 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 underground portion of the mine does not carry smoking materials, matches, or lighters.

(d) Persons underground shall use only permissible electric lamps approved by the Secretary for portable illumination. No open flame shall be permitted in any underground mine except as specifically authorized by this Act.

(c) The Secretary shall prescribe the manner in which all underground working places in a mine shall be illuminated by permissible lighting while persons are working in such places.

(f)(1) At least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each working section of a mine continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, 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 flood water. Adequate and readily accessible escape facilities approved by the Secretary or his authorized representative, properly maintained, and frequently tested shall be immediately present at or in each escape shaft or slope to allow persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

(2) Not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the

two mine openings, and such work shall be prosecuted with reasonable diligence.

(3) When only one main opening is available, owing to final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, except that the distance between the mine opening and working face shall not exceed five hundred feet.

(4) In the case of all coal mines opened on or after the operative date of this title, and in the case of all new working sections opened on or after such date in coal mines opened prior to such date, the escapeway required by this subsection to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as the safety of the miners is assured.

(g) After the operative date of this title, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction. Unless structures existing on or prior to such date 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.

(h) Adequate measures shall be taken to prevent explosive gases and coal dust from accumulating in excessive concentrations in or on surface coal-handling facilities, but in no event shall explosive gases be permitted to accumulate in concentrations in or on surface coal-handling facilities in excess of limits established for explosive gases by the Secretary within one year of the operative date of this title, and coal dust shall not accumulate in excess of limits prescribed by or under this Act. Where coal is dumped at or near air-intake openings, provisions shall be made to prevent the dust from entering the mine.

(i) 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 title.

(j) Whenever the Secretary finds that a mine liberates excessive quantities of explosive gases during its operations, or that a gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine other especially hazardous conditions, he shall provide a minimum of twenty-six spot inspections of all or part of such mine each year at irregular intervals by his authorized representative.

(k) An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that the face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the operators of such equipment from roof falls and from rib and face rolls.

(l) The opening of any mine that is declared inactive by its operator or is abandoned for more than ninety days, after the operative date of this title, shall be sealed in a manner prescribed by the Secretary. Openings to all active coal mines shall be adequately protected to prevent entrance by unauthorized persons.

(m) Each mine shall provide adequate facilities for the miners to change from the clothes worn underground, to provide the storing of such clothes from shift to shift, and to provide sanitary and bathing facilities. Sanitary toilet facilities shall be pro-

vided in the active workings of the mine when such surface facilities are not readily accessible to the active workings.

(n) Arrangements shall be made in advance for obtaining emergency medical assistance and transportation for injured persons. Emergency communications shall be provided 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. In fulfilling each of the requirements in this subsection, the operator shall meet at least minimum standards established by the Surgeon General. Each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this section.

(o) A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device.

(p) The Secretary shall prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

(q) Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground and will provide an accurate record of the miners in the mine kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard. Such record shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than sixteen gauge.

(r) The Secretary shall require, when technologically feasible, that devices to suppress ignitions be installed on electric face cutting equipment.

(s) Whenever an operator mines coal in a manner that requires the construction, operation and maintenance tunnels under any river, stream, lake, or other body of water, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of men working or passing through such tunnels from cave-ins and other hazards. Such permits shall require in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to any such body of water that is, in the judgment of the Secretary, sufficiently large to constitute a hazard. No plan shall be approved unless there is a minimum of rock cover to be determined by the Secretary based on test holes drilled by the operator in a manner to be prescribed by the Secretary.

(t) The Secretary shall require that developed and improved devices and systems for the monitoring and detection of mine safety conditions and for the protection of the individual miner be acquired by each operator of a coal mine and that such devices and systems be used as soon as they become available.

(u) All haulage equipment acquired by an operator of a coal mine on or after one year after the operative date of this title shall be equipped with automatic couplers which shall couple by impact and uncouple without the necessity of men going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on the operative date of this title shall also be so equipped within four years after the operative date of this title.

(v) An adequate supply of potable water shall be provided for drinking purposes in the active workings of the mine, and such

water shall be carried, stored, and otherwise protected in sanitary facilities.

(w) The Secretary shall send a copy of every proposed standard or regulation at the time of publication in the Federal Register to the operator of each coal mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

(x) An employee, the duties of whose position are primarily the inspection of coal mines, including an employee engaged in this activity and transferred to a supervisory or administrative position, who attains the age of fifty years and complete twenty years of service in the performance of those duties may, if the Secretary recommends his retirement and the Civil Service Commission approves, voluntarily retire and be paid an annuity. Any such employee who attains the age of sixty years and completes fifteen years of service may voluntarily retire on an annuity, unless the Secretary determines that such retirement would not be in the best interests of the program and, in such case, the Secretary may extend such employee's service on an annual basis. An employee who retires under this subsection shall be entitled to an annuity of 2½ per centum of his average pay multiplied by his total service, except that the annuities shall not exceed 80 per centum of his average pay. As used in this subsection, the term "employee", "average pay", and "service" have the meaning ascribed to those terms in subchapter III, chapter 83, title 5, United States Code, and the provisions of that subchapter respecting payment and adjustment of annuity, survivor annuities, and related matters, shall apply with respect to employees retiring under this subsection.

(y) (1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger pursuant to section 103(g) of this title, has filed, instituted, or caused to be instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(2) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. 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 public hearing at the request of any party, to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue an order requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Sec-

retary's findings therein. Any decision issued by the Secretary under this paragraph shall be subject to judicial review in accordance with the provisions of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the civil penalties provisions of this Act.

(3) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

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 sections, except that, in a State where no program of certification is provided or where the program does not meet at least minimum Federal standards established by the Secretary, such certification shall be by the Secretary;

(b) "qualified person" means, as the context requires, an individual deemed qualified by the Secretary to make tests and examinations required by this Act; and an individual deemed, in accordance with minimum requirements to be established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical equipment, and to conduct examinations and tests of all electrical equipment.

(c) "permissible" as applied to—

(1) equipment used in the operation of a coal mine, means equipment to which an approved 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,

(2) explosives, shot firing units, or blasting devices used in such mine, means explosives, shot firing units, or blasting devices which meet specifications which are prescribed by the Secretary, and

(3) the manner of use of equipment or explosives, shot firing units, 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 3 per centum of free and combined silica (SiO₂) or, where the Secretary finds that such silica concentrations are not available, up to 5 per centum of free and combined silica;

(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) (1) "working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is done,

(2) "working place" means the area of a coal mine in by the last open crosscut,

(3) "working section" means all areas of

the coal mine from the loading point of the section to and including the working faces,

(4) "active workings" means any place in a coal mine where miners are normally required to work or travel;

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

(j) "electric face equipment" means electric equipment that is installed or used in by the last open crosscut in an entry or a room;

(k) "registered engineer" or "registered surveyor" means an engineer or surveyor registered by the State pursuant to standards established by the State meeting at least minimum Federal requirements established by the Secretary, or if no such standards are in effect, registered by the Secretary;

(1) "low voltage" means up to and including 660 volts; "medium voltage" means voltages from 661 to 1,000 volts; and "high voltage" means more than 1,000 volts;

(m) "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust during a full working shift; such determination shall be the result of applying valid statistical techniques to the minimum necessary measurements of respirable dust; and

(n) "respirable dust" means only dust particulates 5 microns, or less in size.

TITLE IV—ADMINISTRATION

RESEARCH

SEC. 401. (a) The Secretary and the Secretary of Health, Education, and Welfare, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate.

(1) to improve working conditions and practices, prevent accidents, and control the causes of occupational diseases originating in the coal-mining industry;

(2) to develop new or improved methods of recovering persons in coal mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground portion of the mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine. Such research shall consist primarily, but not exclusively, of (I) studies of the relationship between coal mine environments and occupational diseases of coal mine workers; (II) epidemiological studies to (i) identify and define positive factors involved in the diseases of coal miners, (ii) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of coal miners, and (iii) develop criteria on the basis of which coal mine standards can be based; (III) medical prevention and control of diseases of coal miners, including tests for hypersusceptibility and early detection; (IV) evaluation of bodily impairment in connection with occupational disability of coal miners; (V) development of methods, techniques, and programs of effective rehabilitation of coal miners injured or stricken as a result of their occupation; and (VI) setting the requirements, extent and specifications for the medical examinations provided in section 203 of this Act, and utilizing and studying the material, data, and findings of such examinations for the preparation and publication, from time to time, of reports on all significant aspects of the diseases of coal miners as well as on the medical aspects of injuries other than diseases, which are revealed by the research carried on pursuant to this subsection;

(5) to study the relationship between coal mine environment and occupational diseases of coal mine workers; and

(6) for such other purposes as it deems necessary to carry out the purposes of this Act.

(b) To accomplish the objectives established in subsection (a), the Secretary shall distribute funds available to him under this section as equally as practicable between himself and the Secretary of Health, Education, and Welfare, activities under this section in the field of coal mine health shall be carried out by the Secretary of Health, Education, and Welfare, and activities under this section in the field of coal mine safety shall be carried out by the Secretary of the Interior. In carrying out activities under this section the Secretaries of Health, Education, and Welfare and of the Interior may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. Such Secretaries shall consult and cooperate with the Board on specific projects and programs. No research shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses, products, processes, patents, and other developments resulting from such research will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the interest of national security) be available to the general public.

(c) There is hereby authorized to be appropriated for each fiscal year such sums as may be needed to carry out the purposes of section 203(a) and of this section.

(d) No payment may be required of any coal miner in connection with any examination or test given him pursuant to subsection (a) of section 203. Where such examinations or tests cannot be given due to the lack of adequate medical or other necessary facilities or personnel in the locality where the miner resides, arrangements shall be made to have them conducted in such locality by the Secretary of Health, Education, and Welfare, or by an appropriate and qualified person, agency or institution, public or private, under an agreement or arrangement between the Secretary of Health, Education, and Welfare and such person, agency or institution. Such examinations and tests shall be conducted in accordance with the provisions of subsection (a) of section 203. The operator of the coal mine shall reimburse the Secretary of Health, Education, and Welfare, or such person, agency or institution, as the case may be, for the cost of conducting each such examination or test and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

(e) If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health, Education, and Welfare is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his next of kin. The results of such autopsy shall be submitted to the Secretary of Health, Education, and Welfare and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for by the Secretary of Health, Education, and Welfare.

(f) On and after the operative date of this title, the standards on noise prescribed under the Walsh-Healey Public Contracts Act, as amended, in effect October 1, 1969, or any such improved standards as the Secretary may prescribe shall be applicable to each coal mine and each operator of such mine shall comply with them. Beginning six months after the operative date of this title, at intervals of at least every six months thereafter, the operator of each mine shall conduct, in a manner prescribed by the Secretary, tests by a qualified person of the noise level at the mine and certify the results to the Secretary. If the Secretary determines, based on such tests or any tests conducted by his authorized representative, that such

standards on noise are exceeded, such operator shall immediately undertake to install protective devices or other means of protection to reduce the noise level in the affected area of the mine, except that the operator shall not require the use of any protective device or system which the Secretary or his authorized representative finds will be hazardous or cause a hazard to the miners in such mine.

TRAINING AND EDUCATION

SEC. 402. The Secretary shall expand programs for the education and training of coal mine operators, agents, thereof, and miners in—

- (1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in local mines; and
- (2) 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 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 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.

(g) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and each of the succeeding fiscal years for carrying out this section, the sum of \$1,000,000.

EQUIPMENT

SEC. 404. The Secretary is authorized, during the period ending five years after the date of enactment of this Act, to make loans to operators of coal mines to enable them to procure or convert equipment needed by them to comply with the provisions of this

Act. Loans made under this section shall have such maturities as the Secretary may determine, but not in excess of twenty years. Such loans shall bear interest at a rate which the Secretary determines to be adequate to cover (1) the cost of the funds to the Treasury, taking into consideration the current average yields of outstanding marketable obligations of the United States having maturities comparable to the maturities of loans made by the Secretary under this section, (2) the cost of administering this section, and (3) probable losses. In carrying out this section, the Secretary shall to the extent feasible use the services of the Small Business Administration pursuant to agreements between himself and the Administrator thereof.

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 under the provisions of this section 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 and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and, where appropriate, shall cooperate with such institutions in the conduct of such programs by providing financial and technical assistance.

EFFECT ON OTHER LAW

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.

ADMINISTRATIVE PROCEDURES

SEC. 407. Except as otherwise provided in this Act, 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.

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 and III of this Act shall become operative 90 days after enactment. The provisions of title II of this Act shall become operative six months after enactment. The provisions of the Fed-

eral Coal Mine Safety Act, as amended, are repealed on the operative date of titles I and III 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: 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. (a) Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress and to the Office of Science and Technology 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, the amount and status of each loan made under section 404, a description and the anticipated cost of each project and program he has undertaken under section 401, and any other relevant information, including any recommendations he deems appropriate.

(b) Within one hundred and twenty days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare shall submit through the President to the Congress, the Secretary, and to the Office of Science and Technology an annual report upon the health matters covered by this Act, including the progress toward the achievement of the health purposes of this Act, the needs and requirements in the field of coal mine health, a description and the anticipated cost of each project and program he has undertaken under section 401, and any other relevant information, including any recommendations he deems appropriate. The first such report shall include the recommendations of the Secretary of Health, Education, and Welfare as to recommendations as to the maximum permissible individual exposure to coal mine dust during a working shift.

SPECIAL REPORT

SEC. 412. (a) The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal mine health and safety so as to achieve (1) maximum health and safety protection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) reduce delay to a minimum, and (5) permit most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after the date of enactment of this Act.

Amend the title so as to read: "An Act to provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 13950) was laid on the table.

* * * * *

sist on its amendment to the Senate bill (S. 2917) and request a conference with the Senate on the disagreeing votes of the two Houses thereon.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees: Messrs. PERKINS, DENT, PUCINSKI, HAWKINS, Mrs. MINK, Messrs. BURTON of California, AYRES, ERLBORN, BELL of California, and SCHERLE.

APPOINTMENT OF CONFEREES ON
S. 2917

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the House in-

**FEDERAL COAL MINE HEALTH AND
SAFETY ACT OF 1969**

Mr. WILLIAMS of New Jersey. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2917.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States, which were to strike out all after the enacting clause, and insert:

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Mr. WILLIAMS of New Jersey. Mr. President, I move that the Senate disagree to the amendment of the House on S. 2917 and agree to the conference requested by the House thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WILLIAMS of New Jersey, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. MONDALE, Mr. EAGLETON, Mr. CRANSTON, Mr. JAVITS, Mr. PROUTY, Mr. SCHWEIKER, Mr. SAXBE, and Mr. SMITH of Illinois conferees on the part of the Senate.

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(Excerpts Only)

91ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 91-761

FEDERAL COAL MINE HEALTH AND SAFETY ACT

DECEMBER 16, 1969.—Ordered to be printed

Mr. PERKINS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 2917]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Federal Coal Mine Health and Safety Act of 1969".

FINDINGS AND PURPOSE

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) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal mines cause grief and suffering to the miners and to their families;

(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 prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal mines is a serious impediment to the future growth of the coal mining industry and 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 coal mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education, and Welfare and the Secretary of the Interior to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal miners; (2) to require that each operator of a coal mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal mining industry, research and development and training programs aimed at preventing coal mine accidents and occupationally caused diseases in the industry.

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 between a place in a State and 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, Guam, and the Trust Territory of the Pacific Islands;

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal mine;

(e) "agent" means any person charged with responsibility for the operation of all or a part of a coal mine or the supervision of the miners 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;

(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 in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

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

(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) "mandatory health or safety standard" means the interim mandatory health or safety standards established by titles II and III of this Act, and the standards promulgated pursuant to title I of this Act; and

(m) "Panel" means the Interim Compliance Panel established by this Act.

MINES SUBJECT TO ACT

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

INTERIM COMPLIANCE PANEL

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, the Secretary of Labor, and the Secretary shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

(e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section §105 of title 5 of the United States Code shall be applicable to hearing examiners appointed pursuant to this subsection.

(f)(1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to this Act and to provide an opportunity for a public hearing, after notice, at the request of an operator of the affected coal mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel may file a petition for review of such decision under section 106 of this Act. The

provisions of this section shall terminate upon completion of the Panel's functions as set forth under this Act. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5 of the United States Code.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

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, improved mandatory safety standards for the protection of life and the prevention of injuries in a coal mine, and shall, in accordance with the procedures set forth in this section, promulgate the mandatory health standards transmitted to him by the Secretary of Health, Education, and Welfare.

(b) No improved mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners below that provided by any mandatory health or safety standard.

(c) In the development and revision of mandatory safety standards, the Secretary shall consult with the Secretary of Health, Education, and Welfare, the Secretary of Labor, and with other interested Federal agencies, appropriate representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, and such advisory committees as he may appoint. Such development and revision of mandatory safety standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of safety protection for miners, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other safety statutes.

(d) The Secretary of Health, Education, and Welfare shall, in accordance with the procedures set forth in this section, develop and revise, as may be appropriate, improved mandatory health standards for the protection of life and the prevention of occupational diseases of miners. In the development and revision of mandatory health standards, the Secretary of Health, Education, and Welfare shall consult with the Secretary, the Secretary of Labor, and with other interested Federal agencies, appropriate representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, such advisory committees as he may appoint, and, where appropriate, foreign countries. Such development and revision of mandatory standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other health statutes. Mandatory health standards which the Secretary of Health, Education, and Welfare develops or revises shall be transmitted to the

Secretary, and shall thereupon be published in the Federal Register by the Secretary as proposed mandatory health standards.

(e) The Secretary shall 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. In the case of mandatory safety standards, except as provided in subsection (f) 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. In the case of mandatory health standards, except as provided in subsection (f) of this section, the Secretary of Health, Education, and Welfare may, upon the expiration of such period and after consideration of all relevant matter presented to the Secretary and transmitted to the Secretary of Health, Education, and Welfare, direct the Secretary to promulgate such standards with such modifications as the Secretary of Health, Education, and Welfare may deem appropriate and the Secretary shall thereupon promulgate such standards.

(f) On or before the last day of any period fixed for the submission of written data or comments under subsection (e) of this section, any interested person may file with the Secretary written objections to a proposed mandatory health or safety standard, stating the grounds therefor and requesting a public hearing 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 mandatory health or safety standards to which objections have been filed and a hearing requested.

(g) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (f) of this section, the Secretary, in the case of mandatory safety standards, or the Secretary of Health, Education, and Welfare, in the case of mandatory health standards, shall issue notice of, and hold, a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary who held the hearing shall make findings of fact which shall be public. In the case of mandatory safety standards, the Secretary may promulgate such standards with such modifications as he deems appropriate. In the case of mandatory health standards, the Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the mandatory health standards with such modifications as the Secretary of Health, Education, and Welfare deems appropriate and the Secretary shall thereupon promulgate the mandatory health standards. In the event the Secretary or the Secretary of Health, Education, and Welfare, as the case may be, determines that a proposed mandatory health or safety standard should not be promulgated or should be modified, he shall within a reasonable time publish his reasons for his determination.

(h) Any mandatory health or safety standard promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary or the Secretary of Health, Education, and Welfare, as appropriate, specifies a later date.

(i) Proposed mandatory health and safety standards for surface coal mines shall be published by the Secretary, in accordance with the provisions of this section, not later than twelve months after the date of enactment of this Act. Proposed mandatory health and safety standards for surface work areas of underground coal mines, in addition to those established

for such areas under this Act, shall be published by the Secretary, in accordance with the provisions of this section, not later than twelve months after the date of enactment of this Act.

(j) All interpretations, regulations, and instructions of the Secretary or the Director of the Bureau of Mines, in effect on the date of enactment of this Act and not inconsistent with any provision of this Act, shall be published in the Federal Register and shall continue in effect until modified or superseded in accordance with the provisions of this Act.

(k) The Secretary shall send a copy of every proposed standard or regulation at the time of publication in the Federal Register to the operator of each coal mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

ADVISORY COMMITTEES

SEC. 102. (a)(1) The Secretary shall appoint an advisory committee on coal mine safety research composed of—

(A) the Director of the Office of Science and Technology, or his delegate, with the consent of the Director;

(B) the Director of the National Bureau of Standards, Department of Commerce, or his delegate, with the consent of the Director;

(C) the Director of the National Science Foundation, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary may appoint who are knowledgeable in the field of coal mine safety research.

The Secretary shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary on matters involving or relating to coal mine safety research. The Secretary shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grant, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(b)(1) The Secretary of Health, Education, and Welfare shall appoint an advisory committee on coal mine health research composed of—

(A) the Director, Bureau of Mines, or his delegate, with the consent of the Director;

(B) the Director of the National Science Foundation, or his delegate, with the consent of the Director;

(C) the Director of the National Institutes of Health, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary of Health, Education, and Welfare may appoint who are knowledgeable in the field of coal mine health research.

The Secretary of Health, Education, and Welfare shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary of Health, Education, and Welfare on matters involving or relating to coal mine health research. The Secretary of Health,

Education, and Welfare shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grant, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary of Health, Education, and Welfare pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(c) The Secretary or the Secretary of Health, Education, and Welfare may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this Act. The Secretary or the Secretary of Health, Education, and Welfare, as the case may be, shall appoint the chairman of each such committee, who shall be an individual who has no economic interest in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government. A majority of the members of any such advisory committee appointed pursuant to this subsection shall be composed of individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(d) Advisory committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the appropriate Secretary but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

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) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether or not there is compliance with the mandatory health or safety standards or with any notice, order, or decision issued under this title. In carrying out the requirements of clauses (3) and (4) of this subsection, no advance notice of an inspection shall be provided to any person. 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 four times a year.

(b)(1) 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.

(2) For the purpose of developing improved mandatory health standards, the Secretary of Health, Education, and Welfare or his authorized representative shall have a right of entry to, upon, or through, any coal mine.

(3) *The provisions of this Act relating to investigations and records shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this Act.*

(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 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 subpoenas 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 subpoena 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 the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.*

(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, when feasible, 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.*

(g) *Whenever a representative of the miners has reasonable grounds to believe that a violation of a mandatory health or safety standard exists, or an imminent danger exists, such representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title.*

(h) *At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative of the miners at the mine at the time of such inspection shall be given an*

opportunity to accompany the authorized representative of the Secretary on such inspection.

(i) Whenever the Secretary finds that a mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine other especially hazardous conditions, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals.

FINDINGS, NOTICES, AND ORDERS

SEC. 104. (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 forthwith 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) Except as provided in subsection (i) of this section, 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 but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent 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 representative of the Secretary determines that the violation has been abated.

(c)(1) 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, 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 safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any notice given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within ninety days after the issuance of such notice, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, 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 prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) *If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent 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.*

(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 or an authorized representative of the Secretary, to eliminate the condition described in the order;*

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

(3) *any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, 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; and*

(4) *any consultant to any of the foregoing.*

(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 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) *A notice or order issued pursuant to this section, except an order issued under subsection (h) of this section, may be modified or terminated by an authorized representative of the Secretary.*

(h)(1) *If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.*

(2) Upon the conclusion of such investigation and an opportunity for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(i) If, based upon samples taken and analyzed and recorded pursuant to section 202(a) of this Act, or samples taken during an inspection by an authorized representative of the Secretary, the applicable limit on the concentration of respirable dust required to be maintained under this Act is exceeded and thereby violated, the Secretary or his authorized representative shall issue a notice fixing a reasonable time for the abatement of the violation. During such time, the operator of the mine shall cause samples described in section 202(a) of this Act to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative 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 the Secretary or his authorized representative has reason to believe, based on actions taken by the operator, that such limit will be complied with upon the resumption of production in such mine. As soon as possible after an order is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person or team of persons, to the extent such persons are available, who are knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentrations. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the coal mine.

REVIEW BY THE SECRETARY

SEC. 105. (a) (1) An operator issued an order pursuant to the provisions of section 104 of this title, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the Secretary for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator issued a notice pursuant to section 104 (b) or (i) of this title, or any representative of miners in any mine affected by such notice, may, if he believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the Secretary for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. 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 public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice, 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 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 (1) from any modification or termination of any order, or (2) from any order issued under section 104 of this title, except an order issued under section 104(a) of this title, together with a detailed statement giving reasons for granting such relief. The Secretary may grant such relief, under such conditions as he may prescribe, if—

(1) a hearing has been held in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to the applicant; and

(3) such relief will not adversely affect the health and safety of miners in the coal mine.

No temporary relief shall be granted in the case of a notice issued under section 104 (b) or (i) of this title.

JUDICIAL REVIEW

SEC. 106. (a) Any order or decision issued by the Secretary or the Panel under this Act, except an order or decision under section 109(a) 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, or the United States Court of Appeals for the District of Columbia Circuit, upon the filing in such court within thirty days from the date of such order or decision of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this Act. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Secretary or the Panel, and thereupon the Secretary or the Panel shall certify and file in such court the record upon which the order or decision complained of was issued, as provided in section 2112 of title 28, United States Code.

(b) The court shall hear such petition on the record made before the Secretary or the Panel. The findings of the Secretary or the Panel, if

supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary or the Panel for such further action as it may direct.

(c)(1) In the case of a proceeding to review any order or decision issued by the Secretary under this Act, except an order or decision pertaining to an order issued under section 104(a) of this title or an order or decision pertaining to a notice issued under section 104 (b) or (i) of this title, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(C) such relief will not adversely affect the health and safety of miners in the coal mine.

(2) In the case of a proceeding to review any order or decision issued by the Panel under this Act, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; and

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding.

(d) The judgment of the court shall be subject to review only by the Supreme Court of the United States upon a writ of 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 order or decision of the Secretary or the Panel.

(f) Subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him in any proceeding instituted under this section.

POSTING OF NOTICES, ORDERS, AND DECISIONS

SEC. 107. (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, orders, and decisions 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, order, or decision 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, order, or decision required by this Act to be given to an operator to be mailed immediately to a representative of the miners 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. Such notice, order, or decision shall be available for public inspection.

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

(d) Each operator of a coal mine shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine and such official shall receive a copy of any notice, order, or decision issued under this Act affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

INJUNCTIONS

SEC. 108. The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health, Education, and Welfare or his authorized representative, in carrying out the provisions of this Act, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary or the Secretary of Health, Education, and Welfare in furtherance of the provisions of this Act, or (f) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health, Education, and Welfare determines necessary in carrying out the provisions of this Act. Each court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in such orders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it. In actions under this section, subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United

States Code, attorneys appointed by the Secretary may appear for and represent him. In any action instituted under this section to enforce an order or decision issued by the Secretary after a public hearing in accordance with section 554 of title 5 of the United States Code, the findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

PENALTIES

SEC. 109. (a)(1) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, except the provisions of title 4, shall be assessed a civil penalty by the Secretary under paragraph (3) of this subsection which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory 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, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, 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.

(2) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assessed by the Secretary under paragraph (3) of this subsection, which penalty shall not be more than \$250 for each occurrence of such violation.

(3) A civil penalty shall be assessed by the Secretary only after the person charged with a violation under this Act has been given an opportunity for a public hearing and the Secretary has determined, by decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Where appropriate, the Secretary shall consolidate such hearings with other proceedings under section 105 of this title. Any hearing under this section shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Secretary shall file a petition for enforcement of such order in any appropriate district court of the United States. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by registered or certified mail to the respondent and to the representative of the miners in the affected mine or the operator, as the case may be, and thereupon the Secretary shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the Secretary or it may remand the proceedings to the Secretary for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a court of appeals under section 106 of this Act, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's find-

ings, the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him in any action to enforce an order assessing civil penalties under this paragraph.

(b) Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 104 of this title, or any order incorporated in a final decision issued under this title, except an order incorporated in a decision under subsection (a) of this section or section 110(b)(2) of this title, shall, upon conviction, be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this Act, punishment shall be by a fine of not more than \$50,000, or by imprisonment for not more than five years, or by both.

(c) Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under subsection (a) of this section or section 110(b)(2) of this title, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act or any order or decision 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 six months, or by both.

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

ENTITLEMENT OF MINERS

SEC. 110. (a) If a coal mine or area of a coal mine is closed by an order issued under section 104 of this title, all miners working during the shift when such order was issued who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a coal mine or area of a coal mine is closed by an order issued under section 104 of this title for an unwarrantable failure of the operator to comply with any health or safety standard, all miners who are idled due to such order shall be fully compensated, after all interested parties are given an opportunity

for a public hearing on such compensation and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Whenever an operator violates or fails or refuses to comply with any order issued under section 104 of this Act, all miners employed at the affected mine who would be withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

(b)(1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger, (B) has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(2) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. 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 public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein. Any order issued by the Secretary under this paragraph shall be subject to judicial review in accordance with section 106 of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the provisions of sections 108 and 109(a) of this title.

(3) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably and prosecution of such proceedings, shall be assessed against the person committing such violation.

REPORTS

SEC. 111. (a) *All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported for periods determined by the Secretary, but at least annually.*

(b) *In addition to such records as are specifically required by this Act, every operator of a coal mine 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. The Secretary is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records, information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.*

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TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's underground coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

SEC. 402. For purposes of this title—

(a) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110 of title 5, United States Code.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung arising out of employment in an underground coal mine.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in an underground coal mine.

(e) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

(f) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, but such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, 1972

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner

was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more underground coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment;

(2) if a deceased miner was employed for ten years or more in one or more underground coal mines and died from a respirable disease, there shall be a rebuttable presumption that his death was due to pneumoconiosis; and

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the amount by which such payment would be reduced on

account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1972, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable.

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

SEC. 414. (a) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1972, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1972, whichever is the later.

(b) No benefits shall be paid under this part after December 31, 1972, if the claim therefor was filed after December 31, 1971.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, or (2) the death of such miner occurred prior to January 1, 1973.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1972

SEC. 421. (a) On and after January 1, 1973, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State

workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under this part.

(b)(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to those established by section 411, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder;

(D) any claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance

with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

SEC. 422. (a) During any period after December 31, 1972, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in this subsection and

except as the Secretary shall by regulation otherwise provide), be applicable to each operator of an underground coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: Provided, That, except as provided in subsection (i) of this section, no benefits shall be payable by any operator on account of death or total disability due to pneumoconiosis which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe;

(2) for any period prior to January 1, 1973; or

(3) for any period after seven years after the date of enactment of this Act.

(f) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular underground coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i)(1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable

by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

Sec. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of an underground coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

SEC. 424. If a totally disabled miner or a widow is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his widow under this title.

SEC. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) *Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title. and, after January 1, 1973, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.*

(c) *Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.*

TITLE V—ADMINISTRATION

RESEARCH

SEC. 501. (a) *The Secretary and the Secretary of Health, Education, and Welfare, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate—*

(1) *to improve working conditions and practices in coal mines, and to prevent accidents and occupational diseases originating in the coal-mining industry;*

(2) *to develop new or improved methods of recovering persons in coal mines after an accident;*

(3) *to develop new or improved means and methods of communication from the surface to the underground area of a coal mine;*

(4) *to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal mine;*

(5) *to develop epidemiological information to (A) identify and define positive factors involved in occupational diseases of miners, (B) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of miners, and (C) improve mandatory health standards;*

(6) *to develop techniques for the prevention and control of occupational diseases of miners, including tests for hypersusceptibility and early detection;*

(7) *to evaluate the effect on bodily impairment and occupational disability of miners afflicted with an occupational disease;*

(8) *to prepare and publish from time to time, reports on all significant aspects of occupational diseases of miners as well as on the medical aspects of injuries, other than diseases, which are revealed by the research carried on pursuant to this subsection;*

(9) *to study the relationship between coal mine environments and occupational diseases of miners;*

(10) *to develop new and improved underground equipment and other sources of power for such equipment which will provide greater safety: and*

(11) *for such other purposes as they deem necessary to carry out the purposes of this Act.*

(b) *Activities under this section in the field of coal mine health shall be carried out by the Secretary of Health, Education, and Welfare, and activities under this section in the field of coal mine safety shall be carried out by the Secretary.*

(c) In carrying out the provisions for research, demonstrations, experiments, studies, training, and education under this section and sections 301(b) and 502(a) of this Act, the Secretary and the Secretary of Health, Education, and Welfare may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses, products, processes, patents, and other developments resulting from such research, demonstrations, or experiments will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the public interest) be available to the general public.

(d) The Secretary of Health, Education, and Welfare shall also conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with, or around the products of, coal mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

(e) There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out his responsibilities under this section and section 301(b) of this Act at an annual rate of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970, \$25,000,000 for the fiscal year ending June 30, 1971, and \$30,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Secretary of Health, Education, and Welfare such sums as may be necessary to carry out his responsibilities under this Act. Such sums shall remain available until expended.

(f) The Secretary is authorized to grant on a mine-by-mine basis an exception to any mandatory health or safety standard under this Act for the purpose of permitting, under such terms and conditions as he may prescribe, accredited educational institutions the opportunity for experimenting with new and improved techniques and equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners and publishes his findings.

(g) The Secretary of Health, Education, and Welfare is authorized to make grants to any public or private agency, institution, or organization, and operators or individuals for research and experiments to develop effective respiratory equipment.

TRAINING AND EDUCATION

SEC. 502. (a) The Secretary shall expand programs for the education and training of operators and agents thereof, and miners in—

- (1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines; and
- (2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for detecting methane and other explosive gases accurately.

(b) The Secretary shall, to the greatest extent possible, provide technical assistance to operators in meeting the requirements of this Act and in further improving the health and safety conditions and practices in coal mines.

ASSISTANCE TO STATES

Sec. 503. (a) The Secretary, in coordination with the Secretary of Health, Education, and Welfare and the Secretary of Labor, is authorized to make grants in accordance with an application approved under this section to any State in which coal mining takes place—

(1) to assist such State in developing and enforcing effective coal mine health and safety laws and regulations consistent with the provisions of section 506 of this Act;

(2) to improve State workmen's compensation and occupational disease laws and programs related to coal mine employment; and

(3) to promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal mines.

(b) The Secretary shall approve any application or any modification thereof, submitted under this section by a State, through its official coal mine inspection or safety agency, which—

(1) sets forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of subsection (a) of this section;

(2) provides research and planning studies to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation to miners for occupationally caused diseases and injuries arising out of employment in any coal mine;

(3) designates such State coal mine inspection or safety agency as the sole agency responsible for administering grants under this section throughout the State, and contains satisfactory evidence that such agency will have the authority to carry out the purposes of this section;

(4) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal mine inspections within such State;

(5) provides for the extension and improvement of the State program for the improvement of coal mine health and safety in the State, and provides that no advance notice of an inspection will be provided anyone;

(6) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the States under this section;

(7) provides that the designated agency will make such reports to the Secretary in such form and containing such information as the Secretary may from time to time require;

(8) contains assurances that grants provided under this section will supplement, not supplant, existing State coal mine health and safety programs; and

(9) meets additional conditions which the Secretary may prescribe in furtherance of, and consistent with, the purposes of this section.

(c) The Secretary shall not finally disapprove any State application or modification thereof without first affording the State agency reasonable notice and opportunity for a public hearing.

(d) Any State aggrieved by a decision of the Secretary under subsection (b) or (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action be modified or set aside in whole or in part. The court shall hear such appeal on the record made

before the Secretary. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the decision of the Secretary, unless the court so orders. The provisions of section 106 (a), (b), and (c) of this Act shall not be applicable to this section.

(e) Any State application or modification thereof submitted to the Secretary under this section may include a program to train State inspectors.

(f) The Secretary shall cooperate with such State in carrying out the application or modification thereof and shall, as appropriate, develop and, where appropriate, construct facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall also cooperate with such State in establishing a system by which State and Federal inspection reports of coal mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

(g) The amount granted to any coal mining State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out such application.

(h) There is authorized to be appropriated \$3,000,000 for fiscal year 1970, and \$5,000,000 annually in each succeeding fiscal year to carry out the provisions of this section, which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved application.

ECONOMIC ASSISTANCE

SEC. 504. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof “; and”; and

(2) by adding after paragraph (4) a new paragraph as follows:

“(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern operating a coal mine in affecting additions to or alterations in the equipment, facilities, or methods of operation of such mine to requirements imposed by the Federal Coal Mine Health and Safety Act of 1969, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.”

(b) The third sentence of section 7(b) of such Act is amended by inserting “or (5)” after “paragraph (3)”.

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting “7(b)(5),” after “7(b)(4),”.

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(5) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

INSPECTORS; QUALIFICATIONS; TRAINING

SEC. 505. *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 or by education. Persons appointed to assist such representatives in the taking of samples of respirable dust for the purpose of enforcing title II of this Act shall be qualified by training, experience, or education. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives and to carry out the provisions of this Act, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall 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, operators, and representatives of miners in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and 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. 506. (a) *No State law in effect on the date of enactment of this Act or which may become effective thereafter shall be superseded by any provision of this Act or order issued or any mandatory health or safety standard, except insofar as such State law is in conflict with this Act or with any order issued or any mandatory health or safety standard.*

(b) *The provisions of any State law or regulation in effect upon the operative 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 any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect on the date of enactment 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 in any order issued or any mandatory health or safety standard, shall not be held to be in conflict with this Act.*

ADMINISTRATIVE PROCEDURES

SEC. 507. *Except as otherwise provided in this Act, 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, notice, or decision made pursuant to this Act, or to any proceeding for the review thereof.*

REGULATIONS

SEC. 508. *The Secretary, the Secretary of Health, Education, and Welfare, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provision of this Act.*

OPERATIVE DATE AND REPEAL

SEC. 509. *Except to the extent an earlier date is specifically provided in this Act, the provisions of titles I and III of this Act shall become operative ninety days after the date of enactment of this Act, and the provisions of title II of this Act shall become operative six months after the date of enactment of this Act. The provisions of the Federal Coal Mine Safety Act, as amended, are repealed on the operative date of titles I and III of this Act, except that such provisions shall continue to apply to any order, notice, decision, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, decision or findings. All other provisions of this Act shall be effective on the date of enactment of this Act.*

SEPARABILITY

SEC. 510. *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. 511. (a) *Within one hundred and twenty days following the convening of each session of Congress, the Secretary shall submit through the President to the Congress and to the Office of Science and Technology 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, the amount and status of each loan made pursuant to this Act, a description and the anticipated cost of each project and program he has undertaken under sections 301(b) and 501, and any other relevant information, including any recommendations he deems appropriate.*

(b) *Within one hundred and twenty days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the health matters covered by this Act, including the progress toward the achievement of the health purposes of this Act, the needs and requirements in the field of coal mine health, a description and the anticipated cost of each project and program he has undertaken under sections 301(b) and 501, and any other relevant information, including any recommendations he deems appropriate. The first such report shall include the recommendations of the Secretary of Health, Education, and Welfare as to necessary mandatory health standards, including his recommendations as to the maximum permissible individual exposure to miners from respirable dust during a shift.*

SPECIAL REPORT

SEC. 512. (a) *The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal mine health and safety so as to achieve (1) maximum health and safety pro-*

tection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) a reduction of delay to a minimum, and (5) most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after the date of enactment of this Act.

JURISDICTION; LIMITATION

Sec. 513. In any proceeding in which the validity of any interim mandatory health or safety standard set forth in titles II and III of this Act is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same.

CARL D. PERKINS,
JOHN H. DENT,
ROMAN PUCINSKI,
AUGUSTUS F. HAWKINS,
PATSY T. MINK,
PHILLIP BURTON,
WILL H. AYRES,
JOHN N. ERLBORN,
ALPHONZO BELL,
DOMINICK V. DANIELS,
JOHN M. ASHBROOK,

Managers on the Part of the House.

HARRISON WILLIAMS,
JENNINGS RANDOLPH,
CLAI PELL,
GAYLORD NELSON,
WALTER F. MONDALE,
THOMAS F. EAGLETON,
ALAN CRANSTON,
J. JAVITS,
WINSTON PROUTY,
RICHARD S. SCHWEIKER,
WM. B. SAXBE,
RALPH T. SMITH,

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States, submit the following statement and explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate bill and the House amendment were very similar in substance. However, the arrangement of their provisions differed substantially. The substitute agreed upon in conference adopts, in all major respects, the organization of the House amendment. Throughout this statement, references are to the sections and subsections of the conference substitute. The conference substitute adopts, except as explained herein, all of the major provisions of the House amendment. This statement will explain the differences between the conference report and the House amendment, except for differences which are purely technical or conforming.

Section 2

The Senate bill and the House amendment each contained statements of findings and purposes which were substantially the same. The committee of conference adopts these provisions with appropriate modifications to recognize the transfer of functions from the Surgeon General to the Secretary of Health, Education, and Welfare, and to incorporate the more detailed Senate provisions relating to the particular purposes of the act which emphasize the need to eliminate unsafe and unhealthful conditions and practices in this industry. In adopting these provisions, the managers intend that the act be construed liberally when improved health or safety to miners will result.

Section 3

The definitions of terms used in the bill are substantially the same in both the Senate bill and the House amendment. A new definition of the term "mandatory health or safety standard" has been added. It does not change the substance of either the Senate bill or the House amendment, but is merely a technical change to avoid repeating the statement that the standards are those established by titles II and III of the act and those later promulgated under section 101 of the act as the Senate bill did. The definition of "inspection" as contained in the House amendment is no longer necessary, since the conference agreement adopts the language of the Senate bill in section 104 (c) of the act which provides for findings of an unwarrantable failure at any time during the same inspection or during any subsequent inspection without regard to when the particular inspection begins or ends. The conference agreement adopts the Senate version of the definition of "Secretary" which specifically includes his delegate. The delegate would, of course,

be a person designated by him to administer and enforce this act and would include the Federal inspectors who are referred to throughout the act as the Secretary's authorized representatives.

Section 4

The provision of the Senate bill and House amendment describing the mines which are subject to the act, though different in phraseology, were the same in substance. The agreement reached in conference adopts the provisions of both the Senate bill and House amendment, but with a change in phraseology which excludes excess verbiage. Under this provision, as in the case of both the Senate bill and the House amendment, the coal mine, the operator of the mine, and every miner therein is subject to the provisions of the act.

Section 5

Both the Senate bill and House amendment provided for an interim compliance panel composed of five government officials or their delegates. The Panel can draw staff and other assistance from the Departments of Interior, Labor, Commerce, and Health, Education, and Welfare and will also have its own budget for other staff and travel and other expenses. The provisions are substantially the same, except that the House amendment required that hearings held under titles II and III of the act be of record and required that the provisions of section 554 of title 5, United States Code, formerly known as the adjudicatory provisions of the Administrative Procedures Act, be complied with. It also provided for judicial review of the Panel's decisions under section 106 of the act. The conference substitute adopts this provision in the House amendment.

TITLE I—GENERAL

The Senate bill contained provisions for promulgation of mandatory standards which separated into two titles the promulgation of health standards from the promulgation of safety standards. The House amendment provided a common procedure for the promulgation of both types of standards in one section. The conference substitute adopts the House approach on this point to avoid repetition of many provisions.

Section 101

1. This section deals with the promulgation of mandatory health and safety standards. The conference substitute retained the provisions of the House amendment which had no counterpart in the Senate bill and which provided that mandatory health or safety standards promulgated under this title may not reduce the protection afforded miners below that afforded by the interim mandatory health or safety standards set forth in titles II and III or below the standards subsequently promulgated under this section. Also, it provides that when objections are raised to standards, hearings will be held by the appropriate Secretary, and the Secretary who held the hearing must publish his findings. These findings are to be published in the Federal Register. All standards shall be promulgated finally by the Secretary of the Interior. The health standards promulgated by the Secretary will be those transmitted to him by the Secretary of Health, Education, and Welfare.

2. The Senate bill required that proposed mandatory health and safety standards for surface coal mines, including open-pit and auger coal mines, and surface work areas of underground coal mines must be developed and published by the Secretary within a year after the date of enactment of the act. The comparable House provision required that mandatory safety standards for surface coal mines must be developed and published within one year after such date. The conference agreement adopts the Senate provision with modifications. It provides that proposed mandatory health and safety standards for such surface coal mines must be published within one year after the date of enactment. Proposed mandatory standards for surface work areas of underground coal mines, in addition to those interim standards established by this Act, must also be published within that twelve-month period. In both cases, such publication and final promulgation will follow the procedures set forth in this section for all health and safety standards.

3. The Senate bill provided that all interpretations, regulations, and instructions of the Secretary which are in effect on the operative date of the title and which are not inconsistent with any provision of this act will remain in effect until modified or superseded as provided in this act. The House amendment contained no comparable provision. The conference substitute adopts the Senate provision with the requirement that the interpretations, regulations, and instructions of the Director of the Bureau of Mines, who by statute administers the 1952 Act, as well as those of the Secretary, in effect on the date of enactment, and not inconsistent with this act, must be published in the Federal Register as soon as possible after enactment for information purposes and to consolidate them in one place. The managers view this requirement as a very minimal task for the Department to undertake and one that is quite important to both the operators and the miners, as they must know well in advance of the operative date of titles II and III what interpretations, regulations, and instructions will continue to apply.

4. The House amendment required that a copy of every proposed standard or regulation must be sent, when published in the Federal Register, to each operator and the representative of miners at the mine and a copy posted on the bulletin board. The House amendment also stipulated that failure to receive the notice, including lateness of receipt thereof, does not relieve anyone of the obligation under the act to comply with them once finally promulgated. The conference agreement adopts this provision with the note that it is intended that failure to so receive them or to receive them timely also does not relieve any interested person who wants to file written objections to do so under this section within the time afforded therefor in the notice of proposed standards or regulations.

Section 102

1. The Senate bill required the Secretary of the Interior to appoint an Advisory Committee on Coal Mine Safety Research. It would be composed of the Director of the Office of Science and Technology, or his delegate, the Director of the National Bureau of Standards, or his delegate, the Director of the National Science Foundation, or his delegate, and such other persons as the Secretary may appoint who are

knowledgeable in the field of coal mine safety. It would be the duty of this committee to consult with, and make recommendations to, the Secretary on matters involving coal mine safety research. The Secretary would be required to consult with, and to consider the recommendations of, the Advisory Committee in the making of grants and entering into of contracts for safety research. The Chairman and a majority of the members of the Committee must be individuals who have no economic interest in the coal mining industry, and are not operators, miners, or governmental employees. The Senate bill also required the Secretary of Health, Education, and Welfare to appoint an Advisory Committee on Coal Mine Health Research which would be composed of the Director of the Bureau of Mines or his delegate, the Director of the National Science Foundation, or his delegate, the Director of the National Institutes of Health, or his delegate, and such other persons as the Secretary may appoint who are knowledgeable in the field of coal mine health research. The duties of this Advisory Committee and the restrictions on the composition of its membership parallel those of the Advisory Committee for safety. The House amendment contained no comparable provision. The conference substitute adopts this provision of the Senate bill.

2. The Senate bill authorized the Secretary or the Surgeon General to appoint other advisory committees to advise him in carrying out the provisions of this act. The comparable provision of the House amendment authorized the Secretary of the Interior to appoint advisory committees for that purpose. The Senate bill restricted the choice of chairman to persons who have no economic interest in the coal mining industry and are not operators, miners, or governmental employees. It required that a majority of the members be individuals who have no such interest in the coal mining industry. The conference substitute adopts the provisions of the Senate bill with technical changes.

3. The House amendment provided that nongovernmental advisory committee members be paid not in excess of the GS-18 rate, while the Senate bill let the administrators set the rate up to \$100 per day. The conference adopts the House amendment which is consistent with other recent statutes on this subject.

Section 103

1. Section 103 relates to inspections and investigations in coal mines. The provisions of the Senate bill and the House amendment were largely identical. With respect to the authority of the Secretary of Health, Education, and Welfare in this area, the two versions differed in language but not materially in substance. The conference substitute in this regard adopts a combination of both provisions.

2. The Senate bill provided that when a representative of the miners has reason to believe that a violation of a mandatory standard exists, or that an imminent danger exists, he has a right to obtain an immediate inspection of the mine. The notice must be reduced to writing signed by the representative of the miners giving the notice, and a copy provided to the operator. A special inspection was required whenever such notification was received. The comparable provision of the House amendment permitted any miner or any authorized representative of the miners, when he believed that a violation of a mandatory standard existed or that an imminent danger existed, to notify the Secretary or his authorized representative. Upon receipt of the notification, the Sec-

retary or the authorized representative could make a special investigation. The conference substitute provides that whenever a representative of the miners has reasonable grounds to believe that such a violation or imminent danger exists, he may obtain an immediate inspection by giving notice. It requires that the notice must be reduced to writing, signed by the representative who is making the complaint, and a copy provided the operator or his agent by the time the inspection is made. However, an exception is included under which, upon the request of the person giving such notice, his name and the names of the individual miners referred to therein will not appear on the copy of the notice provided the operator or his agent. It should be noted that, as used here and throughout the act, the term "representative of the miners" includes any individual or organization that represents any group of miners at a given mine and does not require that the representative be a recognized representative under other labor laws.

3. The Senate bill authorized the Secretary to enter into agreements with other Federal agencies and the States to utilize their services, personnel, and facilities in carrying out his functions under the act. The House amendment did not extend this authority to State agencies and personnel. The conference adopts the House provision. The managers note that section 503 of this act authorizes cooperation with the States in carrying out Federal responsibilities. The Secretary should utilize that authority where appropriate, except that the managers intend, in adopting the House provision here, that the Secretary not delegate his enforcement authority to State agencies or personnel.

4. The Senate bill provided for the daily stationing of Federal inspectors at underground coal mines which liberate excessive quantities of explosive gases and which are likely to present explosion dangers. The House amendment provided for a minimum of 26 spot inspections on an irregular basis at such mines, and at a mine that had a gas ignition or explosion during any 5-year period beginning prior to the operative date of this title, and at a mine that has other especially hazardous conditions. The Secretary would make these findings. The conference agreement adopts the House amendment with the requirement that there be, in such cases, a minimum of one spot inspection during every 5 working days at a mine that meets one or all of these criteria. These inspections are to be conducted at irregular intervals.

Section 104

Both the Senate bill and the House amendment contained similar provisions relating to findings, notices, and orders. The conference adopts the language of the House amendment in sections 104(a) and (b) with some technical changes. One of these relates to the fact that there are, as mentioned below, special enforcement provisions relative to the dust standard only.

1. The Senate bill provided that if an inspection of a coal mine shows that a mandatory health or safety standard is being violated but that no imminent danger is created thereby, though the violation could significantly and substantially contribute to the cause or effect of a mine hazard, and if it is found that the failure of the operator to comply is unwarrantable, that finding shall be included in the notice given the operator under section 104 (b) or (i). If, during that inspection or any subsequent inspection carried out within 90 days after the issuance of the notice, another violation of any such mandatory

standard is discovered by the inspector and he finds that the violation is also caused by an unwarrantable failure of the operator to comply, the inspector is required to issue a withdrawal order and to continue, under section 104(c)(2) of both the Senate bill and the House amendment, to issue such orders when he finds other unwarrantable violations until such time as a subsequent inspection discloses the occurrence of no such similar violation. The comparable provision of the House amendment required the inspector, in such a case, to cause the mine to be reinspected to determine if any similar violation exists. If such a similar violation did exist, and was caused by the unwarrantable failure of the operator to comply, the inspector would then issue a withdrawal order. The substitute agreed upon in conference adopts the provision of the Senate version of section 104(c)(1) with technical changes to make it clear that, if another violation of any mandatory health or safety standard occurs which is also caused by an unwarrantable failure of such operator to comply, then a withdrawal order must be issued. The managers note that an "unwarrantable failure of the operator to comply" means the failure of an operator to abate a violation he knew or should have known existed, or the failure to abate a violation because of a lack of due diligence, or because of indifference or lack of reasonable care, on the operator's part.

2. Both the Senate bill and the House amendment provided that any notice or order issued hereunder by an inspector could be modified or terminated by an authorized representative of the Secretary. The Senate bill also provided that such modification or termination would be subject to review in the same manner as the order being modified or terminated. The House amendment did not contain this specific provision. The conference substitute adopts the language of the House amendment. It should be noted, however, that the conference substitute in sections 105(a)(1) and 106 states, as in the House amendment, explicitly that modification and termination of any order is subject to a review by the Secretary and the court at the request of the representative of miners under the act.

3. The conference substitute, retains the provision in section 104(h) of the House amendment relating to withdrawal orders in the cases covered by that section, but it adds an additional provision that the hearing in these cases will be of record and be subject to section 554 of title 5 of the United States Code, which requires a formal adjudicatory type hearing since the judicial review provisions of section 106 of this title provide for an appeal on the record.

4. Both the Senate bill and the House amendment had special provisions with respect to enforcement of the respirable dust standard. Under the Senate bill, if it is found from dust samples that the concentrations of respirable dust exceed the permissible limits, the Secretary is required to issue a notice fixing a reasonable time to take corrective action, which could not exceed 72 hours. The operator was then required to take corrective action immediately to bring such concentrations below the required level. At the end of this period, no work could be performed except that needed to sample. The comparable provision of the House amendment provided that when dust samples showed a violation of the applicable standard, the Secretary or his authorized representative must find a reasonable time within which to take corrective action and issue a notice fixing the reasonable time for the abatement of the violation. During that period the operator would

cause samples to be taken of the affected area during each production shift. The House amendment required that if, at the expiration of the period prescribed in the notice or in any extension thereof, the violation had not been abated, a withdrawal order shall be issued.

The conference agreement adopts the House amendment with some modifications. Under this provision, if, based on samples taken, analyzed, and recorded as provided in section 202(a) or, based upon an inspection, the respirable dust standard is exceeded, the inspector, during an inspection, or some other delegate of the Secretary, without an inspection, must issue a notice of violation and fix a reasonable time to abate the violation. The conference agreement does not place a time limit here but parallels the procedures followed in the case of notices for other health or safety violations under section 104(b). Also, it does provide, in section 105(a), for review solely of the reasonableness of the time fixed in this notice and other notices issued under section 104 of violations of the health and safety standards on application by the operator or the representative of the miners. The Secretary or the court cannot stay the application of such notice while the time fixed is being reviewed.

If the operator fails to abate the condition and reduce the dust concentration to the allowable limit within the time fixed or subsequently extended, a withdrawal order must be issued which shall remain in effect until the Secretary or his authorized representative has reason to believe, based on actions taken by the operator, that the applicable dust standard will be complied with when production is resumed. The Senate bill contained a provision, which was retained in the conference substitute, that when an order is issued under this section, the Secretary, if requested, must send to the mine a person or team of persons (if available) who will remain at the mine for such time as they deem appropriate to assist in reducing respirable dust concentrations. While there, they may require the operator to take such action as they deem appropriate to insure the health of any person in the coal mine.

Section 105

1. The Senate bill and the House amendment each contained provisions under which all withdrawal orders issued under the act may be reviewed by the Secretary, except orders issued under section 104(h) which provides separate procedures for review. The conference substitute adopts these provisions with technical changes and with the modification referred to above under which an operator who is issued a notice pursuant to section 104 (b) or (i) or the representative of the miners at the mine may obtain a review of the notice if he believes that the period of time fixed for the abatement of the violation is unreasonable. Under the substitute, the applicant is required to send a copy of the application to the representative of the miners in the affected mine, or the operator, as appropriate, but the filing of an application for review under this section will not operate as a stay of any order or notice.

2. Both the Senate bill and the House amendment provided that, pending the completion of an investigation required by section 105, an applicant may get temporary relief from the Secretary. The Senate bill limited this authority to non-imminent danger orders only. The House amendment did not so limit it. Under the Senate bill the Secretary could grant such relief only if a hearing has been held in which

all parties were given an opportunity to be heard, the applicant shows there is a substantial likelihood that the findings of the Secretary will be favorable to the applicant, and that the relief will not adversely affect the health and safety of miners in the coal mine. The conference agreement adopts the language of the Senate bill, but requires that no such relief may be given in the case of notices issued under section 104 (b) or (i), as well as in the case of appeals from imminent danger orders.

Section 106

1. Both the Senate bill and the House amendment provided for judicial review of decisions issued by the Panel or the Secretary, except decisions relative to civil penalties which are subject to review under section 109. The substantive difference between these provisions lies in the fact that under the Senate bill the review could be in the Court of Appeals for the District of Columbia as well as the court of appeals for the circuit in which the mine is located. The conference substitute adopts the Senate provision with technical changes and makes it clear that the court cannot entertain an appeal until the person seeking review has exhausted his administrative remedies.

2. Both the Senate bill and the House amendment provided authority for the court to grant necessary relief pending final determination of the appeal, except in the case of imminent danger appeals, from a decision of the Secretary. Under the Senate bill, however, such relief could be given only if (1) all parties have been notified and given an opportunity to be heard, (2) the person requesting the relief shows there is a substantial likelihood that he will prevail on the merits in the final determination of the proceeding, and (3) that the relief will not adversely affect the health and safety of miners in the coal mines. The conference substitute adopts these requirements.

3. The Senate bill and the House amendment also limited the right of courts to grant temporary relief in proceedings to review decisions issued by the Panel. The conference substitute adopts the Senate provision which includes the first two restrictions just mentioned.

4. The Senate bill provided that attorneys appointed by the Secretary may appear for, and represent him in, proceedings for judicial review. The House amendment contained no comparable provision. The conference substitute adopts this provision with technical changes.

Section 108

1. Both the Senate bill and the House amendment contained provisions under which injunctions could be obtained for violations of this act and matters related thereto. Under the Senate bill these civil actions would be instituted by the Secretary. Under the House amendment, the Secretary must request the Attorney General to institute them. Under the conference agreement the Secretary may institute the civil action, and, in such action, attorneys appointed by the Secretary may appear for and represent him.

2. The House amendment, unlike the Senate bill, provided that temporary restraining orders may not be issued without notice unless the petition therefor alleges that substantial and irreparable injury to miners will be unavoidable, and provides that the temporary restraining order may be effective for no more than 7 days. The conference substitute modifies the provision of the House amendment to provide that the court may issue temporary restraining orders in accordance with

rule 65 of the Federal Rules of Civil Procedure, but provides that the time limit in the case of a temporary restraining order issued without notice shall be no more than 7 days, and that, in any action to enforce an order or decision, the substantial evidence rule will apply.

Section 109

1. Both the Senate bill and the House amendment provide for the assessment of civil penalties against the operator for violations. Under the Senate bill such a penalty shall not be less than \$1, or more than \$25,000, for each occurrence. Under the House amendment the penalty shall not be more than \$10,000 for each violation with no minimum established. The conference substitute adopts the provisions of the House amendment in this regard with technical changes.

2. The Senate bill provided that, in determining the amount of the civil penalty only, the Secretary should consider, among other things, whether the operator was at fault. The House amendment did not contain this provision. Since the conference agreement provides liability for violation of the standards against the operator without regard to fault, the conference substitute also provides that the Secretary shall apply the more appropriate negligence test, in determining the amount of the penalty, recognizing that the operator has a high degree of care to insure the health and safety of persons in the mine.

3. The Senate bill provided that any miner who willfully violates the safety standards relating to smoking or to carrying of smoking materials, matches, or lighters shall be subject to a civil penalty which shall not be more than \$1,000 for each occurrence. The House amendment did not contain this provision. The conference substitute retains this provision, but modifies it to provide that any civil penalty assessed by the Secretary shall not be more than \$250 for each occurrence of the violation.

4. Both the Senate bill and the House amendment provided an opportunity for a hearing in assessing such penalties, but the Senate bill required a record hearing under 5 U.S.C. 554. The conference substitute adopts the Senate provision with the added provision that, where appropriate, such as in the case of an appeal from a withdrawal order, an effort should be made to consolidate the hearings. The commencement of such proceedings, however, shall not stay any notice or order involving a violation of a standard.

5. The Senate bill provided that if a person against whom a civil penalty is assessed fails to pay it, the Secretary must file a petition for enforcement of the order in the appropriate district court in the United States. The petition must designate the person against whom the order is sought to be enforced. The court is given jurisdiction to enter a judgment enforcing the order as appropriate. The court would hear the case on the record made before the Secretary and the findings of the Secretary, if supported by substantial evidence on the record considered as a whole, would be conclusive. The corresponding provision of the House amendment required the Secretary to request the Attorney General to institute a civil action in a district court of the United States to collect the penalty. Such proceeding would be *de novo*.

The conference agreement is similar to the Senate bill. The court would hear the case *de novo* and determine all relevant issues, except issues of fact which were or could have been litigated before a court of appeals under section 106. This provision recognizes that the facts

involved in the civil penalty may already have been fully litigated by the court of appeals under section 106 and should not be relitigated here. Also, in some cases, they could have been so litigated and were not. Upon the request of the respondent in the de novo proceeding, issues of fact not litigated under section 106 which are in dispute must be submitted to a jury and, on the basis of the jury's finding, the court would determine the amount of the penalty to be imposed. The court has jurisdiction to enter a judgment enforcing the order, or modifying it, or setting it aside, or remanding it to the Secretary.

The Senate bill, but not the House amendment, provided that attorneys appointed by the Secretary may appear and represent him in proceedings to enforce civil penalties. The conference agreement adopts, with a technical change, the Senate provision because the managers believe that here and elsewhere in the act where this provision is found it is most important that the Secretary establish a competent legal staff with experience and understanding of this legislation to handle expeditiously litigation not only at the administrative hearing stage, but also at the appellate and district court stage. The highly technical nature and unique conditions and practices that occur in this industry warrant the conclusion that the health and safety of the miners requires not only well-trained and experienced inspectors and administrators, but also a legal staff with experience gained in the handling of such proceedings.

6. The Senate bill provided that any operator who willfully violates the health or safety standards or refuses to comply with an order incorporated in a decision issued under the title shall be punished by a fine of not more than \$25,000, or imprisoned for not more than 1 year, or both, except that for a second conviction the maximum punishment is \$50,000, or imprisonment for 5 years, or both. The House amendment provided for punishment in similar cases by a fine of not more than \$10,000 or imprisonment for not more than 6 months, or by both, and for a second conviction by a fine of not more than \$20,000 or by imprisonment of not more than 1 year, or by both. The conference substitute adopts the provisions of the Senate bill with technical modifications.

7. The House amendment provided criminal penalties against persons who manufacture new electrical equipment for use in coal mines that is placed in commerce and that is falsely represented as complying with the Secretary's specifications or regulations, and against any other person who removed, altered, modified, or rendered inoperative such equipment prior to its sale or delivery to its ultimate purchaser and who falsely represents such equipment as meeting such specifications or regulations. The Senate bill does not contain such a provision. The conference agreement provides that anyone, whether a manufacturer or not, who knowingly distributes, sells, offers for sale, introduces, or delivers in commerce such equipment which is falsely represented as so complying with this Act or with any specification or regulation of the Secretary applicable to such equipment shall be subject to appropriate sanctions. The objective of this provision is to insure that manufacturers and dealers of such equipment will meet their safety responsibilities in regard to this equipment.

Section 110

The Senate bill provided that where a withdrawal order is issued for repeated failures to comply with a health or safety standard, the Secretary, after giving an opportunity for a hearing to interested persons, shall order all miners who are idled due to the order to be fully compensated by the operator at their regular rates of pay for the time they were idled, or for 1 week, whichever is the lesser. These orders would be subject to judicial review. The corresponding provision of the House amendment provided that where a withdrawal order has been issued all miners working during the shift when the order was issued who are idled by the order will be entitled to full compensation at their regular rates of pay for the period they are idled, but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all miners on that shift who are idled will be entitled to full compensation for the period they are idled, but for not more than 4 hours of the shift. The substitute agreed upon in conference adopts the provisions of the House amendment, except that where the mine is closed by an order issued on account of an unwarrantable failure of the operator to comply with a health or safety standard, the miners who are idled will obtain the benefits described in the Senate bill.

This section of the House amendment also contained a provision, which is retained in the conference substitute, under which an operator who violates or fails or refuses to comply with a section 104 order must pay full compensation at regular rates of pay to miners who should have been withdrawn or prevented from entering the mine or portion thereof as the result of that order, in addition to pay received for work performed after such order is issued.

Nothing in this section is intended to interfere with or preempt any collective bargaining agreement.

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TITLE IV—BLACK LUNG BENEFITS**PART A**

The Senate bill set forth certain findings relative to the need for, and desirability of, a benefit program for inactive miners, their dependents, and their surviving widows and children where such miners are disabled or died due to complicated pneumoconiosis. It also provided that it is the purpose of title V of the Senate bill to provide interim emergency health benefits to coal miners who are totally disabled and unable to be gainfully employed due to complicated pneumoconiosis, to widows and children of such miners, and to develop further information on the subject. The House amendment did not have such a statement of purpose. The conference substitute finds that there are a significant number of living coal miners who are totally disabled from pneumoconiosis arising out of employment in one or more underground coal mines; that there are survivors of such miners whose death was due to this disease, and that few States provide such benefits. It also states that it is the purpose of this title to provide such benefits and to insure that future adequate benefits are provided to coal miners and their dependents where disability or death occurs from such disease.

The House amendment defined the terms coal mine, complicated pneumoconiosis, dependent, and widow. The Senate bill had no similar provision. The conference agreement adopts the House language for widows and dependents. It also defines the terms pneumoconiosis, secretary, miner, and total disability.

PART B

The Senate bill directed the Secretary of Health, Education, and Welfare to develop and promulgate disability benefits standards which would govern the determination of persons eligible to receive benefits and the procedure used in disbursing such benefits. The standards, among other things, are to take into consideration the length of employment in coal mines deemed sufficient to establish a claim. The standards are effective upon promulgation unless a later date of no more than 7 months after enactment is prescribed. The House amendment had no similar provision but defined the term complicated pneumoconiosis. The conference agreement directs the Secretary of Health, Education, and Welfare to prescribe by regulation, standards to determine whether a miner is totally disabled due to, or died from, pneumoconiosis. It provides that the regulations shall not be more restrictive than the regulations applicable to section 223(d) of the Social Security Act. It is expected that initially the criteria applied by the Secretary will be that now applied under section 223(d) of that act. Such standards would, among other things, require that the administrators of this program apply the best medical means available for ascertaining the disease in the miner.

The Senate bill provided for benefit payments to persons determined to be eligible by a State in accordance with the standards of the Secretary of Health, Education, and Welfare based upon the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled is entitled. Under the Senate bill, the Secretary of Health, Education, and Welfare would make grants to cover the entire cost of such payments through June 30, 1971, and to pay one-half of such costs during the fiscal years ending June 30, 1972 and 1973. It authorized annual appropriations for those 3 fiscal years with a requirement for a proportionate reduction in grants and payments if appropriations are not sufficient.

The House amendment provided payments to miners totally disabled from complicated pneumoconiosis and to the widows of miners who suffered from complicated pneumoconiosis at the time of death. The disease must have arisen out of, or in the course of, the individual's employment in a coal mine. If he was so employed for 10 years or more, there is a rebuttable presumption that the disease so arose; if he was not, the individual must demonstrate that his disease so arose. Anyone who suffered from this disease is deemed to be totally disabled and therefore eligible.

Under the House amendment, payments are based upon the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under provisions of Federal law relating to Federal employees (sec. 8112, title 5, United States Code). In the case of total disability, the disabled individual is entitled to payment at a rate equal to 50 percent of such minimum monthly amount. The widow of a miner entitled to payment would be eligible to receive the same amount. The payment would be increased to allow for up to three dependents. The first dependent would increase the basic payment by 50 percent; the second dependent by 75 percent; and the third dependent by 100 percent. The maximum monthly payment, therefore, to which an eligible individual is entitled under this subsection is equal to the minimum monthly payment such Federal employee is entitled to.

Under the House amendment, the Secretary of Labor shall enter into agreements with the Governors of the States under which the State will receive and adjudicate claims under this subsection from its residents and under which the payments will be made. Each Governor will implement the agreement in any manner he determines will best effectuate the provisions of this subsection. If the Secretary of Labor is unable to enter into an agreement with a Governor or if a Governor requests him to do so the Secretary may make payments directly. When the Secretary of Labor has an agreement with a State he will make a grant to the State for the purpose of making the individual payments.

No claim would be considered unless it is filed (1) within 1 year after the date an employed miner received the results of his first chest roentgenogram as provided under section 203, or, if he did not receive such a chest roentgenogram, the date he was first afforded an opportunity to do so under that section, or (2) in the case of any other claimant, within 3 years from the date of enactment of this act, or, in

the case of a claimant who is a widow, within 1 year after the death of her husband or within 3 years from the date of enactment of this act, whichever is the later.

The conference substitute provides that the program under part B would be administered by the Secretary of Health, Education, and Welfare who, based on the heretofore mentioned standards, shall provide benefit payments to miners for total disability from pneumoconiosis and to widows of miners whose death is due to this disease. If a miner who suffered or is suffering from the disease was or is employed in one or more underground coal mines for 10 or more years, there is a rebuttable presumption that his disease arose out of such employment and if a deceased miner was so employed and died from a respirable disease, there is also a rebuttable presumption that death was due to this disease. If a miner is suffering or suffered from a chronic dust disease of the lung based on certain specified medical evidence as defined in section 411(c)(3), there is an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to this disease. The benefit payments are to be made as provided in the House amendment; that is, in accordance with the minimum monthly payment to which a Federal employee in grade GS-2 is entitled for total disability. Benefits for miners are to be reduced by an amount equal to any payment which the miner or his widow receives under State workmen's compensation, unemployment compensation, or disability insurance laws due to disability of such miner, and the amount by which such payment to the miner would be reduced on account of excess earnings under the social security laws.

In the case of total disability of a miner, the claims must be filed on or before December 31, 1972. In the case of a widow, the claim must be filed within 6 months after death of her husband or by December 31, 1972, whichever is later. Benefits are payable to a widow due to death of a miner under part B if the miner was receiving total disability benefits prior to his death or if the death of the miner occurred prior to January 1, 1973. Also, the benefit program provides that no benefits shall be paid after December 31, 1972, for a miner who filed his claim after December 31, 1971. The House amendment provided that no benefit payments shall be made to residents of any State which, after enactment, reduces to persons eligible under this program the benefits it pays under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, and disability insurance, and which are funded by employer contributions. Benefit payments made under State programs funded by general revenues are not included in the maintenance of effort provision in the House amendment for the reason that they are not considered to be workmen's compensation, unemployment compensation, or disability insurance programs as such programs are generally understood, and as they are intended to be understood within the context of this benefit program. Any changes in such payments or programs subsequent to the date of enactment, therefore, would not affect payments to the residents of such State under the House amendment. The Senate bill prohibited the making of benefit payments where a State reduced its benefits to an eligible person. The conference substitute adopts the House amendment without change and together with the above intent.

PART C

The conference substitute also provides that on or after January 1, 1973, benefit claims must be filed pursuant to applicable State workmen's compensation laws, except, in any period when miners or widows are not covered by any such law which provides adequate coverage for pneumoconiosis, they shall be entitled to claim benefits under this provision of the act. A State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in a list of State laws found by the Secretary of Labor and published by him, in accordance with guidelines set forth in this provision, to be adequate. During any period after December 31, 1972, in which a State workmen's compensation law is not so included, the applicable provisions of the act of March 4, 1927, as amended, shall be applicable to an operator of an underground coal mine in such State with respect to death or disability due to this disease arising out of employment in such mine. During such period, the operator shall be liable for, and secure the payment of, benefits to the persons listed in section 412(a) as provided in part C of this title, except that no benefit payments shall be required for any such period seven years after enactment.

TITLE V—ADMINISTRATION

Section 501

1. Both the Senate bill and the House amendment contained provisions under which studies, research, experiments, and demonstrations will be carried on in the fields related to working conditions, prevention of accidents, and control of causes of occupational diseases in the coal mining industry. The House amendment contained a number of specific descriptions of particular matters to be investigated. A number of these have been adopted in the conference substitute, as well as one provision of the Senate bill which required research to develop new and improved sources of power for use underground which was not included in the House amendment. The House amendment required the Secretary of the Interior to distribute or divide the funds available for carrying out the section as equally as possible between himself and the Secretary of Health, Education, and Welfare. This provision is not included in the conference substitute because provision is made for appropriations directly to both. The House amendment also required that activities in the field of health be carried out by the Secretary of Health, Education, and Welfare and the activities in the field of safety be carried out by the Secretary. This House provision was included in the conference substitute.

2. Both the Senate bill and the House amendment authorized contracts and grants to public and private agencies and organizations and individuals to carry out research, experiments, demonstrations, studies, training, and education under this section and sections 301(b) and 502(a) without regard to limitations in other statutes on contracts and grants applicable to other programs of the Secretary. In addition, the Senate bill authorized such grants and contracts to carry out other education and study activities. The conference substitute adopts the provisions of the Senate bill in this regard.

3. The House amendment provided that no research can be carried out under the act unless all developments resulting from such re-

search would be available to the general public, subject to such exceptions and limitations as the Secretary or the Secretary of Health, Education, and Welfare might find necessary in the interests of national security. The Senate bill did not contain this provision. The conference adopts the House provision but substitutes public interest for national security.

4. The Senate bill contained a provision which had no counterpart in the House amendment which provided for studies and research of matters involving the protection of life and the prevention of diseases in connection with persons, who, although not miners, work with or around the products of coal mines in areas outside of such mines and under conditions which might adversely affect their health and well-being. This provision is retained in the conference substitute.

5. The Senate bill authorized the appropriation to the Secretary of the Interior of funds to carry out his functions under this section and section 301(b) at an annual rate not exceeding \$20 million for fiscal year 1970, \$25 million for fiscal year 1971, and \$30 million for fiscal year 1972, and each succeeding fiscal year thereafter. It also authorized a separate appropriation of such sums as may be necessary to the Secretary of Health, Education, and Welfare to carry out the responsibilities imposed upon him by the Act with respect to research in the field of health. The comparable provision of the House amendment authorized the appropriation of such sums as might be necessary to carry out the section. The conference substitute adopts the provisions of the Senate bill with technical changes.

6. The Senate bill authorized the Secretary to grant an operator, on a mine-by-mine basis, exceptions to any of the provisions of the Act for the purpose of granting engineering institutions an opportunity to experiment with new techniques and equipment to improve the health and safety of miners where it will not adversely affect their health and safety. The conference substitute adopts this provision with a modification to insure that its benefits will not be limited to engineering institutions but will be available to other accredited educational institutions. The Secretary, of course, may also conduct such experiments directly under his research authority.

7. The Senate bill authorized grants to public and private agencies, institutions, and organizations, and operators or individuals for research and experiments to develop effective respiratory devices and other devices to carry out the purposes of the act. The conference substitute adopts this provision of the Senate bill, but limits it to the development of respiratory equipment.

Section 502

Both the Senate bill and the House amendment contain provisions relating to programs for the education and training of coal-mine operators, agents thereof, and miners. The Senate bill also directs the Secretary to provide technical assistance to mine operators, but no comparable provision was in the House amendment. The conference agreement adopts this provision of the Senate bill.

Section 503

1. The Senate bill provided Federal assistance to coal producing States in developing and enforcing effective health and safety laws and regulations applicable to mines in the States, and to promote Federal-

State coordination and cooperation in improving health and safety conditions in the Nation's coal mines. It provided, that, in order to receive Federal assistance, the State must submit a plan designating the State coal mine inspection or safety agency as the agency for administering the plan and containing assurance that it will have authority to carry out the plan, gives assurances that an adequate staff will be employed, sets forth the plans, policies, and methods to be followed in carrying out the plan, provides for extension and improvement of the State's program for coal mine health and safety, and prohibits advance notices of inspections, contains the usual common provisions relating to fiscal control and fund accountability and for reports to the Secretary and meets additional conditions prescribed by the Secretary. The Secretary is authorized to discontinue the assistance under the plan if the State fails to comply with it or fails to give reasonable cooperation in administering this Act. If the State is aggrieved by the Secretary's decision to discontinue assistance under the plan, an appeal lies to the Court of Appeals for the District of Columbia. The Senate bill further provided that grants may be made where there is an approved State plan to carry it out, including the cost of training inspectors, and to assist States in planning and implementing other programs for the advancement of health and safety in coal mines. The Senate bill provided that the Federal grant may not exceed 80 percent of the cost of the program. It authorized the appropriation of \$3 million for the fiscal year 1970 and \$5 million for each succeeding fiscal year to carry out the program. It also required an equitable distribution of these funds among the States and for coordination between the Secretaries with the Secretary of Labor and Health, Education, and Welfare in making grants under the section.

The comparable provision of the House amendment provided for grants to coal mining States to assist them to conduct research and planning studies to carry out plans designed to improve their workmen's compensation and occupational disease laws and programs as they relate to compensation for pneumoconiosis and injuries in coal mine employment, and to assist the States in planning and implementing other programs for the advancement of health and safety in coal mines. The grants under the House provision would not extend beyond a period of 5 years following the effective date of the act and would be made only to States which have an approved State plan. The Secretary would approve State plans which provide for making reports to him and for fiscal control and fund accounting procedures, and assure that the State will not reduce its existing State programs or benefits, and meets other conditions which he may prescribe. The provision prevented the Secretary from disapproving a State plan without giving the State an opportunity for a hearing. The amount granted under the House amendment could not exceed 80 percent of the amount expended by it in carrying out the plan. The House amendment authorized the appropriation of \$1 million for the fiscal year 1970 and each succeeding fiscal year for carrying out the section.

The conference substitute combines the provisions of both bills, but the requirement of a State plan is not included. Instead, the conference substitute requires the annual filing of an application for a grant. The conference substitute does give an opportunity for judicial review by the Court of Appeals for the District of Columbia of decisions of

the Secretary when he disapproves a State application. As agreed to in conference, the amount authorized to be appropriated is \$3 million for the fiscal year 1970 and \$5 million annually thereafter for grants to be distributed equitably to coal producing States with approved applications. The amount of the grant to any coal mining State for a fiscal year is limited to 80 per centum of the sum expended by the State annually to carry out the grant application. The managers intend that the Secretary provide grants to States where there is actual coal production during the previous fiscal year for commerce.

2. The provision in the Senate bill providing for the development of facilities, as appropriate, to train Federal and State coal mine inspectors jointly is retained under the conference agreement with a modification to make it clear that it also provides for the construction of such facilities where needed.

Section 504

The Senate bill amended the Small Business Act to authorize loans (either directly or in cooperation with banks or other lending institutions) to assist small business coal mine operators in effecting additions or alterations in the equipment, facilities, or methods of operation on such mines to meet requirements imposed by this act if the Small Business Administration determines that such concern is likely to suffer substantial economic injury without such assistance. The Senate bill also permitted loans to be made or guaranteed under section 202 of the Public Works and Economic Development Act of 1965 for this new purpose. The corresponding provision of the House bill authorized the Secretary for 5 years after enactment to make loans to coal mine operators to enable them to procure or convert equipment needed by them to comply with the provisions of this Act. These loans would have had maturities set by the Secretary but not in excess of 20 years and would bear interest at a rate which would be adequate to cover the cost of the funds to the Treasury, the cost of administering the section, and probable loss. The Secretary would be required to use the services of the Small Business Administration. The conference substitute adopts the provisions of the Senate bill on this matter.

Section 505

Both the Senate bill and the House amendment contained provisions relating to qualifications and training of inspectors and other personnel. The Senate bill, unlike the House amendment, also waived the provision of the Revenue and Expenditure Control Act of 1968 relating to the number of employees for this program. Because of the clear need for more qualified inspectors and other personnel to enforce and administer this Act, the House amendment, with this provision of the Senate bill, is retained in the conference substitute.

Section 506

The Senate bill provided that nothing in the Act would be construed to supersede or effect workmen's compensation laws of the States or to affect common law rights, duties, or liabilities of employers and employees under specified State laws. No comparable provision was contained in the House amendment, and no such provision appears in the conference substitute.

Section 509

The Senate bill provided that the operative date of the interim health and safety standards would be four months after enactment. The House amendment provided that the safety standards be effective three months after enactment and that the health standards be effective six months after enactment. The conference agreement adopts the House provision with a modification noting that, where an earlier effective date is specified, such date shall control.

Section 511

The Senate bill required an annual report to the Congress by the Secretary and the Surgeon General. The House amendment also provided for separate annual reports by the Secretary and the Secretary of Health, Education, and Welfare but specified in greater detail the matters to be included in the reports. The conference agreement adopts the House language with technical changes. The managers intend that these reports be as informative as possible about the actions taken and not taken by the two Secretaries under this Act to achieve its purposes and, most particularly, to achieve compliance with its provisions.

Section 512

The House amendment provided for a study by the Secretary of the ways to coordinate Federal and State coal mine health and safety activities. The Senate bill had no comparable provisions. The conference agreement adopts the House provision.

Section 513

The Senate bill provided that in any proceeding involving the validity of the interim mandatory health and safety standards, no temporary restraining orders or preliminary injunctions restraining or enjoining such standard shall be issued pending a final determination of the issue on the merits. There was no comparable House provision. The conference adopts the Senate provision.

CARL D. PERKINS,
JOHN H. DENT,
ROMAN PUCINSKI,
AUGUSTUS F. HAWKINS,
PATSY T. MINK,
PHILLIP BURTON,
WILLIAM H. AYRES,
JOHN N. ERLBORN,
ALPHONZO BELL,
DOMINICK V. DANIELS,
JOHN M. ASHBROOK,

Managers on the Part of the House.



ing of the statement of the managers on the part of the House.

Mr. ERLLENBORN. Mr. Speaker, I reserve the point of order against the report and withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of December 16, 1969.)

Mr. PERKINS (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement of the managers on the part of the House be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. ERLLENBORN. Mr. Speaker, I renew my point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. ERLLENBORN. Mr. Speaker, I made a point of order against the conference report in that in several instances matters not in disagreement between the House and the Senate were amended in the conference report, and the conference report includes matters that were not included in either the House or the Senate version of the bill. I would like to be heard on that point of order.

The SPEAKER. The Chair will hear the gentleman.

Mr. BURTON of California. Mr. Speaker, will the gentleman yield?

Mr. ERLLENBORN. I cannot yield at this time.

Mr. BURTON of California. It would be a little easier if those of us on this side of the aisle could get a copy of the gentleman's objections.

Mr. ERLLENBORN. I am sorry, I do not have additional copies.

Mr. Speaker, section 401, part B, of the conference report refers to total disability due to pneumoconiosis from working in coal mines as a disease that would come under the terms of this measure. The term "pneumoconiosis" is defined as a chronic dust disease of the lung. Both the House and Senate bills make only complicated pneumoconiosis as the basis for payments.

The SPEAKER. Will the gentleman state again the section of the report to which he makes reference?

Mr. ERLLENBORN. Section 401 of the conference report. All of title IV of the conference report, section 401 and the other sections in title IV.

Mr. Speaker, there was no disagreement between the House and the Senate as to complicated pneumoconiosis being the sole basis that is compensable under both the House and the Senate versions of the bill. This matter was not in disagreement. But in the report of the conference, simple pneumoconiosis was made compensable. This not only violates the provision that matters in disagreement cannot be amended, but it brings in coverage for an additional disease that was not contemplated, or stage of the disease that was not contemplated

CONFERENCE REPORT ON S. 2917,
FEDERAL COAL MINE HEALTH AND
SAFETY ACT

Mr. PERKINS. Mr. Speaker, I call up the conference report on the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. ERLLENBORN. Mr. Speaker, reserving the right to object, I would like to make a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. ERLLENBORN. It is my intention to make a point of order against the conference report. I understand that this must be made before the statement on the part of the managers is read. Am I correct?

The SPEAKER. In response to the parliamentary inquiry, the gentleman's understanding is also the understanding of the Chair. The gentleman is correct.

Mr. ERLLENBORN. If I do not object to the unanimous-consent request for dispensing with the reading of the report, will I be protected in my point of order before the statement of the managers is read?

The SPEAKER. The gentleman could reserve a point of order, and he could exercise it at the conclusion of the read-

in either the House or the Senate version.

Moreover, title IV itself, of which section 401 is a part, carries the caption "Black Lung Benefits," a designation which is applicable only to coal dust pneumoconiosis and not to other forms of the disease, such as silicosis.

Thus the conference report goes beyond both bills in providing compensation for every kind of pneumoconiosis, and thus a number of diseases other than those attributable to black lung or complicated pneumoconiosis, which is coal-dust-complicated pneumoconiosis. Consequently by referring to diseases of the lung caused by dust, other diseases such as silicosis, which were not covered in either the House or the Senate version, are now being made compensable.

Secondly, Mr. Speaker, section 412(c) provides that benefit payments under title IV shall not be deemed income under the Internal Revenue Code. This provision was in neither bill nor in any provision similar in substance. Neither bill addressed itself to the taxability of the compensation paid under those bills. This section 412(c) is entirely new matter that was not contained in either bill in any fashion whatsoever.

Third, Mr. Speaker, section 413(c) requires the miner to file a claim under the applicable State workmen's compensation law subject to certain conditions prior to filing a claim under this section. No such requirement was contained in either bill.

Fourth, Mr. Speaker, section 421(a) provides that after January 1, 1973, claims for benefits shall be filed pursuant to applicable State workmen's compensation laws. Similarly the other provisions of section 421(a) are tied to this prior application by the applicant under State workmen's compensation laws. No such requirements were contained in either bill. This is entirely new matter.

Fifth, Mr. Speaker, section 422(a) of the conference report provides that certain provisions of the Longshoremen and Harbor Workers' Compensation Act shall be applicable to coal mine operators in a State whose workmen's compensation law has not been approved by the Secretary of Labor. Subsections 422 (b), (c), (d), (e), (f), (g), (h), and (i) are related to subsection (a). None of these are in either bill. No reference was made in either bill to the Longshoremen and Harbor Workers' Compensation Act. This is entirely new matter.

Sixth, Mr. Speaker, section 423 of the conference report requires the coal mine operator to pay disability benefits in a State which has no workmen's compensation or whose law is not on the approved list of the Secretary of Labor. This, by the way, imposes new duties on the Secretary of Labor to approve or disapprove the provisions of State workmen's compensation laws. It, in effect, requires the Secretary of Labor to blacklist or make a list of States who do not have State workmen's compensation laws that he feels grant sufficient compensation. This is an entirely new duty on the Secretary of Labor that was not contemplated or provided for by either

bill. It also requires the operator if he is self-insured to comply with regulations of the Secretary of Labor. No such provision was contained in either bill. It sets forth certain mandatory provisions that must be in the contract of the operator if he has a policy from an insurance company providing for payment of such benefits. No such provision was in either bill. This section imposes an obligation to pay workmen's compensation and industrial disease compensation, imposes these conditions on a mine operator, and no such imposition was made by either bill.

Seventh, Mr. Speaker, section 424 of the conference report requires that if the operator is neither self-insured nor covered by a policy or has not paid benefits in a reasonable time or there is no operator who was required to pay such benefits, the Secretary of Labor shall pay these benefits to the claimant who is eligible, and the operator shall be liable to the United States in a civil action for the amount so paid by the United States.

None of these provisions was in either bill. It provides a new cause of action to the United States against the operators that was not contemplated in either bill.

Mr. Speaker, there are many precedents holding that matters not in disagreement between the House and the Senate cannot be amended by the conference committee. There are many precedents for that.

In addition, the precedents are clear that the conference committee's jurisdiction is limited to those matters that were in disagreement, and the conference committee may not draw provisions that go outside those that were contemplated by either bill.

When a bill is sent to conference, matters in disagreement between the Houses, and only matters in disagreement between the Houses, are before the conferees. I cite volume 8, section 3253 of Hinds' Precedents. This rule has always been very strictly construed.

Conferees are restricted to the literal difference between the two Houses. The insertion of any extraneous matter, even though germane, is subject to a point of order. I cite volume 8, sections 3254 and 3258 of Hinds' Precedents.

It is clear, Mr. Speaker, from this short statement of only a few of many precedents—and I have others here and I am prepared to present them—that if any matter is placed in the conference report which goes beyond the literal differences between the two versions of the bill, which imposes new duties upon agencies or departments of Government, or grants new causes of action or new compensation not contemplated by either bill as passed by the two Houses, even though germane, these matters render the conference report subject to a point of order if the managers have exceeded their authority.

I am prepared, Mr. Speaker, if it is desired, to cite additional precedents.

The SPEAKER. Does the gentleman from Kentucky desire to be heard on the point of order?

Mr. PERKINS. Mr. Speaker, I certainly desire to be heard.

The SPEAKER. The Chair will hear the gentleman.

Mr. PERKINS. Mr. Speaker, we feel that we are clearly within the rules of the House. The word "pneumoconiosis" is not limited in the Senate bill. The Senate bill embraces the provisions to which the gentleman from Illinois objects.

In this regard, the Senate bill, in section 502, gave broad grant of authority to the Secretary of Health, Education, and Welfare to "develop and promulgate interim disability standards governing the determination of, among other things"—and I am quoting—"the methods and procedures to be used in disbursing such benefits, and such other matters as the Secretary deems appropriate."

What the conference report does is restrict and nail down what the Senate left to the Secretary's discretion.

I yield to the distinguished gentleman from Michigan, Mr. O'HARA.

Mr. O'HARA. Mr. Speaker, may I be heard on the point of order?

The SPEAKER. The Chair will hear the gentleman.

Mr. O'HARA. Mr. Speaker, I wish to emphasize the point made by the chairman of the Committee on Education and Labor that the language of the conference report objected to represents a definition of terms that is consistent with the differences between the House and Senate versions. In section 502, as the distinguished chairman has pointed out, the Senate left to administrative discretion the definition of the terms with respect to which the gentleman from Illinois has raised some question. The conference report by defining such terms has not gone beyond the Senate bill which on that point was entirely open-ended. I would like to point out as well, Mr. Speaker, that the House bill is a complete substitute for the Senate bill; that the bill went to conference after the House had stricken all after the enacting clause; and that in such conferences all matters in either bill are at issue.

In the Rules and Practices of the House of Representatives, in section 913, it is stated that:

Where one House strikes out of a bill of the other all after the enacting clause and inserts a new text, conferees may discard language occurring both in the bill and the substitute, and exercise a wide discretion in the incorporation of germane amendments and may even report a new bill germane to the subject.

Mr. Speaker, the point of order to the conference report should be overruled.

Mr. BURTON of California. Mr. Speaker, I would like to be heard on the point of order.

The SPEAKER. The gentleman is recognized.

Mr. BURTON of California. Mr. Speaker, initially one of the objections is clearly out of order for the reasons stated by the gentleman from Michigan (Mr. O'HARA); I refer to section 412(c) as to whether or not the benefits should be subject to the Internal Revenue Code. This is clear because we have long since agreed that we were going to write a clear history that for the House portion of this bill these payments were not to be workmen's compensation payments. It was also inferentially clear

that the benefits received under this bill were to be recognized as payments for disability such as are payments given in the traditional workmen's compensation area and therefore not income as made clear by section 412(c). Although this is not the proper point—and I shall deal with this more at length later in the debate—I would hope everyone on the floor would not gather by the distinguished gentleman from Illinois' remarks that the bulk of the amendments suggested that render this bill subject to some question in the mind of the gentleman from Illinois—I would hope there would be no impression of any kind whatsoever that it was the majority that in any instance except by receding to demands of the other side to clarify procedures—

Mr. ERLÉNORN. Mr. Speaker, a point of order.

Mr. BURTON of California. I would hope that no one within the hearing range of any one of us would think it was the majority that imposed these sections.

Mr. ERLÉNORN. Mr. Speaker, a point of order.

Mr. BURTON of California. Rather it was the majority that acceded to the minority's demands.

Mr. ERLÉNORN. Mr. Speaker, a point of order.

Mr. BURTON of California. But because this is not the time to state such matters, I will simply not pursue that vein.

The SPEAKER. The gentleman from Illinois.

Mr. ERLÉNORN. Mr. Speaker, I had intended to make a point of order that the gentleman was out of order and was not addressing himself to the point of order that was raised. I would like an opportunity to respond to the statements of the gentleman on the other side concerning the point of order.

The SPEAKER. The Chair will state to the gentleman that at this time the Chair declines to cut off discussion of the point of order.

Mr. ERLÉNORN. Mr. Speaker, I would like to be heard.

Mr. DENT. Mr. Speaker, I would like to be heard on some points made by the gentleman from Illinois.

First of all, the gentleman will recall that the day of the conference was the 20th day of November. It was a matter of urgency—

Mr. ERLÉNORN. Mr. Speaker, a point of order. The gentleman is not addressing himself to the point of order.

The SPEAKER. The Chair suggests that anyone who speaks address himself to the point of order. The gentleman from Pennsylvania will confine his remarks to the point of order.

Mr. DENT. I am coming to that, sir, but it takes the background in order to bring the point of order into focus.

The SPEAKER. The Chair has stated that the gentleman may be heard and at this point the gentleman's remarks should be addressed to the point of order.

Mr. DENT. I thank the Chair very kindly for his indulgence and I would like a little indulgence from the gentleman from Illinois.

In the instructions of the conferees, well known to the gentleman from Illinois and every other member of the conference, there was instruction by the spokesmen for the minority on the other side of the Hill in which the staffs were given explicit orders to delve within the confines of the understanding we had come to, and write the total disability clauses that were discussed.

If you will note in the manager's report, the language contained in the description of complicated pneumoconiosis of total disability both descriptions and words and language appear in the House version on page 31 which is as follows:

Compensation shall be paid under this subsection in respect of total disability of and individual from complicated pneumoconiosis which arose out of or in the course of his employment in a coal mine—

And then we go over to the next page in the House bill and restate it in reverse so that there would be no misunderstanding of what was intended in the House bill, and we say:

For purposes of this subsection, any individual who suffers from complicated pneumoconiosis shall be deemed to be totally disabled.

The gentleman from the Senate decided that in their version there was an opportunity to pay compensation where there was total disability caused by complicated pneumoconiosis.

We do not necessarily pay for phase 1 of pneumoconiosis to which the gentleman alluded. We may not pay for phases 2 or 3. Neither one of these phases of pneumoconiosis or black lung or whatever you want to call it, necessarily crippled a man to the extent of destroying a man's ability to earn a living in any other occupation. So, the language in this act is directed toward making sure that a person entitled to the compensation shall be paid and a person who is totally disabled or has chronic and advanced pneumoconiosis deprives him of the ability to work in some job where his breathing is so badly disturbed by this respiratory disease that he cannot perform his duties to the best of his ability and to earn a full living.

I say to the gentlemen of the House we gave wide latitude to the staffs of the Senate and House members.

We gave a great deal of latitude particularly to the minority views, and I have always believed that the minority has every right that a majority has, and in some cases more. And most every word that is written into this title IV came from the minority.

Now, if it was the intent, Mr. Speaker, of the minority staff representatives to write language that later could be challenged on a point of order, if that was the purpose then the purpose has been served well by those who served that purpose, but it was not the purpose of the majority.

The majority came before the House and offered a piece of legislation designed to do exactly what 391 Members of the Congress approved. This bill does represent then what the conferees wanted to do, and I do not believe that the point of order is well taken.

The SPEAKER. The Chair is prepared to rule.

Mr. ERLÉNORN. Mr. Speaker, could I be heard further?

The SPEAKER. Does the gentleman from Illinois desire to be heard further?

Mr. ERLÉNORN. I do very briefly, Mr. Speaker.

The SPEAKER. The Chair will hear the gentleman from Illinois.

Mr. ERLÉNORN. Mr. Speaker, my good colleagues addressed themselves only to the first of my several points of order against the conference report, and have alluded to language in the Senate bill. I would like to read some of the language of the Senate bill, section 501:

It is, therefore, the purpose of this title to provide, on a temporary and limited basis, interim emergency health disability benefits, in cooperation with the States, to any coal miner who is totally disabled and unable to be gainfully employed on the date of enactment of this Act due to complicated pneumoconiosis.

Now, that is the clear statement of the purpose of the Senate bill, to give compensation only for complicated pneumoconiosis.

The gentleman from Michigan alluded to section 502 of the Senate bill where the Secretary was given authority to develop and promulgate interim disability benefit standards.

Mr. Speaker, I submit this does not widen the coverage of the bill to any disease other than complicated pneumoconiosis, and the conference report in extending benefits to simple pneumoconiosis, silicosis, and other diseases goes beyond the scope of either bill.

The SPEAKER. The Chair is prepared to rule.

The Chair will state that the Chair had advance notice that the points of order would be raised, and had an opportunity to investigate the matter of the points of order involved therein.

The Chair has had the opportunity to examine the Senate bill and the House amendment thereto, as well as the provisions of the conference report.

The gentleman from Illinois (Mr. ERLÉNORN) has raised a point of order against the conference report on S. 2917 and has cited several instances wherein he contends the conferees have exceeded their authority by either including matter that was not in controversy or going beyond the differences between the provisions of the Senate bill or the House amendment.

The Chair notes that the overall problem of pneumoconiosis and the benefits payable to persons totally disabled thereby is certainly within the matters is disagreement which the conferees could act upon.

The provision appearing in section 412(c) of the conference report is in neither the Senate bill nor the House amendment thereto, but the chair notes that the subject of benefits is certainly included in both bills. As well as how those benefits are to be treated. While the provision cited by the gentleman from Illinois is new language, it is nevertheless germane to the subject of disability compensation which is before the conferees and does not enlarge the subject matter committed to them.

Another argument raised by the gentleman has received the close attention of the chair. As pointed out by the gentleman, part C of title IV of the conference report sets up a new Federal workmen's compensation program for disability payments after December 31, 1972, where State programs are not adequate under State workmen's compensation laws, under a mechanism by which the mine operator would become liable for the payment of disability benefits.

The Chair finds that the subject of financing of disability benefits was a matter before the conferees.

The Chair has studied the precedents and finds them to be consistent that where one House has stricken all after the enacting clause of a bill and inserted an entire substitute therefor, the entire subject matter is committed to the conferees who may report any provision germane thereto providing that it remains within the broad outlines of the matter committed to conference.

The Chair believes that the controlling precedents are found in Hinds Precedents, V, section 6421 and Canons Precedents, volume VIII, section 3248.

The Chair is of the opinion that the conference report is germane and that the conferees have not exceeded their authority. Therefore, the Chair overrules the point of order.

The SPEAKER. The Chair recognizes the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. Mr. Speaker, I yield myself 5 minutes.

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. Mr. Speaker, the conference report that we submit to the House today on S. 2917, Federal Coal Mine Health and Safety Act, is the greatest step forward taken in any industry to assure safe working conditions. I think that it is fitting that in this most hazardous occupation that we have taken such great care throughout the congressional deliberations through the committee action and the action of the House and the action of the conference committee to make certain that the requirements for industry practice will most effectively assure healthy and safe working conditions in mines consistent with current technology. I believe the conferees have been successful in retaining those provisions of the bill which passed the House on October 29 by 389 yeas to only four negative votes—which assure those objectives.

The conference establishes a 3-Omg dust standard effective 6 months after its enactment; retains provisions permitting miners to transfer from a position in the mine to another position where physical examination discloses evidence of pneumoconiosis so as to eliminate his exposure; retains those provisions with respect to the X-ray program; retains those provisions with respect to the promulgation of mandatory health and safety standards; and in general retains the comprehensive health and safety features approved by this body on October 29.

With respect to the compensation of miners who have become disabled be-

cause of black lung disease the conference substitute provides for the payment of benefits for the death of a miner or for his total disability due to this dread disease and intends that its provisions be construed liberally in providing benefits to these people.

Coal miners and former coal miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled federal employee in grade GS-2 would be entitled at the time of payment.

Widows of coal miners and former coal miners whose deaths are due to pneumoconiosis or whose death occurred while receiving benefits under this part shall receive benefits at the rate prescribed for totally disabled miners.

The rates prescribed above are increase for dependents at the rate of 50 percent for one dependent—widow or child—75 percent for two dependents, and 100 percent for three or more dependents.

The following presumptions will be used in establishing entitlement:

First. If a miner who is suffering from pneumoconiosis was employed for 10 years or more in an underground coal mine, there will be a rebuttable presumption that the pneumoconiosis arose out of such employment.

Second. If a miner worked 10 years in such a mine and died of a respirable disease, there will be a rebuttable presumption that his death was due to pneumoconiosis.

Third. If a miner is suffering from or dies from an advanced irreversible stage of pneumoconiosis it will be irrebuttably presumed his death or total disability was due to pneumoconiosis.

Claims filed before December 31, 1972, will be processed by the Secretary of Health, Education, and Welfare in a manner similar to that he uses for processing claims for disability under the Social Security Act. If the claim is filed after December 31, 1971, benefits under that claim may be paid only until January 1, 1973.

Claims filed on or after January 1, 1973, will be processed under the appropriate State workmen's compensation law if the Secretary of Labor has determined it has adequate coverage for pneumoconiosis. He will, generally speaking, determine a State law to have adequate coverage for pneumoconiosis if the benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973.

Where the applicable State workmen's compensation law does not provide adequate coverage for pneumoconiosis, the persons entitled to benefits will be paid—so far as applicable—under the terms of the Longshoremen's and Harbor Workers' Compensation Act and provided under part C of title IV of the bill.

Mr. Speaker, in his letter of today, the Secretary of Labor quoted a portion of his remarks before the Select Subcommittee on Labor on June 3, 1969. I would like at this time to quote an additional paragraph of those remarks of the Secretary:

As to the subject of black lung disease,

that is a matter of tremendous concern to us all. We have done some things about that. We have other ideas, and we will be bringing them forward shortly.

It is now December 17, 1969, or nearly 6 months later, and the Secretary has not brought any "ideas" to us. Instead of coming up with ideas of how to help those poor miners, widows, and children, they tell us to abandon title IV of the bill and to abandon these poor people who are trying to eek out a living with the meager amount of money they are able to scrape together. In the interim, the House passed the 1969 Federal Coal Mine Health and Safety Act with a very broad Federal benefits provision section for miners afflicted with black lung. That was on October 29, 1969. Earlier that month, the Senate also passed a broad Federal benefits provisions.

That was 2 months ago. Since then, we did not hear from the administration until late last week when Secretary Hickel gave us a cost range of this program of between \$154 million. This is typical of Interior's estimates of costs. When we were concerned with the cost of replacing electrical equipment in mines, we were given an initial estimate of \$150 to \$300 million. That range, however, after a few weeks of pencil sharpening, was reduced to less than \$50 million. I can only wonder what Interior would do if we gave them a few more days on their most recent guesses.

Still, he does not give us his "ideas" for helping the miner afflicted with this terrible disease and his poor widow. Rather, he now tells us 2 months after passage by both Houses, and on the day the conference report is filed, the administration tells us that a Federal benefits program for poor people "is inappropriate for the Federal Coal Mine Health and Safety Act of 1969." Mr. Speaker, I say we must meet the needs of these disabled miners regardless of the cost.

I cannot idly sit by and allow miners who walk a few steps and must stop and bend over to catch their breath because they have black lung. We must provide some relief. These miners and their widows cannot wait for the States to act. In many States this wait would be forever.

Even more importantly, this legislation transcends petty arguments over costs. What is at stake here is the health and safety of the coal miners of this country who have been waiting for passage of this bill since that terrible tragedy at Farmington, W. Va., over a year ago. If the provisions of this bill are properly administered, we should greatly reduce and, hopefully, eliminate future black lung claims with the control provided here of the cause of this disease—coal dust.

Let us pass this bill today for the miners of the past, present, and those of tomorrow.

Mr. Speaker, I want, at this time, to comment on remarks made about my handling of this conference report within the last 24 hours. I had considerable discussions with both majority and minority members of my committee yesterday, including the gentleman from Illinois (Mr. ERLBORN), and Members of the Senate. It was my intention to file

this report and to have the other body consider it just as would be the normal case. I found out later that the gentleman from Illinois (Mr. ERLBORN) was well aware of the fact that the Senate would not act first at least 1½ hours earlier than myself. Further, when I asked unanimous consent to file the report by midnight of last night, one of the members of the minority on my committee, the gentleman from California (Mr. BELL) who has shown a keen interest in this legislation and contributed to making it the landmark legislation it is, was on the floor when I made my motion and raised no objection.

Thus, I feel that those who contend that the minority was not consulted in this matter, particularly the gentleman from Illinois (Mr. ERLBORN), either did not state the facts accurately or were not fully apprised of the participation of other members of the minority. I also want to make it abundantly clear that I did not take advantage of any member of the minority in this matter, but, on the contrary, I believe if the gentleman from Illinois (Mr. ERLBORN) had apprised me of the decision of the Members of the other body when he knew of it, much unnecessary work could have been avoided.

At this point, I believe we should emphasize how much this landmark Health and Safety Act for workers was the product of long and hard work of the Congress. In September of 1968 and again in January and March of this year, the Interior Department recommended proposals to protect coal miners, but we quickly found that these were not adequate given the health and safety record of this industry over the past 17 years. The hearings held in both Houses clearly demonstrated to all of us that a far more comprehensive measure was needed for our miners and their families than anything the agencies downtown were proposing or even dreamed of. To illustrate how much this legislation is the product of the Congress, I will list some of its principal features that were not included in any Interior proposal as follows:

HEALTH STANDARDS

The Congress determined very early in its consideration of this measure that a 3-milligram respirable dust standard for underground coal mines was not only necessary for the miners, but also attainable within a short time. The Interior Department, last January, first proposed a 3 standard, but left it up to the Secretary to prescribe the schedule for achieving it. Later in March, the Department proposed a 4.5-milligram standard effective 6 months after enactment, but provided an enforcement procedure that would probably result in most mines maintaining the dust level at 5.5 milligrams.

Congress, on the other hand, prescribes in this legislation a 3 standard effective 6 months after enactment with meaningful enforcement procedures that parallel those applicable to safety standards. At the same time, we were not satisfied that this dust level would protect the health of miners and established a 2-milligram standard effective 3 years after enactment. We also directed the Secretary of Health, Education, and Welfare to begin

almost immediately to establish lower dust levels which could accelerate even the 3- and 2-milligram standard timetable.

Also, the Department provided that if a miner shows substantial evidence of black lung, he shall be transferred to another area of the mine where the dust level is 2 milligrams or less. The conference report before us today provides for such a transfer where there is any evidence of this disease, after the operative date of title II, to an area where the level is 2 milligrams or less, and, effective 3 years after enactment, to an area where the level is 1 or lower.

The Department's proposal would have permitted multiple shift measurements of respirable dust indefinitely. The conference reported bill requires single shift measurements 18 months after enactment.

The conference report, unlike the Department's proposal, would establish the noise standard under the Walsh-Healey Public Contracts Act and direct that it be improved further.

SAFETY STANDARDS

The conference reported bill, unlike the Department's proposals, would:

Require a minimum quantity of air to the working face;

Require the Secretary to prescribe the minimum velocity and quantity of air reaching the working face to control methane;

Require that the Secretary prescribe the maximum respirable dust level for intake aircourses;

Require preshift examinations for all shifts, not just production shifts;

Provide for the proper installation of roof bolts;

Provide for the control of one of the most dangerous sources of methane, namely methane coming from the gob areas;

Require ventilation system and methane and dust control plans;

Provide for the separation of intake and return aircourses from belt haulage-ways;

Provide for expanded protection in the use and maintenance of electrical equipment and high, medium, and low voltage circuits;

Limit the number of temporary splices to one;

Provide that mine maps be available to the Department of Housing and Urban Development and to surface owners and leasees;

Provide for the use of automatic couplers or haulage equipment;

Provide against inundations in mines located under bodies of water;

Provide for self-rescue devices adequate to protect mines for 1 hour or more;

Prescribe improved methods of assuring adequate oxygen underground;

Provide for a check-in and check-out system;

Provide for the prevention and suppression of ignitions on electric face equipment;

Provide for standards to control explosive gases, other than methane; and Provide an adequate supply of potable water for the miners.

BLACK LUNG BENEFITS

Here, as I have said, is one of the most significant provisions of the bill that was initiated in the Congress to help poor miners suffering from this dread disease and the widows and children of these miners. As a matter of fact, as I have stated, the administration, for the first time, today sent a letter from Secretary Shultz opposing these black lung benefit payments for miners affected with this disease, their widows and their children. Imagine, 2 months after this benefits provision passed overwhelmingly in both Houses, the administration on the day of final passage opposes one of its most important provisions and even threatens veto. Where have they been for the last 4 months?

In summary, these are just a few of the examples of what the Congress has done to protect and help miners and their families. We can all be proud of our efforts to save lives and to bring some benefits to those people who have been forgotten in the past.

Finally, I want to admonish both the Secretary of the Interior and the Secretary of Health, Education, and Welfare that they must begin now to carry out the mandates of this legislation in a manner that will provide the greatest health and safety possible to miners and the greatest benefits possible to miners with pneumoconiosis who are totally disabled and the widows of miners with this disease. I can assure both Secretaries that hearings will be held on the progress of this legislation and its achievements before the end of July 1970 by my committee.

A summary follows:

SUMMARY OF MAJOR PROVISIONS

TITLE I—GENERAL

(1) Grants authority for the promulgation of mandatory health and safety standards to the Secretary of the Interior (hereinafter referred to as the "Secretary"). The Secretary promulgates all mandatory standards, but is responsible for developing and revising only mandatory safety standards. The Secretary of Health, Education, and Welfare (HEW) is responsible for developing and revising mandatory health standards. No standard promulgated by the Secretary shall reduce the protection afforded miners below that provided by the interim mandatory health and safety standards contained in titles II and III, respectively.

(2) Provides opportunity for a representative of miners, whenever he has reasonable grounds to believe that a violation of a mandatory health or safety standard exists or an imminent danger exists in a mine, to obtain an immediate inspection of such time.

(3) Provides a minimum of at least four annual inspections of each mine. Also provides a minimum of one spot inspection during every five working days of a mine (A) that liberates excessive quantities of methane or other explosive gases during its operations, (B) in which a methane or other gas ignition of explosion has occurred which resulted in death or serious injury at any time during the previous five years, or (C) the Secretary believes has especially hazardous conditions.

(4) Establishes the procedural mechanism for finding dangerous conditions or violations of standards in mines, and for the issuance of notices and orders—including withdrawal orders—relative to such.

(5) Provides administrative and judicial review procedures.

(6) Establishes civil penalties of up to

\$10,000 for operator violations of a standard or any other provision of the Act. Establishes a civil penalty of up to \$250 to a miner who violates specified provisions of the Act (smoking, carrying of matches, etc.). Establishes criminal penalties to any operator who willfully violates a standard or knowingly violates or fails or refuses to comply with orders. Upon conviction, such operator shall be punished by a fine of not more than \$25,000 and/or imprisonment for not more than one year for the first conviction, and for subsequent convictions, by a fine of not more than \$50,000 and/or imprisonment for not more than five years. Also establishes similar civil and criminal penalties to any director, officer, or agent of a corporate operator for like violations, failures, or refusals. Criminal penalties are also established for false statements, representations, or certifications relative to the Act, and for the introduction and delivery in commerce of any equipment for use in a coal mine which is falsely represented to be in compliance with the provisions of the Act.

(7) Provides for limited pay guarantees to miners idled by a withdrawal order.

(8) Prohibits the discharge or other discrimination against a miner for exercising rights under the Act.

* * * * *

TITLE V—ADMINISTRATION

(1) Provides authorization for appropriations for health and safety research to be carried out by the Secretary of Health, Education, and Welfare and the Secretary, respectively.

(2) Requires the Secretary to expand programs for the education and training of operators, agents, thereof, and miners in accident-control, healthful working conditions, and in the use of coal mining equipment and techniques.

(3) Provides for economic assistance to any small business concern operating a coal mine to meet the requirements imposed by the Act. Such assistance shall be given by the Small Business Administration.

(4) Specifies qualifications and training requirements for employees of the Secretary; particularly inspectors.

Mr. BURTON of California. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the distinguished gentleman from California.

Mr. BURTON of California. Mr. Speaker, it would be fair to state, on behalf of the House conferees on both sides, we had had, up to and through the conference committee, a very constructive relationship, and it is further the case that it is the fault of no Member of this House on either side that we were informed last night about 9:30 that the other body, in their infinite wisdom, handed us an "either or else" set of procedures to follow; and is it not further the fact that the gentleman from Illinois (Mr. ERLÉNORN), our distinguished subcommittee chairman, the gentleman from Pennsylvania (Mr. DENT), and myself, learned of this about 9:30 or so last night, even before the distinguished chairman of the full committee learned of it, and that the only way to cut our way through this situation, because we were not able to come to grips with any

kind of dialog or communication with the other body, was to accede to the gentle nudge—although some stronger language was communicated to us from the gentlemen working on the other side of the Capitol—and so, lamentably for all of us who have worked so long and constructively together, we find ourselves at this rather late hour of the evening, due to other procedural difficulties, in a good deal more disagreement than any of us had as we walked out of the conference committee room at the conclusion of the conference.

Mr. ERLENBORN. Mr. Speaker, will the gentleman from Kentucky yield?

Mr. PERKINS. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Speaker, will the gentleman yield me time to address myself to the conference report?

Mr. PERKINS. Yes. I yield the gentleman now 7 minutes.

Mr. ERLENBORN. Is that all the time the gentleman intends to yield?

Mr. PERKINS. No. I may yield more.

The SPEAKER pro tempore. The gentleman from Illinois is recognized for 7 minutes.

Mr. ERLENBORN. I agree with the gentleman from California (Mr. BURTON) that we have had a constructive relationship among the members of the subcommittee. I regret that the events subsequent to the conference have disturbed that relationship and forced me to take the action I have today. No good purpose will be served in assessing blame on any individual, but I will assert that this whole matter has been badly handled in the last few days.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, I am opposed to this conference report for one simple reason. The conferees met and reached agreement, and the broad outlines of that agreement as to what should be in this conference report, title IV, has been violated. There are matters in this which were never discussed by the conferees. There are new matters brought in, new obligations on the part of the Secretary of Labor, new causes of action against the mine operator, new duties on the Secretary of Labor never contained in either bill, never discussed by the conferees, and never agreed to by the gentleman from Illinois.

Mr. Speaker, to reinforce the fact that I did not know what was in this report, the only time I was delivered a copy—actually delivered to my counsel—of title IV of this report was last night, at about 4 o'clock in the afternoon. That was not an accurate copy of what was in title IV of the report as filed about 11:30 last night. That report would not have been filed at 11:30 last night had not the gentleman from Kentucky gotten unanimous consent to file the report without first asking any Member of the minority if he had objection to the unanimous-consent request.

Again to reinforce what apparently is the attempt to push through something that was never contemplated by the conferees and to foreclose an opportunity for this House to work its will, the gen-

tleman from Kentucky came on the floor of this House this afternoon intending to call up this conference report earlier in the afternoon, and had never informed me nor any other Member of the minority that it was his intention to call up the report for consideration. Every attempt has been made by the gentleman from Kentucky to preclude an opportunity for the minority to know what was in the report and to have an opportunity to inform this House of the provisions that have been put in this report.

Mr. Speaker, I am opposed, as is this administration opposed, to the provisions of title IV of this report. A copy of the letter from the Secretary of Labor Shultz was delivered to me and to the gentleman from Ohio (Mr. AYRES) and to the gentleman from Kentucky (Mr. PERKINS) outlining the position of the administration.

I am also authorized to say that if this conference report is approved and this bill becomes law with the provisions that are now in title IV, with the cost implications to the Treasury of the United States, that the President may be required to veto the bill.

I warned the gentleman from Pennsylvania and the gentleman from Kentucky when we had this matter in subcommittee that to include pneumoconiosis compensation in the mine health and safety bill was endangering the passage of this bill, and I think what I have just informed the Members concerning a possible veto of the bill is confirmation of what I said many months ago.

Mr. Speaker, I think the largest figure as to the possible cost that was ever given as an estimate, prior to the drafting of this new title IV in the conference report, was in the neighborhood of \$30 million or \$40 million. Some of my colleagues estimated it might be as high as \$50 million to \$60 million. Now the Bureau of Mines estimates it to be as high as \$385 million annual cost to the Treasury, and the minimum figure they now estimate the cost of this to be is \$150 million to the U.S. Treasury.

Beyond this, additional impositions are put on the State unemployment compensation systems. It was made very clear in this House when this bill was passed that this was not intended to be a workmen's compensation provision. This was special temporary relief for pneumoconiosis compensation, but now we are going to have this new provision and the Secretary of Labor will be required to pass upon the adequacy of State workmen's compensation provisions, and issue, in effect, a blacklist of those which in his judgment do not have sufficient compensation for the workers, and require that even after this program expires—as was contemplated in both bills that it would expire because it was to be temporary only—that the State workmen's compensation laws cover pneumoconiosis, or in the event they do not, that the mine operator has a new obligation, never contemplated, to pay workmen's compensation benefits to the miners.

It creates a new cause of action by the United States against coal mine operators if they do not pay this compensation, something never contemplated by

the draftsman of this bill in the first place, if he was being honest with the Members of this House and with the members of our committee—if he was honest with the Members of this House when they explained the terms of this bill and carefully told us this was not to be a compensation provision.

This will be the first intrusion into the State operated workmen's compensation laws, not by implication, as I claimed when the bill was under consideration on the floor of the House, but now as drafted by the staff and by a few of the Members outside of the scope of the agreement of the conferees, expressly an intrusion into all workmen's compensation laws.

I am distressed my point of order was overruled. I am going to make a motion to recommit this bill for the purpose of reconsidering title IV. I make it clear that neither this administration nor I nor any Member of the minority is opposed to coal mine health and safety; but we are opposed not only to the provisions of title IV but we also are opposed to the kind of underhanded, behind the scenes, dealings that have brought us to the point where this is being considered today, where it almost passed earlier today without the minority having an opportunity to be heard on the floor of the House.

I hope you will support my motion to recommit not because of your political considerations, not because of your political philosophy—

Mr. BURTON of California. Mr. Speaker, will the gentleman yield?

Mr. ERLENBORN. I will not yield to the gentleman.

Not because of your lack of concern or great interest in the coal miners and in this problem of pneumoconiosis, but so that you can sustain the dignity of this House and the legislative process. This is a travesty upon the legislative process. Unless my motion to recommit is agreed to and we send this bill back to the conference where the conferees can work their will, this will have been a very black day for the House of Representatives and the legislative process.

Mr. PERKINS. Mr. Speaker, I yield 10 minutes to the distinguished chairman of the subcommittee, who is an authority in this area, the gentleman from Pennsylvania (Mr. DENT).

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Speaker, I should first like to say to the gentleman from Illinois that there were no cloak and dagger episodes in this whole deal. There was nothing underhanded. If there was, the underhandedness came from your side of the table, because I did not attend any of the markup sessions, because the instructions of the conferees were to the staff of both sides to write within the confines of the understandings of the conferees. So I did not commingle with the conferees' staff at any time. They wrote the language that they felt was justified and cleared it with their own Senators and Congressmen.

Mr. BROWN of Michigan. Mr. Speaker, will the gentleman yield?

Mr. DENT. Wait until I am through. I want to get this off my mind.

I am sure this opposition, the reason for it, to this legislation is probably best explained by the very letter the gentleman failed to read, the letter I have just been handed, written by Mr. Shultz, the Secretary of Labor.

It is not a question of language. It is not a question of misunderstanding. It is not a question of whether or not there were any transgressions on the part of the conferees or their staffs. It is simply a question of a firm, philosophical belief—I hate to put this down so plainly and bluntly—of those who are now directing the administration.

We believe—

Says Secretary Shultz—

that the solution to this problem is through any necessary improvement in the system of State workmen's compensation laws. . . . [The] "know-how [is in the hands of the States] in the workmen's compensation field. It is our present judgment that reliance should continue to be placed on that system of State laws." We continue to support that position.

Early in the days when this legislation was before the subcommittee we heard witnesses from all over these United States and the one deplorable fact that was brought out time after time was that the States had not done anything to relieve the situation that former miners find themselves in in Iowa, Michigan, California, New York, and in every State of the Union. There was a drop of from 600,000 to 135,000 miners in this country. These miners from the anthracite and bituminous regions of our great coal-mining States are scattered all over these 50 States. There is no responsibility on the part of Georgia and Mississippi to pass a compensation law to pay for a miner's lung disease contracted in one of the mining States. There is no way that we can deprive a man of his property without due process of law by easily trying to assess the cost of pneumoconiosis payments to an operator who has a miner who has worked for 10 or 12 or 15 or 20 years for different operators in different States or in different sections of States. You cannot do that. We found that out in our State, and we passed the last workable law and the only law that has taken care of its miners and those of neighboring States. We paid for it out of the general fund because we knew that these men were crippled and totally disabled. In many States they have no relief whatsoever.

Now, Mr. Speaker, I deny that this is an open compensation law and defy anybody to point out where it is. After 7 years no person who contracts pneumoconiosis and then files a claim can be paid by the Federal Government. We give 7 years because of the time lag in order that the people who might have the disease would have an opportunity to come in and be examined. We tightened it up so that there could be only one agency of the Government to read the findings of the X-rays in order that all would be treated alike.

Mr. Speaker, I have told this House—and I want you to know this—that I never deliberately mislead anybody. I

would not do that and I have not done it in 39 years of being a legislator, and I will not start now.

I told this House time after time that this is a one-shot compensation deal, dealing with a subject matter that is the whole lifeblood of the coal industry. There are 15,000 coal miners needed in this country in the next 18 months. Are you going to work in the coal mines? Are you going to recruit these miners in these great United States to meet the need for fuel in this country in the future? No, you are not. And you will not get any new miners—or old miners, either—to go into the mines unless you give them some security against death by explosion, death by roof falls, and death from the complications of the most dreadful of all diseases. Have you ever heard a coughing coal miner in the stillness of the night hacking away with blood coming out of his mouth and nostrils and with no care? Some have spent \$180 a month for oxygen, and with nowhere to get it and depending on the charity of a charitable organization such as the Red Cross and the Salvation Army, and a man goes begging who was giving his substance to this country to make it what it is today, to build for those of us who have luxuries which we enjoy.

Yes, I know your philosophy. It is spelled out in the letter of your Secretary of Labor, who does not say the things said by the ranking minority members that sections were nongermane to the intent. Oh, no. No such language is in this letter. The plain coldblooded statement of fact is there that we oppose payment, the payment of compensation to the distressed miners of this country unless their State passes a law on it. How do you force the States to pass a law? By a statement? You cannot force them and no one else can.

These men are suffering and they are dying, and I want to give you another little bit of information that might ease your cold hearts. Eighty-five percent of all the deactivated miners in the Appalachia region are over 65 years of age, and you are worrying about what millions it is going to cost you. Their funeral services will cost more than you pay for compensation.

Let me give you some figures. These figures come from the Secretary of Health of this great Nation of ours after the only study ever made—and I have given you these figures and you know you have heard them; I gave them to the conference and they have heard them; there is nothing secret about them and you can get them. At one point a Senator came before us and told us that the cost would be as much as \$180 million a year.

Gentlemen, if you took every miner in these United States and if you paid him \$5,000 a year and bought his wife a chin-chilla coat, you would not spend that much money.

Finally, after a little bit of fact finding, he came down to \$154 million and yesterday he came down to \$124 million. And, let me tell you the truth and when the truth is known to you, our Secretary of Health, Education, and Welfare, in a Public Health Service survey made in

1963 and carried through to 1965, the only authentic survey made in the field of pneumoconiosis in this great country of ours, and it was made by the Department of Health, Education, and Welfare, and it was found that 3 percent of all the active coal miners throughout the Appalachian region where the heart of black lung exists, only 3 percent of the active coal miners have the chronic and advanced stage of pneumoconiosis. That is one category paid under our provision.

If you take the 110,000 miners working underground in this country, and the only ones susceptible to the disease, the figure would go to 3,300 miners. We have a total top figure in this bill of \$272 a month. And, if you count everyone of these 85 years of age or 65 years of age or 75 years-year-old miners and gave them credit for a wife and two children and if you paid them the top payment of \$272 a month, you would be paying out something over \$32.3 million for that part of the provision.

The SPEAKER pro tempore (Mr. Flood). The time of the gentleman from Pennsylvania has expired.

Mr. PERKINS. Mr. Speaker, I yield the gentleman 3 additional minutes.

Mr. DENT. I do not know what the total cost of this provision will be, but I do know the costs being thrown around here are outrageous and unsubstantiated. We have proven that, and evidence of that proof will appear at the conclusion of my remarks.

Now, let us go a little further. It has been said on this floor that this is an invasion of States' rights, that we are injuring the State systems. You do not have any State systems. You do not have any State programs. If you did, we would not have to have this legislation. But what do we do?

Dr. Monroe Berkowitz of Rutgers University, a renowned expert in the field appeared before the committee and said:

This would constitute an endorsement by Congress of the State system. Some inducement of this sort is vital to the continuing health of our State system of workmen's compensation. It would express a judgment by Congress that the system is worth preserving and that it is good enough to cover all. Only if States do not act would obviously second-best solutions be brought into play. If this legislation were completely successful, not one person would ever be added to the coverage of the Longshoremen's and Harbor Workers' Act.

Certainly it is a second-best solution, because if it was a first-best solution these miners would have had their compensation payments during these last years of degradation, disease and despair. No, it is not the best we can give, but I say that any opposition to this bill today is an opposition to paying some little recompense to the men who go down into the bowels of the earth, if you will, and give us the fuel that makes and has made this Nation what it is—that built its farms and its mills, and made millionaires out of many of the people—these same men who today are poverty stricken.

Come with me, will you, hand in hand, come and take a walk through the back valleys of Pennsylvania and of West Virginia, and I will show you what a coal

mine looks like, and I defy any of you to stand up in the face of a small, degraded coal town and a little coal mining family in a shanty like the one I was born in, and tell me you would vote against this because your philosophy says it is not the business of the Federal Government.

The Federal Government was constituted to do for the States and the people of the States that which the States do not do for themselves.

And in that context I will leave you with this admonition, and I leave it with you because I know it to be true, and I know it is true because I know our coal miners and I know their fiber and I know their being—you defeat this bill and there will not be a coal miner in the mines of this country within 15 days.

Mr. Speaker, I will now be brief in discussing this conference report. The House passed the coal mine health and safety bill October 29, and the conference committee met and agreed on November 20—the anniversary of the Farmington tragedy. The conference committee debated the provisions of the House amendment to the bill passed in the other body with one consistent objective: the highest degree of health and safety protection to the miner. I am proud of our agreement and satisfied that it represents the best we could have even hoped for. I believe we can all take pride in this product with the knowledge that its ramifications will extend to every coal mining community in the Nation, and will afford a greater measure of security and relief to miners and their families.

Mr. Speaker, the major provisions of the bill may be summarized rather succinctly. They follow:

TITLE I.—GENERAL

First. Grants authority for the promulgation of mandatory health and safety standards to the Secretary of the Interior—hereinafter referred to as the "Secretary." The Secretary promulgates all mandatory standards, but is responsible for developing and revising only mandatory safety standards. The Secretary of Health, Education, and Welfare is responsible for developing and revising mandatory health standards. No standard promulgated by the Secretary shall reduce the protection afforded miners below that provided by the interim mandatory health and safety standards contained in titles II and III, respectively.

Second. Provides opportunity for a representative of miners, whenever he has reasonable grounds to believe that a violation of a mandatory health or safety standard exists or an imminent danger exists in a mine, to obtain an immediate inspection of such mine.

Third. Provides a minimum of at least four annual inspections of each mine. Also provides a minimum of one spot inspection during every 5 working days of a mine that liberates excessive quantities of methane or other explosive gases during its operations, in which a methane or other gas ignition or explosion has occurred which resulted in death or serious injury at any time during the previous 5 years, or the Secretary believes has especially hazardous conditions.

Fourth. Establishes the procedural mechanism for finding dangerous conditions or violations of standards in mines, and for the issuance of notices and orders—including withdrawal orders—relative to such.

Fifth. Provides administrative and judicial review procedures.

Sixth. Establishes civil penalties of up to \$10,000 for operator violations of a standard or any other provision of the act. Establishes a civil penalty of up to \$250 to a miner who violates specified provisions of the act—smoking, carrying of matches, and so forth. Establishes criminal penalties to any operator who willfully violates a standard or knowingly violates or fails or refuses to comply with orders. Upon conviction, such operator shall be punished by a fine of not more than \$25,000 and/or imprisonment for not more than 1 year for the first conviction, and for subsequent convictions, by a fine of not more than \$50,000 and/or imprisonment for not more than 5 years. Also establishes similar civil and criminal penalties to any director, officer, or agent of a corporate operator for like violations, failures, or refusals. Criminal penalties are also established for false statements, representations, or certifications relative to the act, and for the introduction and delivery in commerce of any equipment for use in a coal mine which is falsely represented to be in compliance with the provisions of the act.

Seventh. Provides for limited pay guarantees to miners idled by a withdrawal order.

Eighth. Prohibits the discharge or other discrimination against a miner for exercising rights under the act.

TITLE II.—INTERIM MANDATORY HEALTH STANDARDS

First. Establishes interim mandatory health standards effective 6 months after the date of enactment of the act.

Second. Requires each operator to take accurate samples of the amount of respirable dust in the mine atmosphere. The samples are transmitted to the Secretary and analyzed and recorded by him.

Third. Establishes a 3.0 milligram per cubic meter of air—mg./m.³—dust standard effective 6 months after enactment. Extensions of time to comply with the standard—permits for noncompliance—may be granted by the Panel—established by section 5—for a period not to exceed 12 months from the effective date of the standard.

Fourth. Establishes a 2.0 mg./m.³ dust standard effective 3 years after enactment, but the Panel may grant permits for noncompliance to an operator for a period not to exceed 3 additional years from the effective date of the standard.

Fifth. The Secretary of Health, Education, and Welfare has the continuing authority, beginning 1 year after enactment, to further reduce the dust standard below the levels established by the act to levels which will prevent new incidences of respiratory disease and the further development of such disease in any person.

Sixth. Each operator shall cooperate with the Secretary of Health, Education,

and Welfare in making a chest X-ray available to each miner within 18 months after enactment, again 3 years later, and at such subsequent intervals determined by the Secretary of Health, Education, and Welfare but not to exceed every 5 years. Each worker who begins work in a coal mine for the first time shall be given a chest X-ray at the commencement of his employment and again 3 years later. If the second X-ray shows evidence of the development of pneumoconiosis, the worker shall be given an additional X-ray 2 years later. The X-rays may be supplemented by other tests deemed necessary by the Secretary of Health, Education, and Welfare. The Secretary of Health, Education, and Welfare is also responsible for reading, classifying, and recording all results of X-rays and other medical tests.

Seventh. Any miner who shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine where the respirable dust concentration is not more than 2.0 mg/m.³. Effective 3 years after enactment, the option of transfer shall be to an area of the mine where such concentration is not more than 1.0 mg/m.³, or if such level of concentration is not attainable in the mine, to an area where the concentration is the lowest attainable below 2.0 mg/m.³. Any miner so transferred shall not receive less than the regular rate of pay received by him immediately prior to transfer.

Eighth. Incorporates the noise standard prescribed under the Walsh-Healey Public Contracts Act, and provides authority to the Secretary of Health, Education, and Welfare to improve upon such standard.

TITLE III.—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

First. Establishes interim mandatory safety standards effective 3 months after the date of enactment of the act.

Second. Establishes detailed requirements to provide for safer working conditions in underground coal mines. These include requirements with regard to roof support, ventilation, combustible materials and rockdusting, electrical equipment, trailing cables, grounding, underground high-voltage distribution, underground low- and medium-voltage alternating current circuits, trolley and trolley feeder wires, fire protection, maps, blasting and explosives, hoisting and mantrips, emergency shelters, communications, escapeways, and other miscellaneous matters.

Third. Establishes requirements for the use of permissible equipment in all underground coal mines. Requires that all electric face equipment at gassy mines and all such small equipment at all mines be permissible within 15 months after enactment. It is also required that, in the case of mines not previously classified as gassy which are below the water-table, such large equipment must be permissible in 15 months, but the Panel may grant extensions of time—permits for noncompliance—of not to exceed in the aggregate an additional 33 months if the Panel determines, based on specified cri-

teria, that the operator is unable to comply with the permissibility requirements because of unavailability of permissible equipment. In the case of such mines which are located entirely above the watertable, it is required that such large equipment be permissible within 51 months after enactment but the Panel may grant extensions of not to exceed 2 additional years on a mine-by-mine basis because of unavailability of such equipment.

TITLE IV—BLACK LUNG BENEFITS

First. Provides for the payment of benefits for death or total disability due to pneumoconiosis.

Second. Coal miners and former coal miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled Federal employee in grade GS-2 would be entitled at the time of payment. This represents approximately \$136 per month. Widows of coal miners and former coal miners whose deaths are due to pneumoconiosis or whose deaths occurred while receiving total disability benefits, receive benefits at the rate prescribed for totally disabled miners. The rates prescribed above are increased for dependents at the rate of 50 percent for one dependent, widow or child, 75 percent for two dependents, and 100 percent for three or more dependents. The benefits for miners and widows will be reduced on account of payments under the workmen's compensation, unemployment compensation, or disability insurance laws of the State and, in the case of miners only, on account of excess earnings, as provided under the Social Security Act for benefits payable under that act.

Third. The following presumptions are used in determining entitlement:

A. If a miner who is suffering from pneumoconiosis was employed for 10 years or more in an underground coal mine, there will be a rebuttable presumption that the pneumoconiosis arose out of such employment.

B. If a miner worked 10 years in such a mine and died of a respirable disease, there will be a rebuttable presumption that his death was due to pneumoconiosis.

C. If a miner is suffering from or dies from an advanced irreversible stage of pneumoconiosis, it will be irrebuttably presumed his death or total disability was due to pneumoconiosis.

Fourth. Claims filed before December 31, 1972, will be processed by the Secretary of Health, Education, and Welfare in a manner similar to that he uses for processing claims for disability under the Social Security Act. If the claim is filed after December 31, 1971, benefits under that claim may be paid only until January 1, 1973. Claims filed on or after January 1, 1973, will be processed under the appropriate State workmen's compensation law if the Secretary of Labor has determined it has adequate coverage for pneumoconiosis. He will, generally speaking, determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are

not less favorable to the claimant than those applicable to claims filed before January 1, 1973. Where the applicable State workmen's compensation law does not provide adequate coverage for pneumoconiosis, the persons entitled to benefits will have their claims processed, so far as applicable, under the terms of the Longshoremen's and Harbor Workers' Compensation Act.

Fifth. In the case of claims filed on or after January 1, 1973, no payments of benefits may be made after 7 years after the date of enactment of the act.

TITLE V—ADMINISTRATION

First. Provides authorization for appropriations for health and safety research to be carried out by the Secretary of Health, Education, and Welfare and the Secretary, respectively.

Second. Requires the Secretary to expand programs for the education and training of operators, agents, thereof, and miners in accident control, healthful working conditions, and in the use of coal mining equipment and techniques.

Third. Provides for economic assistance to any small business concern operating a coal mine to meet the requirements imposed by the act. Such assistance shall be given by the Small Business Administration.

Fourth. Specifies qualifications and training requirements for employees of the Secretary; particularly inspectors.

Mr. Speaker, I would like to take an additional minute to discuss title IV of the conference report—the title providing for black lung benefits. When we began considering a coal mine health and safety proposal early this year, I think it fair to say that this provision was not generally thought of as likely to be included in the final bill. A similar provision was in fact included in the bill passed by the House and it was done because of the tremendous effort and tenacity put forth by the gentleman from New Jersey (Mr. DANIELS) and the gentleman from California (Mr. BURTON). The gentleman from New Jersey gave this provision life when he led it through his subcommittee and was gracious enough and concerned enough about the ultimate claimants to ask that it be incorporated into the health and safety package. The gentleman from California was absolutely uncompromising in his determination to fight the battle for the provision beyond that, and existence of the provision in the conference report is a testimony to his success.

Mr. Speaker, there is only one State that now provides an assistance program of any significant scope, and that is the Commonwealth of Pennsylvania. The citizens of that State, through their taxes, provide the general revenues for the program. It is my understanding that Pennsylvania's program is the only one funded through general revenues. Other such programs are funded by employer contributions and are essentially workmen's compensation programs. The conference report contains a maintenance of effort provision which provides that no benefits shall be paid under this provision to the residents of any State which, after the date of enactment, reduces the benefits payable to persons eligible to re-

ceive benefits under this provision, under its State laws which are applicable to its general work force with regard to its State laws which are applicable workmen's compensation, unemployment compensation, or disability insurance.

Mr. Speaker, we are talking about laws which apply to a State's general work force and not laws for a segment of the work force. We are also talking about programs that are, in fact, workmen's compensation, unemployment compensation, or disability insurance. This literal interpretation is also intended to apply to sections 412(b) and 422(g)—the offsetting provisions. We are not talking about State programs funded through general revenues. Any State that has such programs could reduce benefits payable to persons eligible to receive them under this provision. If the State did not so reduce the benefits, such benefits could not be offset or deducted from payments under this provision.

This should be made unmistakably clear. The language of the conference report and the appropriate amplification of that language in the statement of the managers on the part of the House says as much.

Mr. Speaker, it is time to act on this bill. Its provisions are long overdue and our miners have waited and suffered long enough.

Mr. Speaker, if I may pay one final tribute, the gentleman in the Chair, the gentleman from Pennsylvania (Mr. FLOOD), has labored over this bill with a concern for miners and their families that can only come from living among them. Before the thought of a new coal mine health and safety law gained popular support, DAN FLOOD was the most persistent and tenacious advocate of a better law. He recognized the shortcomings of the existing law, and overcame every obstacle in fighting for a proposal that provided meaningful protection to the miner.

His imprint is indelibly inscribed on this bill. Even though he is not a member of the Committee on Education and Labor, he managed to put provisions in the bill that are solely his. The gentleman testified before our committee and before the Senate committee in support of strong coal mine health and safety legislation, and also for the provisions granting benefits to miners disabled due to pneumoconiosis and to the widows of those who died from the disease. I can well recall his impassioned pleas for these miners and widows, and I think it is fair to say that DAN FLOOD should certainly enjoy this Christmas with the knowledge that his role in this effort was major in every respect.

Mr. Speaker, I now include in the RECORD our response to Secretary HICKEL's estimate of the costs of the black lung benefit provision. They follow:

RESPONSE TO HICKEL LETTER

The following comments are directed to the letter of December 12, 1969, from Secretary of the Interior Walter J. Hickel to Senator Jacob K. Javits regarding the estimated cost of Title IV of the conference report on the Federal Coal Mine Health and Safety Act. They are particularly directed to the estimates contained in "Plan I" of the letter—

the estimated cost of a program similar to that provided in title IV.

The assumptions made in estimating the cost of the program are inaccurate in the light of available and relevant information.

(1) The first and basic assumption in the Hickel estimate is that the experience of title IV will be similar to the Pennsylvania law. Although the criteria for determining eligibility for receiving total disability benefits under title IV and the Pennsylvania statute are similar, the actual implementation of the two provisions may not be identical. For instance, as of December 1, some 25,579 miners were on Pennsylvania's benefit rolls. Presumably, they were all totally disabled due to pneumoconiosis. Presumably also, they were totally disabled according to the Social Security Act definition (the qualification in title IV). And yet, the fact is that only a fraction of those miners were receiving Social Security disability insurance, and there are presently only about 20,000 individuals throughout the United States receiving such disability insurance for all respiratory diseases.

(2) The Hickel estimate then progresses from that first assumption to expand the Pennsylvania experience to all potential claimants in the United States. It begins with the 25,579 Pennsylvania miners. Two thousand additional miners are arbitrarily added to that figure with the statement that 2,000 miners will be transferred within the next 18 months from Pennsylvania's workmen's compensation program to its pneumoconiosis benefit program. The reason for the 18 months is never explained. The more relevant date is the present and not 18 months from now, or July 17, 1971. In any event—in the interest of fairness—if the 2,000 miners should be added to the present benefit total, then an appropriate number should be subtracted from that total on account of the death of miners now on the rolls. The Pennsylvania experience is 187 deaths per month of miners receiving such benefits. Over 18 months then, some 3,366 miners could be expected to be dropped from the Pennsylvania rolls because of their death.

The Hickel estimate is exaggerated on this point then, by 5,366 miners.

(3) The Hickel estimate then takes the inflated figure of 27,579 miners and expands it nationwide. It does so by taking that proportion who are bituminous miners (38%)—thereby arriving at a figure of 10,500 miners—and multiplying that figure by a multiple of 4. The multiple was determined by stating that Pennsylvania has approximately 25% of the Nation's underground bituminous miners. This is quite correct, but irrelevant. The appropriate multiple should be derived by projecting the man-years of exposure for disabled Pennsylvania miners to the man-years of exposure in the coal-producing states. During the period 1930-1950, these figures were 1,940,441 and 6,828,725, respectively. The correct multiple then, should be about 3.5.

Using the Hickel multiple of 4, the total number of bituminous miners in the inactive population who meet the Pennsylvania criteria is estimated at 42,000. Using the more appropriate multiple of 3.5, that figure would be 36,750. It is obvious that the error is becoming more aggravated with each such inaccurate assumption or statistical technique.

(4) The Hickel estimate then adds 2,400 miners to the total. That number supposedly represents those active miners who have complicated or advanced pneumoconiosis. The assumption must be that all 2,400 miners will leave their jobs if offered benefits under this program, because the miner's earnings would offset his benefit allowances if he continued to work. It is highly unlikely that all 2,400 miners will do so. A more realistic assumption is that about 10%, or 240 of the 2,400 active miners, presently afflicted with complicated pneumoconiosis—would retire.

(5) After anthracite miners are added to the escalating Hickel total, it is 61,400 bituminous and anthracite miners eligible for benefits. Some 7,000 miners are then subtracted from that total. The 7,000 represent those who are on or will qualify for State workmen's compensation, thereby offsetting Federal cost. The actual figure is nearer 10,000—according to State figures—than 7,000.

(6) A multiple for dependents of eligible miners is then applied to the 54,000 total. The assumption is made that each miner has 1.5 dependents. According to information from the United Mine Workers retirement fund, the figure or multiple should be 1.2 dependents for each miner. This inaccurate multiple, when applied to the total, represents an error of 16,320 individuals.

Mr. PERKINS. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Pennsylvania (Mr. SAYLOR).

(Mr. SAYLOR asked and was given permission to revise and extend his remarks.)

Mr. SAYLOR. Mr. Speaker, I rise in support of this conference report, and I do so because it is a good report and I too, like my colleague, the gentleman from Pennsylvania, JOHN DENT, come from an area of coal mines, coal miners, and coal towns.

This bill is the price being paid by the Congress of the United States on behalf of the American conscience. It is a part of the price that we the present citizens of this country must pay for crimes of the past. It is a little effort to square accounts for what the country did not do before. Heretofore, Mr. Speaker, we followed the practice of getting the most out of our miners and our coal—get it out—get paid and to—with all thought of tomorrow.

Mr. Speaker, it is our privilege to sit here in the Halls of the Congress tonight. The lights are bright, not only here in the Halls of Congress, on Capitol Hill, but throughout Washington and throughout our land, not cognizant of the fact that about 80 percent of those lights are generated by coal. Whether you folks realize it or not, this country is today short 15,000 coal miners.

Companies will give you a college education, if you will just promise to come back and tell them you will work for the coal mines afterwards, and you cannot get the young people to accept this offer or without a college education to go into the coal mines.

I have lived in communities where the people have said, "Look, I work in the coal mines, and I have just one desire, and that is I do not want my children to work in the coal mines."

If we expect to have the kind of economy that we have developed, and if we expect to have electricity throughout the length and breadth of our land if we expect to have the good things of this country and our world, then we had better pass this conference report. If we do not, I can tell you it will be less than 15 days until every miner in this country walk out of the mines and their newly elected president, their national officers, the President of the United States, the Congress of the United States, yes the Supreme Court of the United States will not get them to go back into the mines.

And you just try and get somebody else to go down in a mine and mine coal.

There is not one of you in this room,

except maybe a half dozen who have ever been down in a mine and who know what it is to operate the complex machine of a modern-day mine. That is what we, the Congress, are faced with if we fail to adopt this conference report.

Mr. BRAY. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman.

Mr. BRAY. Mr. Speaker, I certainly intend to support this conference report. I do not have any mine within 50 miles of my present district, but 15 years ago I did represent many of the mines in the State of Indiana and, in fact, I was very active on the mine safety bill of 1953, I believe it was.

I am going along with this conference report, and I think it would be fine if we all did so.

Mr. McDADE. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to my colleague, the gentleman from Pennsylvania.

Mr. McDADE. I thank my distinguished colleague for yielding.

Mr. Speaker, I want to associate myself with the remarks the gentleman has made and to express my unequivocal support of this conference report. I urge all of my colleagues to recognize the enormous debt that we owe to the coal miners of this Nation and to pass this most important and humane piece of legislation.

Mr. WAMPLER. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to my colleague from Virginia.

Mr. WAMPLER. Mr. Speaker, I rise in support of this conference report.

I think this is very important legislation. It is designed to meet one of the real needs of our time. We have heard some talk this evening about States' rights. I think there is also such a thing as States' responsibilities, and when a State cannot or will not do those things which it should do, I think we here in the Congress have the responsibility of acting accordingly.

Mr. Speaker, I urge the adoption of this conference report.

Mr. REID of New York. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to the gentleman from New York.

Mr. REID of New York. Mr. Speaker, I commend the gentleman most warmly for his excellent statement and for his initiative in this regard along with the gentleman from West Virginia (Mr. HECHLER), the gentleman from Pennsylvania (Mr. DENT) and other Members on both sides.

Mr. Speaker, this bill is a vital bill. It has been far too long delayed. I think it is absolutely essential that this conference report be supported.

Mr. SAYLOR. Mr. Speaker, let me say to you unless you have been in a coal town and unless you have seen a miner come out of a mine—black, yes, black from the dirt of the coal—and see him try to walk home from the tippie to his house which may be only a couple of hundred yards away, and to see him stagger along, fighting for his breath, hang on to a telephone post or some kind of post along the way, and cough and spit, and sit down all out

of breath and fight to get his breath, wave off the efforts of his fellow miners, telling them this is his problem, to leave him alone—wondering if he will gain enough strength to get home—yes, that is what we have done to human beings in this country in coal mines in the past.

What this conference report does is to try to compensate a little bit for the ills of the past.

I think it is rather fortunate that this conference report is brought up during the advent season. Let me remind you of the words of our Master who said:

If you have done it to these my children, you have done it unto Me.

I hope we have as big a vote in support of this conference report as we did on the original bill.

Mr. PERKINS. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. PUCINSKI).

Mr. PUCINSKI. Mr. Speaker, I wish to associate myself with the remarks of the distinguished chairman of my subcommittee, the gentleman from Pennsylvania (Mr. DENT), who has worked so hard and tirelessly to bring this legislation to a fruitful conclusion.

I suggest that this bill, when finally passed by Congress, will be a monument to his compassion for his fellow men. This country owes him a great debt of gratitude.

Mr. Speaker, I reject completely the threat of a Presidential veto. With all due respect to my colleague, the gentleman from Illinois, I think any suggestion that the President may veto this bill is an unfortunate intimidation of the legislative branch of Congress. We have our responsibility and the President has his. If the President wishes to veto this bill when the time comes, he has his rights and he can exercise those rights at the proper time. But I believe it is an intrusion on the right of the legislative to threaten a veto even before Congress has had an opportunity to use its own judgment and work its will. I will tell you this—you study this bill and you will see what it does and you are going to find that this is landmark legislation. I was proud to sign the conference report on this bill and I might say to my colleagues that at no point did anybody come to me and say there were provisions in this conference report that went outside of the scope of discussion in the conference.

I doubt very much if the President will veto this bill after he familiarizes himself with all of its provisions. And if he does, he will have to make every effort to override the veto.

I think this is a good bill. I congratulate the chairman of the subcommittee (Mr. DENT) and I congratulate the chairman of the full committee (Mr. PERKINS) for bringing this bill before us today. Once we get this bill through this House, I think all of us can be proud of the contribution we made. I am not surprised that some of the conglomerates that are buying up coal mines might be opposed to some of this legislation, but as my friend said here a moment ago, unless we bring some meaningful safety standards into the coal mines of America, we will not have any coal mines. I am proud

of the fact that I insisted on bringing the Public Health Service into these coal mines for the first time to establish safety standards for the American coal miner. We can now look forward to some decent standard to protect the health of our miners.

I will tell you that this is a bill that every one of us can vote for and can support with pride, because it is meaningful legislation for the health of this country and the future growth of this country. I urge adoption of the conference report.

Mr. PERKINS. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. ESCH).

Mr. ESCH. Mr. Speaker, I think the first point should be to establish my credibility and to recognize that there is more emotionalism than factual evidence being presented in the conference report today. I came from a coal mining town. My father's health was directly impaired by the black lung disease. So the intent of my remarks should be taken with that in mind.

I also favored the provisions of the House bill provision concerning black lung compensation. But I stand opposed to title IV as it now is, and I think those Members, especially those from coal mining districts, should be aware of what we are attempting to do here today, and that is to instruct the conferees to go back and to provide that they bring back in title IV the same language that left the House.

I make that statement for this particular reason: When this bill passed the House, and as stated in the committee report, there was no indication that there should be a broad base involvement of workmen's compensation acts in every State in the Union under this title. As it now stands, under title IV, we are opening the door to Federal intrusion into the total workmen's compensation program in the country.

Mr. BURTON of California. Mr. Speaker, will the gentleman yield?

Mr. ESCH. I will not yield at this time; instead of yielding to the gentleman from California, I would like to read the gentleman's remarks on October 29 of this year on the floor of this House when he rose in opposition to cutting out the compensation feature of title IV. At that time he quoted from the committee report—

Mr. BURTON. It is intended, as the committee report so very emphatically and unambiguously states:

This payment program is not a Workmen's Compensation program. It is not intended to be so. It contains none of the characteristic features which mark any Workmen's Compensation plan, and it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for death, injury, or the illness of other workers.

I stand ready to support a coal mine safety bill. I stand ready to support a strong compensation bill for people who have been affected by black lung disease. But let us instruct the conferees to come back, not with an open-door provision on workmen's compensation, but with a very limited and well drawn provision that will allow us to pass this bill and see it enacted into law.

Mr. STEIGER of Wisconsin. Mr. Speaker, will the gentleman yield?

Mr. ESCH. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Mr. Speaker, I commend the gentleman from Michigan for his statement and wish to associate myself with his remarks. I was one of those on this floor who opposed the amendment at the time it was offered by the gentleman from Iowa (Mr. SCHERLE) and supported the pneumoconiosis conference provision. I am distressed by the action of the conference. I believe the position of the House on this question should be upheld.

The SPEAKER pro tempore (Mr. Flood). The time of the gentleman has expired.

Mr. PERKINS. Mr. Speaker, does the gentleman from Michigan wish more time?

Mr. ESCH. Yes. I do.

Mr. PERKINS. I yield the gentleman 2 additional minutes.

Mr. BURTON of California. Mr. Speaker, will the gentleman yield?

Mr. ESCH. I yield to the gentleman from California.

Mr. BURTON of California. Mr. Speaker, I wanted the gentleman from Michigan to yield during his statement because for those who read the RECORD, there is no difficulty in finding this gentleman's observations. In my opinion the gentleman in the well, the gentleman from Michigan (Mr. ESCH) has stated in all accuracy that he had previously established his credentials and his concern for the black lung victims. There can be no challenge on any account on that question. It was for that purpose I sought to have the gentleman from Michigan yield to me, because I am very much aware not only of the most constructive contribution the gentleman from Michigan made, but similarly the contribution made by the gentleman from Wisconsin (Mr. STEIGER). If they have changed their attitude on this portion, one can clearly know it is precisely for the grounds they state and not because of their indifference to the plight of these black lung miners and their widows.

Mr. ESCH. Mr. Speaker, will the gentleman not concur that it would be very possible for the conferees to go back before we finish this session—as we have many other conferences going on also—and week come back with the provision that title IV, part C be stricken, so that we can assure that we get an adequate black lung compensation provision without opening up the question of State workmen compensation? Would the gentleman not concur that that would be possible?

Mr. BURTON of California. The gentleman from Michigan quoted me earlier in his remarks and quoted me accurately. Those sentiments were mine in the conference, as I hope would have been attested to by now. They are still my sentiments, but in any conference we have to accept and to give and take with the other body. We did that, upholding, I believe, the bulk of the thrust of the House bill. We simply did not win all. I wish we could have.

Mr. ESCH. Mr. Speaker, I appreciate the gentleman's remarks. I hope he will support the motion to recommit.

Mr. ERLBORN. Mr. Speaker, will the gentleman yield?

Mr. ESCH. I yield to the gentleman from Illinois (Mr. ERLBORN).

Mr. ERLBORN. Mr. Speaker, I wish to explain that when I offer my motion to recommit, it will be to instruct the conference to insist upon section 110(b) of the bill as it passed the House which is the pneumoconiosis compensation provision.

Mr. PERKINS. Mr. Speaker, I yield 3 minutes to the distinguished Speaker of the House (Mr. McCORMACK).

Mr. McCORMACK. Mr. Speaker, I am very happy to be a Member of this House today while this bill is in its final passage through this body. I am confident that the clear majority of the Members of the House will reject the motion to recommit with instructions.

I can remember when I first came here the situation that confronted millions of human beings just like ourselves, those who came from other parts of the United States and who worked in the mines. Behind those human beings were their wives and their families.

I can remember as a member of the Ways and Means Committee in the early 1930s the legislation coming before that committee, legislation that was then on its way through the long journey of progress for those who worked in the mines, to which the gentleman from Pennsylvania (Mr. SAYLOR) has so graphically referred today. My heart was with them then, and my heart is with them now.

I saw them occupying a position of what I called economic slavery. They worked in the mines, they lived in company-owned houses, they bought in company-owned stores, and they were denied, through economic pressure and black-listing and many other conditions, the right to organize.

I can remember the legislation that came out of the Ways and Means Committee by a vote of 13 to 12 in the 1930's, and I am very glad that I was one of those constituting the 13 in the Ways and Means Committee who voted for the early legislation in those years.

That was a painful journey. Today we have before us the culmination of the long, hard journey in the effort to bring justice to those who work in the mines, and in bringing justice to those who work in the mines, also bringing justice to the wives and to the families.

I am very glad to be a Member today, when this bill is up. I congratulate the chairman of the committee and the members of the committee, and the members of the conference committee. I hope that this bill will pass the House by an overwhelming vote, conveying to the miners of today a message from this body that we realize the problems which confront them and that we are doing everything possible to try to bring justice to them.

So, Mr. Speaker, I join with my colleagues in sending a message to those who work in the mines that we from all parts of the United States have extreme and favorable consideration for them.

Again I congratulate the committee, and I congratulate the Members of the House, when this conference report will be adopted, because it is another step in the cause of justice. It is another step in the consideration of human beings.

Mr. PERKINS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Iowa (Mr. SCHERLE).

(Mr. SCHERLE asked and was given permission to revise and extend his remarks.)

Mr. SCHERLE. Mr. Speaker, I was one of the four who voted against this bill when it first came to the House floor. That was not because I am against safety; not at all. But I am totally and unequivocally opposed to Federal workmen's compensation.

I was pleased tonight to hear my colleague from Illinois (Mr. ERLBORN) confirm those fears I expressed when the bill was on the floor. Up until today the proponents of this bill carefully avoided using the term "Federal workmen's compensation" for fear of States' rights usurpation, and perhaps even the possible total defeat of the bill.

One can call it anything he wants. It is still Federal workmen's compensation. It is benefits that will be paid for by the Federal Government.

This foot-in-the-door approach will relegate the jurisdiction of the States in the field of workmen's compensation to purely administrative functions. This is only the beginning.

No other disease, no injury, nothing at all is covered in this bill other than "black lung" or pneumoconiosis under the provision of Federal workmen's compensation. That term alone should frighten the Members. Much less should they vote for it.

When this bill was on the House floor it was sold on the premise that it was a coal mine safety bill. No one in this body is against coal mine safety. We all voted for that. But the inclusion of Federal workmen's compensation was not mentioned. Many Members voted for it without ever knowing that it was a provision of the bill.

Once again, the total estimate of this measure was given at \$40 million. We have had varying figures, from \$40 million to as high as \$400 million. This, I believe, would exceed any type of support we could give this bill.

The statement was made a short time ago that we cannot get men to work in the mines. We cannot get men to work on the farms in Iowa. This bill is not a handicap.

There are three States, Virginia, West Virginia, and Pennsylvania, that have developed laws as far as pneumoconiosis is concerned.

I believe it is the responsibility of the States to take care of their own. I am not asking anybody in this Chamber to take care of my people back in Iowa who are incapacitated by inhaling dust from working in grain elevators, or any other disease.

We do have sympathy and compassion for the coal miners and are making provisions for a safety bill. However, I believe we defeat our purpose if we vote for

this measure based on remuneration to be paid by Federal workmen's compensation, a real Pandora's box.

Mr. PERKINS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania (Mr. FLOOD).

Mr. FLOOD. Well, Mr. Speaker, I hear the wolves howling. I fly in the face of the gods even for 2 minutes. I take this 2 minutes, Mr. Speaker, because I am from the hard coal fields—the anthracite fields. Now, you have heard about black lung and pneumoconiosis. Well, I speak for the anthracite miner's asthma. Did you ever hear of that? Anthracosis. Just as deadly and just as disastrous. I would not attempt to gild the lily and approach the speech of my friend from Pennsylvania (Mr. DENT). I knew him in Harrisburg. I knew him when. The right man in the right place at the right time as chairman of this subcommittee—DENT of Pennsylvania.

I just want to tell you soft coal people that there is still hard coal. Maybe we can only use it to make dress shirt studs any more, but when I first came here 25 years ago I had 30,000 men in my district in the hard coal fields. Today I have 3,500. But I have 25,000 retired miners spitting out their guts and their lungs in the coal buckets all through my district from miner's asthma. Now put that in your pipe and smoke it. Do you think Flood, with my reputation in this House, would be particeps criminis to an indictment that has been laid against this committee? I do not think you do, or I would not be standing here.

Mr. PERKINS. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from California (Mr. BURTON).

The SPEAKER. The gentleman is recognized for 5 minutes.

Mr. BURTON of California. The mine workers do not want this bill to go back to conference. I am led to believe on good information that the local operators do not want this bill to go back to conference. I hope the majority of my colleagues do not want it to go to conference, and I hope we turn down the motion to recommit.

I am particularly gratified that the black lung benefit provision—a lonely orphan several months ago—will be the law of the land, if the recommit motion is defeated.

An explanation of the bill summary will be inserted at this place in the RECORD, along with cost estimates presented by Secretary of Interior, Mr. Hickel.

Time will tell whether these last-minute estimates were straight forward—or whether they were—as is my opinion—politically motivated and White House dictated. This ignoble effort to deny any meaningful help to black lung widows and miners deserves our flat rejection.

The House payment provisions have been around for 5 months—is not it suspicious that the administration waited until the last 5 days—more than 1 month after the conference concluded—to come up with their estimates.

The material referred to follows:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., December 12, 1969.

HON. JACOB K. JAVITS,
U.S. SENATE,
Washington, D.C.

DEAR SENATOR JAVITS: In response to your request, estimates of the Federal costs of the benefit provisions of the Federal Coal Mine Health and Safety Act of 1969 have been developed. These estimates were developed after consultation between this Department and the Department of Health, Education, and Welfare; the Department of Labor, and the Bureau of the Budget.

Several major problems in preparing cost estimates developed. The language of the draft provision of the bill does not define the term "total disability due to pneumoconiosis". It simply provides that the Secretary of Health, Education, and Welfare, shall, by regulation, prescribe standards for determining whether a miner is totally disabled due to pneumoconiosis. The standards established by Health, Education, and Welfare for such determination are an essential element in determining the cost of this program. From conversations with the Committee staff, it is not clear just what the intention is with respect to the establishment of criteria for determining eligibility due to total disability from pneumoconiosis. If the standards established by Health, Education, and Welfare allow those miners to qualify under this program who do not otherwise qualify for disability benefits under the social security program, the cost to the Federal Government could be in the neighborhood of \$300 million or more during the first year. If, on the other hand, the standards established by Health, Education, and Welfare are similar to the standards established under the social security program, based on the Pennsylvania experience which is administered under comparable standards, the cost to the Federal Government could be in the neighborhood of \$150 million or more during the first year. If the standards established by Health, Education, and Welfare are to be somewhere in between, the cost of course could range between these two figures.

The figures attached to this letter have been computed on the basis of both assumptions set out above. Any attempt to offset these costs by benefits otherwise payable for total disability under the social security program is extremely difficult. No exact figures are available indicating the number of miners presently receiving total disability benefits due to pneumoconiosis. Also various assumptions were made regarding the age of the potential beneficiaries, the number of dependents, mortality rates and other influencing factors. It must be understood that the assumptions underlying the attached figures may have introduced a margin of error into the estimates, the magnitude of which is unknown.

The estimates do not reflect State costs, which in future years would be considerable, nor do they consider Federal administrative costs of determining eligibility and making payments. It may cost \$8,000,000 or more, including the cost of medical services, to make initial determinations of disability due to pneumoconiosis. In addition, there would be a continuing cost of preparing and issuing benefit checks.

Sincerely,

WALTER J. HICKEL,
Secretary of the Interior.

ESTIMATED FEDERAL COST OF BENEFIT PAYMENTS
PLAN I

Assume:

1. The Federal benefit provision will be similar in experience to the Pennsylvania Pneumoconiosis Benefit Law. The criteria for benefits are:

(1) The miner must have X-ray evidence of pneumoconiosis.

(2) The miner must be completely disabled—not able to engage in any gainful employment.

A. On 10/1/69, 25,579 miners were on Pennsylvania's benefit rolls. Two thousand will be transferred in the next 18 months from workmen's compensation to benefit payment by virtue of having exhausted benefits under workmen's compensation. Total on benefits 7/17/71: 27,579.

B. Based on workmen's compensation data, 62 percent of those compensated are anthracite miners, and 38 percent are bituminous miners. $27,579 \times 38\% = 10,500$ bituminous. $27,579 \times 62\% = 17,079$ anthracite.

C. In 1952 and 1969 Pennsylvania had approximately 25 percent of the underground bituminous-coal miners. $10,500 \times 4 = 42,000$. Total number of bituminous miners in the inactive population who meet the Pennsylvania criteria.

Anthracite miners (see plan I for basic data):

Employed in 1952—120,000. All are no longer in anthracite mines. Assume 60 percent mortality. Number of survivors in 1969—48,000.

Assume 75 percent are over 61 and eligible for benefits..... 36,000

Assume 50 percent of those less than 61 are eligible for benefits..... 6,000

Age group	1952 work force		1969 Work force		
	Number of men	Surviving in 1969	Age 1969	Number of men	Age group
20 to 24.....	48,000	47,000	37 to 41	9,600	20 to 24
25 to 29.....	60,000	57,000	42 to 46	12,600	25 to 29
30 to 34.....	56,000	52,000	47 to 51	11,200	30 to 34
35 to 44.....	104,000	94,000	52 to 61	20,800	35 to 44
45 to 54.....	76,000	56,000	62 to 71	15,200	45 to 54
55 to 59.....	36,000	17,000	72 to 76	7,200	55 to 59
60 to 64.....	20,000	6,000	77	4,000	60 to 64
Total.....	400,000	329,000		80,000	

Assume 95% of surviving men in 1952 work force now over 61 are eligible for benefits..... 75,000

Assume of the surviving men in the 52/61 age group in the 1952 work force, 10,000 are still in the work force and that 25% of the remaining group are eligible for benefits.. 21,000

$$\frac{94,000 - 10,000}{4} = 21,000$$

Assume that in the present work force the number of eligibles is the same as the number with pneumoconiosis 8,000

108,000

$80,000 \times .10 = 8,000$
Total bituminous miners presently on State workmen's compensation plan 4,500

99,500

D. In active miners, the Public Health Service found 3 percent with X-ray evidence of advanced pneumoconiosis. $80,000 \times .03 = 2,400$.

E. Total bituminous miners eligible for benefits. $42,000 + 2,400 = 44,400$.

F. There are no anthracite miners in any State other than Pennsylvania.

Number of anthracite miners on the Pennsylvania benefit roll: 17,079.

G. Total number of bituminous miners and anthracite miners eligible for benefits. $44,400 + 17,000 = 61,400$.

H. Assume 7,000 men (4,500 bituminous miners and 2,500 anthracite miners) are on or will qualify for State workmen's compensation. $61,400 - 7,000 = 54,400$ Total eligible miners.

I. Assume each miner has 1.5 dependents.

Assume of the 6,000 presently in the anthracite workforce, 20 percent would qualify..... 1,200

Total 43,200
Presently receiving State workmen's compensation 2,500

Total 40,700

Total bituminous miners..... 99,500
Total anthracite miners..... 40,700

Total 140,200

Assume each case has 1.5 dependents. Federal payment is \$2,657.

Total cost of miner benefits: $140,200 \times \$2,657 = \$374,000,000$.

Widow cost—\$9,650,000.
Total \$383,650,000 ($\$374,000,000 + \$9,650,000$).

PLAN II

Criteria for total disability:

1. X-ray evidence of pneumoconiosis.
2. Evidence of physical impairment.
3. Age.

Population at risk in 1952:

1. Bituminous-coal miners..... 400,000
2. Anthracite miners..... 120,000

Total 520,000

Mine population in 1952 and 1969:

Federal payment is \$2,657. $54,400 \times \$2,657 = \$145,000,000$.

J. Widows benefits \$9,650,000.
Total: \$154,650,000 ($\$145,000,000 + \$9,650,000$)

SUMMARY

Plan I

The Federal benefit provision will be similar in experience to the Pennsylvania Pneumoconiosis Benefit Law.

The criteria for disability are:

1. The miner must have X-ray evidence of pneumoconiosis.
2. The miner must be completely disabled—not able to engage in any gainful employment.

First year cost without offsets: \$154,650,000.

Twenty-year cost without offsets: \$1,200,000,000.

Plan II

Criteria for disability:

1. X-ray evidence of pneumoconiosis.
2. Evidence of physical impairment.
3. Age.

First year cost without offsets: \$383,650,000.

Twenty-year cost without offsets: \$2,980,000,000.

SUMMARY OF MAJOR PROVISIONS

TITLE I—GENERAL

(1) Grants authority for the promulgation of mandatory health and safety standards to the Secretary of the Interior (hereinafter referred to as the "Secretary"). The Secretary promulgates all mandatory standards, but is responsible for developing and revising only mandatory safety standards. The Secretary of Health, Education, and Welfare (HEW) is responsible for developing and revising man-

datory health standards. No standard promulgated by the Secretary shall reduce the protection afforded miners below that provided by the interim mandatory health and safety standards contained in titles II and III, respectively.

(2) Provides opportunity for a representative of miners, whenever he has reasonable grounds to believe that a violation of a mandatory health or safety standard exists or an imminent danger exists in a mine, to obtain an immediate inspection of such mine.

(3) Provides a minimum of at least four annual inspections of each mine. Also provides a minimum of one spot inspection during every five working days of a mine (A) that liberates excessive quantities of methane or other explosive gases during its operations, (B) in which a methane or other gas ignition or explosion has occurred which resulted in death or serious injury at any time during the previous five years, or (C) the Secretary believes has especially hazardous conditions.

(4) Establishes the procedural mechanism for finding dangerous conditions or violations of standards in mines, and for the issuance of notices and orders—including withdrawal orders—relative to such.

(5) Provides administrative and judicial review procedures.

(6) Establishes civil penalties of up to \$10,000 for operator violations of a standard or any other provision of the Act. Establishes a civil penalty of up to \$250 to a miner who violates specified provisions of the Act (smoking, carrying of matches, etc.). Establishes criminal penalties to any operator who willfully violates a standard or knowingly violates or fails or refuses to comply with orders. Upon conviction, such operator shall be punished by a fine of not more than \$25,000 and or imprisonment for not more than one year for the first conviction, and for subsequent convictions, by a fine of not more than \$50,000 and/or imprisonment for not more than five years. Also establishes similar civil and criminal penalties to any director, officer, or agent of a corporate operator for like violations, failures, or refusals. Criminal penalties are also established for false statements, representations, or certifications relative to the Act, and for the introduction and delivery in commerce of any equipment for use in a coal mine which is falsely represented to be in compliance with the provisions of the Act.

(7) Provides for limited pay guarantees to miners idled by a withdrawal order.

(8) Prohibits the discharge or other discrimination against a miner for exercising rights under the Act.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

(1) Establishes interim mandatory health standards effective six months after the date of enactment of the Act.

(2) Requires each operator to take accurate samples of the amount of respirable dust in the mine atmosphere. The samples are transmitted to the Secretary and analyzed and recorded by him.

(3) Establishes a 3.0 milligram per cubic meter of air (mg/m^3) dust standard effective six months after enactment. Extensions of time to comply with the standard (permits for noncompliance) may be granted by the Panel (established by section 5) for a period not to exceed twelve months from the effective date of the standard.

(4) Establishes a 2.0 mg/m^3 dust standard effective three years after enactment, but the Panel may grant permits for noncompliance to an operator for a period not to exceed three additional years from the effective date of the standard.

(5) The Secretary of Health, Education, and Welfare has the continuing authority, beginning one year after enactment, to further reduce the dust standard below the levels established by the Act to levels which will prevent new incidences of respiratory

disease and the further development of such disease in any person.

(6) Each operator shall cooperate with the Secretary of Health, Education, and Welfare in making a chest x-ray available to each miner within eighteen months after enactment, again three years later, and at such subsequent intervals determined by the Secretary of Health, Education, and Welfare but not to exceed every five years. Each worker who begins work in a coal mine for the first time shall be given a chest x-ray at the commencement of his employment and again three years later. If the second x-ray shows evidence of the development of pneumoconiosis, the worker shall be given an additional x-ray two years later. The x-rays may be supplemented by other tests deemed necessary by the Secretary of Health, Education, and Welfare. The Secretary of Health, Education, and Welfare is also responsible for reading, classifying, and recording all results of x-rays and other medical tests.

(7) Any miner who shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine where the respirable dust concentration is not more than 2.0 mg/m^3 . Effective three years after enactment, the option of transfer shall be to an area of the mine where such concentration is not more than 1.0 mg/m^3 ; or if such level of concentration is not attainable in the mine, to an area where the concentration is the lowest attainable below 2.0 mg/m^3 . Any miner so transferred shall not receive less than the regular rate of pay received by him immediately prior to transfer.

(8) Incorporates the noise standard prescribed under the Walsh-Healey Public Contracts Act, and provides authority to the Secretary of Health, Education, and Welfare to improve upon such standard.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

(1) Establishes interim mandatory safety standards effective three months after the date of enactment of the Act.

(2) Establishes detailed requirements to provide for safer working conditions in underground coal mines. These include requirements with regard to roof support, ventilation, combustible materials and rock dusting, electrical equipment, trailing cables, grounding, underground high-voltage distribution, underground low- and medium-voltage alternating current circuits, trolley and trolley feeder wires, fire protection, maps, blasting and explosives, hoisting and mantrips, emergency shelters, communications, escapeways, and other miscellaneous matters.

(3) Establishes requirements for the use of permissible equipment in all underground coal mines. Requires that all electric face equipment at gassy mines and all such small equipment at all mines be permissible within 15 months after enactment. It is also required that, in the case of mines not previously classified as gassy which are below the watertable, such large equipment must be permissible in 15 months, but the Panel may grant extensions of time (permits for noncompliance) of not to exceed in the aggregate an additional 33 months if the Panel determines, based on specified criteria, that the operator is unable to comply with the permissibility requirements because of unavailability of permissible equipment. In the case of such mines which are located entirely above the watertable, it is required that such large equipment be permissible within 51 months after enactment but the Panel may grant extensions of not to exceed 2 additional years on a mine-by-mine basis because of unavailability of such equipment.

TITLE IV—BLACK LUNG BENEFITS

(1) Provides for the payment of benefits for death or total disability due to pneumoconiosis.

(2) Coal miners and former coal miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled Federal employee in Grade GS-2 would be entitled at the time of payment. This represents approximately \$136 per month. Widows of coal miners and former coal miners whose deaths are due to pneumoconiosis or whose deaths occurred while receiving total disability benefits, receive benefits at the rate prescribed for totally disabled miners. The rates prescribed above are increased for dependents at the rate of 50 percent for one dependent (widow or child), 75 percent for two dependents, and 100 percent for three or more dependents. The benefits for miners and widows will be reduced on account of payments under the workmen's compensation, unemployment compensation, or disability insurance laws of the State and, in the case of miners only, on account of excess earnings, as provided under the Social Security Act for benefits payable under that Act.

(3) The following presumptions are used in determining entitlement:

A. If a miner who is suffering from pneumoconiosis was employed for 10 years or more in an underground coal mine, there will be a rebuttable presumption that the pneumoconiosis arose out of such employment.

B. If a miner worked ten years in such a mine and died of a respirable disease, there will be a rebuttable presumption that his death was due to pneumoconiosis.

C. If a miner is suffering from or dies from an advanced irreversible stage of pneumoconiosis, it will be irrebuttably presumed his death or total disability was due to pneumoconiosis.

(4) Claims filed before December 31, 1972, will be processed by the Secretary of Health, Education, and Welfare in a manner similar to that he uses for processing claims for disability under the Social Security Act. If the claim is filed after December 31, 1971, benefits under that claim may be paid only until January 1, 1973. Claims filed on or after January 1, 1973, will be processed under the appropriate State workmen's compensation law if the Secretary of Labor has determined it has adequate coverage for pneumoconiosis. He will, generally speaking, determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973. Where the applicable State workmen's compensation law does not provide adequate coverage for pneumoconiosis, the persons entitled to benefits will have their claims processed (so far as applicable) under the terms of the Longshoremen's and Harbor Workers' Compensation Act.

(5) In the case of claims filed on or after January 1, 1973, no payments of benefits may be made after seven years after the date of enactment of the Act.

TITLE V—ADMINISTRATION

(1) Provides authorization for appropriations for health and safety research to be carried out by the Secretary of Health, Education, and Welfare and the Secretary, respectively.

(2) Requires the Secretary to expand programs for the education and training of operators, agents, thereof, and miners in accident-control, healthful working conditions, and in the use of coal mining equipment and techniques.

(3) Provides for economic assistance to any small business concern operating a coal mine to meet the requirements imposed by the Act. Such assistance shall be given by the Small Business Administration.

(4) Specifies qualifications and training requirements for employees of the Secretary; particularly inspectors.

The SPEAKER. The gentleman yields back 4½ minutes.

Mr. PERKINS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio (Mr. HAYS).

Mr. HAYS. Mr. Speaker, I have not spoken on this bill before although I represent most of the coal mining area in Ohio and practically all of the deep coal mining area. I was born in a little town that became a coal mining center about the time that I was in kindergarten. The first funeral that I ever attended was a double funeral, you might say—a Catholic mass in the morning and a Protestant funeral in the afternoon when the teacher took the whole first grade to the funerals of the fathers of two of our classmates. I have lived with that kind of a danger to the people who are my neighbors and friends all of my life.

Now, Ohio has a pretty fair mine safety law. I had something to do with the first one when I was in the State senate, but I do not believe the argument of the gentleman from Iowa that if the States do not do it, we should not do it, which he seems to imply. I think we ought to do this and I think this bill ought to pass. I do not think it ought to be recommitted and I think that not only the coal miners and their families do not think so, but I do not think anyone in Ohio thinks so.

Mr. Speaker, I want to congratulate the chairman (Mr. PERKINS) and the chairman of the subcommittee (Mr. DENT) as well as the members of the subcommittee and the conference committee. I think they have done the best job they could in a very difficult situation. I think it is a job that will be good for people and good for all Americans. I hope we pass this bill here tonight.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from West Virginia (Mr. STAGGERS).

(Mr. STAGGERS asked and was given permission to revise and extend his remarks.)

Mr. STAGGERS. I thank the gentleman from Kentucky for yielding to me.

Mr. Speaker, as one of the cosponsors of a bill which was considered—and I think all of my colleagues from the State of West Virginia introduced similar bills because they knew the importance of this subject—I remember in 1952 when we had this bill on the floor, the mine safety bill, I made the remark that the time for dilly-dallying was strictly past. And, Mr. Speaker, I say that tonight, the time for dilly-dallying about this bill is now over.

This bill should not be recommitted because it is fraught with danger if it is recommitted. It may not come back to this floor. Further, I believe exactly what has been said here to the effect that if it is not passed before we go home, you are not going to find many coal miners working in this Nation by next week.

Mr. Speaker, I wish to take this opportunity to congratulate the distinguished gentleman from Kentucky, the chairman of the full committee, the distinguished gentleman from Pennsylvania (Mr. DENT), chairman of the subcommittee and all members of the Committee on Education and Labor and others who

have had a part in bringing this legislation to the floor.

Mr. Speaker. I am speaking for all Members of the West Virginia delegation when I say this.

That we hope that this bill will not be recommitted but will be passed overwhelmingly.

Mr. PERKINS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Pennsylvania (Mr. HECHLER).

(Mr. HECHLER of West Virginia asked and was given permission to revise and extend his remarks.)

Mr. HECHLER of West Virginia. Mr. Speaker, this is a magnificent piece of legislation. It is strong and effective in its terms. It is a tribute to the initiative and hard work of Congress, and particularly my good friends the gentleman from Kentucky (Mr. PERKINS) who so ably chairs the full committee, the gentleman from Pennsylvania (Mr. DENT) who chairs the subcommittee and so eloquently addressed the House earlier this evening, and the gentleman from California (Mr. BURTON), who played a major role in fashioning the compensation features of the bill along with the gentleman from New Jersey (Mr. DANIELS).

This bill was drafted in Congress, it originated in Congress, it was perfected in Congress, and the tougher provisions of the bill all came as a result of the insistence of Congress. Had the Congress followed the advice of the executive branch, this would have been a milk and water piece of legislation instead of a brick and mortar piece of legislation. Had the Congress followed the advice of the executive branch, there would have been little protection for the health and safety of the coal mines of this Nation.

That is why it is passing strange that we should suddenly at the 11th hour, at 1 minute before midnight, have unveiled to us a letter of opposition to this bill from the Secretary of Labor. Even more startling is the threat of a Presidential veto which has emanated from the minority side. The White House had no part in initiating or framing this landmark legislation. Every action taken by the White House during the consideration of this legislation was in the form of trying to weaken, delay or eliminate provisions for the protection of the coal miners. Now it ill behoves the President and a member of the President's Cabinet to send messages here at the last minute in an effort to stall or kill this legislation.

The major drive for this legislation began immediately after the tragic fire and explosions at Consol No. 9 Mine in Farmington, W. Va., resulting in the deaths of 78 miners on November 20, 1968. Passage of this legislation is a fitting monument to the memory of the 78 miners who lost their lives at Farmington. Their widows have waited 13 months since Farmington for the passage of this legislation. Everyone would acknowledge that without that tragic accident, we would not even be considering mine health and safety legislation this year. Therefore, in tribute to these men, I hope the President will invite to the signing of this landmark legislation the wid-

ows of the 78 coal miners who died at Farmington.

We have heard many references tonight to the dignity of the House of Representatives. We have also heard references to the rights of the States. But what about the dignity and rights of the coal miners working in the pits, the thousands who are suffering from black lung, the thousands who have been crippled in mine accidents, the widows and families left behind when the breadwinner is killed in the most hazardous occupation in the world? The last comprehensive mine safety law was passed in 1952. The miners have waited for 17 years. Let us not nitpick any further. I say this because I agree with those who state that if Congress does not act before Christmas, there will be a major strike in the coal fields.

There is a major challenge ahead in the manner in which this legislation is administered and enforced. Congress has provided a sturdy framework for action, but if the administrative agencies charged with administering this law are timid in their approach toward enforcement, the dangers to the health and safety of coal miners will increase. I am frank to state that one of the major reasons I became disenchanted with the top leadership of the United Mine Workers of America was the fact that down through the years they have exerted very little initiative and pressure toward improving the safety laws or regulations. Furthermore, even after the Farmington disaster, the top leadership of the United Mine Workers of America bluntly stated that in their judgment it would not be possible to enact any health protection or coal dust standard for the miners this year. Later, they took the same timid approach toward the enactment of compensation for victims of black lung. For a long time, they clung to the obviously gaping loophole provided by the Federal Coal Mine Safety Board of Review. These facts are a matter of record. It took the pressure of the candidacy of Joseph A. Yabloski to awaken the leadership of the United Mine Workers of America to their legislative responsibilities to the coal miners, and then the old leadership began to wake up and become more active.

Now that the election of December 9 is a thing of the past, the real question is whether President W. A. Boyle and the leadership of the United Mine Workers of America intend to insist on a strict enforcement of this law for the benefit of the coal miners, or whether they will in a self-satisfied fashion lapse back into their cozy relationship with the coal operators and interpret the election results as a mandate for inaction. I honestly feel that the strength of the pending legislation will depend not only on the vigor with which the administrative agencies proceed with enforcement, but also on the degree to which the United Mine Workers of America from top to bottom keeps a vigilant watch on the manner in which this legislation is administered. They must beef up their safety staff, they must beef up their legal staff, and insure that the health and safety of every coal miner receives maximum protection under the law.

Mr. BURTON of Utah. Mr. Speaker, the health and safety of over 144,000 Americans is riding with us on the vote we are about to take. These Americans are coal miners—citizens who live with danger each day of their lives. They are badly in need of help—help which we can give them through the legislation we are debating now.

In addition to detailed safety standards, this legislation prescribes health standards which place limits on the amount of coal dust permitted in the mine atmosphere—something that will curb what is known as black lung disease.

This legislation will provide payments for retired and active miners who now have an advanced stage of this horrible disease; and will provide benefits to surviving dependents of miners whose death was due to such a disease.

The mines in my State of Utah—as well as mines anywhere in the United States—would be inspected by a Federal mine inspector at least four times a year; and if any of these mines are found to be in a dangerous condition, the inspector would have the authority to order the mine workers withdrawn until the danger is eliminated.

Miners in my district have been discouraged by the lack of legislation in previous years. And while this bill does not contain all the provisions I would hope it would, still it is the best that our mining experts have been able to come up with to enable this House and the other body to form some sort of agreement.

Mr. PERKINS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

MOTION TO RECOMMIT OFFERED BY
MR. ERLÉN BORN

Mr. ERLÉN BORN, Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the conference report?

Mr. ERLÉN BORN. I am, Mr. Speaker. The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ERLÉN BORN moves to recommit the conference report on the bill S. 2917 to the committee on conference with instructions to the managers on the part of the House to insist upon the position of the House with respect to section 110(B) of the bill as passed by the House of Representatives.

Mr. PERKINS. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion to recommit.

Mr. GERALD R. FORD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 83, nays 258, not voting 92, as follows:

[Roll No. 335]

YEAS—83

Adair	Belcher	Brock
Anderson, III.	Betts	Brown, Mich.
Arends	Blackburn	Brown, Ohio
Ashbrook	Bow	Bush
Atres	Brinkley	Byrnes, Wis.

Clancy	Hammer-	Minshall
Clawson, Del.	schmidt	Mizell
Collier	Hutchinson	Morton
Collins	King	Nelsen
Conable	Kleppe	Poff
Cramer	Kuykendall	Price, Tex.
Crane	Kyl	Quis
Davis, Wis.	Landgrebe	Rallsback
Dennis	Langen	Robison
Derwinski	Lloyd	Roth
Devine	Lukens	Ruth
Dickinson	McClory	Scherle
Edwards, Ala.	McClure	Scott
Erlenborn	McCulloch	Steiger, Wis.
Each	McDonald.	Teague, Calif.
Ford, Gerald R.	Mich.	Thompson, Ga.
Foreman	MacGregor	Thomson, Wis.
Frellinghuysen	Mailliard	Vander Jagt
Frey	Mann	Wiggins
Goldwater	Mathias	Wold
Goodling	May	Wylder
Gross	Mayne	Wylie
Grover	Meskill	
Gubser	Michel	

NAYS—258

Abernethy	Fountain	Mize
Addabbo	Fraser	Mollohan
Albert	Friedel	Monagan
Alexander	Fulton, Pa.	Montgomery
Anderson,	Fuqua	Moorhead
Calif.	Galifanakis	Morgan
Andrews,	Garmatz	Morse
N. Dak.	Gaydos	Murphy, III.
Annunzio	Gettys	Murphy, N.Y.
Ashley	Gialmo	Myers
Aspinall	Gibbons	Natcher
Beall, Md.	Gilbert	Nedzi
Bell, Calif.	Gonzalez	Nichols
Bennett	Gray	Nix
Bevill	Green, Pa.	O'Hey
Biaggi	Griffin	O'Hara
Blester	Griffiths	O'Konski
Bingham	Gude	Olsen
Blatnik	Hagan	O'Neal, Ga.
Boland	Haley	O'Neill, Mass.
Brademas	Halpern	Ottinger
Brasco	Hamilton	Pasaman
Bray	Hanley	Patten
Broomfield	Hansen, Idaho	Pepper
Brotzman	Hansen, Wash.	Perkins
Brown, Calif.	Harrington	Pettis
Broyhill, N.C.	Harsha	Philbin
Burke, Fla.	Harvey	Pickle
Burke, Mass.	Hathaway	Pike
Burleson, Tex.	Hawkins	Pirnie
Burlison, Mo.	Hays	Pollock
Burton, Calif.	Hechler, W. Va.	Preyer, N.C.
Burton, Utah	Helstoski	Price, Ill.
Button	Henderson	Pryor, Ark.
Byrne, Pa.	Hicks	Pucinski
Cabell	Hogan	Purcell
Caffery	Hollifield	Quillen
Camp	Horton	Randall
Carey	Howard	Rarick
Carter	Hull	Reid, Ill.
Casey	Hungate	Reid, N.Y.
Chamberlain	Hunt	Reifel
Clark	Jacobs	Reuss
Clay	Jarman	Rhodes
Cleveland	Johnson, Calif.	Riegle
Cohelan	Johnson, Pa.	Rodino
Colmer	Jones, Ala.	Roe
Conte	Jones, N.C.	Rogers, Fla.
Corbett	Jones, Tenn.	Rooney, Pa.
Culver	Kath	Rosenthal
Daddario	Kastenmeier	Rostenkowski
Daniel, Va.	Kazen	Roudebush
Daniels, N.J.	Kee	Roybal
Davis, Ga.	Keith	Ruppe
de la Garza	Kluczynski	Ryan
Dent	Koch	St Germain
Diggs	Kyros	St. Onge
Dingell	Latta	Sandman
Donohue	Leggett	Satterfield
Dorn	Long, Md.	Saylor
Dowdy	Lowenstein	Schadeberg
Downing	Lujan	Scheuer
Dulski	McCarthy	Schneebeli
Duncan	McDade	Schwengel
Eckhardt	McEwen	Shively
Edmondson	McFall	Shriver
Edwards, La.	McKnealy	Skubitz
Eilberg	Maddonald,	Slack
Eshleman	Mass.	Smith, Iowa
Evans, Colo.	Madden	Snyder
Farbstein	Mahon	Springer
Feighan	Marsh	Stafford
Findley	Matsunaga	Staggers
Fisher	Meeds	Steiger, Ariz.
Flood	Melcher	Stephens
Flowers	Mikva	Stokes
Foley	Miller, Calif.	Stratton
Ford.	Miller, Ohio	Stubblefield
William D.	Minish	Stuckey
	Mink	Symington

Talcott	Waldie	Wyman
Taylor	Wampler	Yatron
Thompson, N.J.	Watkins	Young
Tiernan	Watson	Zablocki
Udall	Whalen	Zion
Vanik	White	Zwach
Vigorito	Wolf	
Waggonner	Wyatt	

NOT VOTING—92

Abbutt	Evins, Tenn.	Rivers
Adams	Fallon	Roberts
Anderson,	Fascell	Rooney, Colo.
Tenn.	Flynt	Rooney, N.Y.
Andrews, Ala.	Fulton, Tenn.	Sebelius
Baring	Gallagher	Sikes
Barrett	Green, Oreg.	Sisk
Berry	Hall	Smith, Calif.
Blanton	Hanna	Smith, N.Y.
Boggs	Hastings	Stanton
Bolling	Hébert	Steed
Brooks	Heckler, Mass.	Sullivan
Broyhill, Va.	Hosmer	Taft
Buchanan	Ichord	Teague, Tex.
Cahill	Jonas	Tunney
Cederberg	Kirwan	Ullman
Celler	Landrum	Utt
Chappell	Lennon	Van Deerlin
Chisholm	Lippscomb	Watts
Clausen	Long, La.	Weicker
Don H.	McCloskey	Whalley
Conyers	McMillan	Whitehurst
Corman	Martin	Whitten
Coughlin	Mills	Widnall
Cowger	Mosher	Williams
Cunningham	Moss	Wilson, Bob
Dawson	Fatman	Wilson,
Delaney	Felly	Charles H.
Dellenback	Foage	Winn
Denney	Fodell	Wright
Dwyer	Powell	Yates
Edwards, Calif.	Rees	

So the motion to recommit was rejected.

The Clerk announced the following pairs:

Mr. Sisk with Mr. Smith of California.
 Mrs. Green of Oregon with Mrs. Dwyer.
 Mr. Delaney with Mr. Widnall.
 Mr. Rooney of New York with Mr. Bob Wilson.
 Mr. Mills with Mr. Jonas.
 Mr. Ichord with Mr. Cederberg.
 Mr. Rivers with Mr. Hall.
 Mr. Boggs with Mr. Martin.
 Mr. Barrett with Mr. Mosher.
 Mr. Rogers of Colorado with Mr. Cahill.
 Mr. Blanton with Mr. Taft.
 Mr. Tunney with Mr. Utt.
 Mr. Fallon with Mr. Weicker.
 Mr. Hébert with Mr. Williams.
 Mr. Foage with Mr. Denney.
 Mr. Moss with Mr. Cowger.
 Mr. Abbutt with Mr. Felly.
 Mr. Corman with Mr. Lippscomb.
 Mrs. Sullivan with Mrs. Heckler of Massachusetts.
 Mr. Sikes with Mr. Smith of New York.
 Mr. Steed with Mr. Cunningham.
 Mr. Fascell with Mr. Coughlin.
 Mr. Evins of Tennessee with Mr. Broyhill of Virginia.
 Mr. Adams with Mr. Hosmer.
 Mr. McMillan with Mr. Don H. Clausen.
 Mr. Andrews with Mr. Whitehurst.
 Mr. Anderson of Tennessee with Mr. Winn.
 Mr. Brooks with Mr. Stanton.
 Mr. Baring with Mr. Berry.
 Mr. Celler with Mr. Dellenback.
 Mr. Flynt with Mr. Buchanan.
 Mr. Fodell with Mr. McCloskey.
 Mr. Chappell with Mr. Whalley.
 Mr. Edwards of California with Mr. Conyers.
 Mr. Fulton of Tennessee with Mr. Rees.
 Mr. Yates with Mrs. Chisholm.
 Mr. Hanna with Mr. Dawson.
 Mr. Landrum with Mr. Lennon.
 Mr. Long of Louisiana with Mr. Patman.
 Mr. Roberts with Mr. Whitten.
 Mr. Wright with Mr. Ullman.
 Mr. Watts with Mr. Van Deerlin.
 Mr. Kirwan with Mr. Dorn.
 Messrs. MADDEN, CABELL, and STEPHENS changed their votes from "yea" to "nay."

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the conference report.

Mr. GERALD R. FORD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 333, nays 12, not voting 88, as follows:

[Roll No. 336]

YEAS—333

Abernethy	Eilberg	Leggett
Adair	Eshleman	Lloyd
Addabbo	Evans, Colo.	Long, Md.
Albert	Farbstein	Lowenstein
Alexander	Feighan	Lujan
Anderson,	Findley	Lukens
Anderson, Calif.	Fish	McCarthy
Anderson, Ill.	Fisher	McClure
Andrews,	Flood	McClure
Andrews, N. Dak.	Flowers	McCulloch
Annunzio	Foley	McDade
Arends	Ford, Gerald R.	McDonald,
Ashley	Ford,	Mich.
Aspinall	William D.	McEwen
Ayres	Foreman	McFall
Beall, Md.	Fountain	McKneally
Belcher	Fraser	Macdonald,
Bell, Calif.	Frelinghuysen	Mass.
Bennett	Frey	MacGregor
Betts	Friedel	Madden
Bevill	Fulton, Pa.	Mahon
Biaggi	Fuqua	Mailliard
Biester	Galifianakis	Mann
Bingham	Gallagher	Marsh
Blackburn	Garmatz	Mathias
Blatnik	Gaydos	Matsunaga
Boland	Gettys	May
Bow	Giaino	Mayne
Brademas	Gibbons	Meeds
Brasco	Gilbert	Melcher
Bray	Goldwater	Meskill
Brinkley	Gonzalez	Michel
Broomfield	Goodling	Mikva
Brotzman	Gray	Miller, Calif.
Brown, Calif.	Green, Pa.	Miller, Ohio
Brown, Mich.	Griffin	Minish
Brown, Ohio	Griffiths	Mink
Broyhill, N.C.	Grover	Minsahl
Burke, Fla.	Gubser	Mtze
Burke, Mass.	Gude	Mizell
Burleson, Tex.	Hagan	Mollohan
Burlison, Mo.	Haley	Monagan
Burton, Calif.	Halpern	Montgomery
Burton, Utah	Hamilton	Moorhead
Bush	Hammer-	Morgan
Button	schmidt	Morse
Byrne, Pa.	Hanley	Morton
Byrnes, Wis.	Hansen, Idaho	Murphy, Ill.
Cabell	Hansen, Wash.	Murphy, N.Y.
Caffery	Harrington	Myers
Camp	Harsha	Natcher
Carey	Harvey	Nedzi
Carter	Hastings	Nelsen
Casey	Hathaway	Nichols
Chamberlain	Hawkins	Nix
Clancy	Hays	Obey
Clark	Hechler, W. Va.	O'Hara
Clawson, Del.	Helstoski	O'Konski
Clay	Henderson	Olsen
Cleveland	Hicks	O'Neal, Ga.
Cohelan	Hogan	O'Neill, Mass.
Collier	Hollifield	Ottlinger
Colmer	Horton	Passman
Conable	Howard	Patten
Conte	Hull	Pepper
Corbett	Hungate	Perkins
Cramer	Hunt	Pettis
Crane	Hutchinson	Philbin
Culver	Jacobs	Pickle
Daddario	Jarman	Pike
Daniel, Va.	Johnson, Calif.	Pirnie
Daniels, N.J.	Johnson, Pa.	Poff
Davis, Ga.	Jones, Ala.	Pollock
de la Garza	Jones, N.C.	Preyer, N.C.
Dent	Jones, Tenn.	Price, Ill.
Darwinski	Karth	Price, Tex.
Devine	Kastenmeier	Fryor, Ark.
Dickinson	Kazen	Pucinski
Diggs	Kee	Purcell
Dingell	Keith	Quie
Donohue	King	Quillen
Dowdy	Kleppe	Railsback
Downing	Kluczynski	Randall
Dulski	Koch	Rarick
Duncan	Kuykendall	Reid, Ill.
Eckhardt	Kyl	Reid, N.Y.
Edmondson	Kyros	Reifel
Edwards, Ala.	Langen	Reuss
Edwards, La.	Latta	Rhodes

Riegle
Robison
Rodino
Roe
Rogers, Fla.
Rooney, Pa.
Rosenthal
Rostenkowski
Roth
Roudebush
Roybal
Ruppe
Ruth
Ryan
St Germain
St. Onge
Sandman
Satterfield
Saylor
Schadeberg
Schauer
Schneebeil
Schwengel
Sebelius
Shipley

Shriver
Skubitz
Slack
Smith, Iowa
Snyder
Springer
Stafford
Staggers
Steiger, Ariz.
Steiger, Wis.
Stephens
Stokes
Stratton
Stubblefield
Stucky
Symington
Talcott
Taylor
Teague, Calif.
Teague, Tex.
Thompson, Ga.
Thompson, N.J.
Thomson, Wis.
Tiernan
Udall

Vander Jagt
Vanik
Vigorito
Waggoner
Waldie
Wampler
Watkins
Watson
Whalen
White
Wilson.
Charles H.
Wold
Wolf
Wyatt
Wydler
Wylie
Wyman
Yatron
Young
Zablocki
Zion
Zwach

Mr. Brooks with Mr. Stanton.
Mr. Baring with Mr. Berry.
Mr. Celler with Mr. Dellenback.
Mr. Flynt with Mr. Buchanan.
Mr. Podell with Mr. McCloskey.
Mr. Chappell with Mr. Whalley.
Mr. Edwards of California with Mr. Conyers.

Mr. Fulton of Tennessee with Mr. Rees.
Mr. Yates with Mrs. Chisholm.
Mr. Hanna with Mr. Teague of Texas.
Mr. Landrum with Mr. Lennon.
Mr. Long of Louisiana with Mr. Patman.
Mr. Roberts with Mr. Whitten.
Mr. Wright with Mr. Ullman.
Mr. Watts with Mr. Van Deerlin.
Mr. Kirwan with Mr. Hastings.
Mr. Gallagher with Mr. Sebelius.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NAYS—12

Ashbrook
Brock
Collins
Davis, Wis.

Dennis
Erlenborn
Esch
Gross

Landgrebe
Scherle
Scott
Wiggins

NOT VOTING—88

Abbutt
Adams
Anderson,
Tenn.
Andrews, Ala.
Baring
Barrett
Berry
Blanton
Boggs
Boiling
Brooks
Broyhill, Va.
Buchanan
Cahill
Cederberg
Celler
Chappell
Chisholm
Clausen,
Don H.
Conyers
Corman
Coughlin
Cowger
Cunningham
Dawson
Delsney
Dellenback
Denney

Dorn
Dwyer
Edwards, Calif.
Evins, Tenn.
Fallon
Fascell
Flynt
Fulton, Tenn.
Green, Oreg.
Hall
Hanna
Hébert
Heckler, Mass.
Hosmer
Ichord
Jonas
Kirwan
Landrum
Lennon
Lipscomb
Long, La.
McCloskey
McMillan
Martin
Mills
Mosher
Moss
Patman
Pelly
Poage

Podell
Powell
Rees
Rivers
Roberts
Rogers, Colo.
Rooney, N.Y.
Sikes
Sisk
Smith, Calif.
Smith, N.Y.
Stanton
Steed
Sullivan
Taft
Tunney
Ullman
Utt
Van Deerlin
Watts
Weicker
Whalley
Whitehurst
Whitten
Widnall
Williams
Wilson, Bob
Winn
Wright
Yates

GENERAL LEAVE

Mr. PERKINS. Mr. Speaker. I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks and include extraneous matter in connection with the conference report on mine safety.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Sisk with Mr. Smith of California.
Mrs. Green of Oregon with Mrs. Dwyer.
Mr. Delaney with Mr. Widnall.
Mr. Rooney of New York with Mr. Bob Wilson.
Mr. Mills with Mr. Jonas.
Mr. Ichord with Mr. Cederberg.
Mr. Rivers with Mr. Hall.
Mr. Boggs with Mr. Martin.
Mr. Barrett with Mr. Mosher.
Mr. Rogers of Colorado with Mr. Cahill.
Mr. Blanton with Mr. Taft.
Mr. Tunney with Mr. Utt.
Mr. Fallon with Mr. Weicker.
Mr. Hébert with Mr. Williams.
Mr. Poage with Mr. Denney.
Mr. Moss with Mr. Cowger.
Mr. Abbutt with Mr. Pelly.
Mr. Corman with Mr. Lipscomb.
Mrs. Sullivan with Mrs. Heckler of Massachusetts.
Mr. Sikes with Mr. Smith of New York.
Mr. Steed with Mr. Cunningham.
Mr. Fascell with Mr. Coughlin.
Mr. Evins of Tennessee with Mr. Broyhill of Virginia.
Mr. Adams with Mr. Hosmer.
Mr. McMillan with Mr. Don H. Clausen.
Mr. Andrews with Mr. Whitehurst.
Mr. Anderson of Tennessee with Mr. Winn.

with me in the development of this bill and in its passage many long hours. My colleague from West Virginia has brought to this legislation his special knowledge of the health and safety problems in the coal mining industry and the special concerns of his constituents. My colleague from New York has brought to this bill his bipartisan desire for effective health and safety legislation. Both the majority and minority staffs have given of themselves unselfishly. They are to be commended.

The Senate conferees were successful in insisting on all provisions in the Senate bill which provided more effective protection to the coal miners. The conference report reflects an effect by the conferees of both Houses to blend the best of the Senate bill with the best of the House amendments. I firmly believe the conferees have achieved the most effective coal mine health and safety law ever considered by Congress.

Briefly, the conference report reflects the Senate conferees' insistence on the Senate's lower coal dust standard, and on the Senate's closed end conversion period for explosion-proof equipment. In addition, your conferees succeeded in retaining the Senate's more stringent penalties for criminal violations of the act.

At this point I ask unanimous consent to include a summary of the major provisions of the bill.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF MAJOR PROVISIONS

TITLE I—GENERAL

(1) Grants authority for the promulgation of mandatory health and safety standards to the Secretary of the Interior (hereinafter referred to as the "Secretary"). The Secretary promulgates all mandatory standards, but is responsible for developing and revising only mandatory safety standards. The Secretary of Health, Education, and Welfare (HEW) is responsible for developing and revising mandatory health standards. No standard promulgated by the Secretary shall reduce the protection afforded miners below that provided by the interim mandatory health and safety standards contained in titles II and III, respectively.

(2) Provides opportunity for a representative of miners, whenever he has reasonable grounds to believe that a violation of a mandatory health or safety standard exists or an imminent danger exists in a mine, to obtain an immediate inspection of such mine.

(3) Provides a minimum of at least four annual inspections of each mine. Also provides a minimum of one spot inspection during every five working days of a mine (A) that liberates excessive quantities of methane or other explosive gases during its operations, (B) in which a methane or other gas ignition or explosion has occurred which resulted in death or serious injury at any time during the previous five years, or (C) the Secretary believes has especially hazardous conditions.

(4) Establishes the procedural mechanism for finding dangerous conditions or violations of standards in mines, and for the issuance of notices and orders—including withdrawal orders—relative to such.

(5) Provides administrative and judicial review procedures.

(6) Establishes mandatory civil penalties of up to \$10,000 for operator violations of a standard or any other provision of the Act. Establishes a civil penalty of up to \$250 to

a miner who wilfully violates specified provisions of the Act (smoking, carrying of matches, etc.). Provides criminal penalties for any operator who wilfully violates a standard or knowingly violates or fails or refuses to comply with orders. Upon conviction, such operator shall be punished by a fine of not more than \$25,000 and/or imprisonment for not more than one year for the first conviction, and for subsequent convictions, by a fine of not more than \$50,000 and/or imprisonment for not more than five years. Also establishes similar civil and criminal penalties to any director, officer, or agent of a corporate operator for like violations, failures, or refusals. Criminal penalties are also provided for false statements, representations, or certifications relative to the Act, and for the introduction and delivery in commerce of any equipment for use in a coal mine which is falsely represented to be in compliance with the provisions of the Act.

(7) Provides for pay guarantees to miners idled by a withdrawal order.

(8) Prohibits the discharge or other discrimination against a miner for exercising rights under the Act.

* * * * *

FEDERAL COAL MINE HEALTH AND SAFETY ACT—CONFERENCE REPORT

Mr. WILLIAMS of New Jersey. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal-mining industry of the United States. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of December 16, 1969, pp. H12553-H12572, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. WILLIAMS of New Jersey. Mr. President, on October 2, 1969, this body passed a coal mine health and safety law by a record unanimous vote of 74 to zero. Less than 1 month later, the House passed the coal mine bill by a vote of 389 to 4. Last night, at 10:30 p.m., our colleagues on the House side accepted the conference report by a vote of 333 to 12. Today, I submit to this body, the report of the committee of conference so that we may send this bill without any delay on to the President for signature and final enactment into law.

Mr. President, all 12 Senate conferees have signed the report which is in the nature of a substitute.

Before I proceed, I wish to bring to the attention of my colleagues the most gratifying complete cooperation I have received on this bill from all Senate conferees. The ranking majority member (Mr. RANDOLPH) and the ranking minority member (Mr. JAVITS) have worked

B. If a miner worked ten years in such a mine and died of a respirable disease, there will be a rebuttable presumption that his death was due to pneumoconiosis.

C. If a miner is suffering from, or dies from, an advanced irreversible stage of pneumoconiosis, it will be irrebuttably presumed his death or total disability was due to pneumoconiosis.

(4) Claims filed before December 31, 1972, will be processed by the Secretary of Health, Education, and Welfare in a manner similar to that he uses for processing claims for disability under the Social Security Act. If the claim is filed after December 31, 1971, benefits under that claim may be paid only until January 1, 1973. Claims filed on or after January 1, 1973, will be processed under the appropriate State workmen's compensation law if the Secretary of Labor has determined it has adequate coverage for pneumoconiosis. He will, generally speaking, determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973. Where the applicable State workmen's compensation law does not provide adequate coverage for pneumoconiosis, the persons entitled to benefits will have their claims processed (so far as applicable) under the terms of the Longshoremen's and Harbor Workers' Compensation Act.

(5) In the case of claims filed on or after January 1, 1973, no payments of benefits may be made after seven years after the date of enactment of the Act.

TITLE V—ADMINISTRATION

(1) Provides authorization for appropriations for health and safety research to be carried out by the Secretary of Health, Education, and Welfare and the Secretary, respectively.

(2) Requires the Secretary to expand programs for the education and training of operators, agents, thereof, and miners in accident-control, healthful working conditions, and in the use of coal mining equipment and techniques.

(3) Provides for economic assistance to any small business concern operating a coal mine to meet the requirements imposed by the Act. Such assistance shall be given by the Small Business Administration.

(4) Specifies qualifications and training requirements for employees of the Secretary; particularly inspectors.

TITLE IV—BLACK LUNG BENEFITS

(1) Provides for the payment of benefits for death or total disability due to pneumoconiosis.

(2) Coal miners and former coal miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled Federal employee in grade GS-2 would be entitled at the time of payment. This represents approximately \$136 per month. Widows of coal miners and former coal miners whose deaths are due to pneumoconiosis or whose deaths occurred while receiving total disability benefits, receive benefits at the rate prescribed for totally disabled miners. The rates prescribed above are increased for dependents at the rate of 50 percent for one dependent (widow or child), 75 percent for two dependents, and 100 percent for three or more dependents. The benefits for miners and widows will be reduced on account of payments under the workmen's compensation, unemployment compensation, or disability insurance laws of the State and, in the case of miners only, on account of excess earnings, as provided under the Social Security Act for benefits payable under that Act.

(3) The following presumptions are used in determining entitlement:

A. If a miner who is suffering from pneumoconiosis was employed for 10 years or more in an underground coal mine, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

Health, Education, and Welfare, within 6 months after enactment.

8. Establish and publish proposed mandatory health standards re: noise (Sec. 206), both secretaries, within 6 months after enactment.

9. Prescribe manner for testing noise level at a coal mine (Sec. 206), Secretary of Health, Education, and Welfare, within 6 months after enactment.

10. Initial approval of roof-control plans (Sec. 302(a)), Secretary of Interior, 5 months after enactment.

11. Prescribe minimum air quantity and velocity reaching working face (Sec. 303(b)), Secretary of Interior, within 6 months after enactment.

12. Prescribe maximum respirable dust level for intake aircourses (Sec. 303(b)), Secretary of Interior, within 15 months after enactment.

13. Initial approval of ventilation and methane and dust control plan (Sec. 303(o)), Secretary of Interior, within 6 months after enactment.

14. Initial approval of plan of emergency action when mine fan stops (Sec. 303(t)), Secretary of Interior, within 5 months after enactment.

15. Conduct survey of availability of permissible electric face equipment and publish same (Sec. 305(a)(5)), Secretary of Interior, within 12 months after enactment.

16. Prescribe procedures and safeguards for making repairs on high-voltage lines (Sec. 307(d)), Secretary of Interior, within 3 months after enactment.

17. Establish minimum requirements for firefighting equipment (Sec. 311(a)), Secretary of Interior, 3 months after enactment.

18. Prescribe specifications for fire suppression devices (Sec. 311(e)), Secretary of Interior, within 15 months after enactment.

19. Require that devices for warning of fires be installed on belt conveyors. (Sec. 311(g)); Secretary of Interior, within 5 months after enactment.

20. Prescribe schedule for monthly fire suppression devices on belt haulageways (Sec. 311(g)), Secretary of Interior, 3 months after enactment.

21. Prescribe illumination standards (Sec. 317(e)), Secretary of Interior, within 12 months after enactment.

22. Establish methane limits in or on surface coal handling facilities (Sec. 317(h)), Secretary of Interior, within 15 months after enactment.

23. Prescribe minimum standards for emergency medical aid, Secretary of Health, Education, and Welfare, within 3 months after enactment.

24. Prescribe improved methods re: providing adequate oxygen (Sec. 317(o)), Secretary of Interior, after operative date of Title III.

25. Establish procedures for issuing permits re: hazards from cave-ins of tunnels under water (Sec. 317(r)), Secretary of Interior, prior to operative date of title III.

26. Propose standards for preventing explosion from gases other than methane and for testing such gases (Sec. 317(t)), Secretary of Interior, within 15 months after enactment.

27. Prescribe minimum Federal standards for "certified" or "registered" persons (Sec. 318(a)), Secretary of Interior, prior to operative date of title III.

28. Establish requirements for persons qualified as electricians (Sec. 318(b)), Secretary of Interior, prior to operative date of title.

29. Establish specifications re: permissible (Sec. 318(c)), Secretary of Interior, prior to operative date of title.

30. Prescribe procedures for field testing and approval of electric face equipment (Sec. 318(i)), Secretary of Interior, prior to operative date of title.

31. Study of ways to coordinate Federal and State activities in the field of coal mine

TIMETABLE OF ACTIONS BY SECRETARY OF THE INTERIOR AND SECRETARY OF HEALTH, EDUCATION, AND WELFARE

[Action and due date after enactment]

1. Publish proposed health and safety standards for surface coal mines (Sec. 101(i)), Secretary of Interior, 15 months after enactment.

2. Publish proposed health and safety standards for surface areas of underground coal mines. (Sec. 101(i)), Secretary of Interior, 15 months after enactment.

3. Publish all interpretations; regulations, and instructions not inconsistent with this Act (Sec. 101(j)), Secretary of Interior, immediately.

4. Appoint separate advisory committee on coal mine health and safety research (Sec. 102), both secretaries, 3 months after enactment.

5. Prescribe methods, locations, intervals and manner of sampling respirable dust (Sec. 202(a)), both secretaries, jointly, 2 months after enactment.

6. Establish time schedule for reducing respirable dust concentrations below established levels, Secretary of Health, Education, and Welfare, beginning 12 months after enactment.

7. Prescribe specifications for taking chest roentgenograms (Sec. 203(a)), Secretary of

health and safety (Sec. 512), Secretary of Interior, as soon as practicable after enactment.

Mr. WILLIAMS of New Jersey. Mr. President, one of the major issues in conference concerned the program of disability benefits to victims of black lung and their widows. As I am sure my colleagues will recall, during the debates on this bill, the Senate, by a unanimous rollcall vote of 91 to 0, added to the health and safety bill a temporary black lung benefits program. It was a program which called for an initial 1-year period of full Federal funding, and 2 years of Federal-State matching, under standards established by the Secretary of Health, Education, and Welfare. The House version was drastically different in that it authorized benefits to be paid to any eligible claimant who filed his claim within the next 7 years. All these payments were to be funded from the Federal Treasury.

The bills had one major concept in common. They both recognized that the States, with rare exception such as Pennsylvania, had sorely neglected to provide any effective benefit program for the ruined victims of this dreadful disease.

Furthermore, both bills to correct this neglect, provided that Federal standards would apply to determination of eligibility for benefits.

The Senate conferees has some degree of success in getting the House to recede from the full Federal funding and complete State exclusion from a disability benefits program. I say some degree of success. Under the House amendment the Federal Treasury would have borne the responsibility for claims filed within 7 years. Although the House would not completely recede to the Senate provision, it did agree to a program under which the Federal Government would accept the financial burden for the 50,000 miners who have already been disabled and are no longer employed, or should be no longer forced to struggle through another day's work in the mines. Miners or widows filing claims within the first 2 years, would be paid benefits by the Federal Government at an average of less than \$50 a week. For persons disabled thereafter, the burden would fall on the State workmen's compensation program unless the State refused to accept the responsibility. If the State chooses not to fulfill this obligation to the disabled coal miners, the employers would be required to accept the obligation in accordance with the procedures of the Longshoremen's and Harbor Workers' Compensation Act.

I believe that this is a fair and responsible provision. I believe that this bill is a most effective and responsible piece of legislation offering promise and hope to our Nation's coal miners.

I urge my colleagues to adopt the conference report.

For the benefit of my colleagues, I ask unanimous consent to include at this point a complete section-by-section analysis of the conference report.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

FEDERAL COAL MINE HEALTH AND SAFETY ACT—SECTION-BY-SECTION ANALYSIS AND EXPLANATION

The following analysis and explanation discusses all the provisions of the Federal Coal Mine Health and Safety Act of 1969 as agreed to by the Conference Committee.

Section 1

This section cites the act as the "Federal Coal Mine Health and Safety Act of 1969."

Section 2. Findings and purpose

This section makes certain congressional findings relative to the need for, and desirability of, legislation to improve the health and safety of the Nation's coal miners. It emphasizes the fact that the operators of coal mines, with the assistance of the miners, have the primary responsibility to prevent accidents and occupational disease. It declares that the purpose of the act is to establish immediately comprehensive interim mandatory health and safety standards, to require that improved standards be developed, to require compliance by the operators and the miners, to aid the States in developing State health and safety programs, and to improve present research and training programs in this field. Thus, the overall objective of the Act is to eliminate unsafe and unhealthy conditions and practices and to provide benefits for miners and dependents afflicted by occupationally caused respiratory disease and, in accomplishing this objective, it is the intention of the conferees that it be construed liberally.

Section 3. Definitions

This section defines various terms used in the act.

The term "Secretary" means the Secretary of the Interior or his delegate.

The definition of an "operator" is designed to be as broad as possible to include any individual, organization, or agency, whether owner, lessee or otherwise, that operates, controls, or supervises a coal mine, either directly or indirectly. It does not, however, include persons whose primary responsibility is to run the mine or supervise employees such as a superintendent or foreman unless such persons meet the statutory definition of operator. These are the agents of the operator.

The definition of a "coal mine" is broad and intended to cover all areas and facilities of underground and surface, including auger, coal mines.

The definition of an "imminent danger" is broadened from that in the 1952 act in recognition of the need to be concerned with any condition or practice, naturally or otherwise caused, which may lead to sudden death or injury before the danger can be abated. It is not limited to just disastrous type accidents, as in the past, but all accidents which could be fatal or nonfatal to one or more persons before abatement of the condition or practice can be achieved.

The definition of an "accident" includes, but is not limited to, such occurrences as mine fires, ignitions, explosions, roof falls, or inundations. It also includes any other occurrence which causes injury, whether or not lost time results, or death to one or more persons.

Section 4. Mines subject to act

This section establishes that all coal mines the operations or products of which affect commerce and each operator and every miner of such mine are subject to this act. It applies to surface, as well as underground coal mines which affect commerce, including those coal mines which provide coal to the United States under contract or other agreement and to coal mines located on Federal lands.

Section 5. Interim compliance panel

This section establishes a five-member Government panel to consider applications

for noncompliance permits under sections 202 and 305 of the act. The section authorizes the Panel to utilize the services, personnel and other assistance of the Departments of Health, Education, and Welfare, Interior, Commerce, and Labor in carrying out its functions without regard to any limitations in other statutes relative to providing such services, personnel, or other assistance or the funding of such assistance and to appoint hearing examiners to carry out hearings under those sections in accordance with section 554 of title 5 of the United States Code. Decisions of the Panel shall be subject to review under section 106. The Panel will continue in existence until completion of its functions under those two sections and then will terminate automatically. The Panel shall make annual reports to the Secretary for the Congress.

TITLE I.—GENERAL

Section 101. Health and safety standards; review

Subsection (a) of this section requires the Secretary, in the manner described later, to develop, promulgate, and revise improved mandatory safety standards for the protection of life and the prevention of injuries in coal mines subject to the act. He is also required to promulgate the mandatory health standards which are transmitted to him by the Secretary of Health, Education, and Welfare, as hereafter described. It is noted that responsibility for establishing any health standard under this Act rests with the Secretary of Health, Education, and Welfare.

Subsection (b) provides that no mandatory health or safety standard may be so promulgated which reduces the protection afforded miners below that afforded by the interim standards contained in titles II and III of this Act or below standards subsequently promulgated under this section.

Subsection (c) provides that when he develops mandatory safety standards, the Secretary must consult with other Federal agencies, representatives of States, appropriate representatives of coal mine operators and miners, advisory committees appointed for that purpose, and other interested persons. In developing safety standards, in addition to the attainment of the highest degree of safety protection for the miners, other considerations should be the latest available scientific data in the field, technical feasibility of the standards, and experience gained under this and other safety statutes.

Subsection (d) of this section directs the Secretary of Health, Education, and Welfare to develop and revise improved mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners in the same manner as safety standards proposed by the Secretary of the Interior. When he has developed or revised a mandatory health standard, the Secretary of Health, Education, and Welfare will transmit it to the Secretary of the Interior who will publish it in the Federal Register as a proposed mandatory health standard.

Subsection (e) requires the Secretary to publish proposed mandatory health and safety standards in the Federal Register and to allow interested persons at least 30 days to submit written data or comments. Thereafter, unless an objection is filed as provided in subsection (f), the Secretary may, in the case of a safety standard, after consideration of all the data and comments which have been submitted, promulgate the standard with any modifications he deems appropriate. In the case of a health standard, unless an objection is filed, the Secretary of Health, Education, and Welfare may, upon the expiration of such 30-day period, and after consideration of all relevant data and comments transmitted to him, direct the Secretary to promulgate the standard with such modification as the Secretary of Health, Education, and Welfare may deem appropriate.

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Subsection (b) provides that no mandatory health or safety standard may be so promulgated which reduces the protection afforded miners below that afforded by the standards contained in titles II and III of the act. It is noted that responsibility for establishing any health standard under this Act rests with the Secretary of Health, Education, and Welfare.

Subsection (c) provides that when he develops mandatory safety standards, the Secretary must consult with other Federal agencies, representatives of States, appropriate representatives of coal mine operators and miners, advisory committees appointed for that purpose, and other interested persons. In developing safety standards, in addition to the attainment of the highest degree of safety protection for the miners, other considerations should be the latest available scientific data in the field, technical feasibility of the standards, and experience gained under this and other safety statutes.

Subsection (d) of this section directs the Secretary of Health, Education, and Welfare to develop and revise improved mandatory health standards for the protection of life and the prevention of occupational diseases of coal miners in the same manner as safety standards proposed by the Secretary of the Interior under subsection (c). When he has developed or revised a mandatory health standard, the Secretary of Health, Education, and Welfare will transmit it to the Secretary of the Interior who shall publish it in the Federal Register as a proposed mandatory health standard. This subsection clearly delineates the health responsibility of the Secretary of Health, Education, and Welfare from the safety responsibilities of the Secretary of the Interior.

Subsection (e) requires the Secretary to publish proposed mandatory health and safety standards in the Federal Register and to allow interested persons at least 30 days to submit written data or comments. Thereafter, unless an objection is filed as provided in subsection (f), the Secretary may, in the case of a safety standard, after consideration of all the data and comments which have been submitted, promulgate the standard with any modifications he deems appropriate. In the case of a health standard, unless an objection is filed, the Secretary of Health, Education, and Welfare may, upon

the expiration of such 30-day period, and after consideration of all relevant data and comments transmitted to him, direct the Secretary to promulgate the standard with such modification as the Secretary of Health, Education, and Welfare may deem appropriate.

Subsection (f) provides that during the period fixed for submission of written data and comments as described in the preceding subsection any interested person may file written objection to the proposed standards stating the ground therefore and requesting a public hearing. The Secretary will then publish in the Federal Register a notice specifying the proposed standard to which objections have been filed and hearing requested.

Subsection (g) provides that the appropriate Secretary will promptly hold a public hearing. Within 60 days after the hearing, the appropriate Secretary will make public his findings of fact in the Federal Register. The Secretary may promulgate the mandatory safety standard with such modifications as he deems appropriate. The Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the health standard with any modifications the Secretary of Health, Education, and Welfare deems appropriate. If either Secretary determines after hearings that a proposed standard should not be promulgated or should be modified, he must publish his reasons therefor in the Federal Register.

The requirement of publication under this subsection serves to emphasize the point that it is the objective of this Act that both Secretaries take appropriate steps to insure that actions taken under this Act will be as public as possible.

Subsection (h) provides that mandatory standards promulgated as described above will be effective upon publication in the Federal Register unless the appropriate Secretary specifies a later date.

Subsection (i) requires the Secretary to publish proposed mandatory health and safety standards for surface coal mines and additional standards for surface work areas of underground coal mines within 12 months after the enactment of the act.

Subsection (j) provides that existing interpretations, regulations, and instructions of the Secretary and the Director of the Bureau of Mines under the 1962 act and other statutes would continue in effect until changed or modified, so long as they are not in conflict with this act. These relate to administrative instructions, interpretations, and regulations, some of which are now contained in the Federal Register. Also, there are some regulations, such as those relating to permissibility of equipment, that must continue until changed to avoid administrative problems. In some cases, items on permissibility and fire protection would be modified or superseded under this act. These instructions, interpretations, and regulations are to be published for purposes of consolidating them in one place and for information to the miners and operators.

Subsection (k) requires that copies of proposed standards and regulations be provided to the operators and the miners.

Section 102. Advisory committees

This section directs the Secretary and the Secretary of Health, Education, and Welfare to appoint two separate mandatory advisory committees in the field of coal mine health and safety research. Both committees would have Government, as well as non-Government members. It would also authorize the appointment of other advisory committees on other matters. Members of advisory committees who are not governmental employees will be paid on a per diem basis at a rate not in excess of that prescribed for grade GS-18 in the general schedule. The chairman and the majority of non-Government members must have no interests in the industry.

Section 103. Inspections and investigations

Subsection (a) of this section provides that there shall be frequent inspections and investigations in coal mines by authorized representatives of the Secretary. These inspections and investigations shall be made for the following purposes:

(1) Obtaining, utilizing, and disseminating information relating to health and safety conditions, causes of accidents and causes of diseases and physical impairments originating in coal mines;

(2) Gathering information with respect to mandatory 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 or with any notice, order or decision issued under this title.

For purposes of determining whether an imminent danger exists in a mine and determining whether or not there is compliance with a mandatory health and safety standard or with a notice, order or decision issued under the title, no advance notice of the inspection shall be provided to any person, and the representatives of the Secretary are required to make inspections of each underground coal mine throughout its entirety at least four times a year.

Subsection (b) of this section provides that the Secretary or his authorized representatives shall have a right of entry to a coal mine for the purpose of making inspections or investigations. It provides the same authority for the Secretary of Health, Education, and Welfare, or his authorized representative for the purpose of developing improved mandatory health standards. It also provides that the provisions of the act relating to investigations and records shall be available to the Secretary of Health, Education, and Welfare, in carrying out his functions under the act.

Subsection (c) authorizes the Secretary, by agreement, to utilize the services, personnel, and facilities of any Federal agency in carrying out the act. This provision does not prohibit the Secretary from contracting for the services of State agencies. However, the Secretary may not delegate his enforcement responsibilities to State agencies and personnel.

Subsection (d) provides the Secretary with various procedures and powers necessary in connection with the investigation of accidents or other matters relating to health and safety conditions at a mine.

Subsection (e) requires the operator of a coal mine in which an accident occurs to notify the Secretary and to prevent the destruction of evidence relating to the cause thereof. The Secretary or his authorized representative is required to take appropriate action to protect the life of any person where an accident occurs in a coal mine and rescue and recovery work is necessary. In such a case he may, if he deems it appropriate, supervise and direct rescue and recovery activity.

Subsection (f) authorizes representatives of the Secretary to issue appropriate orders to insure the safety of persons in a coal mine in which an accident has occurred. The operator of such a mine must obtain the approval of such representative 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.

Subsection (g) makes it clear that if the miners in a mine have reasonable grounds to believe that a standard is being violated or an imminent danger exists, their representative has a right to an immediate special inspection by notifying the Secretary or his delegate in the quickest fashion possible, either orally or in writing. Such notification, if oral, must, however, be reduced to writing and sent to the Secretary and a copy provided the operator, except that such copy

shall not contain the names of the miners or their representative if the person giving the notice so requests. The inspector need not await the receipt of such written notice. As used here and throughout the Act, the term "representative of the miners" includes any individual or organization that represents any group of miners at a given mine and does not require that the representative be a recognized representative under other labor laws. A lawyer for the miners could also be a representative.

Subsection (h) authorizes representatives of the miners to accompany the authorized representatives of the Secretary on his inspection of a coal mine. This provision shall not, however, conflict with the prohibition against advance notice of inspections.

Subsection (i) requires irregular spot inspections every five working days at mines where the Secretary finds certain hazards.

Section 104. Findings, notices, and orders

Subsection (a) provides that if an inspector finds the existence of an imminent danger in any mine, underground or otherwise, he must immediately issue a withdrawal order to the operator requiring him to withdraw the men from the mine or area thereof affected and prevent entrance by anyone to that mine or area, except those miners necessary to abate the hazard. Withdrawal must be to a safe area. The order remains in effect until an inspector determines that there is no danger. The imminent danger may be due to a violation of a mandatory safety standard or some other cause not covered by a standard, including natural causes. It should be emphasized at this point that the operator has a duty under the Act to withdraw persons from a mine or area thereof affected by an imminent danger without waiting for an inspector to order it.

Subsection (b) provides authority for an inspector to issue notices of violations of standards, providing time to abate the violation. Where abatement is not completed within the time prescribed, the inspector must issue a withdrawal order to continue in effect until the violation is abated, as determined by the inspector. Notices should be issued as promptly as possible after the violation is observed whether or not the violation is connected before the notice is issued.

Subsection (c) provides that if an inspector finds a violation of a health or safety standard that does not cause an imminent danger, but is of such a nature as could significantly and substantially contribute to any mine safety or health hazard, and if he finds that the violation is due to an unwarrantable failure to comply with the standard, he includes the finding in the notice issued by him under subsections (b) or (i) of this section. If the inspector finds, at any time within 90 days after that notice is issued, another violation which is also due to an unwarrantable failure of the operator to comply, he must issue a withdrawal order for the affected area. Once such order is issued and an inspector finds other unwarrantable failure violations, he must continue to issue such orders until an inspection finds no similar violations.

The term "unwarrantable failure" means the failure of an operator to abate a violation he knew or should have known existed.

Subsection (d) enumerates the persons permitted in an area subject to a withdrawal order.

Subsections (e) and (f) prescribe the contents of a notice or order issued by an inspector and require that it be given to the operator or his agent.

Subsection (g) authorizes an inspector to modify or terminate a notice or order except an order issued under subsection (h).

Subsection (h) provides that if an inspector finds that health or safety conditions exist in a mine which, while they do not create a problem of an imminent danger,

are of such serious nature that it is reasonable to assume that an imminent danger will result soon, and that such conditions cannot be satisfactorily corrected because of a lack of available technology, he must notify the operator of the mine or his agent of these conditions and file a copy thereof, including his findings, with the Secretary and with the representatives of the miners in that mine. On receipt of this notice, the Secretary must cause a special investigation to be made which could include another inspection and which would include an opportunity for a hearing. Once the investigation is completed, the Secretary then would make findings of fact and issue a decision either canceling the notice or ordering a withdrawal of persons from the areas affected and that such withdrawal continue until such time as the Secretary, after a hearing, determines that the conditions have been abated. The hearings under this subsection are subject to section 554 of title 5 of the United States Code and decisions of the Secretary are subject to judicial review.

This provision is designed to meet situations that may arise in the future where a particular mine or section of a mine is being operated under conditions that are considered hazardous to the health or safety of the miner, but not of the type that would require the issuance of an imminent danger order. There may be, for example, mines or areas thereof where such situations may exist or will exist as mining continues deeper and deeper below the earth's surface. Such deep mining may present considerable health or safety hazards for which there is no available technology to overcome them.

Subsection (i) provides that when the samples of respirable dust taken and analyzed as required by section 202(a) show that the dust level exceeds the applicable health standards, the Secretary or his delegate without an inspection, or an inspector during an inspection, must find a reasonable time within which to take corrective action to reduce the concentration of respirable dust to the miners in the area of the mine in which such standard was exceeded and must issue a notice fixing such time for the abatement of the violation. During that time, the operator of the mine is required to cause samples of respirable dust to be taken as described in section 202(a) in the affected area during each production shift. If, upon the expiration of the prescribed period of time, or an extension thereof, the violation has not been abated, the miners shall be withdrawn from the affected area until there is reason to believe, based on actions taken by the operator, that the applicable dust standard will be complied with when production is resumed. Once a withdrawal order is issued, the Secretary, on request of the operator, must dispatch knowledgeable employees of the Department of the Interior to assist the operator in reducing the dust level, if such knowledgeable persons are available. Such persons may require the operator to take such actions as they deem appropriate to reach the objective of controlling the dust.

Section 105. Review by the Secretary

Subsections (a), (b), and (c) establish a procedure for reviewing administratively withdrawal orders issued by an inspector, modifications or terminations of such orders by an inspector and the reasonableness of the time limits in notices, upon request made by an operator or representative of the miners. Upon making the request, the Secretary must undertake a special investigation to ascertain the facts which must include an opportunity for a public hearing pursuant to 5 U.S.C. 554. Once completed, the Secretary must make findings of fact and issue a decision promptly. The filing of an application for such review cannot operate as a stay of any order or notice.

Subsection (d) authorizes the Secretary to grant temporary stays of orders, but not

notices, in nonimminent danger cases after a hearing and a finding that there is substantial likelihood that the applicant will be successful and most importantly upon a finding that such relief will not adversely affect the miners health and safety.

Section 106. Judicial review

This section provides for review of any order or decision of the Secretary or the Interim Compliance Panel, except an order or decision under section 109(a), by the court of appeals for the circuit where the mine is located or the Court of Appeals of the District of Columbia by petition filed by the aggrieved operator or representative of the miner within 30 days from the date of issuance of the decision. Such review can only be obtained after the appellant exhausts all available administrative remedies. The court must hear the petition on the record before the Secretary or Panel and their findings, under the substantial evidence rule, will be conclusive. The court's decision may be appealed to the Supreme Court.

Subsection (c) authorizes the court to grant stays in the case of any appeal from a decision of the Secretary, except one involving an imminent danger order, and in the case of any decision of the Panel after a hearing and the making of findings relative to the likelihood of the appellant prevailing and, in the case of a decision by the Secretary, findings relative to the health and safety of the miners.

Subsections (e) and (f) authorize the Department of the Interior to use its attorneys in connection with such appeals. The commencement of proceedings for judicial review will not unless so ordered by the court operate as a stay of the decision by the Secretary of the Panel.

Section 107. Posting of notices and orders

Subsection (a) of this section requires that there be maintained at each coal mine an office and a bulletin board near the entrance of the mine where notices may be posted which are required by law. Any notice, order or decision required by the act to be given to an operator may be delivered to the office of the mine and a copy shall then be immediately posted on the bulletin board by the operator.

Subsection (b) requires the Secretary to cause a copy of any notice, order or decision required by this title to be given to the operator to be mailed immediately to the representative of miners in the affected mine and to the public official or agency of the State concerned.

Subsection (c) of this section permits the Secretary to deliver any notice, order or decision to an agent of the operator of a mine, and the agent is required to take appropriate measures to insure the compliance with the notice, order or decision.

Subsection (d) requires each mine operator to file with the Secretary, and keep current, the name and address of the mine and the name and address of the person who controls or operates the mine. Each operator is required to designate an official at such mine as the principal officer in charge of health and safety at the mine. Where the mine is subject to control of a person not directly involved with its daily operation, there shall be filed with the Secretary the name and address of both the person who controls the mine and of the person having overall responsibility for the health and safety program at the mine.

Section 108. Injunctions

This section authorizes the Secretary using attorneys appointed by him to institute civil action for relief, including permanent or temporary injunctions, restraining orders, or other appropriate orders, in the U.S. district court in which a coal mine is located or in which the operator has his principal office, in a number of specified instances. These

civil actions will be brought whenever such operator or his agent—

(1) Violates an order or decision issued under this Act;

(2) Interferes with, hinders, or delays the Secretary or his authorized representative or the Secretary of Health, Education, and Welfare, or his authorized representative, from carrying out the act;

(3) Refuses to admit such representative to the mine;

(4) Refuses to permit inspection of the mine;

(5) Refuses to furnish information requested by the Secretary or the Secretary of Health, Education, and Welfare; and

(6) Refuses to permit access to and copying of records.

It is provided that temporary restraining orders may be issued only in accordance with Rule 65 of the Federal Rules of Civil Procedure, except that the time limit in such orders, when issued without notice, shall be no more than seven days. In any action to enforce an order or decision, the substantial evidence rule will apply.

Section 109. Penalties

Subsection (a) of this section provides that the operator of a coal mine in which a violation occurs of a mandatory health or safety standard, or who violates any provision of this act, shall be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense. In fixing the amount of the penalty, the Secretary is required to consider the operator's history of previous violations, the appropriateness of the penalty to the size of the business, its effect on the operator's ability to continue in business, the gravity of the violation, whether the operator was negligent, and the demonstrated good faith in rapidly complying after notification of violation. The penalties will not be finally assessed pending the termination of all opportunities for review under this section. This subsection also makes a miner subject to a civil penalty of up to \$250 for any willful violation of any standard relating to smoking underground or the carrying of smoking materials, matches, or lighters underground.

The person must be given an opportunity to obtain a public hearing before an order assessing a penalty is issued. The commencement of any proceeding under this subsection, however, shall not stay any notice or order involving a violation.

The subsection also provides that where a person fails to pay a civil penalty, the Secretary may institute a civil action in a district court to collect the penalty. The court would hear the case de novo and determine all relevant issues, except issues of fact which were or could have been litigated before a court of appeals under section 106. This provision recognizes that the facts involved in the civil penalty may already have been fully litigated by the court of appeals under section 106 and should not be relitigated here. Also, in some cases, they could have been so litigated and were not. Upon the request of the respondent in the de novo proceeding, issues of fact not litigated under section 106 which are in dispute must be submitted to a jury and, on the basis of the jury's finding, the court would determine the amount of the penalty to be imposed. The court has jurisdiction to enter a judgment enforcing the order, or modifying it, or setting it aside, or remanding it to the Secretary.

Subsection (b) provides criminal penalties against an operator who willfully violates a standard or knowingly fails or refuses to comply with or violates an order or an order incorporated in a final decision issued under this act except decisions under subsection (a) of this section or section 110(b)(2) of this title. Upon conviction, the operator is subject

to a \$25,000 fine and 1 year imprisonment for a first violation, and a \$50,000 fine and 5 years imprisonment for subsequent violations.

Subsection (c) provides that when a corporate operator violates a standard or knowingly violates or fails or refuses to comply with an order or an order incorporated in a final decision this section would subject any director, officer, or agent of the corporation who knowingly authorized, ordered, or carried out such violation, failure or refusal to the above civil and criminal sanctions.

Subsection (d) provides that any person who knowingly makes a false statement or representation in any document filed or maintained in accordance with the provisions of this act or any mandatory health or safety standard of this act or any order or decision issued under the act shall be fined not more than \$10,000 or imprisoned not more than 6 months, or both.

Subsection (e) provides penalties against any person who knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment which is misrepresented as complying with this Act or with the Secretary's specifications or regulations.

Section 110. Entitlement of miners

Subsection (a) provides that, if a mine or a portion of a mine is closed by an order issued under section 104, the operator must pay all miners working during the shift when the order was issued who are idled by the order full compensation for the period they are idled but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all miners on that shift who are idled by the order will receive full compensation for the period they are idled but not for more than 4 hours of the shift. The section also provides a procedure for compensating miners idled due to withdrawal orders issued for unwarrantable failures to comply with a health or safety standard. In such cases, the Secretary would, after a hearing, issue an order requiring that all miners idled by such order be compensated by the operator at their pay scale for such idle time, or for seven days, whichever is less. The order is subject to judicial review. Whenever an operator violates or refuses to comply with an order issued under section 104, all miners at the affected mine who would be withdrawn or prevented from entering the mine as a result of such order shall be paid full compensation, in addition to pay received for work performed after the order was issued, for the period beginning when the order was issued and ending when the order is complied with, vacated, or terminated.

Subsection (b) prohibits discrimination against miners for having exercised their rights under this Act or for having participated, in any way, in the enforcement of the Act. The subsection provides procedures for obtaining reinstatement and back pay for miners discharged by operators and other remedies for miners discriminated against.

Section 111. Reports

All accidents in coal mines, including unintentional roof falls, except in abandoned panels or inaccessible or unsafe areas must be investigated by the Operator or his agent to determine the cause and the means of preventing a recurrence. Records will be kept and the information shall be made available to the Secretary and the appropriate State agency. These records will be open for inspection and include manhours worked and cover periods determined by the Secretary.

Every operator is required to establish and maintain such records and to make such reports and to provide such information as the Secretary may reasonably require to permit him to perform his functions under the Act. The Secretary is authorized to compile, ana-

lyze, publish reports or information so obtained. It is also provided that all records required under the Act will be available for public inspection, except as otherwise provided. This provision is not intended to abrogate any medical privilege which may exist regarding X-ray or other medical examinations under this Act.

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tion of this title to miners who are or were employed in underground coal mines. The parameters of the term "total disability" will be established from time-to-time by the Secretary of Health, Education, and Welfare, but he must not establish more restrictive criteria for determining disability than the criteria applicable under section 223(d) of the Social Security Act, as amended, for purposes of disability under that Act. It is expected that initially this criteria will be followed. As time goes on, the Secretary may develop more liberal criteria consistent with the purpose of this title.

Part B—Claims for Benefits Filed on or Before December 31, 1972.

Section 411

Subsection (a) directs the Secretary of Health, Education, and Welfare to pay benefits under this part to miners totally disabled due to pneumoconiosis and to widows of deceased miners whose death was due to this disease, in accordance with regulations promulgated by the Secretary.

Subsection (b) directs the Secretary to prescribe by regulation standards for determining under subsection (a) whether a miner is totally disabled due to this disease and whether his death was due to it. Such regulations must be promulgated finally in the Federal Register as soon as possible after enactment, but no later than 3 months after enactment. Such regulations shall be revised as needed.

Subsection (c) establishes certain presumptions in connection with subsection (a). If a miner who is suffering from pneumoconiosis was employed for 10 years or more in one or more underground coal mines, there will be a rebuttable presumption that the pneumoconiosis arose out of such employment. If a miner or former miner worked ten years in such mines and died of a respirable disease, there will be a rebuttable presumption that his death was due to pneumoconiosis. If a miner or former miner is suffering from, or dies from, an advanced irreversible stage of pneumoconiosis, it is irrebuttably presumed that he is totally disabled and the total disability or death was due to pneumoconiosis.

Subsection (d) makes it clear that, in the event a person does not meet the requirements for any of the above presumptions, such person may still obtain benefit payments under subsection (a).

Section 412

Under subsection (a), miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled Federal employee in the first step of grade GS-2 would be entitled at the time of payment. Widows of miners whose deaths are due to pneumoconiosis or whose death occurred while receiving benefits under this part receive benefits at the rate prescribed for totally disabled miners. The rates prescribed above are increased for dependents at the rate of 50 percent for one dependent (widow or child), 75 percent for two dependents, and 100 percent for three or more dependents.

Under subsection (b), the benefits for miners or their widows, will be reduced by an amount equal to payments under any workmen's compensation, unemployment compensation, or State disability insurance laws. The amount of such payment would also be reduced on account of excess earnings of a miner, but not his widow, as provided under section 203 (b) through (e) of the Social Security Act of the amount paid were a benefit payable under section 202 of such act.

Subsection (c) provides that such benefits payable shall not be deemed to be income for purposes of the Internal Revenue Code of 1954.

Section 413

Subsection (a) requires that, except as provided in Section 414, benefit claims under this part must be filed on or before December 31, 1972, to be eligible for payments. Once benefits are paid, however, on account of total disability and the miner dies, the widow will continue to receive such benefits.

Subsection (b) provides that the Secretary shall utilize, to the greatest extent possible and consistent with the purposes of this part, the personnel and procedures used to determine total disability under Section 223 of the Social Security Act, as amended. All other eligibility factors, such as, but not limited to age, required earnings shall be ignored. The purpose of this subsection is to use established machinery for the determination of total disability but in no way to be construed as imposing requirements as to quarters of earnings, age limitations, etc. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims.

Subsection (c) requires that claimants also file under the applicable State workmen's compensation law before, or simultaneous with, filings under this part. This requirement, however, shall not apply in cases where the Secretary finds that such filing would be futile because the period within which a claim under the State law may be filed has expired or because pneumoconiosis is not compensable under the State law or in any other case in which, he finds, such filing to be futile.

Section 414

Subsection (a) provides that benefit claims under this part for total disability must be filed on or before December 31, 1972, and death claims must be filed within 6 months after death of the miner, or by December 31, 1972, whichever is later. Thus, where a miner who is totally disabled due to pneumoconiosis and eligible for benefits later dies, his widow continues to receive such benefits as provided in section 412 even though death occurred after December 31, 1972.

Subsection (b) requires that if a claim is filed after December 31, 1971, but before December 31, 1972, the claimant can receive benefits through to December 31, 1972, under this part.

Subsection (c) provides that benefits under this part shall not be paid for any period of disability occurring prior to the date a claim is filed. However benefits accrue from the date the claim is filed—not the date it is approved.

Under subsection (d), no benefit payments shall be made to residents of any State which, after enactment, reduces to persons eligible under this program the benefits it pays under the laws of the State which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, and disability insurance, and which are funded in whole or in part by employer contributions. Benefit payments made under State programs funded by general revenues are not included in the maintenance of effort provision for the reason that they are not considered to be workmen's compensation, unemployment compensation, and disability insurance programs as such programs are generally understood. Any changes by a State in such payments or programs, including, but not limited to, the termination of such payments or programs in the case of persons eligible for benefits under this title, that are funded by general revenues subsequent to the date of enactment of this title shall not affect in any way payments under this title to eligible miners who are residents of such State.

Subsection (e) requires that benefits for widows under this part on account of death

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TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

Section 401

This section finds that there are a significant number of living coal miners who are totally disabled from pneumoconiosis arising out of employment in one or more underground coal mines; that there are a number of survivors of such miners whose death was due to this disease; and that few states provide benefits to such miners or survivors. It also provides that it is the purpose of this title to provide such benefits and to ensure that future adequate benefits are provided to coal miners and their dependents where disability or death occurs from such disease. It is intended that this title be construed in a manner that will assure accomplishment of this purpose and will provide benefit payments to the greatest number of eligible persons possible.

Section 402

This section defines various terms used in this title. "Pneumoconiosis" is defined to mean any chronic dust disease, whether in its advanced stages or not, of the lung, arising out of employment in one or more underground coal mines. It is anticipated that the disease will be determined by the best medical evidence possible, primarily x-rays. But pulmonary function tests, and other medical means may be used for diagnosis, as determined by the Secretary of HEW. The definition of a "miner" limits the applica-

of a miner shall be paid if benefits under part B were being paid prior to his death to the deceased miner because of total disability due to pneumoconiosis, or if the miner died prior to January 1, 1973.

Part C—Claims for Benefits After December 31, 1972.

Section 421

Subsection (a) requires that on and after January 1, 1973, pneumoconiosis disability and death claims must be filed under the applicable State workmen's compensation law, except that, during any period when miners or their widows are found not to be covered by a State's workmen's compensation law which provides adequate coverage for this disease, they shall be entitled to claim benefits under this part.

Subsection (b) provides for the listing by the Secretary of Labor of such State laws that provide adequate coverage for pneumoconiosis. He shall publish such list by October 1, 1972, in the Federal Register and from time to time thereafter. During any period such State law is not so listed, it shall not be deemed to provide such coverage. Generally speaking, the Secretary will determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973, under part B; that the claim for benefits as filed within 3 years of discovery of disease, there are in effect provisions with respect to prior and successor operators which are substantially equivalent to provisions contained in section 422(i), and there are other provisions as required by paragraph (F). The inclusion or failure to list a State's workmen's compensation law is subject to review in the U.S. court of appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia.

Section 422

Under subsection (a), during any period after December 31, 1972, when a State's workmen's compensation law is not so listed, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, except certain specified sections thereof, shall be applicable to each operator of an underground coal mine in that State, to the extent the Secretary determines them applicable, relative to claims for death or total disability benefits due to pneumoconiosis arising out of employment in such mine. The Secretary of Labor is also authorized to publish additional provisions by regulation, together with all or part of the applicable provisions of said Act other than those specifically excluded, when he believes such publication will facilitate the administration of this part and will insure that each such operator shall be liable for, and secure the payment of, benefits to eligible persons. The objective of this provision is to provide adequate flexibility in the Secretary of Labor in carrying out this provision.

Under subsection (b), the operator of an underground coal mine is made liable for benefit payments under this part in those States in which a State workmen's compensation law is not included on the list published by the Secretary of Labor.

Subsection (c) requires that during such period benefits must be paid by the operator to those persons eligible under section 412(a) of this title in accordance with the regulations promulgated by both Secretaries. However, except as provided under subsection 422(i), no such benefits are payable by such operator unless if the death or total disability due to pneumoconiosis arose in whole or in part while the miner was employed in a coal mine of the operator. It should be noted here that the term "operator" is defined in section 3 of the Act and that definition applies to this part.

Subsection (d) provides that benefits paid by an operator under this section must be paid monthly in the same amount specified in section 412(a).

Subsection (e) limits payments to claims for benefits during any period after January 1, 1973, but, in no event, for any period after 7 years after the enactment of this Act.

Subsection (f) provides that claims for benefits under this section must be filed within 3 years after discovery of total disability due to the disease, or in the case of death due to the disease, within 3 years from the date of death.

Subsection (g) requires that the benefits must be reduced by the amount of any compensation received under any Federal or State workmen's compensation law because of death or disability due to this disease, but does not affect medical benefits and related care as provided under such law.

Subsection (h) provides that the regulations of Health, Education, and Welfare promulgated under section 411 of this title will apply to claims filed under this section. In addition, this subsection directs the Secretary of Labor to establish standards by regulation, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular mine or mines, and he may establish standards for apportioning, where appropriate, liability for benefit payments under this section among more than one operator.

Subsection (i) provides that, during any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after the operative date of this title shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection would not relieve the prior operator of any liability under this section. Also, it would not affect whatever rights the later operator might have against the prior operator. The intent of this provision is to insure that operators cannot escape liability under this section or State workmen's compensation laws to pay benefits to miners previously employed by them by the device of transferring their mines and going out of business.

Section 423

Subsection (a) requires that, during any period when a State workmen's compensation law is not listed by the Secretary of Labor as provided in this part, the operator of an underground coal mine therein must secure payment of benefits for which he is liable under this part by qualifying as a self-insurer, or providing insurance of such benefits.

Subsections b & c set forth what every policy or contract of insurance must contain to meet the requirements of subsection (a) (2), and require that they cannot be cancelled prior to the date specified in the policy or contract for its expiration without at least a minimum of 30 days notice to the Secretary of Labor and to the operator.

Section 424

Under this section, if benefits are due under section 422 and an operator liable for them has not obtained security or has not paid the benefits within a reasonable period of time, the Secretary shall pay them to the eligible person and such operator shall be liable to the United States for any payment under this title. It is specifically intended that the right of subrogation established by this section includes both active and inactive miners and to widows to whom benefits are paid under either this section or part B of this title, to the extent such

miners and widows are entitled to benefits from any operator under section 422. If benefits are due under section 422 and there is no operator who was required to secure such payment, the Secretary shall pay them to the eligible person.

Section 425

Under this section the Secretary may utilize the services of State and local agencies in connection with the administration of section 422.

Section 426

Under this section, the Secretaries of Labor and Health, Education, and Welfare are authorized to issue regulations to carry out this title. Also, both Secretaries must submit annual reports to the Congress. Finally, this section makes it clear that if a State's workmen's compensation law provides greater benefits than those payable under this title, such law shall not be construed or held to be in conflict with this title.

TITLE V—ADMINISTRATION

Section 501. Research

Subsection (a) directs the Secretary and the Secretary of Health, Education, and Welfare to conduct comprehensive studies, experiments, and demonstrations in their respective areas of expertise in the field of coal mine health and safety.

Subsection (b) provides that activities under this section in the field of coal mine health will be carried out by the Secretary of Health, Education, and Welfare while activities in the field of coal mine safety will be carried out by the Secretary of the Interior.

Subsection (c) provides that in carrying out this section and the research under sections 301(b) and 502(a) the Secretaries may use the services of public and private agencies and individuals. All information developed under the authority of this act must be made available to the general public, unless an exception or limitation is made by the Secretary of the Interior or the Secretary of HEW in the public interest.

Subsection (d) directs the Secretary of Health, Education, and Welfare to conduct research and studies on the health conditions of nonminers working with or around coal products in areas outside coal mines.

Subsection (e) authorizes separate appropriations for health and safety research to both Secretaries.

Subsection (g) authorizes grants by the Secretary of Health, Education * * * act to experiment with new techniques and equipment to improve health and safety on a finding by the Secretary that granting the exception will not adversely affect the health and safety of the miners. Subsection (g) authorizes grants by the Secretary of Health, Education, and Welfare for research and experiments on respiratory equipment.

Section 502. Training and education

This section directs the Secretary to expand programs to educate and train operators and miners relative to health and safety, and it would direct that the Secretary provide technical assistance to coal mine operators in meeting the requirements of this act.

Section 502. Training and education

This section directs the Secretary, in coordination with the Secretaries of Labor and Health, Education, and Welfare, to make grants to States to conduct studies and to carry out plans designed to improve State workmen's compensation and occupational disease laws as they relate to compensation for pneumoconiosis and injuries in coal mine employment, to assist the States in developing and enforcing effective health and safety laws and regulations applicable to mines in the States, and to promote Federal-State coordination and cooperation in improving health and safety conditions in the Nation's coal mines.

It provides that in order to receive the Federal assistance the State must submit an application setting forth its plans to improve State workmen's compensation laws, designating the State coal mining inspection or safety agency as the agency for administering the grant and containing assurance that it will have authority to carry out the purposes of the assistance, gives assurances that an adequate staff will be employed, sets forth the plans, policies, and methods to be followed in carrying out the grant, provide for extension and improvement of the State's program for coal mine health and safety, and prohibits advance notices of inspections, contains the usual common provisions relating to fiscal control and fund accountability and for reports to the Secretary, and meets additional conditions prescribed by the Secretary. The Secretary cannot disapprove an application without affording the State an opportunity for a hearing. If the State is aggrieved by the Secretary's decision, an appeal lies to the Court of Appeals for the District of Columbia. The section further provides that grants may be made to carry out the cost of training inspectors, and to assist States in planning and implementing other programs for the advancement of health and safety in coal mines. The Federal grant may not exceed 80 percent of the cost of the program. It authorizes the appropriation of \$3 million for the fiscal year 1970 and \$5 million for each succeeding fiscal year to carry out the program.

Section 504. Economic assistance

This section amends section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)) to permit loans to assist coal mine operators who qualify under that act as small business concerns in the purchasing, rebuilding, or conversion of equipment and other facilities to comply with the standards established or promulgated under this act. Loans may also be made or guaranteed for such purposes under section 202 of the Public Works and Economic Development Act of 1965, as amended.

Section 505. Inspectors; qualifications; training

This section gives the Secretary authority to appoint qualified people as inspectors. They must, in general, have practical experience in the mining of coal or as a practical mining engineer, or a good educational background. The details of the person's qualifications would be developed by the Secretary in an effort to get the most qualified people. It would authorize the Secretary to work with educational institutions and the operators and the States in developing and financing cooperative programs to train selected persons as inspectors and to train others for possible selection as inspectors. Because of the immediate need to hire qualified persons as inspectors, the statutory and other limitations on personnel would not apply to inspectors and other persons needed to carry out the provisions of this act. The Congress is aware that this Act cannot be effective without sound and vigorous administration by well-qualified and dedicated personnel. It will require a great number of well trained personnel in the next several months to insure that the Act will be properly administered from the beginning. The history and record of health and safety in this industry requires no less than such effective administration. Coal mine health and safety enforcement and research no longer can be the stepchild to mineral production or to other programs of the Department of the Interior. They must be substantially expanded and improved.

Section 508. Effect on State laws

This section provides that only State laws less stringent than this act or those in conflict with this act shall be superseded.

Section 507. Administrative procedures

This section provides that certain procedures in title 5 of the United States Code would not apply to notices, orders or decisions issued under this act because the act prescribes the procedures to be followed.

Section 508. Regulations

This section authorizes the issuance of regulations to carry out the act.

Section 509. Operative date and repeal

This section establishes the operative date of the various titles of the act and provides for the repeal of the Federal Coal Mine Safety Act, as amended. In some cases, earlier dates in a particular title and prescribed and it is the purpose of this section that those dates be made.

Section 510. Separability

This section assures the continued effectiveness of the remainder of the act in the event any of its provisions are held invalid.

Section 511. Reports

This section provides for separate annual reports and recommendations to the Congress by the Secretary and the Secretary of Health, Education, and Welfare.

This title clearly delineates the areas of responsibility in the field of health and safety research by both Secretaries. The delineation is consistent with titles I through III of the act which also establish the roles of both Secretaries and it is the intent of the Congress that this delineation be followed. It is also intended that both Secretaries take the initiative and use the broad mandates set forth in this act to improve the health and safety of miners rapidly. The annual reports required by this section must provide detailed information of the actions taken and not taken by both Secretaries in meeting these responsibilities in order that the Congress may annually assess how effective they have been.

Section 512. Special report

This section requires a special report from the Secretary on Federal-State cooperation.

Section 513. Jurisdiction; limitation

This section prohibits the temporary enjoining of any statutory health or safety standard in any proceeding in which the standard's validity is in issue.

There follows a brief summary of a timetable of actions the Congress established by this bill which Congress intends must be met with the urging and cooperation of the miners and their representatives and the operators:

TIMETABLE OF ACTIONS BY SECRETARY OF THE INTERIOR AND SECRETARY OF HEALTH, EDUCATION, AND WELFARE

[Action and Due Date After Enactment]

1. Publish proposed health and safety standards for surface coal mines (Sec. 101(i)), Secretary of Interior, 15 months after enactment.
2. Publish proposed health and safety standards for surface areas of underground coal mines (Sec. 101(1)), Secretary of Interior, 15 months after enactment.
3. Publish all interpretations; regulations, and instructions not inconsistent with this Act (Sec. 101(j)), Secretary of Interior, immediately.
4. Appoint separate advisory committee on coal mine health and safety research (Sec. 102), both Secretaries, 3 months after enactment.
5. Prescribe methods, locations, intervals and manner of sampling respirable dust (Sec. 202(a)), both Secretary, jointly, 2 months after enactment.
6. Establish time schedule for reducing respirable dust concentrations below established levels, Secretary of Health, Education, and Welfare, beginning 12 months after enactment.

7. Prescribe specifications for taking chest roentgenograms (Sec. 203(a)), Secretary of Health, Education, and Welfare, within 6 months after enactment.

8. Establish and publish proposed mandatory health standards re: noise (Sec. 206), both Secretaries, within 6 months after enactment.

9. Prescribe manner for testing noise level at a coal mine (Sec. 206), Secretary of Health, Education, and Welfare, within 6 months after enactment.

10. Initial approval of roof-control plans (Sec. 302(a)), Secretary of Interior, 5 months after enactment.

11. Prescribe minimum air quantity and velocity reaching working face (Sec. 303(b)), Secretary of Interior, within 6 months after enactment.

12. Prescribe maximum respirable dust level for intake aircourses (Sec. 303(b)), Secretary of Interior, within 15 months after enactment.

13. Initial approval of ventilation and methane and dust control plan (Sec. 303(o)), Secretary of Interior, within 6 months after enactment.

14. Initial approval of plan of emergency action when mine fan stops (Sec. 303(t)), Secretary of Interior, within 5 months after enactment.

15. Conduct survey of availability of permissible electric face equipment and publish same (Sec. 305(a)(5)), Secretary of Interior, within 12 months after enactment.

16. Prescribes procedures and safeguards for making repairs on high-voltage lines (Sec. 307(d)), Secretary of Interior, within 3 months after enactment.

17. Establish minimum requirements for firefighting equipment (Sec. 311(a)), Secretary of Interior, 3 months after enactment.

18. Prescribe specifications for fire suppression devices (Sec. 311(e)), Secretary of Interior, within 15 months after enactment.

19. Require that devices for warning of fires be installed on belt conveyors. Sec. 311(g), Secretary of Interior, within 5 months after enactment.

20. Prescribe schedule for monthly fire suppression devices on belt haulageways (Sec. 311(g)), Secretary of Interior, 3 months after enactment.

21. Prescribe illumination standards (Sec. 317(e)), Secretary of Interior, within 12 months after enactment.

22. Establish methane limits in or on surface of coal handling facilities (Sec. 317(h)), Secretary of Interior, within 15 months after enactment.

23. Prescribe minimum standards for emergency medical aid, Secretary of Health, Education, and Welfare, within 3 months after enactment.

24. Prescribe improved methods re: providing adequate oxygen (Sec. 317(o)), Secretary of Interior, after operative date of Title III.

25. Establish procedures for issuing permits re: hazards from cave-ins of tunnels under water (Sec. 317(r)), Secretary of Interior, prior to operative date of title III.

26. Propose standards for preventing explosions from gases other than methane and for testing such gases (Sec. 317(t)), Secretary of Interior, within 15 months after enactment.

27. Prescribe minimum Federal standards for "certified" or "registered" persons (Sec. 318(a)), Secretary of Interior, prior to operative date of title III.

28. Establish requirements for persons qualified as electricians (Sec. 318(b)), Secretary of Interior, prior to operative date of title.

29. Establish specifications re: permissible (Sec. 318(c)), Secretary of Interior, prior to operative date of title.

30. Prescribe procedures for field testing

and approval of electric face equipment (Sec. 318(1)), Secretary of Interior, prior to operative date of title.

31. Study of ways to coordinate Federal and State activities in the field of coal mine health and safety (Sec. 512), Secretary of Interior, as soon as practicable after enactment.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. GRIFFIN. Mr. President, I wanted to very briefly renew the concern I expressed earlier in connection with the amendment of the Senator from West Virginia (Mr. RANDOLPH) about the cost that will be involved in this final conference report. I wish it were as reasonable as described by the distinguished Senator from New Jersey. It is a matter of serious concern.

Mr. RANDOLPH. Mr. President, last December the Members of the Congress, in effect, said that we would pass effective, strong legislation for coal mine health and safety. That has been the commitment of Congress. It is now being completed.

Mr. JAVITS. Mr. President, the coal mine health and safety bill reported by the conference is the product of months and months of work by the members of our Committee on Labor and Public Welfare and the House Committee on Education and Labor, and their staffs. The bill now before us represents, without question, the most comprehensive health and safety legislation ever brought before the Congress. The bill is, in a true sense, a landmark; one which represents a real turning point on our attitude toward health and safety of workers in this country and particularly the years of neglect of the workers in the most dangerous industry in America: coal mining.

Equally important, for the first time, this bill recognizes the Federal responsibility toward workers who have become the victims of occupational disease, in this case one of the deadliest of all occupational diseases, coal workers' pneumoconiosis or "black lung."

Mr. President, I would like to compliment the distinguished Senator from New Jersey, who as the chairman of the Subcommittee on Labor, has given of himself unsparingly in managing the Senate bill during a period of over 9 months. I also want to pay tribute to the Senator from West Virginia (Mr. RANDOLPH) whose spirit and knowledge of the coal industry were of such help to all of us on the Senate side.

Mr. President, for the widows of the miners who died so tragically last year at Farmington, W. Va., and for the many miners who have died in past years, including the 13 months which have elapsed since the Farmington tragedy, this bill is too late. It also comes too late to help those thousands of miners who, as a result of exposure to coal dust over a period of many years, have contracted pneumoconiosis, thus being condemned to spend their declining years enfeebled and gasping for every breath.

We cannot restore the gift of life to those who have been killed, nor is there any medical process known which would restore to normalcy lungs ravaged by

years and years of exposure to respirable coal dust. We can, however, do all that is possible to reduce this awful toll of life, limb, and breath in the future; furthermore, we can ensure that those unfortunate miners who have been totally disabled by black lung receive some minimal amount of benefits which would enable them and their widows and children to live with some small amount of economic security. That, in essence, is what has been done in this report.

I know that the health and safety provisions of this bill will cost money. Operators will be required to change existing practices and install new types of equipment, sometimes at considerable cost. We have attempted to moderate that cost to the extent that we could, through appropriate extensions of time, and through help in the form of small business loans, but we have not sacrificed principle. In this bill health and safety come first, and economics follow.

The health and safety provisions contained in the bill are, in general, a merger of the strongest provisions of both the House and the Senate bills. That is particularly true with respect to the dust standards. They are not controversial and are covered in the conference report and the statement of the House managers, as well as the section-by-section analysis which has been prepared.

I do want to discuss, in some detail, title IV of the bill relating to compensation for black lung victims and their widows, because it is the part of the bill which is the most controversial. I personally have had a great deal to do with some of its provisions. At my request the Secretary of Interior submitted cost estimates of the benefit program under title IV of approximately \$150 million to \$383 million. Furthermore, yesterday the administration, through the Secretary of Labor, announced its opposition to title IV on the basis of its cost and the fact that it represented an intrusion by the Federal Government into State workmen's compensation programs.

I do not believe that this program will cost what Secretary Hickel has estimated it will.

In particular, the estimate should be adjusted to reflect an average number of dependents of one rather than 1.5, at least 2,000 or 3,000 more workers than assumed in the estimate as presently receiving workmen's compensation payments, and the amounts which will be offered or recovered under section 424. With these adjustments, the actual annual cost of this bill during the first years after enactment is estimated by my staff at \$80 to \$100 million and certainly no more than \$120 million, per year.

Furthermore, I believe that title IV should not be condemned as an invasion of States rights, but rather praised as a step to insure that the victims of this tragic occupational disease receive some bare minimum of compensation, with the cost to be borne by the Federal Government, insofar as workers for whom no employer liability can be established under traditional workmen's compensation criteria, and by the employers insofar as their responsibility can be established under such traditional criteria.

The provisions relating to benefits for

victims of black lung in the House and Senate bills differed considerably. However in adopting the compensation provisions contained in their respective bills, both the House and the Senate explicitly based their action on the incontestable fact that, with the possible exception of Pennsylvania, the workmens compensation programs of the States had utterly failed thousands of coal miners throughout the country who have become totally disabled or who have died from black lung. The Senate, by an extraordinary 91 to 0 vote, agreed to establish an interim emergency program, with the States paying half the cost in the third and fourth years, pending a study and recommendations by the Secretary of Health, Education, and Welfare of a permanent solution. That study was to include the desirability of employer financing, among other things.

It will also be recalled that the compensation program originally proposed to the Senate would have been paid for, in part, with half the proceeds of the assessment which would have been imposed on operators under the bill as reported by the committee. The assessment was deleted from the bill, but only because of the point of order raised by the Senator from Vermont.

The House, by an overwhelming vote, approved what amounted to a permanent, federally financed program. Under the House bill, benefits were payable to totally disabled miners for life and to the widows of miners who died from pneumoconiosis, with a time limit of 7 years for claims to be filed by miners and no time limit at all for widows. The House program clearly would have cost more to the Federal Government than the Federal payments part of title IV of the bill reported by the conference committee.

Now, though the administration did not actively oppose the House bill, it opposes the conference bill. Previously, the administration did not indicate that it preferred the Senate to the House version of the bill.

The Secretary of Labor urges that we should encourage the States to improve their laws. But, and this is the crux of the matter, he says that in the last analysis we must continue to rely on State laws. In essence, the administration view is that Congress must refrain from doing anything to insure that disabled workers receive even a bare minimum of benefits even though under most State laws they have no entitlement to benefits.

A few months ago, the administration sent to the Congress proposed occupational health and safety legislation, which I was privileged to sponsor in the Senate. The President's message and the testimony of the Secretary on the bill made it absolutely clear that the reason this legislation is necessary is because the States and private industry are simply not doing a good enough job. The proposed occupational health and safety bill recognizes, quite properly, that where the States are now doing a good job they ought to be permitted to continue, but where they are not, the Federal Government ought to step in. Furthermore, all the States should meet Federal minimum standards.

If the Federal Government has a proper role to play in preventing occupational diseases and injuries from occurring, does it not have an equally proper role to play in endeavoring to see that the unfortunate victims of occupational diseases and injuries receive minimum adequate compensation?

Now let me be clear on one matter: I am certainly not an advocate of federalization of workmen's compensation law, either generally or with respect to black lung in particular; and the conference report does no such thing. That would have been an indefensible waste of the administrative apparatus and expertise that presently does exist in the States. Nor do I deny for a moment that the States themselves deserve full credit for the development of the workmen's compensation concept, truly one of the pioneering social reforms of this century. But we can and we should require State workmen's compensation programs to meet bare minimum standards of decency. What is involved, in the last analysis, is the principle that industry should bear the cost of benefits for its injured and diseased workers. It is on that principle that I offered the compromise adopted by the conference which reduced the 7-year fully federally funded program of the House bill to a 3-year federal program, followed by a program based on minimum workmen's compensation benefits payable by employers under State laws, or, if the State law did not require the payment of adequate benefits, under Federal law. That is what title IV does in the case of death or total disability due to black lung.

The proposal which is embodied in title IV of the bill is, in fact, much less of an intrusion on the general principles of workmen's compensation than was the House bill, which would have covered, under a completely Federal program, active miners as well as inactive miners who filed claims within a maximum period of 7 years and widows who filed claims at any time.

Under title IV of the conference bill there is a general cutoff date of December 31, 1971, on the filing of claims for permanent Federal benefits—with certain exceptions for widows. In the case of claims filed anytime in 1972, benefits are payable under the Federal program only until December 31, 1972. Commencing January 1, 1973, claims must be filed under State workmen's compensation laws unless the applicable State law has failed to meet certain minimum criteria for adequate coverage of pneumoconiosis. If the State law fails to meet these criteria, operators will be liable to pay benefits under Federal law. The criteria which State laws must meet include payment of benefits for total disability or death due to pneumoconiosis arising out of employment substantially equivalent to or greater than the benefits payable under the federally financed part of the program; that is, \$136 per month for a miner or widow with no dependents, \$204 if there is one dependent, \$238 if there are two dependents, and \$272 for three or more dependents.

These amounts, it should be noted, are far below the 66 $\frac{2}{3}$ percent of the average

miner's monthly pay, the percentage recommended by the U.S. Labor Department for workmen's compensation payments in the case of total disability.

Another criterion which the State law must meet is that the standards for determining total disability or death due to pneumoconiosis must be equivalent to those established by the Secretary of Health, Education, and Welfare under the Federal benefits program. This is particularly important since it is because black lung has simply not been recognized as an occupational disease until very recently that most workmen's compensation laws have failed to provide adequate coverage to coal miners. The standards for determining total disability will, at least initially, be those applied under the OASDI program. They generally require that a person be unable to pursue gainful employment for at least 1 year before he is considered totally disabled.

Another important criterion is a statute of limitations on the filing of claims of 3 years from the discovery and it is discovery, not occurrence, of total disability due to pneumoconiosis or death due to the disease, whichever is later. This criterion is designed to insure that, to the extent possible to do so consistently with traditional workmen's compensation criteria, after December 31, 1972, the cost of benefits for at least some of the active and inactive miners and widows eligible for benefits under the federally financed program will be borne by the operators of the mines in which such miners were employed and whose pneumoconiosis arose out of their employment in such mines.

The cost of any Federal benefits to such miners and widows will be reduced either through the operation of the offset provisions applicable with respect to workmen's compensation payments under part A or, in case the miner or widow for some reason does not file a claim for such benefits, through payments by the operator liable for the benefits to the Federal Government, as subrogee, under section 424.

State laws will also have to contain provisions governing the liability of successor operators included in section 423, which are designed to prevent any operator from escaping liability to pay compensation by the simple expedient of transferring ownership of the mine prior to January 1, 1973. Just such transfers have occurred, on a wholesale basis, to escape liability under the laws of at least one State.

Finally, State laws will have to meet other minimum criteria, based on provisions of the Longshoremen's and Harbor Worker's Compensation Act as the Secretary of Labor specifies in order to ensure that adequate coverage for total disability or death due to pneumoconiosis is provided, but these may not be inconsistent with the criteria I have previously mentioned. Thus, the Secretary could not require any State to raise its level of benefits above those specified in section 412.

If a State law meets these criteria, that is the end of the matter, so long as it continues to do so. If, however, the State law

does not meet these criteria, then operators of mines in such States are made liable to pay and secure benefits under Federal law itself. The benefit levels are the same as those provided under the federally financed program; the standards for determining death or total disability due to pneumoconiosis are the same as those applicable under the Federal program; provisions governing the liability of successor operators apply as described above, and the appropriate sections of the Longshoremen's and Harbor Worker's Compensation Act are made applicable. The Secretary of Labor is also given the power to prescribe additional provisions, not inconsistent with the provisions of the bill, as necessary to carry out the purpose of this part.

The result of this compromise is to substantially reduce the Federal cost of the program from the House bill through the application of traditional workmen's compensation principles.

THE PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.



Public Law 91-173
 91st Congress, S. 2917
 December 30, 1969

An Act

To provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes.

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".

Federal Coal
 Mine Health and
 Safety Act of
 1969.

FINDINGS AND PURPOSE

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; 83 STAT. 742,
83 STAT. 743

(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal mines cause grief and suffering to the miners and to their families;

(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 prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal mines is a serious impediment to the future growth of the coal mining industry and 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 coal mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education, and Welfare and the Secretary of the Interior to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal miners; (2) to require that each operator of a coal mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal mining industry, research and development and training programs aimed at preventing coal mine accidents and occupationally caused diseases in the industry.

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 between a place in a State and 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, Guam, and the Trust Territory of the Pacific Islands;

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal mine;

(e) "agent" means any person charged with responsibility for the operation of all or a part of a coal mine or the supervision of the miners 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;

(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 in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

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

(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) "mandatory health or safety standard" means the interim mandatory health or safety standards established by titles II and III of this Act, and the standards promulgated pursuant to title I of this Act; and

(m) "Panel" means the Interim Compliance Panel established by this Act.

MINES SUBJECT TO ACT

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

INTERIM COMPLIANCE PANEL

Establishment;
membership.

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

Travel
expenses, etc.

(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, the Secretary of Labor, and the Secretary shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

Agency
cooperation.

(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

Quorum.

(e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section 3105 of title 5 of the United States Code shall be applicable to hearing examiners appointed pursuant to this subsection.

Hearing
examiners,
appointment.

30 Stat. 415.

(f) (1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to this Act and to provide an opportunity for a public hearing, after notice, at the request of an operator of the affected coal mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel may file a petition for review of such decision under section 106 of this Act. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under this Act. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5 of the United States Code.

Duties.

Post, p. 754.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

30 Stat. 324.
Annual report
to Secretary
and Congress.

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, improved mandatory safety standards for the protection of life and the prevention of injuries in a coal mine, and shall, in accordance with the procedures set forth in this section, promulgate the mandatory health standards transmitted to him by the Secretary of Health, Education, and Welfare.

(b) No improved mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners below that provided by any mandatory health or safety standard.

(c) In the development and revision of mandatory safety standards, the Secretary shall consult with the Secretary of Health, Education, and Welfare, the Secretary of Labor, and with other interested Federal

agencies, appropriate representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, and such advisory committees as he may appoint. Such development and revision of mandatory safety standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of safety protection for miners, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other safety statutes.

(d) The Secretary of Health, Education, and Welfare shall, in accordance with the procedures set forth in this section, develop and revise, as may be appropriate, improved mandatory health standards for the protection of life and the prevention of occupational diseases of miners. In the development and revision of mandatory health standards, the Secretary of Health, Education, and Welfare shall consult with the Secretary, the Secretary of Labor, and with other interested Federal agencies, appropriate representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, such advisory committees as he may appoint, and, where appropriate, foreign countries. Such development and revision of mandatory standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other health statutes. Mandatory health standards which the Secretary of Health, Education, and Welfare develops or revises shall be transmitted to the Secretary, and shall thereupon be published in the Federal Register by the Secretary as proposed mandatory health standards.

Publication in
Federal
Register.

Publication in
Federal
Register.

(e) The Secretary shall 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. In the case of mandatory safety standards, except as provided in subsection (f) 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. In the case of mandatory health standards, except as provided in subsection (f) of this section, the Secretary of Health, Education, and Welfare may, upon the expiration of such period and after consideration of all relevant matter presented to the Secretary and transmitted to the Secretary of Health, Education, and Welfare, direct the Secretary to promulgate such standards with such modifications as the Secretary of Health, Education, and Welfare may deem appropriate and the Secretary shall thereupon promulgate such standards.

Objections.

(f) On or before the last day of any period fixed for the submission of written data or comments under subsection (e) of this section, any interested person may file with the Secretary written objections to a proposed mandatory health or safety standard, stating the grounds therefor and requesting a public hearing 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 mandatory health or safety standards to which objections have been filed and a hearing requested.

Publication in
Federal
Register.

(g) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (f) of this section, the Secretary, in the case of mandatory safety standards, or the Secretary of Health, Education, and Welfare, in the case of mandatory health standards, shall issue notice of, and hold, a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary who held the hearing shall make findings of fact which shall be public. In the case of mandatory safety standards, the Secretary may promulgate such standards with such modifications as he deems appropriate. In the case of mandatory health standards, the Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the mandatory health standards with such modifications as the Secretary of Health, Education, and Welfare deems appropriate and the Secretary shall thereupon promulgate the mandatory health standards. In the event the Secretary or the Secretary of Health, Education, and Welfare, as the case may be, determines that a proposed mandatory health or safety standard should not be promulgated or should be modified, he shall within a reasonable time publish his reasons for his determination.

Hearings.

(h) Any mandatory health or safety standard promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary or the Secretary of Health, Education, and Welfare, as appropriate, specifies a later date.

Effective date.

(i) Proposed mandatory health and safety standards for surface coal mines shall be published by the Secretary, in accordance with the provisions of this section, not later than twelve months after the date of enactment of this Act. Proposed mandatory health and safety standards for surface work areas of underground coal mines, in addition to those established for such areas under this Act, shall be published by the Secretary, in accordance with the provisions of this section, not later than twelve months after the date of enactment of this Act.

(j) All interpretations, regulations, and instructions of the Secretary or the Director of the Bureau of Mines, in effect on the date of enactment of this Act and not inconsistent with any provision of this Act, shall be published in the Federal Register and shall continue in effect until modified or superseded in accordance with the provisions of this Act.

Publication in Federal Register.

(k) The Secretary shall send a copy of every proposed standard or regulation at the time of publication in the Federal Register to the operator of each coal mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

Copies.

ADVISORY COMMITTEES

SEC. 102. (a) (1) The Secretary shall appoint an advisory committee on coal mine safety research composed of—

Committee on coal mine safety research, membership.

(A) the Director of the Office of Science and Technology, or his delegate, with the consent of the Director;

(B) the Director of the National Bureau of Standards, Department of Commerce, or his delegate, with the consent of the Director;

(C) the Director of the National Science Foundation, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary may appoint who are knowledgeable in the field of coal mine safety research.

The Secretary shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary on matters involving or relating to coal mine safety research. The Secretary shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grant, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(b)(1) The Secretary of Health, Education, and Welfare shall appoint an advisory committee on coal mine health research composed of—

(A) the Director, Bureau of Mines, or his delegate, with the consent of the Director;

(B) the Director of the National Science Foundation, or his delegate, with the consent of the Director;

(C) the Director of the National Institutes of Health, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary of Health, Education, and Welfare may appoint who are knowledgeable in the field of coal mine health research.

The Secretary of Health, Education, and Welfare shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary of Health, Education, and Welfare on matters involving or relating to coal mine health research. The Secretary of Health, Education, and Welfare shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grant, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary of Health, Education, and Welfare pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(c) The Secretary or the Secretary of Health, Education, and Welfare may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this Act. The Secretary or the Secretary of Health, Education, and Welfare, as the case may be, shall appoint the chairman of each such committee, who shall be an individual who has no economic interest in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government. A majority of the members of any such advisory committee appointed pursuant to this subsection shall be composed of individuals who have no economic

Conflict of interest.

Committee on coal mine health research, membership.

Conflict of interest.

interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(d) Advisory committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the appropriate Secretary but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

Compensation
and travel
expenses.

34 F.R. 2605.
5 USC 5332
note.
Ante, p. 190.
80 Stat. 499.

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) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether or not there is compliance with the mandatory health or safety standards or with any notice, order, or decision issued under this title. In carrying out the requirements of clauses (3) and (4) of this subsection, no advance notice of an inspection shall be provided to any person. 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 four times a year.

(b) (1) 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.

Right of
entry.

(2) For the purpose of developing improved mandatory health standards, the Secretary of Health, Education, and Welfare or his authorized representative shall have a right of entry to, upon, or through, any coal mine.

Right of
entry.

(3) The provisions of this Act relating to investigations and records shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this Act.

(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 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 subpoenas 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 subpoena 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

Hearings,
subpena power.

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 the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(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, when feasible, 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.

(g) Whenever a representative of the miners has reasonable grounds to believe that a violation of a mandatory health or safety standard exists, or an imminent danger exists, such representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title.

(h) At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Secretary on such inspection.

(i) Whenever the Secretary finds that a mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine other especially hazardous conditions, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals.

FINDINGS, NOTICES, AND ORDERS

SEC. 104. (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 forthwith 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) Except as provided in subsection (i) of this section, 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 but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent 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 representative of the Secretary determines that the violation has been abated.

(c) (1) 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, 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 safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any notice given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within ninety days after the issuance of such notice, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, 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 prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent 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.

(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 or an authorized representative of the Secretary, to eliminate the condition described in the order;

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

(3) any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, 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; and

(4) any consultant to any of the foregoing.

(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 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) A notice or order issued pursuant to this section, except an order issued under subsection (h) of this section, may be modified or terminated by an authorized representative of the Secretary.

(h) (1) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.

(2) Upon the conclusion of such investigation and an opportunity for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(i) If, based upon samples taken and analyzed and recorded pursuant to section 202(a) of this Act, or samples taken during an inspection by an authorized representative of the Secretary, the applicable limit on the concentration of respirable dust required to be maintained under this Act is exceeded and thereby violated, the Secretary or his authorized representative shall issue a notice fixing a reasonable time for the abatement of the violation. During such time, the operator of

the mine shall cause samples described in section 202(a) of this Act to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative 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 the Secretary or his authorized representative has reason to believe, based on actions taken by the operator, that such limit will be complied with upon the resumption of production in such mine. As soon as possible after an order is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person or team of persons, to the extent such persons are available, who are knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentrations. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the coal mine.

Post, p. 760.

REVIEW BY THE SECRETARY

SEC. 105. (a) (1) An operator issued an order pursuant to the provisions of section 104 of this title, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the Secretary for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator issued a notice pursuant to section 104(b) or (i) of this title, or any representative of miners in any mine affected by such notice, may, if he believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the Secretary for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. 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 public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

Hearing.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

80 Stat. 384.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice, 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 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 (1) from any modification or termination of any order, or (2) from any order issued under section 104 of this title, except an order issued under section 104(a) of this title, together with a detailed statement giving reasons for granting such relief. The Secretary may grant such relief, under such conditions as he may prescribe, if—

(1) a hearing has been held in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to the applicant; and

(3) such relief will not adversely affect the health and safety of miners in the coal mine.

No temporary relief shall be granted in the case of a notice issued under section 104 (b) or (i) of this title.

JUDICIAL REVIEW

SEC. 106. (a) Any order or decision issued by the Secretary or the Panel under this Act, except an order or decision under section 109(a) 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, or the United States Court of Appeals for the District of Columbia Circuit, upon the filing in such court within thirty days from the date of such order or decision of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this Act. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Secretary or the Panel, and thereupon the Secretary or the Panel shall certify and file in such court the record upon which the order or decision complained of was issued, as provided in section 2112 of title 28, United States Code.

72 Stat. 941;
80 Stat. 1323.

(b) The court shall hear such petition on the record made before the Secretary or the Panel. The findings of the Secretary or the Panel, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary or the Panel for such further action as it may direct.

(c) (1) In the case of a proceeding to review any order or decision issued by the Secretary under this Act, except an order or decision pertaining to an order issued under section 104(a) of this title or an order or decision pertaining to a notice issued under section 104 (b) or (i) of this title, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(C) such relief will not adversely affect the health and safety of miners in the coal mine.

(2) In the case of a proceeding to review any order or decision issued by the Panel under this Act, the court may, under such condi-

tions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; and

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding.

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

62 Stat. 928.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Secretary or the Panel.

(f) Subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him in any proceeding instituted under this section.

80 Stat. 663.

POSTING OF NOTICES, ORDERS, AND DECISIONS

SEC. 107. (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, orders, and decisions 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, order, or decision 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, order, or decision required by this Act to be given to an operator to be mailed immediately to a representative of the miners 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. Such notice, order, or decision shall be available for public inspection.

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

(d) Each operator of a coal mine shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine and such official shall receive a copy of any notice, order, or decision issued under this Act affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall

receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

INJUNCTIONS

SEC. 108. The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health, Education, and Welfare or his authorized representative, in carrying out the provisions of this Act, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary or the Secretary of Health, Education, and Welfare in furtherance of the provisions of this Act, or (f) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health, Education, and Welfare determines necessary in carrying out the provisions of this Act. Each court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in such orders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it. In actions under this section, subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him. In any action instituted under this section to enforce an order or decision issued by the Secretary after a public hearing in accordance with section 554 of title 5 of the United States Code, the findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

28 USC app.

80 Stat. 563.

80 Stat. 384.

PENALTIES

SEC. 109. (a) (1) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, except the provisions of title 4, shall be assessed a civil penalty by the Secretary under paragraph (3) of this subsection which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory 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, the appropriateness of such penalty to

Post, p. 792.

the size of the business of the operator charged, whether the operator was negligent, 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.

(2) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assessed by the Secretary under paragraph (3) of this subsection, which penalty shall not be more than \$250 for each occurrence of such violation.

(3) A civil penalty shall be assessed by the Secretary only after the person charged with a violation under this Act has been given an opportunity for a public hearing and the Secretary has determined, by decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Where appropriate, the Secretary shall consolidate such hearings with other proceedings under section 105 of this title. Any hearing under this section shall be of record and shall be subject to section 554 of title 5 of the United States Code.

90 Stat. 384.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Secretary shall file a petition for enforcement of such order in any appropriate district court of the United States. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by registered or certified mail to the respondent and to the representative of the miners in the affected mine or the operator, as the case may be, and thereupon the Secretary shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the Secretary or it may remand the proceedings to the Secretary for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a court of appeals under section 106 of this Act, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings, the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him in any action to enforce an order assessing civil penalties under this paragraph.

90 Stat. 663.

(b) Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 104 of this title, or any order incorporated in a final decision issued under this title, except an order incorporated in a decision under subsection (a) of this section or section 110(b)(2) of this title, shall, upon conviction, be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this Act, punishment shall be by a fine of not more than \$50,000, or by imprisonment for not more than five years, or by both.

(c) Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under subsection (a) of this section or section 110 (b) (2) of this title, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act or any order or decision 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 six months, or by both.

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

ENTITLEMENT OF MINERS

Compensation.

SEC. 110. (a) If a coal mine or area of a coal mine is closed by an order issued under section 104 of this title, all miners working during the shift when such order was issued who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a coal mine or area of a coal mine is closed by an order issued under section 104 of this title for an unwarrantable failure of the operator to comply with any health or safety standard, all miners who are idled due to such order shall be fully compensated, after all interested parties are given an opportunity for a public hearing on such compensation and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Whenever an operator violates or fails or refuses to comply with any order issued under section 104 of this Act, all miners employed at the affected mine who would be withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

Discrimination.

(b) (1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger, (B) has

filed, instituted, or caused to be filed or instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(2) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. 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 public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein. Any order issued by the Secretary under this paragraph shall be subject to judicial review in accordance with section 106 of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the provisions of sections 108 and 109(a) of this title.

30 Stat. 384.

(3) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

REPORTS

SEC. 111. (a) All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported for periods determined by the Secretary, but at least annually.

(b) In addition to such records as are specifically required by this Act, every operator of a coal mine 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. The Secretary is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent other-

Records,
availability.

wise specifically provided by this Act, all records, information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

COVERAGE

Post, p. 791.

Ante, p. 745.

SEC. 201. (a) The provisions of sections 202 through 206 of this title and the applicable provisions of section 318 of title III shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory health standards promulgated by the Secretary under the provisions of section 101 of this Act, and shall be enforced in the same manner and to the same extent as any mandatory health standard promulgated under the provisions of section 101 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 title I of this Act.

(b) Among other things, it is the purpose of this title to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations in the mine atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.

DUST STANDARD AND RESPIRATORY EQUIPMENT

SEC. 202. (a) Each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed. Such samples shall be taken by any device approved by the Secretary and the Secretary of Health, Education, and Welfare and in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretaries shall prescribe in the Federal Register within sixty days from the date of enactment of this Act and from time to time thereafter. Such samples shall be transmitted to the Secretary in a manner established by him, and analyzed and recorded by him in a manner that will assure application of the provisions of section 104(i) of this Act when the applicable limit on the concentration of respirable dust required to be maintained under this section is exceeded. The results of such samples shall also be made available to the operator. Each operator shall report and certify to the Secretary at such intervals as the Secretary may require as to the conditions in the active workings of the coal mine, including, but not limited to, the average number of working hours worked during each shift, the quantity and velocity of air regularly reaching the working faces, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

(b) Except as otherwise provided in this subsection—

(1) Effective on the operative date of this title, each operator shall continuously maintain the average concentration of respira-

ble dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 3.0 milligrams of respirable dust per cubic meter of air.

(2) Effective three years after the date of enactment of this Act, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

(3) Any operator who determines that he will be unable, using available technology, to comply with the provisions of paragraph (1) of this subsection, or the provisions of paragraph (2) of this subsection, as appropriate, may file with the Panel, no later than sixty days prior to the effective date of the applicable respirable dust standard established by such paragraphs, an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the 3.0 milligram standard established by paragraph (1) of this subsection, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue a permit for noncompliance to the operator. If, in the case of an application for a permit for noncompliance with the 2.0 milligram standard established by paragraph (2) of this subsection, the application satisfies the requirements of subsection (c) of this section and the Panel determines that the applicant will be unable to comply with such standard, the Panel shall issue to the operator a permit for noncompliance.

Noncompliance
permit.

(4) In any case in which an operator, who has been issued a permit (including a renewal permit) for noncompliance under this section, determines, not more than ninety days prior to the expiration date of such permit, that he still is unable to comply with the standard established by paragraph (1) of this subsection or the standard established by paragraph (2) of this subsection, as appropriate, he may file with the Panel an application for renewal of the permit. Upon receipt of such application, the Panel, if it determines, after all interested persons have been notified and given an opportunity for a public hearing under section 5 of this Act, that the application is in compliance with the provisions of subsection (c) of this section, and that the applicant will be unable to comply with such standard, may renew the permit.

Permit
renewal.

(5) Any such permit or renewal thereof so issued shall be in effect for a period not to exceed one year and shall entitle the permittee during such period to maintain continuously the average concentration of respirable dust in the mine atmosphere during each shift in the working places of such mine to which the permit applies at a level specified by the Panel, which shall be at the lowest level which the application shows the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

Ante, p. 744.

Permit
termination.

(6) No permit or renewal thereof for noncompliance shall

entitle any operator to an extension of time beyond eighteen months from the date of enactment of this Act to comply with the 3.0 milligram standard established by paragraph (1) of this subsection, or beyond seventy-two months from the date of enactment of this Act to comply with the 2.0 milligram standard established by paragraph (2) of this subsection.

(c) Any application for an initial or renewal permit made pursuant to this section shall contain—

(1) a representation by the applicant and the engineer conducting the survey referred to in paragraph (2) of this subsection that the applicant is unable to comply with the standard applicable under subsection (b)(1) or (b)(2) of this section at specified working places because the technology for reducing the concentration of respirable dust at such places is not available, or because of the lack of other effective control techniques or methods, or because of any combination of such reasons;

(2) an identification of the working places in such mine for which the permit is requested; the results of an engineering survey by a certified engineer of the respirable dust conditions of each working place of the mine with respect to which such application is filed and the ability to reduce such dust to the level required to be maintained in such place under this section; a description of the ventilation system of the mine and its capacity; the quantity and velocity of air regularly reaching the working faces; the method of mining; the amount and pressure of the water, if any, reaching the working faces; the number, location, and type of sprays, if any; action taken to reduce such dust; and such other information as the Panel may require; and

(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

(d) Beginning six months after the operative date of this title and from time to time thereafter, the Secretary of Health, Education, and Welfare shall establish, in accordance with the provisions of section 101 of this Act, a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed below the levels established in this section to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person. Such schedule shall specify the minimum time necessary to achieve such levels taking into consideration present and future advancements in technology to reach these levels.

(e) References to concentrations of respirable dust in this title means the average concentration of respirable dust if measured with an MRE instrument or such equivalent concentrations if measured with another device approved by the Secretary and the Secretary of Health, Education, and Welfare. As used in this title, 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.

(f) For the purpose of this title, the term "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured, during the 18

Reduction
schedule,
establishment.
ante, p. 745.

"MRE
instrument."

"Average
concentration."

month period following the date of enactment of this Act, over a number of continuous production shifts to be determined by the Secretary and the Secretary of Health, Education, and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary and the Secretary of Health, Education, and Welfare find, in accordance with the provisions of section 101 of this Act, that such single shift measurement will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

Ante, p. 745.

(g) The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this title.

Spot
inspection.

(h) Respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this Act. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this Act.

MEDICAL EXAMINATIONS

SEC. 203 (a) The operator of a coal mine shall cooperate with the Secretary of Health, Education, and Welfare in making available to each miner working in a coal mine the opportunity to have a chest roentgenogram within eighteen months after the date of enactment of this Act, a second chest roentgenogram within three years thereafter, and subsequent chest roentgenograms at such intervals thereafter of not to exceed five years as the Secretary of Health, Education, and Welfare prescribes. Each worker who begins work in a coal mine for the first time shall be given, as soon as possible after commencement of his employment, and again three years later if he is still engaged in coal mining, a chest roentgenogram; and in the event the second such chest roentgenogram shows evidence of the development of pneumoconiosis the worker shall be given, two years later if he is still engaged in coal mining, an additional chest roentgenogram. All chest roentgenograms shall be given in accordance with specifications prescribed by the Secretary of Health, Education, and Welfare and shall be supplemented by such other tests as the Secretary of Health, Education, and Welfare deems necessary. 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 and of such tests shall be submitted to the Secretary and to the Secretary of Health, Education, and Welfare, and, at the request of the miner, to his physician. The Secretary shall also submit such results to such miner and advise him of his rights under this Act related thereto. Such specifications, readings, classifications, and tests shall, to the greatest degree possible, be uniform for all coal mines and miners in such mines.

(b)(1) On and after the operative date of this title, any miner who, in the judgment of the Secretary of Health, Education, and Welfare based upon such reading or other medical examinations, shows

evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 2.0 milligrams of dust per cubic meter of air.

(2) Effective three years after the date of enactment of this Act, any miner who, in the judgment of the Secretary of Health, Education, and Welfare based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 1.0 milligrams of dust per cubic meter of air, or if such level is not attainable in such mine, to a position in such mine where the concentration of respirable dust is the lowest attainable below 2.0 milligrams per cubic meter of air.

(3) Any miner so transferred shall receive compensation for such work at not less than the regular rate of pay received by him immediately prior to his transfer.

(c) No payment may be required of any miner in connection with any examination or test given him pursuant to this title. Where such examinations or tests cannot be given, due to the lack of adequate medical or other necessary facilities or personnel, in the locality where the miner resides, arrangements shall be made to have them conducted, in accordance with the provisions of this title, in such locality by the Secretary of Health, Education, and Welfare, or by an appropriate person, agency, or institution, public or private, under an agreement or arrangement between the Secretary of Health, Education, and Welfare and such person, agency, or institution. The operator of the mine shall reimburse the Secretary of Health, Education, and Welfare, or such person, agency, or institution, as the case may be, for the cost of conducting each examination or test made, in accordance with this title, and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

Autopsy.

(d) If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health, Education, and Welfare is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his surviving next of kin. The results of such autopsy shall be submitted to the Secretary of Health, Education, and Welfare and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for by the Secretary of Health, Education, and Welfare.

DUST FROM DRILLING ROCK

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, or by ventilation, or by any other method or device approved by the Secretary which is at least as effective in controlling such dust. Respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be provided per-

sons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

DUST STANDARD WHEN QUARTZ IS PRESENT

SEC. 205. In coal mining operations where the concentration of respirable dust in the mine atmosphere of any working place contains more than 5 per centum quartz, the Secretary of Health, Education, and Welfare shall prescribe an appropriate formula for determining the applicable respirable dust standard under this title for such working place and the Secretary shall apply such formula in carrying out his duties under this title.

NOISE STANDARD

SEC. 206. On and after the operative date of this title, the standards on noise prescribed under the Walsh-Healey Public Contracts Act, as amended, in effect October 1, 1969, shall be applicable to each coal mine and each operator of such mine shall comply with them. Within six months after the date of enactment of this Act, the Secretary of Health, Education, and Welfare shall establish, and the Secretary shall publish, as provided in section 101 of this Act, proposed mandatory health standards establishing maximum noise exposure levels for all underground coal mines. Beginning six months after the operative date of this title, and at intervals of at least every six months thereafter, the operator of each coal mine shall conduct, in a manner prescribed by the Secretary of Health, Education, and Welfare, tests by a qualified person of the noise level at the mine and report and certify the results to the Secretary and the Secretary of Health, Education, and Welfare. In meeting such standard under this section, the operator shall not require the use of any protective device or system, including personal devices, which the Secretary or his authorized representative finds to be hazardous or cause a hazard to the miners in such mine.

49 Stat. 2036.
41 USC 35
note.

Ante, p. 745.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

COVERAGE

SEC. 301. (a) The provisions of sections 302 through 318 of this title shall be interim mandatory safety standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory safety standards promulgated by the Secretary under the provisions of section 101 of this Act, and shall be enforced in the same manner and to the same extent as any mandatory safety standard promulgated under section 101 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 title I of this Act.

(b) The purpose of this title is to provide for the immediate application of mandatory safety standards developed on the basis of experience and advances in technology and to prevent newly created hazards resulting from new technology in coal mining. The Secretary shall immediately initiate studies, investigations, and research to further upgrade such standards and to develop and promulgate new and

improved standards promptly that will provide increased protection to the miners, particularly in connection with hazards from trolley wires, trolley feeder wires, and signal wires, the splicing and use of trailing cables, and in connection with improvements in vulcanizing of electric conductors, improvement in roof control measures, methane drainage in advance of mining, improved methods of measuring methane and other explosive gases and oxygen concentrations, and the use of improved underground equipment and other sources of power for such equipment.

Modifications.

(c) Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners in such mine or other interested party to present information relating to the modification of such standard. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

80 Stat. 384.

(d) In any case where the provisions of sections 302 to 318, inclusive, of this title provide that certain actions, conditions, or requirements shall be carried out as prescribed by the Secretary, or the Secretary of Health, Education, and Welfare, as appropriate, the provisions of section 553 of title 5 of the United States Code shall apply unless either Secretary otherwise provides. Before granting any exception to a mandatory safety standard as authorized by this title, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected coal mine.

ROOF SUPPORT

SEC. 302. (a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. 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 coal mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this title. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent sup-

port unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan and the absence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished the Secretary or his authorized representative and shall be available to the miners and their representatives.

(b) The method of mining followed in any coal mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

(c) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine as the Secretary may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof boltholes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

(d) When installation of roof bolts is permitted, such roof bolts shall be tested in accordance with the approved roof control plan.

(e) Roof bolts shall not be recovered where complete extractions of pillars are attempted, where adjacent to clay veins, or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

(f) Where miners are exposed to danger from falls of roof, face, and ribs the operator shall examine and test the roof, face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

VENTILATION

SEC. 303. (a) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(b) All active workings 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, explosive, noxious, and harmful gases, and dust, and smoke and explosive fumes. 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. The minimum quantity of air in any coal mine reaching each working face shall be three thousand cubic feet a minute. Within three months after the operative date of this title, the Secretary shall prescribe the minimum velocity and quantity of air reaching each working face of each coal mine in order to render harmless and carry away methane and

other explosive gases and to reduce the level of respirable dust to the lowest attainable level. The authorized representative of the Secretary may require in any coal mine a greater quantity and velocity of air when he finds it necessary to protect the health or safety of miners. Within one year after the operative date of this title, the Secretary or his authorized representative shall prescribe the maximum respirable dust level in the intake aircourses in each coal mine in order to reduce such level to the lowest attainable level. 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) (1) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement, where such exception will not pose a hazard to the miners. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(2) The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and noxious gases, dust, and explosive fumes.

(3) Brattice cloth used underground shall be of flame-resistant material.

Pre-shift
examinations.

(d) (1) Within three hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section 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 such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards: test 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 velocity: and examine for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun. Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety 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 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 operator to receive such reports at a designated station on the surface of the mine, before other persons enter the underground areas of such mine to work in such 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 in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

Records.

(2) No person (other than certified persons designated under this subsection) shall enter any underground area, except during any 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, each working section shall be examined for hazardous conditions by certified persons designated by the operator to do so. Any such condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 104(d) of this Act, until the danger is abated. Such examination shall include tests for methane with a means approved by the Secretary for detecting methane and for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary.

Ante, p. 751.

(f) In addition to the pre-shift and daily examinations required by this section, examinations for hazardous conditions, including tests for methane, and for compliance with the mandatory health or safety standards, shall be made at least once each week by a certified person designated by the operator 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 aircourse in its entirety, idle workings, and, insofar as safety considerations permit, abandoned areas. Such weekly examination need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date and time at the places examined, and if any hazardous condition is found, such condition shall be reported to the operator promptly. Any hazardous condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 104(d) of this Act, until such danger is abated. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

Weekly examinations for hazardous conditions.

Records.

(g) At least once each week, a qualified 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 any pair or set of developing entries and the last open crosscut in any pair or set of

Weekly ventilation examinations.

Records.

Methane
examinations.

rooms, the volume and, when the Secretary so prescribes, the velocity reaching each working face, the volume being 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 recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the coal mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(k) (1) At the start of each shift, tests for methane shall be made at each working place immediately before electrically operated equipment is energized. Such tests shall be made by qualified persons. If 1.0 volume per centum or more of methane is detected, electrical equipment shall not be energized, taken into, or operated in, such working place until the air therein contains less than 1.0 volume per centum of methane. Examinations for methane shall be made during the operation of such equipment 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 at any time the air at any working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall contain less than 1.0 volume per centum of methane. While such changes or adjustments are underway and until they have been achieved, power to electric face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine. If at any time such air contains 1.5 volume per centum or more of methane, all persons, except those referred to in section 104(d) of this Act, shall be withdrawn from the area of the mine endangered thereby to a safe area, and all electric power shall be cut off from the endangered area of the mine, until the air in such working place shall contain less than 1.0 volume per centum of methane.

Ante, p. 751.

(i) (1) If, when tested, a split of air returning from any working section contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall contain less than 1.0 volume per centum of methane. Tests under this paragraph and paragraph (2) of this subsection 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.

(2) If, when tested, a split of air returning from any working section contains 1.5 volume per centum or more of methane, all persons, except those persons referred to in section 104(d) of this Act, shall be withdrawn from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area of the mine, until the air in such split shall contain less than 1.0 volume per centum of methane.

(3) In virgin territory, if the quantity of air in a split ventilating the active workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section for the last open crosscut, if the air in the split returning from such workings

does not pass over trolley wires or trolley feeder wires, and if a certified person designated by the 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, except those referred to in section 104(d) of this Act, from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area only when the air returning from such workings contains 2.0 volume per centum or more of methane.

Ante, p. 751.

(j) Air which has passed by an opening of any abandoned area shall not be used to ventilate any working place in the coal 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 certified person designated by the operator 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.

(k) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(l) The Secretary or his authorized representative shall require, as an additional device for detecting concentrations of methane, that a methane monitor, approved as reliable by the Secretary after the operative date of this title, be installed, when available, on any electric face cutting equipment, continuous miner, longwall face equipment, and loading machine, except that no monitor shall be required to be installed on any such equipment prior to the date on which such equipment is required to be permissible under section 305(a) of this title. When installed on any such equipment, such monitor shall be kept operative and properly maintained and frequently tested as prescribed by the Secretary. The sensing device of such monitor shall be installed as close to the working face as practicable. Such monitor shall be set to deenergize automatically such equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage determined by an authorized representative of the Secretary which shall not be more than 1.0 volume per centum of methane. An authorized representative of the Secretary shall require such monitor to deenergize automatically equipment on which it is installed when the concentration of methane reaches a maximum percentage determined by such representative which shall not be more than 2.0 volume per centum of methane.

Methane
monitor.

Post, p. 775.

(m) 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 persons are permitted to enter or work in such areas. 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 approved by the Secretary 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.

(n) 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 methane. If in such examination methane is found in amounts of 1.0 volume per centum or more, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall contain less than 1.0 volume per centum of methane.

(o) A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form within ninety days after the operative date of this title. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every six months.

(p) Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

(q) 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 workings are ventilated with sufficient air to keep the air in open areas along the pillar lines below 1.0 volume per centum of methane.

(r) 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, not in excess of nine months, 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.

(s) In all underground areas of a coal mine, 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 1.0 volume per centum or more, changes or adjustments shall be made at once in the ventilation so that the air shall contain less than 1.0 volume per centum of methane. No shots shall be fired until the air contains less than 1.0 volume per centum of methane.

(t) Each operator shall adopt a plan within sixty days after the operative date of this title 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 working sections, (2) to cut off the power in the mine in a timely manner, (3) to provide for restora-

tion of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the working places and other active workings where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of 1.0 volume per centum or more 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.

(u) 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.

(v) The mine foreman shall read and countersign promptly the daily reports of the pre-shift examiner and assistant mine foremen, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. Where such reports disclose hazardous conditions, they shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 104(d) of this Act, until such danger is abated. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

Reports.

(w) Each day, the mine foreman and each of his assistants shall enter plainly and sign with ink or indelible pencil in a book approved by the Secretary 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 him or reported to him during the day and what action was taken to remedy such condition. Such book shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and shall be open for inspection by interested persons.

Ante, p. 751.

Daily reports.

(x) Before a coal mine is reopened after having been abandoned or declared inactive by the operator, the Secretary shall be notified, and an inspection shall be made of the entire mine by an authorized representative of the Secretary before mining operations commence.

(y)(1) In any coal mine opened after the operative date of this title, the entries used as intake and return aircourses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to the operative date of this title which has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to permit adequately the coursing of intake or return air through such entries, (1) the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate, active working places, and (2) when the belt haulage entries are not

necessary to ventilate the active working places, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane.

(2) In any coal mine opened on or after the operative date of this title, or, in the case of a coal mine opened prior to such date, in any new working section of such mine, where trolley haulage systems are maintained and where trolley wires or trolley feeder wires are installed, an authorized representative of the Secretary shall require a sufficient number of entries or rooms as intake aircourses in order to limit, as prescribed by the Secretary, the velocity of air currents on such haulageways for the purpose of minimizing the hazards associated with fires and dust explosions in such haulageways.

(z) (1) While pillars are being extracted in any area of a coal mine, such area shall be ventilated in the manner prescribed by this section.

(2) Within nine months after the operative date of this title, all areas from which pillars have been wholly or partially extracted and abandoned areas, as determined by the Secretary or his authorized representative, shall be ventilated by bleeder entries or by bleeder systems or equivalent means, or be sealed, as determined by the Secretary or his authorized representative. When ventilation of such areas is required, such ventilation shall be maintained so as continuously to dilute, render harmless, and carry away methane and other explosive gases within such areas and to protect the active workings of the mine from the hazards of such methane and other explosive gases. Air coursed through underground areas from which pillars have been wholly or partially extracted which enters another split of air shall not contain more than 2.0 volume per centum of methane, when tested at the point it enters such other split. When sealing is required, such seals shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine.

(3) In the case of mines opened on or after the operative date of this title, or in the case of working sections opened on or after such date in mines opened prior to such date, the mining system shall be designed in accordance with a plan and revisions thereof approved by the Secretary and adopted by such operator so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion-proof seals or bulkheads.

COMBUSTIBLE MATERIALS AND ROCK DUSTING

SEC. 304. (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 permitted to accumulate in active workings, or on electric equipment therein.

(b) Where underground mining operations in active workings create or raise excessive amounts of dust, water or water with a wetting agent added to it, or other no less effective methods approved by the Secretary or his authorized representative, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, or other no less effective methods approved by the Secretary or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

(c) All underground areas of a coal 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 working faces, unless such areas are inaccessible or unsafe to enter or unless the Secretary or his authorized representative permits an exception upon his finding that such exception will not pose a hazard to the miners. All crosscuts that are less than forty feet from a working face shall also be rock dusted.

(d) Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities 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 aircourses shall be no less than 80 per centum. Where methane is present in any ventilating current, the per centum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane where 65 and 80 per centum, respectively, of incombustibles are required.

(e) Subsections (b) through (d) of this section shall not apply to underground anthracite mines.

Nonapplicability.

ELECTRICAL EQUIPMENT—GENERAL

Sec. 305. (a) (1) Effective one year after the operative date of this title—

(A) all junction or distribution boxes used for making multiple power connections in by the last open crosscut shall be permissible;

(B) all handheld electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment as the Secretary may designate within two months after the operative date of this title which are taken into or used in by the last open crosscut of any coal mine shall be permissible;

(C) all electric face equipment which is taken into or used in by the last open crosscut of any coal mine classified under any provision of law as gassy prior to the operative date of this title shall be permissible; and

(D) all other electric face equipment which is taken into or used in by the last crosscut of any coal mine, except a coal mine referred to in paragraph (2) of this subsection, which has not been classified under any provision of law as a gassy mine prior to the operative date of this title shall be permissible.

(2) Effective four years after the operative date of this title, all electric face equipment, other than equipment referred to in paragraph (1) (B) of this subsection, which is taken into or used in by the last open crosscut of any coal mine which is operated entirely in coal seams located above the watertable and which has not been classified under any provision of law as a gassy mine prior to the operative date of this title and in which one or more openings were made prior to the date of enactment of this Act, shall be permissible, except that any operator of such mine who is unable to comply with the provisions of this paragraph on such effective date may file with the Panel an application for a permit for noncompliance ninety days prior to such date. If the Panel determines, after notice to all interested persons and an opportunity for a public hearing under section 5 of this Act, that such application satisfies the provisions of paragraph (10) of this

Permit for noncompliance.

Ante, p. 744.

subsection and that such operator, despite his diligent efforts, will be unable to comply with such provisions, the Panel may issue to such operator such a permit. Such permit shall entitle the permittee to an additional extension of time to comply with the provisions of this paragraph of not to exceed twenty-four months, as determined by the Panel, from such effective date.

(3) The operator of each coal mine shall maintain in permissible condition all electric face equipment required by this subsection to be permissible which is taken into or used in by the last open crosscut of any such mine.

(4) Each operator of a coal mine shall, within two months after the operative date of this title, file with the Secretary a statement listing all electric face equipment by type and manufacturer being used by such operator in connection with mining operations in such mine as of the date of such filing, and stating whether such equipment is permissible and maintained in permissible condition or is nonpermissible on such date of filing, and, if nonpermissible, whether such nonpermissible equipment has ever been rated as permissible, and such other information as the Secretary may require.

(5) The Secretary shall promptly conduct a survey as to the total availability of new or rebuilt permissible electric face equipment and replacement parts for such equipment and, within six months after the operative date of this title, publish the results of such survey.

(6) Any operator of a coal mine who is unable to comply with the provisions of paragraph (1)(D) of this subsection within one year after the operative date of this title may file with the Panel an application for a permit for noncompliance. If the Panel determines that such application satisfies the provisions of paragraph (10) of this subsection, the Panel shall issue to such operator a permit for noncompliance. Such permit shall entitle the permittee to an extension of time to comply with such provisions of paragraph (1)(D) of not to exceed twelve months, as determined by the Panel, from the date that compliance with the provisions of paragraph (1)(D) of this subsection is required.

(7) Any operator of a coal mine issued a permit under paragraph (6) of this subsection who, ninety days prior to the termination of such permit, or renewal thereof, determines that he will be unable to comply with the provisions of paragraph (1)(D) of this subsection upon the expiration of such permit may file with the Panel an application for renewal thereof. Upon receipt of such application, the Panel, if it determines, after notice to all interested persons and an opportunity for a public hearing under section 5 of this Act, that such application satisfies the provisions of paragraph (10) of this subsection and that such operator, despite his diligent efforts, will be unable to comply with the provisions of paragraph (1)(D), may renew the permit for a period not exceeding twelve months.

(8) Any permit or renewal thereof issued pursuant to this subsection shall entitle the permittee to use such nonpermissible electric face equipment specified in the permit during the term of such permit.

(9) Permits for noncompliance issued under paragraphs (6) or (7) of this subsection shall, in the aggregate, not extend the period of noncompliance more than forty-eight months after the date of enactment of this Act.

(10) Any application for a permit of noncompliance filed under this subsection shall contain a statement by the operator—

Survey,
publication.

Permit for
noncompliance.

Permit
renewal.

Ante, p. 744.

Permit
limitation.

Contents.

(A) that he is unable to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, within the time prescribed;

(B) listing the nonpermissible electric face equipment being used by such operator in connection with mining operations in such mine on the operative date of this title and the date of the application by type and manufacturer for which a noncompliance permit is requested and whether such equipment had ever been rated as permissible;

(C) setting forth the actions taken from and after the operative date of this title to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, together with a plan setting forth a schedule of compliance with said paragraphs for each such equipment referred to in such paragraphs and being used by the operator in connection with mining operations in such mine with respect to which such permit is requested and the means and measures to be employed to achieve compliance; and

(D) including such other information as the Panel may require.

(11) No permit for noncompliance shall be issued under this subsection for any nonpermissible electric face equipment, unless such equipment was being used by an operator in connection with the mining operations in a coal mine on the operative date of this title.

(12) Effective one year after the operative date of this title, all replacement equipment acquired for use in any mine referred to in this subsection shall be permissible and shall be maintained in a permissible condition, and in the event of any major overhaul of any item of equipment in use one year from the operative date of this title such equipment shall be put in, and thereafter maintained in, a permissible condition, unless, in the opinion of the Secretary, such equipment or necessary replacement parts are not available.

(b) A copy of any permit granted under this section shall be mailed immediately to a representative of the miners 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 title, was classed gassy under any provision of law 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, except where permissible power connection units are used, outby the last open crosscut shall be in intake air.

(e) The location and the electrical rating of all stationary electric apparatus in connection with the mine electric system, including permanent cables, switchgear, rectifying substations, transformers, permanent pumps and trolley wires and trolley feeder wires, and settings of all direct-current circuit breakers protecting underground trolley circuits, shall be shown on a mine map. Any changes made in a location, electric rating, or setting shall be promptly shown on the map when the change is made. Such map shall be available to an authorized representative of the Secretary and to the miners in such mine.

Mine map.

(f) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when

necessary for trouble shooting or testing. In addition, energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of such mine shall require that such person wear approved and tested insulated shoes and wireman's gloves. No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who performed such work, except that, in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by the operator or his agent.

Examinations.

(g) All electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the Secretary and to the miners in such mine.

Records.

(h) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials.

(i) All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(j) Cables shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

(k) All power wires (except trailing cables on mobile equipment, 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-insulated insulators and shall not contact combustible material, roof, or ribs.

(l) Power wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected.

(m) 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. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(n) 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 area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.

(o) All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(p) Each ungrounded, exposed power conductor that leads underground shall be equipped with suitable 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 neutral grounds by a distance of not less than twenty-five feet.

(q) No device for the purpose of lighting any coal mine which has not been approved by the Secretary or his authorized representative shall be permitted in such mine.

(r) An authorized representative of the Secretary may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

TRAILING CABLES

SEC. 306. (a) Trailing cables used in coal mines 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 or other no less effective device approved by the Secretary 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 assure against connecting a trailing cable to the wrong size circuit breaker.

(d) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. 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. As used in this subsection, the term "splice" means the mechanical joining of one or more conductors that have been severed.

"Splice."

(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 equipment.

(g) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

GROUNDING

Sec. 307. (a) All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the Secretary. Metallic frames, casings, and other enclosures of electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded by methods approved by an authorized representative of the Secretary. Methods other than grounding which provide no less effective protection may be permitted by the Secretary or his authorized representative.

(b) The frames of all offtrack direct current machines and the enclosures of related detached components shall be effectively grounded, or otherwise maintained at no less safe voltages, by methods approved by an authorized representative of the Secretary.

(c) The frames of all stationary high-voltage equipment receiving power from ungrounded delta systems shall be grounded by methods approved by an authorized representative of the Secretary.

(d) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test, and maintain protective devices in making such repairs, to be prescribed by the Secretary prior to the operative date of this title.

(e) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

UNDERGROUND HIGH-VOLTAGE DISTRIBUTION

Sec. 308. (a) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

(b) High-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment 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, except that the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he

determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(c) The grounding resistor, where required, 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 for a voltage equal to the phase-to-phase voltage of the system.

(d) Six months after the operative date of this title, high-voltage, resistance grounded systems 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, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available.

(e) (1) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one or more ground conductors having a total cross-sectional area of not less than one-half the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit.

(2) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(f) Couplers that are used with medium-voltage or high-voltage power circuits shall be of the three-phase type with a full metallic shell, except that the Secretary may permit, under such guidelines as he may prescribe, no less effective couplers constructed of materials other than metal. Couplers shall be adequate for the voltage and current expected. All exposed metal on the metallic couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground check 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) All underground high-voltage transmission cables shall be installed only in regularly inspected aircourses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, 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, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(i) 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.

(j) Circuit breakers and disconnecting switches underground shall be marked for identification.

(k) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be

made in accordance with section 306(e) of this title. Terminations and splices in all other high-voltage cables shall be made in accordance with the manufacturer's specifications.

(l) Frames, supporting structures, and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(m) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the Secretary may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the Secretary and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that, when such centers and transformers are moved while energized as permitted under this subsection, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.

Records.

UNDERGROUND LOW- AND MEDIUM-VOLTAGE ALTERNATING CURRENT CIRCUITS

SEC. 309. (a) Low- and medium-voltage power circuits serving three-phase alternating current equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and over-current.

(b) Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, 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 the electrical equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 25 amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(c) Six months after the operative date of this title, low- and medium-voltage resistance grounded systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit

breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(d) Disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected. Trailing cables for mobile equipment shall contain one or more ground conductors having a cross sectional area of not less than one-half the power conductor, and, six months after the operative date of this title, an insulated conductor for the ground continuity check circuit or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Splices made in the cables shall provide continuity of all components.

(e) Single phase loads shall be connected phase to phase.

(f) Circuit breakers shall be marked for identification.

(g) Trailing cables for medium voltage circuits shall include grounding conductors, a ground check conductor, and ground metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

TROLLEY WIRES AND TROLLEY FEEDER WIRES

SEC. 310. (a) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

(b) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(c) Trolley wires and trolley feeder wires, high-voltage cables and transformers shall not be located in by the last open crosscut and shall be kept at least 150 feet from pillar workings.

(d) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires; (2) on both sides of all doors and stoppings; and (3) at man-trip stations. The Secretary or his authorized representatives shall specify other conditions where trolley wires and trolley feeder wires shall be adequately protected to prevent contact by any person, or shall require the use of improved methods to prevent such contact. Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

FIRE PROTECTION

SEC. 311. (a) Each coal mine shall be provided with suitable fire-fighting equipment adapted for the size and conditions of the mine. The Secretary shall establish minimum requirements for the type,

quality, and quantity of such equipment, and the interpretations of the Secretary or the Director of the Bureau of Mines relating to such equipment in effect on the operative date of this title shall continue in effect until modified or superseded by the Secretary. After every blasting operation, an examination shall be made to determine whether fires have been started.

(b) Underground storage places for lubricating oil and grease shall be of fireproof construction. Except for specially prepared materials approved by the Secretary, lubricating oil and grease kept in all underground areas in a coal mine shall be in fireproof, closed metal containers or other no. less effective containers approved by the Secretary.

(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. Other underground structures installed in a coal mine as the Secretary may prescribe shall be of fireproof construction.

(d) All welding, cutting, or soldering with arc or flame in all underground areas of a coal mine shall, whenever practicable, be conducted in fireproof enclosures. Welding, cutting or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a qualified person who shall make a diligent search for fire during and after such operations and shall, immediately before and during such operations, continuously test for methane with means approved by the Secretary for detecting methane. Welding, cutting, or soldering shall not be conducted in air that contains 1.0 volume per centum or more of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(e) Within one year after the operative date of this title, fire suppression devices meeting specifications prescribed by the Secretary shall be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic systems of such equipment. Such fluids shall be used in the hydraulic systems of other underground equipment unless fire suppression devices meeting specifications prescribed by the Secretary are installed on such equipment.

(f) Deluge-type water sprays or foam generators automatically actuated by rise in temperature, or other no less effective means approved by the Secretary of controlling fire, shall be installed at main and secondary belt-conveyor drives. Where sprays or foam generators are used they shall supply a sufficient quantity of water or foam to control fires.

(g) Underground belt conveyors shall be equipped with slippage and sequence switches. The Secretary shall, within sixty days after the operative date of this title, require that devices be installed on all such belts which will give a warning automatically when a fire occurs on or near such belt. The Secretary shall prescribe a schedule for installing fire suppression devices on belt haulageways.

(h) On and after the operative date of this title, all conveyor belts acquired for use underground shall meet the requirements to be established by the Secretary for flame-resistant conveyor belts.

MAPS

Sec. 312. (a) The operator of a coal mine shall have in a fireproof repository located in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on scale. Such map shall show the active workings, all pillared, worked out, and abandoned areas, except as provided in this section, entries and air-courses with the direction of airflow indicated by arrows, contour lines of all 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 either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine, and such other information as the Secretary may require. Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned which are inaccessible or cannot be entered safely and on which no information is available. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. Such map shall be kept up to date by temporary notations and such map shall be revised and supplemented at intervals prescribed by the Secretary 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, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing, or residing on surface areas of such mines or areas adjacent to such mines. The operator shall furnish to the Secretary or his authorized representative and to the Secretary of Housing and Urban Development, upon request, one or more copies of such map and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of this Act and in connection with the functions and responsibilities of the Secretary of Housing and Urban Development.

Availability.

(c) Whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal 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 or abandonment 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 by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

Mine closure.

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.

(b) Explosives and detonators shall be kept in separate containers until immediately before blasting. In underground anthracite mines, (1) mudcaps or other open, unconfined shake shots may be fired, if

restricted to battery starting when methane or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots 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; and (3) tests for methane shall be made immediately before such shots are fired and if 1.0 volume per centum or more of methane is present, when tested, such shot shall not be made until the methane content is reduced below 1.0 volume per centum.

(c) Except as provided in this subsection, in all underground areas of a coal mine 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 non-permissible explosives in sinking shafts and slopes from the surface in rock. Nothing in this section shall prohibit the use of compressed air blasting.

(d) Explosives or detonators carried anywhere underground in a coal mine by any person shall be in containers constructed of non-conductive material, maintained in good condition, and kept closed.

(e) Explosives or detonators shall be transported in special closed containers (1) in cars moved by means of a locomotive or rope, (2) on belts, (3) in shuttle cars, or (4) in equipment designed especially to transport such explosives or detonators.

(f) When supplies of explosives and detonators for use in one or more working 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 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.

(g) Explosives and detonators stored in the working places 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 working 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.

HOISTING AND MANTRIPS

SEC. 314 (a) Every hoist used to transport persons at a coal mine shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist handling platforms, cages, or other devices used to transport persons shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device; with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device; and have a proper margin of safety. Cages, platforms, or other devices which are used to transport persons in shafts and slopes shall be equipped with safety catches or other no less effective devices approved by the Secretary that act quickly and effectively in an emergency, and such 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 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) Other 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 shall be provided.

(d) There shall be at least two effective methods approved by the Secretary of signaling between each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

(e) Each locomotive and haulage car used in an underground coal mine shall be equipped with automatic brakes, where space permits. Where space does not permit automatic brakes, locomotives and haulage cars shall be subject to speed reduction gear, or other similar devices approved by the Secretary which are designed to stop the locomotives and haulage cars with the proper margin of safety.

(f) All haulage equipment acquired by an operator of a coal mine on or after one year after the operative date of this title shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on the operative date of this title shall also be so equipped within four years after the operative date of this title.

EMERGENCY SHELTERS

Sec. 315. The Secretary or an authorized representative of the Secretary may prescribe in any coal mine that rescue chambers, properly sealed and ventilated, be erected at suitable locations in the mine to which persons may go in case of an emergency for protection against hazards. Such chambers shall be properly equipped with first aid materials, an adequate supply of air and self-contained breathing equipment, an independent communication system to the surface, and proper accommodations for the persons while awaiting rescue, and such other equipment as the Secretary may require. A plan for the erection, maintenance, and revisions of such chambers and the training of the miners in their proper use shall be submitted by the operator to the Secretary for his approval.

COMMUNICATIONS

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

MISCELLANEOUS

Sec. 317. (a) Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance

Oil and gas
wells.

with State laws and regulations, except that such barriers shall not be less than three hundred feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

Boreholes.

(b) Whenever any working place approaches within fifty feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within two hundred feet of any other abandoned areas 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 working face of such working place and shall be continually maintained to a distance of at least ten feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas 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 miners in such place.

Smoking,
prohibition.

(c) No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

Portable
electric lamps.

(d) Persons underground shall use only permissible electric lamps approved by the Secretary for portable illumination. No open flame shall be permitted in the underground area of any coal mine, except as permitted under section 311(d) of this title.

(e) Within nine months after the operative date of this title, the Secretary shall propose the standards under which all working places in a mine shall be illuminated by permissible lighting, within eighteen months after the promulgation of such standards, while persons are working in such places.

(f) (1) Except as provided in paragraphs (2) and (3) of this subsection, at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of surface fires, fumes, smoke, and flood water. Escape facilities approved by the Secretary or his authorized representative, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

(2) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has

been made between the two mine openings, and such connections shall be made as soon as possible.

(3) When only one mine opening is available, owing to final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(4) In the case of all coal mines opened on or after the operative date of this title, and in the case of all new working sections opened on or after such date in mines opened prior to such date, the escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as such extension does not pose a hazard to the miners.

(g) After the operative date of this title, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction. Unless structures existing on or prior to such date which are 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 miners underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard and shall be available for inspection by interested persons.

Surface
structures,
fireproofing.

(h) Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations in or on surface coal-handling facilities, but in no event shall methane be permitted to accumulate in concentrations in or on surface coal-handling facilities in excess of limits established for methane by the Secretary within one year after the operative date of this title. Where coal is dumped at or near air-intake openings, provisions shall be made to avoid dust from entering the mine.

(i) 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 Act.

Training
programs.

(j) An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.

(k) On and after the operative date of this title, the opening of any coal mine that is declared inactive by its operator or is permanently closed or abandoned for more than ninety days, shall be sealed by the operator in a manner prescribed by the Secretary. Openings of all other mines shall be adequately protected in a manner prescribed by the Secretary to prevent entrance by unauthorized persons.

(l) The Secretary may require any operator to provide adequate facilities for the miners to change from the clothes worn underground, to provide for the storing of such clothes from shift to shift, and to provide sanitary and bathing facilities. Sanitary toilet facilities shall be provided in the active workings of the mine when such surface facilities are not readily accessible to the active workings.

(m) Each operator shall make arrangements in advance for obtaining emergency medical assistance and transportation for injured

Emergency
medical
assistance.

persons. Emergency communications shall be provided 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 coal 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. In fulfilling each of the requirements of this subsection, the operator shall meet at least minimum requirements prescribed by the Secretary of Health, Education, and Welfare. Within two months after the operative date of this title, each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this subsection.

Self-rescue device.

(n) A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device.

(o) The Secretary shall prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

Identification check system.

(p) Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground, and will provide an accurate record of the persons in the mine kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard. Such record shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than sixteen gauge.

(q) The Secretary shall require, when technologically feasible, that devices to prevent and suppress ignitions be installed on electric face cutting equipment.

Tunnels under water.

(r) Whenever an operator mines coal from a coal mine opened after the operative date of this title, or from any new working section of a mine opened prior to such date, in a manner that requires the construction, operation, and maintenance of tunnels under any river, stream, lake, or other body of water, that is, in the judgment of the Secretary, sufficiently large to constitute a hazard to miners, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of miners working or passing through such tunnels from cave-ins and other hazards. Such permits shall require, in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to such body of water. No plan shall be approved unless there is a minimum of cover to be determined by the Secretary, based on test holes drilled by the operator in a manner to be prescribed by the Secretary. No such permit shall be required in the case of any new working section of a mine which is located under any water resource reservoir being constructed by a Federal agency on the date of enactment of this Act, the operator of which is required by such agency to operate in a manner that adequately protects the safety of miners working in such section from cave-ins and other hazards.

Drinking water.

(s) An adequate supply of potable water shall be provided for drinking purposes in the active workings of the mine, and such water shall be carried, stored, and otherwise protected in sanitary containers.

(t) Within one year after the operative date of this title, the Secretary shall propose standards for preventing explosions from explosive gases other than methane and for testing for accumulations of such gases.

DEFINITIONS

SEC. 318. For the purpose of this title and title II of this Act, the term—

(a) "certified" or "registered" as applied to any person means a person certified or registered 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 or registration is provided or where the program does not meet at least minimum Federal standards established by the Secretary, such certification or registration shall be by the Secretary;

(b) "qualified person" means, as the context requires,

(1) an individual deemed qualified by the Secretary and designated by the operator to make tests and examinations required by this Act; and

(2) an individual deemed, in accordance with minimum requirements to be established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical equipment, and to conduct examinations and tests of all electrical equipment;

(c) "permissible" as applied to—

(1) equipment used in the operation of a coal mine, means equipment, other than permissible electric face 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,

(2) explosives, shot firing units, or blasting devices used in such mine, means explosives, shot firing units, or blasting devices which meet specifications which are prescribed by the Secretary, and

(3) the manner of use of equipment or explosives, shot firing units, and blasting devices, means the manner of use prescribed by the Secretary;

(d) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, 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 4 per centum of free and combined silica (SiO_2), or, where the Secretary finds that such silica concentrations are not available, which does not contain more than 5 per centum of free and combined silica;

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

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

(g) (1) "working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle,

(2) "working place" means the area of a coal mine in by the last open crosscut.

(3) "working section" means all areas of the coal mine from the loading point of the section to and including the working faces.

(4) "active workings" means any place in a coal mine where miners are normally required to work or travel;

(h) "abandoned areas" means sections, panels, and other areas that are not ventilated and examined in the manner required for working places under section 303 of this title:

(i) "permissible" as applied to electric face equipment means all electrically operated equipment taken into or used in by the last open crosscut of an entry or a room of any coal mine the electrical parts of which, including, but not limited to, associated electrical equipment, components, and accessories, are designed, constructed, and installed, in accordance with the specifications of the Secretary, to assure that such equipment will not cause a mine explosion or mine fire, and the other features of which are designed and constructed, in accordance with the specifications of the Secretary, to prevent, to the greatest extent possible, other accidents in the use of such equipment: and the regulations of the Secretary or the Director of the Bureau of Mines in effect on the operative date of this title relating to the requirements for investigation, testing, approval, certification, and acceptance of such equipment as permissible shall continue in effect until modified or superseded by the Secretary, except that the Secretary shall provide procedures, including, where feasible, testing, approval, certification, and acceptance in the field by an authorized representative of the Secretary, to facilitate compliance by an operator with the requirements of section 305(a) of this title within the periods prescribed therein:

(j) "low voltage" means up to and including 660 volts; "medium voltage" means voltages from 661 to 1,000 volts; and "high voltage" means more than 1,000 volts;

(k) "respirable dust" means only dust particulates 5 microns or less in size; and

(l) "coal mine" includes areas of adjoining mines connected underground.

Ante, p. 775.

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's underground coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

Definitions.

SEC. 402. For purposes of this title—

(a) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110 of title 5, United States Code.

80 Stat. 539;

81 Stat. 210.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung arising out of employment in an underground coal mine.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in an underground coal mine.

(e) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

(f) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, but such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.

81 Stat. 868.

42 USC 423.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, 1972

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

Publication
in Federal
Register.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more underground coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment;

(2) if a deceased miner was employed for ten years or more in one or more underground coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis; and

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

Sec. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

Sec. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1972, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable.

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section: except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

34 F.R. 9605.
5 USC 5332
note.
80 Stat. 532.
5 USC 8101-
8193.

42 USC 403.
42 USC 402.

68A Stat. 3.
20 USC 1 et
seq.

70 Stat. 615.
40 USC 423.

68 Stat. 1081.
42 USC 421.

Sec. 414. (a) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1972, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1972, whichever is the later.

(b) No benefits shall be paid under this part after December 31, 1972, if the claim therefor was filed after December 31, 1971.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, or (2) the death of such miner occurred prior to January 1, 1973.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1972

Sec. 421. (a) On and after January 1, 1973, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under this part.

(b) (1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to those established by section 411, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder;

(D) any claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be;

Publication in
Federal
Register.

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis. The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

SEC. 422. (a) During any period after December 31, 1972, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in this subsection and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of an underground coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe;

(2) for any period prior to January 1, 1973; or

(3) for any period after seven years after the date of enactment of this Act.

(f) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular underground coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i)(1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

Sec. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of an underground coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after

notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

Sec. 424. If a totally disabled miner or a widow is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his widow under this title.

Sec. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

Sec. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, 1973, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

TITLE V—ADMINISTRATION

RESEARCH

Sec. 501. (a) The Secretary and the Secretary of Health, Education, and Welfare, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate—

(1) to improve working conditions and practices in coal mines, and to prevent accidents and occupational diseases originating in the coal-mining industry;

(2) to develop new or improved methods of recovering persons in coal mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground area of a coal mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal mine;

(5) to develop epidemiological information to (A) identify and define positive factors involved in occupational diseases of miners, (B) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of miners, and (C) improve mandatory health standards;

(6) to develop techniques for the prevention and control of occupational diseases of miners, including tests for hypersusceptibility and early detection;

(7) to evaluate the effect on bodily impairment and occupational disability of miners afflicted with an occupational disease;

(8) to prepare and publish from time to time, reports on all significant aspects of occupational diseases of miners as well as on the medical aspects of injuries, other than diseases, which are revealed by the research carried on pursuant to this subsection;

(9) to study the relationship between coal mine environments and occupational diseases of miners;

(10) to develop new and improved underground equipment and other sources of power for such equipment which will provide greater safety; and

(11) for such other purposes as they deem necessary to carry out the purposes of this Act.

(b) Activities under this section in the field of coal mine health shall be carried out by the Secretary of Health, Education, and Welfare, and activities under this section in the field of coal mine safety shall be carried out by the Secretary.

(c) In carrying out the provisions for research, demonstrations, experiments, studies, training, and education under this section and sections 301(b) and 502(a) of this Act, the Secretary and the Secretary of Health, Education, and Welfare may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses, products, processes, patents, and other developments resulting from such research, demonstrations, or experiments will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the public interest) be available to the general public.

Availability of information.

(d) The Secretary of Health, Education, and Welfare shall also conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with, or around the products of, coal mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

Studies.

(e) There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out his responsibilities under this section and section 301(b) of this Act at an annual rate of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970, \$25,000,000 for the fiscal year ending June 30, 1971, and \$30,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Secretary of Health, Education, and Welfare such sums as may be necessary to carry out his responsibilities under this Act. Such sums shall remain available until expended.

Appropriation.

(f) The Secretary is authorized to grant on a mine-by-mine basis an exception to any mandatory health or safety standard under this

Exceptions.

Act for the purpose of permitting, under such terms and conditions as he may prescribe, accredited educational institutions the opportunity for experimenting with new and improved techniques and equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners and publishes his findings.

(g) The Secretary of Health, Education, and Welfare is authorized to make grants to any public or private agency, institution, or organization, and operators or individuals for research and experiments to develop effective respiratory equipment.

TRAINING AND EDUCATION

SEC. 502. (a) The Secretary shall expand programs for the education and training of operators and agents thereof, and miners in—

(1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines; and

(2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for detecting methane and other explosive gases accurately.

(b) The Secretary shall, to the greatest extent possible, provide technical assistance to operators in meeting the requirements of this Act and in further improving the health and safety conditions and practices in coal mines.

ASSISTANCE TO STATES

SEC. 503. (a) The Secretary, in coordination with the Secretary of Health, Education, and Welfare and the Secretary of Labor, is authorized to make grants in accordance with an application approved under this section to any State in which coal mining takes place—

(1) to assist such State in developing and enforcing effective coal mine health and safety laws and regulations consistent with the provisions of section 506 of this Act;

(2) to improve State workmen's compensation and occupational disease laws and programs related to coal mine employment; and

(3) to promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal mines.

(b) The Secretary shall approve any application or any modification thereof, submitted under this section by a State, through its official coal mine inspection or safety agency, which—

(1) sets forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of subsection (a) of this section;

(2) provides research and planning studies to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation to miners for occupationally caused diseases and injuries arising out of employment in any coal mine;

(3) designates such State coal mine inspection or safety agency as the sole agency responsible for administering grants under this section throughout the State, and contains satisfactory evidence that such agency will have the authority to carry out the purposes of this section:

(4) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal mine inspections within such State;

(5) provides for the extension and improvement of the State program for the improvement of coal mine health and safety in the State, and provides that no advance notice of an inspection will be provided anyone;

(6) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the States under this section;

(7) provides that the designated agency will make such reports to the Secretary in such form and containing such information as the Secretary may from time to time require;

(8) contains assurances that grants provided under this section will supplement, not supplant, existing State coal mine health and safety programs; and

(9) meets additional conditions which the Secretary may prescribe in furtherance of, and consistent with, the purposes of this section.

(c) The Secretary shall not finally disapprove any State application or modification thereof without first affording the State agency reasonable notice and opportunity for a public hearing.

(d) Any State aggrieved by a decision of the Secretary under subsection (b) or (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action be modified or set aside in whole or in part. The court shall hear such appeal on the record made before the Secretary. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the decision of the Secretary, unless the court so orders. The provisions of section 106 (a), (b), and (c) of this Act shall not be applicable to this section.

(e) Any State application or modification thereof submitted to the Secretary under this section may include a program to train State inspectors.

(f) The Secretary shall cooperate with such State in carrying out the application or modification thereof and shall, as appropriate, develop and, where appropriate, construct facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall also cooperate with such State in establishing a system by which State and Federal inspection reports of coal mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

(g) The amount granted to any coal mining State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out such application.

(h) There is authorized to be appropriated \$3,000,000 for fiscal year 1970, and \$5,000,000 annually in each succeeding fiscal year to carry out the provisions of this section, which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved application.

Appropriation.

ECONOMIC ASSISTANCE

72 Stat. 367.
15 USC 636.

SEC. 504. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof “; and”; and

(2) by adding after paragraph (4) a new paragraph as follows:

“(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern operating a coal mine in affecting additions to or alterations in the equipment, facilities, or methods of operation of such mine to requirements imposed by the Federal Coal Mine Health and Safety Act of 1969, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.”

(b) The third sentence of section 7(b) of such Act is amended by inserting “or (5)” after “paragraph (3)”.

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting “7(b)(5),” after “7(b)(4),”.

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(5) of the Small Business Act, as amended pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

79 Stat. 556.
42 USC 3142.

INSPECTORS: QUALIFICATIONS: TRAINING

SEC. 505. 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 or by education. Persons appointed to assist such representatives in the taking of samples of respirable dust for the purpose of enforcing title II of this Act shall be qualified by training, experience, or education. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives and to carry out the provisions of this Act, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall 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, operators, and representatives of miners in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and 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.

Arte, p. 83.
5 USC 3101
note.

EFFECT ON STATE LAWS

Sec. 506. (a) No State law in effect on the date of enactment of this Act or which may become effective thereafter shall be superseded by any provision of this Act or order issued or any mandatory health or safety standard, except insofar as such State law is in conflict with this Act or with any order issued or any mandatory health or safety standard.

(b) The provisions of any State law or regulation in effect upon the operative 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 any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect on the date of enactment 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 in any order issued or any mandatory health or safety standard, shall not be held to be in conflict with this Act.

ADMINISTRATIVE PROCEDURES

Sec. 507. Except as otherwise provided in this Act, 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, notice, or decision made pursuant to this Act, or to any proceeding for the review thereof.

80 Stat. 381,
392.

REGULATIONS

Sec. 508. The Secretary, the Secretary of Health, Education, and Welfare, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provision of this Act.

OPERATIVE DATE AND REPEAL

Sec. 509. Except to the extent an earlier date is specifically provided in this Act, the provisions of titles I and III of this Act shall become operative ninety days after the date of enactment of this Act, and the provisions of title II of this Act shall become operative six months after the date of enactment of this Act. The provisions of the Federal Coal Mine Safety Act, as amended, are repealed on the operative date of titles I and III of this Act, except that such provisions shall continue to apply to any order, notice, decision, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, decision or findings. All other provisions of this Act shall be effective on the date of enactment of this Act.

Repeal.
55 Stat. 177.
30 USC 451
note.

SEPARABILITY

Sec. 510. 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. 511. (a) Within one hundred and twenty days following the convening of each session of Congress the Secretary shall submit through the President to the Congress and to the Office of Science and Technology 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, the amount and status of each loan made pursuant to this Act, a description and the anticipated cost of each project and program he has undertaken under sections 301(b) and 501, and any other relevant information, including any recommendations he deems appropriate.

(b) Within one hundred and twenty days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the health matters covered by this Act, including the progress toward the achievement of the health purposes of this Act, the needs and requirements in the field of coal mine health, a description and the anticipated cost of each project and program he has undertaken under sections 301(b) and 501, and any other relevant information, including any recommendations he deems appropriate. The first such report shall include the recommendations of the Secretary of Health, Education, and Welfare as to necessary mandatory health standards, including his recommendations as to the maximum permissible individual exposure to miners from respirable dust during a shift.

SPECIAL REPORT

Federal and
State
coordination.

SEC. 512. (a) The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal mine health and safety so as to achieve (1) maximum health and safety protection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) a reduction of delay to a minimum, and (5) most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after the date of enactment of this Act.

JURISDICTION: LIMITATION

SEC. 513. In any proceeding in which the validity of any interim mandatory health or safety standard set forth in titles II and III of this Act is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

Approved December 30, 1969.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-563 accompanying H.R. 13950 (Comm. on Education & Labor) and No. 91-761 (Comm. of Conference).

SENATE REPORT NO. 91-411 (Comm. on Labor & Public Welfare).

CONGRESSIONAL RECORD, Vol. 115 (1969):

Sept. 25, 26, 29, 30, Oct. 1, 2: Considered and passed Senate.

Oct. 27-29: Considered and passed House, amended, in lieu of H.R. 13950.

Dec. 17: House agreed to conference report.

Dec. 18: Senate agreed to conference report.



Commissioner's Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 99

January 2, 1970

FEDERAL COAL MINE HEALTH AND SAFETY ACT

To Administrative, Supervisory,
and Technical Employees

On December 30, 1969, President Nixon signed S. 2917 (Federal Coal Mine Health and Safety Act of 1969, P. L. 91-173), which is primarily designed to establish nationwide health and safety standards for the coal-mining industry. Of particular interest to the Social Security Administration is title IV of the new law, under which cash benefits are provided for coal miners (and their dependents) who are "totally disabled" due to pneumoconiosis ("black lung" disease) and for survivors of coal miners who died from the disease.

Under P. L. 91-173, the Secretary of Health, Education, and Welfare is responsible, for years before 1973, for the payment and administration of these benefits, using standards which the Secretary will prescribe for determining whether a miner is totally disabled due to pneumoconiosis and whether the death of a miner was due to pneumoconiosis. The law provides that to the extent possible, personnel and procedures used in making social security disability determinations will be used in the administration of these benefit provisions. "Pneumoconiosis," for the purpose of these benefits, is defined as a chronic dust disease of the lung arising out of employment in an underground coal mine.

For benefit claims filed before 1973, the monthly benefits for a miner disabled by the disease or for the widow of a miner who died from it will be a flat amount--about \$136. (The amount of the benefit will be equal to 50 percent of the minimum monthly payment under the Federal Employees' Compensation Act to a totally disabled Federal employee in the first step of grade GS-2.) An additional 50 percent of this benefit will be payable for one dependent, 75 percent for two dependents, and 100 percent for three or more dependents. The benefits are not retroactive--that is, no benefits will be paid for any period prior to the date on which a claim for them is filed.

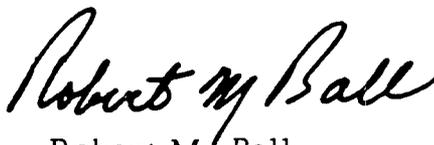
Benefit payments to a miner or his widow will be reduced by the amount of State workmen's compensation, unemployment compensation, or State disability insurance payments (provided under temporary disability programs in California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico). Benefits to miners will also be subject to an earnings test, the provisions of which will be the same as the social security retirement test provisions.

For benefit claims filed after 1972, the over-all responsibility will shift to the Secretary of Labor. Such claims will be filed under State workmen's compensation laws in those States which have such laws that are approved by the Secretary of Labor as providing adequate coverage for pneumoconiosis. Where a State workmen's compensation law does not have this approval, coal mine operators will be required to pay benefits to miners totally disabled due to pneumoconiosis, and to survivors of miners who died from the disease. Such payments will be made under conditions and in the amounts which would be applicable if the claim were subject to the provisions of the Longshoremen's and Harbor Workers' Act. They will be payable up to a period of 7 years after enactment. Benefit payments by a coal mine operator will be reduced by the amount of workmen's compensation payments. Where payment from a coal mine operator or his insurer cannot be obtained, the Secretary of Labor will make the payments to which a totally disabled miner or his widow is entitled under P. L. 91-173.

It appears at this time that the benefits payable under P. L. 91-173 will be considered to be in the nature of workmen's compensation payments, so that any social security disability benefits to which a miner and his dependents (but not his survivors) are also entitled will be subject to the workmen's compensation offset provisions of section 224 of the Social Security Act.

As the benefit provisions of title IV of P. L. 91-173 were developed by a House-Senate conference committee, apparently not long before the conference committee bill was reported to the Congress and passed, we had no opportunity to prepare and transmit advance instructions for administering the benefits. Interim instructions for taking applications have been forwarded to all concerned offices. Final instructions and forms will be distributed as soon as possible.

Enclosed is a statement by the President on signing P. L. 91-173.



Robert M. Ball
Commissioner

Enclosure

FOR IMMEDIATE RELEASE

DECEMBER 30, 1969

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT
ON SIGNING OF THE FEDERAL
COAL MINE HEALTH AND SAFETY
ACT OF 1969

The health and safety of American workers is a primary concern of this Administration. With this concern in mind, one of my very early legislative recommendations was in the area of coal mine health and safety. This has culminated today in my signing of the Federal Coal Mine Health and Safety Act of 1969. The health and safety provisions of this Act represent an historical advance in industrial practices.

However, I do have reservations about certain serious issues raised by the Act. In signing it I wish to bring to the attention of the Congress and the nation three points I consider to be of major importance:

First, workman's compensation has been and should be a State responsibility. Title IV of this Act gives the Federal Government responsibility in this area. I want to emphasize very strongly that Title IV is temporary, limited and unique and in no way should it be considered a precedent for future Federal administration of workmen's compensation programs. With the exception of continuing benefit payments to claimants establishing eligibility during the period prior to December 31, 1972, all Federal responsibility in this area will expire within seven years.

Next, this Act creates confusion about the consistency of standards in Federally administered disability programs. I have therefore instructed the Secretary of Health, Education and Welfare in administering this program to apply wherever possible standards consistent with those under the existing Social Security Act disability program.

Finally, the Act may present problems of administration that require legislative changes. If such problems arise, I will propose corrective legislation.

While I have these concerns about the problems presented by the Act, I have great pride in this historic legislation. It represents a crucially-needed step forward in the protection of America's coal miners.

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LISTING OF REFERENCE MATERIALS

U.S. Congress. Senate. Committee on Labor and Public Welfare. Subcommittee on Labor. *Hearings on S. 355, S. 467, S. 1094, S. 1178, S. 1300, S. 1907, S. 2118, S. 2284, and S. 2405, Bills to Improve the Health and Safety Conditions of Persons Working in the Coal Mining Industry of the United States.* 91st Congress, 1st session.

U.S. Congress. House. Committee on Education and Labor. General Subcommittee on Labor. *Hearings on H.R. 4047, HR. 4295, and H.R. 7976, Bills to Improve the Health and Safety Conditions of Persons Working in the Coal Mine Industry of the United States.* 91st Congress, 1st session.

U.S. Congress. House. Committee on Education and Labor. Select Subcommittee on Labor. *Hearings on H.R. 11476, A Bill to Encourage the States to Improve Their Workmen's Compensation Laws to Assure Adequate Coverage and Benefits to Employees Injured in the Mining Industry, and for Other Purposes.* 91st Congress, 1st session.

BLACK LUNG BENEFITS ACT OF 1972 (P.L. 92-303)

I. Reported to and Passed House

- A. Committee on Education and Labor Reports
House Report No. 92-460, Parts I and II
(to accompany H.R. 9212) — *August 5, September 14, 1971*
- B. Committee Bill Reported to the House
H.R. 9212 (reported with an amendment) — *August 5, 1971*
- C. House Debate — Congressional Record — *October 18, November 9-10, 13, 1971*
- D. House-Passed Bill
H.R. 9212 (as referred to the Senate) — *November 11, 1971*

II. Reported to and Passed Senate

- A. Committee on Labor and Public Welfare Report
Senate Report No. 92-743 (to accompany H.R. 9212) — *April 10, 1972*
- B. Committee Bill Reported to the Senate
H.R. 9212 (reported with amendments) — *April 10, 1972*
- C. Senate Debate — Congressional Record — *April 13, 17, 1972*
- D. Senate-Passed Bill
H.R. 9212 (with numbered amendments) — *April 17, 1972*
- E. House and Senate Appointed Conferees — Congressional Record — *April 19, 1972*

III. Conference Report (reconciling differences in the disagreeing votes of the two Houses)

- A. Senate Report No. 92-780 — *May 3, 1972*
- B. Senate Debate — Congressional Record — *May 4, 1972*
- C. House Debate — Congressional Record — *May 10, 1972*

IV. Public Law

- A. Public Law 92-303, 92nd Congress — *May 19, 1972*
- B. Commissioner's Bulletin No. 124, Black Lung Benefits Amendments — *May 26, 1972*

Appendix

Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), Proposed Amendments to Title IV, Black Lung Legislation, Bill Text, Section-by-Section Analysis, and Changes in Existing Law Made by S. 2675, S. 2289, H.R. 9212, and Comparison of the Legislation with Current Law — Subcommittee on Labor of the Committee on Labor and Public Welfare — Committee Print — *December 1971*

Listing of Reference Materials

BLACK LUNG BENEFITS

AUGUST 5, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. PERKINS, from the Committee on Education and Labor,
submitted the following

REPORT

together with

MINORITY AND SEPARATE VIEWS

[To accompany H.R. 9212]

The Committee on Education and Labor, to whom was referred the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, having considered the same, report favorably thereon, with amendment, and recommend that the bill do pass.

The amendment is as follows: Strike all after the enacting clause and insert the matter that appears in the reported bill in italic type.

PURPOSE OF LEGISLATION

The basic purpose of H.R. 9212 is to amend the provisions of Title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and to make adjustments in the Act deemed desirable in the light of 1½ years experience in its administration.

BACKGROUND OF LEGISLATION

The payment of benefits to coal miners totally disabled due to pneumoconiosis, and to the widows of those who died with such disability, or from the disease, had its origin in a section of the House version of the Federal Coal Mine Health and Safety Act of 1969. In reporting that bill—H.R. 13950—the Committee on Education and Labor said:

One of the compelling reasons the committee found it necessary to include this program in the bill was the failure

of the States to assume compensation responsibilities for the miners covered by this program. State laws are generally remiss in providing compensation for individuals who suffer from an occupational disease as it is, and only one State—Pennsylvania—provides retroactive benefits to individuals disabled by pneumoconiosis.

Also, it is understandable that States which are not coal-producing have no wish to assume responsibility for residents who may have contracted the ailment mining coal in another State. The substantial reduction in the number of miners actually employed in mines following World War II caused a dispersal of men throughout the country—many into States which have few, if any, mines. These men took with them an irreversible disease, but because of their present location are denied benefits.

The committee also recognized the problems inherent in requiring employers to assume the cost of compensating individuals for occupational diseases contracted in years past.

The resolution of this dilemma, consistent with the desperate financial need of individuals eligible to receive payments under this bill, was the inevitable inclusion of section 112(b), and the requirement that the payments be made from general revenues.

It is hoped that the health standards prescribed in title II will eliminate conditions in mines which cause the disease. Also, it is expected that the States will assume responsibility in their respective compensation plans for miners who contract the disease in the future.

Coal workers' pneumoconiosis is caused by the inhalation of coal mine dust. Total disability may arise due to either simple or complicated pneumoconiosis. For purposes of the benefit program, there is an irrebutable presumption that complicated pneumoconiosis is totally disabling. A miner with complicated pneumoconiosis incurs progressive massive fibrosis as a complex reaction to dust and other factors, which may include tuberculosis and other infections. The disease in this form usually produces marked pulmonary impairment and considerable respiratory disability.

Such respiratory disability severely limits the physical capabilities of the individual, can induce death by cardiac failure, and may contribute to other causes of death. Once the disease is contracted, it is progressive and irreversible.

Simple pneumoconiosis may also be totally disabling, though the law does not contain a presumption that a miner is totally disabled if he has it. Rather, the present test is the ability of the miner to engage in "any substantial gainful activity."

Comment on the general health of coal miners compared with that of other workers, taken from the digest of the most recent international conference on the subject, is appropriate at this point:

The principal studies carried out in the United States which bear on this subject have been studies of mortality rates among coal miners. These suggest that, in the past, the

risk of death among coal miners has been nearly twice that of the general population and higher than that of any other occupational group in the United States. Contributing heavily to this excess have been deaths from accidents and respiratory diseases. The fact that the excess of respiratory disease deaths increases sharply with the age of the miner strongly suggests the importance of environmental factors. Mortality rates of coal miners for most other causes are also high, and the picture obtained from studying mortality data is one of generally poor health. Unfortunately, the latest study available is for the year 1950, and health levels may have improved considerably since that time. The mortality rates of United States coal miners contrast sharply with mortality rates published for coal miners in Great Britain. In that country, coal miners' mortality for all causes is elevated only about 15% above that for the general population, although special studies of cohorts in certain areas of Great Britain do show excesses of as much as 50%.

COMMITTEE ACTION

The General Subcommittee on Labor received testimony on black lung legislation during its oversight hearings into the Hyden, Kentucky, coal mine disaster. The hearings were conducted March 9-13. The Subcommittee received additional testimony on May 19, and the full Committee on June 22. The Subcommittee unanimously ordered the bill reported and the full Committee, on June 23, ordered the bill reported by a vote of 22-1.

SUMMARY OF MAJOR PROVISIONS

H.R. 9212 embodies the concepts of several bills designed to improve the administration of the black lung benefits program, and to make it more equitable.

Section 1 provides for the payment of black lung benefits to "double orphans." Title IV of the Act now provides that benefits may be paid only to miners or their widows. When both the miner and his spouse are deceased, the dependent surviving children (referred to as "double orphans") are not entitled to benefits. The Act permits augmented benefits to a miner or his widow for the support of their dependent children, but withdraws that support when both the miner and widow have died. Section 1 of the bill corrects this inequity.

"Child" is defined in accordance with the Federal Employees Compensation Act, and would mean: "an individual who is unmarried and (1) under 18 years of age, or (2) incapable of self-support because of physical or mental disability which arose before he reached 18 years of age or, in the case of a student, before he ceased to be a student, or (3) a student." "Student" is also defined to mean "an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution. . . ."

If the claim of a child is filed within 6 months after the month in which the bill is enacted, benefit payments—assuming the child meets

the eligibility requirements—will be made to the child retroactively to December 30, 1969 (the date of enactment of the Federal Coal Mine Health and Safety Act), except that payments cannot be made for a period before the date a child actually met the eligibility requirements. If the child is not eligible for benefits at the time of filing, but was eligible during a period since December 30, 1969, he is entitled to benefit payments for that period of eligibility.

If the claim of a child is filed after 6 months following the month in which the bill is enacted, benefit payments—assuming the child meets the eligibility requirements—will be made retroactively to a date 12 months preceding the date the claim is filed, except that payments cannot be made for a period before the date a child actually met the eligibility requirements. If the child is not eligible for benefits at the time of filing, but was eligible during the twelve-month period preceding, he is entitled to benefit payments for that period of eligibility.

The bill was amended in committee to insure that benefit payments to a child shall only be paid for so long as the child meets the eligibility criteria. The bill was also amended to permit the payment of benefits to a child claimant if the claim is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1972, whichever is the later. This provision was included notwithstanding the requirements of any other provision, thereby establishing the "double orphans" provision as a total Federal responsibility. The committee does not intend that the requirements of part C of Title IV of the Act include a "double orphans" provision.

The committee is not aware of many cases of "double orphans" who would be eligible for benefits under the bill, but those few cases brought to the attention of the committee are truly heart-rending. In presenting testimony on the subject, Mr. Bernard Popick, Director of the Bureau of Disability Insurance in the Social Security Administration, supported the inclusion of "double orphans" within the coverage of the black lung benefits program.

Section 1 also permits the Secretary of Health, Education, and Welfare to prescribe regulations consistent with provisions of the Social Security Act relating to overpayments and underpayments, payments to incompetents, and claimant representation.

Section 2 states that the existing black lung benefits program "shall not be considered a workmen's compensation law or plan for purposes of" the disability insurance provisions of the Social Security Act. Under those provisions, Social Security disability benefits to a worker and his family must be reduced under certain specified circumstances if he is also entitled to workmen's compensation, and if the combined benefits exceed 80 percent of the worker's average pre-disability earnings.

This section of the bill merely proposes to affirm by statute what was stated repeatedly during Congressional consideration of the original legislation, and what was clearly intended. Under an erroneous interpretation some miners, who were receiving disability insurance benefits and who were eligible for and awarded black lung benefits, have suffered an actual reduction in total benefits received. They have found themselves in the position of receiving less in benefits once their black lung claims were approved, than they had been receiving prior to such approval.

The Social Security Administration estimates that less than 5% of black lung applicants are affected by this provision.

To support this provision and to demonstrate the clear intent of the Congress, the following legislative history is presented at this point:

1. The House Report on the bill (H.R. 13950) states:

This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. . . .

2. The following excerpts are from the House debate on the bill:

Mr. STEIGER of Wisconsin. It (the committee report) states:

This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan.

I am sure that the chairman would clearly agree with that statement.

Mr. PERKINS. It is not a workmen's compensation plan even though it is included in the bill because the committee found workmen's compensation statutes in various States totally inadequate to compensate the victims of black lung. It is a special compensation plan because of the hazardous nature of the employment of coal miners.

Mr. STEIGER of Wisconsin. I understand.

* * * * *

Mr. DENT. This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. Moreover, it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for the death, injury, or illness of workers.

* * * * *

Mr. BURTON of California. Mr. Chairman, I rise in opposition to the amendment. Of all the sections of the bill, this is the one section that by no stretch of the imagination could be called in any manner, shape, or form anything but bipartisan.

It is intended, as the committee report so very emphatically and unambiguously states:

This payment program is not a Workmen's Compensation program. It is not intended to be so. It contains none of the characteristic features which mark any Workmen's Compensation plan, and it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for death, injury, or the illness of other workers.

* * * * *

Mr. STEIGER of Wisconsin. Mr. Chairman, I appreciate the gentleman from California yielding. I wish simply to reassert

what I said during the general debate and what the gentleman from California has just now said so well, and that is that the provision to which the amendment refers is not a precedent. The committee report spells this out. The gentleman from California has stated it clearly and with equivocation. This is not a workmen's compensation provision.

My argument with the distinguished gentleman from Iowa, who has sponsored the amendment which I oppose, is that he is considering this a compensation plan, and it is not. It has none of the characteristics of such, and clearly ought not to be viewed by those who are concerned about this provision as being a precedent.

Mr. HANSEN of Idaho. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman from Idaho.

Mr. HANSEN of Idaho. Mr. Chairman, I appreciate the gentleman yielding. I associate myself with the remarks made by the gentleman from California and add this comment, that the bill has been worked out over a long period of time, very painfully, and we have come up with some limited response to the problem. I am aware of the precedent-setting possibilities of this bill, but I think the history has been such that those possibilities have been eliminated or virtually minimized.

* * * * *

Mr. SAYLOR. So this is not a workmen's compensation bill. This is a responsibility of mankind—we the Congress represent the mankind of the country—it is our responsibility to take care of this in one operation. We have provided the method whereby men suffering from this dread disease and their survivors can get some benefit. This is our responsibility as a Congress. I believe it is one of the prices we have had to pay for the mistakes of the past. I hope that this amendment will be defeated.

Mr. ESCH. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to my colleague from Michigan.

Mr. ESCH. I thank the gentleman for yielding. I wish to associate myself with the remarks of the gentleman from Pennsylvania and to compliment him on his leadership on this bill and on this section. As one who has a personal interest, having been born in his district, and having had a father who served in the mines at the age of 14 in his district, I am aware that the gentleman in the well knows firsthand the problems of the miners and our responsibility toward them.

Hopefully this legislation in total will bring about a new era in the mines, but this amendment must be defeated so that we can give recognition to a related problem; that is, with the miners who are already afflicted from the past.

Mr. MORGAN. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to my colleague from Pennsylvania.

Mr. MORGAN. Mr. Chairman, I wish to associate myself with the gentleman. We represent the two largest active mining areas in the great State of Pennsylvania.

This is not a workmen's compensation act, as it has been described by the proponents of this amendment. It contains none of the characteristic features which mark any workmen's compensation plan. We are moving in this bill toward dust-free mines. The provisions in this bill are a limited response in a form of emergency assistance to the miners. This is not a permanent proposition.

I commend the gentleman from Pennsylvania for his remarks, and I associate myself with them.

* * * * *

Mr. DENT. I want to reassure the gentleman from Wisconsin that this is not a compensation act in any way. It is a benefit payment for services rendered in an industry that did not take care of its problem and in the States that did not take care of their problem. This is a Federal obligation as this Congress sees it.

3. The following excerpts are from the House debate on the Conference Report:

Mr. BURTON of California. * * * we have long since agreed that we were going to write a clear history that for the House portion of this bill these payments were not to be workmen's compensation payments.

* * * * *

Mr. ERLBORN. * * * It was made very clear in this House when this bill was passed that this was not intended to be a workmen's compensation provision.

4. The following excerpt is from the Senate debate on the Conference Report:

Mr. JAVITS. * * * Now let me be clear on one matter: I am certainly not an advocate of federalization of workmen's compensation law, either generally or with respect to black lung in particular; and the conference report does no such thing. * * *

The proposal which is embodied in Title IV of the bill is, in fact, much less of an intrusion on the general principles of workmen's compensation than was in the House bill. * * *

Section 3 of the bill extends, for two years, the existing program for payment of black lung benefits. Under the Act, the program will be modified by 1973 to shift responsibility from the Federal Government to the States and mine operators. Although some States appear to have modified their workmen's compensation laws as necessary to provide adequate coverage for pneumoconiosis, and several others have bills pending in their legislatures to do so, the great majority have not yet acted. Moreover, as of June 23, only 18 State legislatures were meeting in regular session. This section will permit a reasonable and necessary additional period of time for the States to prepare to assume

responsibilities for the payment of black lung benefits, thereby relieving the Federal Government of future responsibilities.

Section 4 prohibits the use of chest X-rays as the sole basis for denial of claims under part B of Title IV of the Act, and is included to clarify congressional intent with respect to the determination of total disability due to pneumoconiosis. Though the Secretary of Health, Education, and Welfare has authority to prescribe standards for determining whether a miner is totally disabled due to pneumoconiosis, there are legislative guidelines within which such standards are to be set. The enumeration of the guidelines in section 411(c)(3) of the Act, for instance, did not establish a mutual exclusivity of diagnoses. That enumeration was an explicit direction to the Secretary, that the Congress recognized the desirability of utilizing a combination of diagnostic methods. The Committee Report is specific on this point of Congressional concern:

The committee heard testimony¹ to the effect that X-ray examinations alone could not always establish the existence of pneumoconiosis. As the Surgeon General testified, frequently miners who have shown no X-ray evidence of the disease are found, in an autopsy, to have contracted the disease. Therefore, the committee is authorizing the Surgeon General to require any medical examinations which, in his judgment, are necessary to establish the extent and severity of the disease and otherwise to promote the health of miners.

Following are pertinent excerpts from the testimony to which the report refers:

*Excerpts from the written statement of the Surgeon General of the United States: * * * Coal miners' pneumoconiosis is a distinct clinical entity, resulting from inhalation of coal dust. Physicians diagnose it on the basis of X-ray evidence of nodules in the lungs of a patient with a history of long exposure to coal dust. However, it should be pointed out that data from postmortem examinations indicate a higher prevalence of the disease than can be diagnosed from X-ray examinations. [Emphasis supplied.]*

*Testimony of Dr. Donald L. Rasmussen, Chief, Pulmonary Section, Beckley Appalachian Regional Hospital, Beckley, W. Va.: Of interest is the fact that those miners who have worked primarily at the face in mechanized operations become impaired on an average of 5 years earlier than men engaged in all other mining jobs. These face workers also show somewhat more X-ray abnormality, although there is little relationship between impairment and X-ray category pneumoconiosis * * * (emphasis supplied)*

*Testimony of Dr. H. A. Wells, Director, Pulmonary Research Laboratory, Conemaugh Valley Memorial Hospital, Johnstown, Pa.: But I would hasten to interject here that X-ray alone without being coupled with functional testing is going to be a poor indicator of the disease (pneumoconiosis) * * **

¹ Hearings of the General Subcommittee on Labor, U.S. House of Representatives, on H.R. 4047; H.R. 4295; and H.R. 7976, 91st Cong., 1st Sess.

*Testimony of Dr. Jethro Gough, Professor and Head, Department of Pathology and Bacteriology, Welsh National School of Medicine, Cardiff, Wales: * * * Now, since then it has been, as I answered your question, how do we go about saying who gets it (pneumoconiosis) and how long does it take? We do this survey which runs about every 5 years * * * That is, it is going to test out the function of breathing, how well a man can breathe, every 5 years, to see whether this matches up with the X-ray change. If he is not getting X-ray changes, maybe he is getting a disturbance in his breathing capacity, and this is being tested out as well * * **

*Excerpts from the Annual Report 1967-68. Medical Service and Medical Research, National Coal Board, Great Britain: * * * Secondly, it was also rapidly apparent that the X-ray film was not, by itself, a reasonable measure of disability * * **

From the British Government Publication "Pneumoconiosis and Allied Occupational Chest Diseases", Ministry of Social Security, London, England:

** * * The disease (pneumoconiosis) is difficult to diagnose, especially in the early stages, and accurate diagnosis depends on three essentials—a high quality full size radiograph of the chest, a full clinical examination (including lung function tests) and complete industrial history * * **

** * * The radiograph remains the most important single factor in the diagnosis of pneumoconiosis, as defined * * * on the other hand the opacities seen in the radiograph are not in themselves diagnostic and must be interpreted in the light of a detailed occupational history and clinical examinations * * * (emphasis supplied)*

Similar testimony² before the Senate Labor Subcommittee enabled ready concurrence by both Houses of the Congress that exclusive reliability on X-rays is not sufficient to establish total disability due to pneumoconiosis. A very compelling statement was made on this point by Dr. Werner A. Laquerur, Director of Laboratories, Appalachian Regional Hospital, Beckley, West Virginia:

** * * Although I am very happy to say that some of the great pathologists concur with this point, every technique which we are using in determining disease has its limitation of precision and accuracy. Unfortunately the tool of X-ray * * * is a rather crude tool, and all it does is show evidence * * * So the fact that we do not have positive X-ray evidence does not rule out that a patient or a miner does not have a coal worker's pneumoconiosis * * **

It is to be noted that the committee does not intend that the preceding, in any way, disparage the use of x-ray in detecting pneumoconiosis. Rather, the committee is of the belief that no single test is presently superior to x-ray; but, that x-ray should not act as the sole determinant in denying a claim when other evidence may establish pneumoconiosis to the extent of total disability.

² Hearings of the Subcommittee on Labor, United States Senate, on S. 353, S. 467, S. 1094, S. 1178, S. 1300, S. 1907, S. 2113 and S. 2284, 91st Cong., 1st Sess.

The American College of Radiology has been of considerable and generous assistance in the implementation of the program, and in advising the committee with respect to the instant subject. In a letter to the chairman of the Subcommittee, Dr. Seymour F. Ochsner, Chairman of the Board of Chancellors of the American College of Radiology, suggested "language which would direct the Secretary (of Health, Education, and Welfare) to take into consideration any and all clinical findings which would be provided by the miner or his physicians—including the x-ray findings." The committee anticipates the eventual development of improved medical techniques even more precise in detecting and categorizing pneumoconiosis.

Section 4 of the bill applies only with respect to part B of Title IV of the Act, notwithstanding any other possible implication to the contrary. The committee does not intend that section 4 be a requirement of part C.

ESTIMATE OF COSTS

Pursuant to the requirements of clause 7 of rule XIII of the Rules of the House of Representatives, the following committee estimate of the cost of the legislation is presented:

FROM GENERAL REVENUES

[In millions of dollars]

	Fiscal year—					
	1972	1973	1974	1975	1976	1977
Double orphans.....	1.5	0.8	0.8	0.8	0.8	0.8
Disability insurance offset.....	None	None	None	None	None	None
Extend Federal responsibility.....	None	44.0	143.0	171.0	148.0	140.0
X-ray requirement.....	10.0	10.0	9.0	8.0	7.0	6.0

No Government agency has submitted to the committee any cost estimate by which a comparison can be made with the above committee estimate of the cost of this legislation. The estimates are based upon information supplied from several sources. The estimates on double orphans are based upon a total of 500 eligible beneficiaries for each fiscal year. The increased cost for fiscal year 1972 is a result of the retroactive feature of the provision. Social Security disability benefit payments have been reduced to black lung beneficiaries as a result of the Social Security Administration's application of offset provisions. Hence, the nonapplicability of the offset provision to the black lung benefit payments which is made legislatively clear in the reported bill will result in an estimated cost to the disability insurance trust fund of \$20 million in fiscal year 72, and \$10 million in each of the succeeding fiscal years, but will not result in any cost from general revenues. The line in the above table dealing with the extension of Federal responsibility is based upon information informally supplied by the Social Security Administration and is adopted by the committee as its estimate in the absence of any other information to the committee which would either support or negate it.

The estimates on the X-ray requirement provisions are based upon the premise that approximately 5,000 miners and widows have been wrongfully denied the benefits as a result of a negative X-ray finding and that each claimant would receive an average of \$2,000 in benefits during the year with declining amounts needed in succeeding fiscal years because of fewer eligible applicants and beneficiaries.

SECTION-BY-SECTION ANALYSIS

Section 1.

Subsection (a) of this section amends section 412(a) of the Act to add a new paragraph dealing with the payment of benefits to children who become entitled to such benefits under the bill. These are children of miners whose deaths are due to pneumoconiosis or who were receiving benefits at the time of the miners' death, and leave no widow, and children of widows who were receiving benefits at the time of the widows' death. The amount of such benefits, if there is one child, shall be the rate provided in the Act for miners who are disabled due to pneumoconiosis. If there is more than one child, each shall be entitled to his pro rata share of an amount equal to the aggregate of the rate provided for disabled miners, plus 50 percent of such rate where there are two children, 75 percent of such rate where there are three children, and 100 percent of such rate where there are more than three children.

Subsection (b) (1) of this section amends section 412(b) of the Act, which provides for reduction of benefit payments on account of receipt of State workmen's compensation, unemployment compensation, or disability insurance, and for reductions on account of excess earnings, to provide for a reduction of benefits to children in the same manner as for other beneficiaries under the Act.

Subsection (b) (2) of this section amends section 412 to provide a definition of the term "child". The term is defined to include only unmarried children, and only those who are (1) under eighteen, or (2) incapable of self-support because of a disability arising before they reach eighteen or cease to be students (as defined), or (3) students. Stepchildren, adopted children and posthumous children are included. For purposes of this definition, a student is considered to be a person under 23 who has not completed four years of education beyond high school and is in full-time attendance at a school or an institution of higher education which is public or recognized as accredited by the bill, or at some other type of educational or training institution as defined by the Secretary of Health, Education, and Welfare. Appropriate provisions are included to insure that students do not lose their benefits during certain vacation periods or while they are prevented from attending by factors beyond their control.

Subsection (b) (3) of this section amends section 413(b) of the Act to permit the Secretary to prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act. These sections deal with the treatment of overpayments and underpayments, payments in the case of beneficiaries who are incompetent, and claimant representation.

Subsection (b) (4) of this section amends section 414 of the Act by inserting a new paragraph (2), which deals with time limitations in the case of claims by children. The provisions of the new paragraph will be applicable notwithstanding any other provisions of the part.

Under it, if a claim is filed within six months after the month of the enactment of the bill, benefit payments under the claim will be made retroactively to December 30, 1969 (the date of enactment of the original Act), or from the date the child first would have been eligible for benefits, whichever is the shorter period. If the claimant is not eligible for benefits at the time he files his claim, but was eligible during the period between December 30, 1969, and the date the claim is filed, the benefit payments will be made for that period. Where a claim is filed by a child more than six months after the month of the enactment of the bill, benefit payments made under the claim shall be retroactive for the twelve-month period preceding the filing of the claim or from the date the child first became eligible for such payments, whichever is the lesser period. Where a claim is filed by a claimant who is not eligible for benefits but was eligible for some period during the twelve-month period before the claim was filed, benefit payments will be made for the duration of that period. Claims for benefits under the amendments made by the bill will not be considered unless filed within six months after the death of the father or mother (whichever last occurred), or by December 31, 1972, whichever is the later.

Section 2.

Subsection (a) of this section amends section 412(b) of the Act to provide that part B of the Act will not be considered a workmen's compensation law or plan for purposes of section 224 of the Social Security Act. This provision is included to emphasize the original intent of the Congress that the black-lung benefits program should not serve as a precedent for Federal workmen's compensation, and should not be represented as a workmen's compensation law or plan. This amendment will be effective from December 30, 1969, the original date of the enactment of the Act.

Section 3.

This section continues the timetable under the Act for two additional years. This provision will permit an additional period for the States to prepare to assume responsibilities for providing black-lung benefits to beneficiaries under the Act, thereby relieving the Federal Government of future responsibilities.

Section 4.

This section amends the first sentence of section 413(b) of the Act, which deals with procedures to be used in determining entitlement under the Act, to provide that claims for benefits may not be denied solely on the basis of the results of a chest X-ray.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE IV OF THE FEDERAL COAL MINE HEALTH
AND SAFETY ACT OF 1969

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's underground coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

SEC. 402. For purposes of this title—

(a) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110 of title 5, United States Code.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung arising out of employment in an underground coal mine.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in Part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in an underground coal mine.

(e) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

(f) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, but such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.

(g) *The term "child" means an individual who is unmarried and (1) under eighteen years of age, or (2) incapable of self-support because of physical or mental disability which arose before he reached eighteen years of age or, in the case of a student, before he ceased to be a student, or (3) a student. Such term includes stepchildren, adopted children, and posthumous children. For the purpose of this subsection the term "student" means an individual under twenty-three years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—*

(1) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(3) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) an additional type of educational or training institution as defined by the Secretary of Health, Education, and Welfare.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration in which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose twenty-third birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, [1972] 1974

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him, under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more underground coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment;

(2) if a deceased miner was employed for ten years or more in one or more underground coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis; and

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A,

B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) *In the case of the child or children of a miner whose death is due to pneumoconiosis or a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children, as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: Provided, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 402(g).*

[(3)](4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow *or child* shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow *or child* under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the

amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act. *This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act.*

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, [1972] 1974, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act, *but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram.* Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable. *In carrying out his responsibilities under this part, the Secretary may prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act.*

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section: except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, at the opinion of the Secretary, the filing of a claim would clearly be futile.

SEC. 414. (a) (1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, [1972] 1974, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, [1972] 1974, whichever is the later.

(2) *In the case of a claim by a child, this paragraph shall apply, notwithstanding any other provision of this part.*

(4) *If such claim is filed within six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from December 30, 1969, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.*

(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1972, whichever is the later.

(b) No benefits shall be paid under this part after December 31, [1972] 1974, if the claim therefor was filed after December 31, [1971] 1973.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, or (2) the death of such miner occurred prior to January 1, [1973] 1975.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, [1972] 1974

SEC. 421. (a) On and after January 1, [1973] 1975, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under this part.

(b) (1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, [1972] 1974, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to those established by section 411, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder;

(D) any claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

SEC. 422. (a) During any period after December 31, [1972] 1974, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in this subsection and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of an underground coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe;

(2) for any period prior to January 1, [1973] 1975; or

(3) for any period after [seven] nine years after the date of enactment of this Act.

(f) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular underground coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i) (1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

SEC. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421 (b) each operator of an underground coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

SEC. 424. If a totally disabled miner or a widow is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his widow under this title.

SEC. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, ~~1973~~ 1975, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

MINORITY VIEWS ON H.R. 9212

In its present form we are opposed to the bill H.R. 9212 as reported by the committee. The bill consists of four sections all of which amend title IV of the Federal Coal Mine Health and Safety Act of 1969 and is designated in the act as "Black Lung Benefits". We object to sections 2, 3, and 4 of the bill but approve of the principle embodied in section 1. We feel that in view of the broad and bipartisan support among our committee members for the principle and goal of section 1 it should have been treated as a measure separate and distinct from the changes which would be made in title IV by sections 2, 3, and 4. We find these changes objectionable and, as a practical matter, unrelated and unnecessary to achieve the purposes and goal of section 1. The only reason we have heard for lumping together all four of these amendments is a public statement by the chairman of the committee to the effect that section 1 will carry section 2, 3, and 4 with it; in other words, that the strong support for the principle of section 1 will help assure the approval of the quite controversial provisions in sections 2, 3, and 4 of the committee bill. Our efforts to achieve this desirable separation in committee were fruitless.

SUMMARY OF TITLE IV—BLACK LUNG BENEFITS

Federal benefits under title IV are to be paid only for total disability of underground coal miners arising out of the ailment generally known as "black lung" which is pneumoconiosis caused by the inhalation of coal dust. Benefits are also provided for the widows of such miners and where there is a surviving widow along with other dependents, the widow's benefit is substantially increased.

Title IV consists of three parts. Part A includes the definitions of the terms used in title IV and a statement of purpose. It finds that there are a significant number of miners who are totally disabled from pneumoconiosis, there are dependent survivors of such miners, and that few States provide benefits for either. It then declares that the purpose of title IV is to provide such benefits.

Part B in relevant part, deals with claims for benefits filed on or before December 31, 1972, by eligible miners or their widows. Benefits may be paid to widows only if such benefits were actually being paid to the miner prior to his death, or the miner died prior to January 1, 1973. No benefits are to be paid under this part after December 31, 1972, if the claim therefor was filed after December 31, 1971, except in the case of a widow who filed her claim prior to December 31, 1972, or within 6 months after the death of the miner whichever is later. Any other claim filed thereafter is governed by the provisions of part C except that benefits may be received under part B but only up to December 31, 1972, by such other claimants who filed during the calendar year 1972.

Part C, in relevant part, shifts the Federal benefit program, as set forth in part B, to the workmen's compensation programs of the several States. It provides that on and after January 1, 1973, claimants for benefits because of coal-dust pneumoconiosis shall file their claims pursuant to the applicable State workmen's compensation law.

If the applicable State law fails to meet the standards prescribed by the Secretary of Labor or has no provision of law providing for compensation in connection with coal-dust pneumoconiosis, the operator of an underground coal mine must pay benefits to those of his miners who become disabled or who died because of coal-dust pneumoconiosis arising out of their employment in his mine. However, such benefits are not required to be paid under part C by any State or operator for any period prior to January 1, 1973, or for any period after 7 years following December 30, 1969, the date of enactment of the Federal Coal Mine Health and Safety Act, that is, after December 30, 1976. If a coal mine operator fails to pay benefits as required by part C, or there is no operator who was required to pay such benefits, the Secretary of Labor shall pay them to the eligible claimant, and the operator shall be liable to the United States in a civil suit for an equal amount.

*PROPOSED LENGTHENING OF THE TIME PERIOD
FOR FEDERAL BENEFITS AND REGULATIONS*

The purpose of title IV was to establish a temporary Federal program of black lung benefits which it was felt would no longer be needed after the expiration of the program because (1) the number of potential beneficiaries would decline both rapidly and substantially as a consequence of the extremely low maximum coal dust densities prescribed by the act, and hence the resulting decrease in the incidence of coal-dust pneumoconiosis; and (2) the several States would establish and develop their own programs of compensation for those afflicted with the disease, particularly with the assistance provided to the States, financially and otherwise, as provided in section 503 of the act precisely for that purpose.

Within 1 week of enactment, 18,000 claims had been filed; by the end of the first month the number had risen to almost 100,000, and continued to grow rapidly thereafter. It is not surprising that the all-out effort on the part of the agency to protect all the rights of potential beneficiaries, coupled with the lack of comprehension of the complex and technical requirements for eligibility to receive benefits, resulted in applications from a very substantial number who were eventually found not to meet the eligibility requirements of the law.

Currently, total claims filed since enactment approximate 290,000 with about 10,000 new claims being received each month. Decisions have already been completed in about 250,000 of the total claims filed, which in our opinion constitutes some sort of a peak record for speed on the part of an administrative agency handling a new and complicated program during a period of less than a year and a half from the program's inception.

Of the 250,000 decisions made, almost half (120,000) represent payment awards—70,000 to miners and 50,000 to widows, with the num-

ber of both types of awards increasing each week as additional claims are processed.

Taking into account miners, and widows and dependents covered, over 200,000 people are currently beneficiaries of the program. Benefit disbursements to date have been almost \$275 million and current monthly payments total about \$22 million (an annual rate of about \$264 million). The Office of the Actuary of the Social Security Administration now estimates that by the end of the fiscal year (July 1972), benefit disbursements are expected to be \$375 million annually and total beneficiaries at that time will be about 260,000.

These statistics are particularly illuminating in several respects. In the course of the consideration during 1969 of the bills which eventually became the Federal Coal Mine Health and Safety Act, the proponents of the black-lung benefits (title IV) program asserted that the annual cost of the program would be in the neighborhood of \$40 million annually. Critics of the proposal declared that it would range anywhere from \$250 million to \$500 million. Apart from the fact that these critics were far more accurate in their estimates and that the proponents apparently hadn't even the flimsiest evidence on which to base their belief concerning the size and scope of the program, the contrast between these estimates of the proponents and the current statistics completely confound their accusation that the Social Security Administration is improperly denying an enormous number of claims.¹

On the basis of the 120,000 claims approved at an annual total cost of about \$264 million currently, we find that the individual benefits thus average about \$2,200 annually per award. Applying this rate to the \$40 million estimate made in 1969 by the proponents of the program, it follows as a matter of simple arithmetic that they must have envisaged the number of awards at about 18,180. The actual number as described above is currently 120,000 and steadily increasing. In the face of this contrast, how can they seriously maintain that the Social Security Administration is improperly denying a huge number of claims?²

There is one factor which contributes substantially to the huge number of claims which have been thus far approved, and this factor itself is a direct refutation of the charge that the agency seeks to deny as many as possible of the claims which have been filed.

The Social Security Administration has in all important phases of the act, administered it as liberally as possible. It has resolved virtually all doubts and statutory ambiguities or contradictions in favor of the claimant to the extreme limits beyond which it would clearly be failing to adhere to the express requirements of the law and the discernible congressional intent.

¹ It was even charged during the recent hearings on the committee bill that the Social Security Administration was under orders from "higher up" in the executive branch of the Government to deny as many claims as possible. This was not only categorically denied by the agency, but not a shred of evidence was adduced to support the charge. Its absurdity is so obvious in the face of the statistical record of the number of claims approved that it merits no further attention.

² During legislative consideration of the bills in 1969, the Secretary of the Interior estimated that the number of claims payable by next month (July 1971) would be 61,400. Although his figure was far more realistic than that of the proponents it nevertheless underestimated the present situation by 50 percent.

The following are a few of many significant manifestations of this agency policy:

1. Although title IV can be construed, on the basis of its language in several provisions, to require an adverse decision against a widow who fails to file her claim prior to January 1, 1973, the agency has chosen to interpret the statute, admittedly somewhat ambiguous in this respect, as validating certain of such claims if filed not later than 6 months following the date of her husband's death, even though the filing occurs after January 1, 1973.

2. Title IV can reasonably be construed as denying the claim of a widow whose husband's death is not due to pneumoconiosis. The statute, however, is sufficiently ambiguous, to permit a contrary interpretation more favorable to the claimant and again the agency has chosen to apply the latter. Thus, if the miner was receiving "black-lung" benefits prior to his death, the widow's claim is virtually always approved. If the miner had not been receiving such benefits but a medical examination shortly before his death or after it (autopsy, biopsy) discloses what would have been compensable pneumoconiosis, and his death was not clearly from some totally unrelated cause (an automobile accident, for example), the widow's claim, generally, is approved.

3. Although the weight of medical opinion holds that pneumoconiosis is seldom the cause of disabling impairment until and if it reaches the complicated stage, the agency approves the claim of a miner where the X-ray evidence discloses only first-stage (simple) pneumoconiosis accompanied by severe impairment of breathing. This policy is based on the statutory provisions which create rebuttable presumptions in favor of results such as this—but in virtually every such case the presumption is accepted.

Liberal interpretations of the statute such as the foregoing, and many others as well, have obviously been a significant factor in the large number of favorable decisions on claims for black-lung benefits. More restricted statutory construction would undoubtedly have resulted in a substantial increase in the number of claims denied. The inference is almost inescapable that the overwhelming majority of the claims rejected had unmistakably failed to meet the requirements of the law under even the most liberal interpretation.

And finally, the contention of the proponents of the committee bill that a 2-year extension of all and each of the provisions of title IV (as provided in section 3 of the bill) is essential to furnish unsuccessful claimants an opportunity to ask for and receive reconsideration of their rejected claims is similarly without foundation. The Social Security Administration has already created and is already fully operating the machinery for such reconsideration.

The report points out that the backlog of initial claims filed in the first year's operations has now been virtually eliminated. With a nearly normal workload of pending initial claims the delays encountered in handling such claims in the first year no longer exist. For claims presently being filed, processing time appears to be in line with experience in processing regular social security disability claims, i.e., on the average, about 10-12 weeks from filing to completion.

There has arisen, however, an increasing number of claims in which the denied claimant is exercising his right to request reconsideration of the adverse decision. The agency is making every effort to insure that any additional evidence having a bearing on the case is obtained and carefully considered as a part of a new and independent review of the claim. Following the decision on reconsideration, a dissatisfied applicant may request a hearing before an agency hearing examiner. The examiner's decision may be appealed to the Appeals Council of the Social Security Administration, and there are further appeal rights to the Federal courts. Action is well under way to gear up the hearing process to expedite the handling of this new workload.

During consideration of section 3 of the bill in executive session of the committee, the proponents asserted in support of the amendment, that the time extension the amendment would provide was needed in order to permit reconsideration of rejected claims. This contention, on its face, is entirely without merit. If a claim has been filed and rejected, the review and appeals procedures described above are applicable. If the rejection is reversed and the claim is approved, the claimant receives exactly the same treatment as if the claim had been approved in the first place, even if the decision of reversal is not handed down until long after the statutory time period had expired. The Social Security Administration opposed extending the time limits of the existing law when it appeared before subcommittee. We join in their opposition to the enactment of section 3 of the committee bill.

*"BLACK-LUNG" BENEFITS AS OFF-SETS TO SOCIAL
SECURITY DISABILITY BENEFITS*

Section 2 of the committee bill provides that Federal "black-lung" benefit payments under part B of title IV of the act "shall not be considered a workmen's compensation law or plan for purposes of section 224" of the Social Security Act.

Section 224 of the Social Security Act was enacted in 1965 and constitutes what is commonly called a "workmen's compensation offset" provision. For people who become disabled after June 1, 1965, and are under age 62, section 224 limits the amount of combined income from social security disability benefits and State or Federal workmen's compensation benefits. The agency regards "black-lung" benefits as benefits under a "workmen's compensation law or plan," and hence treats them as if it does benefits received under State workmen's compensation laws.

Thus, the amount of the limitation on social security disability benefits for an individual who also receives black-lung benefits is either 80 percent of the worker's average current earnings before he became disabled, or 100 percent of the amount of total family benefits under the social security disability benefits program whichever is the higher. If the combined benefits would exceed this amount, the social security disability benefits are reduced by the amount of the excess.

Section 2 would require the Social Security Administration to apply section 224 so as to eliminate any reduction in the social security benefits of an individual who was also receiving black-lung benefits who would thereby receive the full amount of each benefit.

The Social Security Administration opposed the enactment of section 2 of the committee bill and we join in such opposition for the following reasons:

1. The proponents of the amendment contend that the legislative history of title IV of the Coal Mine Health and Safety Act indicates that it was the intent of Congress that "black-lung" benefits not be regarded as a workmen's compensation law or plan. To the contrary, the congressional deliberations in 1969 which led to the act indicate that the foregoing contention is quite inaccurate. What was actually discussed and emphasized was that the "black-lung" benefits program was not to be regarded as a precedent for further intrusion by the Federal Government into the field of "workmen's compensation," a legislative area traditionally occupied by and reserved to the States. This was in answer to fears expressed by Members of Congress that enactment of the benefits program would have precisely that effect.

As a matter of fact, the "black-lung" benefits program shows a congressional intent that it be deemed a temporary workmen's compensation plan designed to apply for an interim period in order to give the States an opportunity to amend or establish their own workmen's compensation laws to provide occupational disability benefits for black-lung victims.

In effectuation of this purpose, part C of title IV provides that beginning with January 1, 1973, the responsibility to grant black-lung benefits shall pass, permanently, from the Federal Government to the States; that claims thereafter shall be filed pursuant to the applicable State workmen's compensation law, not with the Federal Government. Even the time extension of 2 years proposed in section 3 of the committee bill does not in any way modify this purpose—it merely postpones its achievement for 2 years—until January 1, 1975.

The language of several provisions of title IV strongly indicates a recognition that title IV is a workmen's compensation law even if only a temporary one at the Federal level.

Thus, section 412(b) of the act provides that benefits to a miner or his widow shall be reduced by an amount equal to any payment received under the workmen's compensation law of his State, and section 412(c) forbids the consideration of any claim for benefits under part B of title IV unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for the Federal benefits. This provision clearly indicates that even before responsibility for black-lung benefits passes to the States beginning in 1973, they are regarded as the kind of claims which properly fall into the domain of State workmen's compensation laws.

3. The principle behind the workmen's compensation offset provision in the Social Security Act (and in section 412(b) of the Coal Mine Health and Safety Act referred to above as well) is to prevent duplication of benefits to the extent that combined benefits equal or even exceed the worker's earnings before he became disabled. The rationale is to avoid creating a situation where it is more profitable to collect benefits than to attempt to become rehabilitated and return to work.

4. Eliminating black-lung benefits as offsets to social security disability benefits may well result in beneficiaries receiving a larger total of benefits in States where workmen's compensation laws apply to black-lung disability than in States where the laws do not provide black-lung disability benefits.

Thus, let us take as a hypothetical example, a coal miner with a wife and one child whose applicable average earnings prior to black-lung disability are \$390 per month. When disabled he will receive monthly, \$244 in social security disability benefits, and in a State with an applicable workmen's compensation law, \$200. He will receive no Federal black-lung benefits because the \$200 State payment exceeds the Federal black-lung benefit he would otherwise be entitled to and therefore offsets the latter in full. The Social Security Administration would then calculate 80 percent of his average prior earnings as \$312 and give him a social security disability payment of \$112 which added to his \$200 workmen's compensation benefit would give a combined benefit of \$312 monthly.

In a State with no workmen's compensation program applicable to black lung, the same miner would receive \$244 in social security disability benefits and \$153 in Federal black-lung benefits. There being no offset of any kind under the committee bill he would receive a combined monthly payment of \$397. This is not only greater than the benefit he would receive in the State which had a black lung workmen's compensation law but would exceed his average earnings prior to his disability. It is difficult to imagine a more inequitable and in fact more discriminatory treatment of a State doing an excellent job in providing for its miners disabled by black lung and in favor of States which have done nothing to compensate such minors.

5. As pointed out above, section 2 of the committee bill prohibits the Social Security Administration from using black-lung benefits as an offset against social security disability benefits. It does this by imposing a limitation on the application of section 224 of the Social Security Act. We are of the opinion therefore, that section 2 in fact constitutes an amendment of the Social Security Act over which this committee has no jurisdiction and is therefore out of order in the committee bill.

In any event, the present policy of reducing social security disability benefits because of receipt of black lung benefits is neither drastic in the degree to which total benefits are actually reduced nor is it applicable to more than a very small percentage of dual benefit recipients, actual or potential.

The offset under section 224 of the Social Security Act is not a dollar-for-dollar offset as we have pointed out earlier in these views. Recipients entitled to dual benefits are assured of automatic benefit increases. Thus, every social security benefit increase enacted by Congress is automatically added in full to the benefits paid by the Social Security Administration regardless of the 80 percent limitation. Moreover, the law requires that the average current earnings upon which the 80 percent figure rests be redetermined periodically to insure that the base of the beneficiary's combined benefits is updated to the level of current earnings. And finally, the pending social security bill, House Resolu-

tion 1, if enacted into law, will apply a new formula for determining the average earnings which will raise that average and as a result will increase the total of combined benefits a dual beneficiary may receive.

As a final consideration on section 2 of the committee bill it should be pointed out that most minor applicants for black lung benefits are men in their sixties, disabling black lung generally being the end result of many years of exposure to high coal dust levels in underground coal mines. Hence, because the offset provision in the Social Security Act is applicable only to claimants who are under the age of 62, the provision has resulted in a reduction of social security benefits for only a small percentage of those awarded black-lung benefits. The agency's data show that less than 5 percent of black lung applicants have been affected by the offset.

MEDICAL TESTS FOR DETERMINING TOTAL DISABILITY FROM COAL MINERS PNEUMOCONIOSIS

Section 4 of the committee bill would amend title IV of the Coal Mine Health and Safety Act by adding a provision that no claim for benefits under part B of said title "shall be denied solely on the basis of the results of a chest roentgenogram (X-ray)."

In testifying against that amendment the Social Security Administration pointed out that diagnostic X-ray evidence is the primary source in determining if a miner has pneumoconiosis. If positive X-ray evidence of "complicated pneumoconiosis" is found, no further evidence is required and the claim is allowed. If negative X-ray evidence is ascertained, the claim is denied. If positive X-ray evidence reveals "simple pneumoconiosis," other medical tests are needed to determine the level of severity of the impairment.

The technical and medical elements involved in dealing with coal-miner's pneumoconiosis are extremely complex and require a professional expertise which, it is safe to say, none of us on the committee possess. We think it appropriate therefore, to quote in extenso from that portion of the Social Security Administration's report which deals with these extremely difficult problems and issues recognizing that the agency has access to and has utilized the best existing professional knowledge and skill in its administration of the black lung benefit provisions of the act. The quotations read as follows:

The basic program principle embodied in the law requiring an occupational or causal connection between disability or death and pneumoconiosis has posed a very difficult problem from a medical standpoint. At the same time, this occupational concept has also resulted in substantial claimant misunderstanding of program requirements and decision results.

Diagnosis of pneumoconiosis

Under part B of title IV, a miner is entitled to benefits if he is totally disabled due to pneumoconiosis. In line with this requirement, the regulations specify that, regardless of other impairments, total disability must be found to be caused by pneumoconiosis which is defined in the statute as a chronic

dust disease of the lungs which has arisen out of employment in underground coal mines.

To establish the casual or occupational connection with coal worker's pneumoconiosis, the regulations provide that there must be X-ray evidence of pneumoconiosis in the living applicant (in a rare case, a biopsy). This is based on the prevailing medical judgment that in the absence of positive X-ray evidence, the disease does not exist or exists to a degree that would have no significant effect on the claimant's functional capacity.

There is some minority medical opinion to the effect that disabling pneumoconiosis may exist in the absence of "positive" X-ray evidence thereof. However, this issue was thoroughly considered by the Social Security Administration, through extensive consultation with a wide range of medical specialists, and the requirement was included in the regulations as reflecting the overwhelming consensus of medical judgment on the issue.

Regulations require X-rays to be taken in conformance with acceptable medical standards and to be classified in accordance with the ILO and UICC classification system for pneumoconiosis. X-rays of good diagnostic quality can be classified reliably according to these systems.

Where existing X-ray evidence is not available for a proper determination, State agencies are responsible through special agreement for making arrangements with qualified radiologists locally to provide X-rays of claimants at program expense. Most of these radiologists have participated in the special training courses (workshops) sponsored by the Public Health Service in cooperation with the American College of Radiology and the American College of Chest Physicians, to improve techniques for taking X-rays and skills in classifying them according to the UICC and ILO systems.

To reinforce the accuracy and consistency of X-ray readings under the black-lung program, the Social Security Administration is utilizing the services of a group of eminent radiologists with outstanding experience and skill in X-ray classification under the approved systems.

Standards of disability determinations

In line with congressional intent and the direction given by the President, every effort has been made to establish disability evaluation criteria consistent with those under the regular social security disability insurance program. However, some problems existed in implementing the statutory requirement of total disability due to pneumoconiosis.

An individual's ventilatory ability may be compromised by many diseases other than coal worker's pneumoconiosis. Emphysema commonly affects this ability; neurological, muscular, infectious, or degenerative disease may do so also.

From a medical standpoint, it is impossible in most situations to determine what portion of an individual's reduced ventilatory capacity is due to coal worker's pneumoconiosis and what portion is due to one or more other diseases he has. Nevertheless, to assure fullest equity to claimants under these circumstances, favorable disability determinations have been made where a claimant has a serious breathing impairment and has pneumoconiosis.

However, some miners have emphysema or chronic bronchitis, and may be severely disabled as a result, but do not have pneumoconiosis. Under the law, claims from such miners must be denied.

Claimants frequently find it difficult to understand the basis for the distinction between these allowed and denied claims, particularly if the miner denied because he does not have pneumoconiosis is severely disabled and worked long years in underground coal mine employment.

from the fact

Some misunderstanding among applicants also results from the fact that it is possible for a miner to have "complicated" pneumoconiosis and therefore meet the statutory presumption of disability, even though he does not have a severe breathing impairment.

Death due to pneumoconiosis

Widows' claims under the act presented two special kinds of problems. First, obtaining evidence of the presence of pneumoconiosis in claims where the miner may have died many years in the past and second, the requirement for establishing a causal relationship between the disease and death, unless the miner was entitled to benefits under the act or had the "complicated" stage of the disease.

Claims which have been denied consist largely of those in which either (1) there is no evidence that the miner had chronic lung disease, or (2) the miner died as the result of trauma or clearly from an acute disease unrelated to pneumoconiosis and there is no evidence that he had the "complicated" stage of the disease.

The Social Security Administration is making every effort to assist widows in locating any evidence of probative value to support their claims. However, in the absence of any evidence that the miner died of chronic lung disease, or where there is clearly compelling evidence to the contrary, there is no basis under the law for finding that death was due to pneumoconiosis.

Public understanding of black-lung benefit program

As with the regular social security program, it has been the policy of the Social Security Administration to take positive steps to assure that members of the potentially affected public have knowledge of their rights under the black-lung

benefits provisions and understand the requirements for entitlement. The volume of applications received attests to the extent to which the public has been made aware of the potential benefits under the law. However, efforts to communicate effectively the requirements of the law have been less successful.

In some areas, there has been a high degree of misunderstanding of the intent and requirements of the law and regulations among the coal mining population. Some of the reasons for this have been discussed in previous sections of this chapter. However, even beyond this, and despite sustained efforts by the Social Security Administration and others to clarify the qualifying provisions, many claimants continue to have the strong view that the program is designed to provide supplementary benefits to underground coal miners solely on the basis of long-term mine work or, if simple pneumoconiosis is present, irrespective of the requirement of total disability due to the disease.

The foregoing exposition is in all fundamental respects consistent with the experience of the British Government and the British coal-mine industry which may rightly claim to be the pioneers in the investigation, study, methods of diagnosis, and recognition of coal workers' pneumoconiosis.³

Section 4 of the committee bill would require the Social Security Administration to abandon the position that coal worker's pneumoconiosis can be diagnosed in the living person only by chest X-ray, is The consensus of expert medical judgment, as has been indicated, is that no means other than chest X-ray, is presently available to diagnose coal workers' pneumoconiosis, as distinguished from other respiratory ailments, in the living person. The symptoms of these other ailments are virtually identical with those of coal workers' pneumoconiosis. Thus the proposed amendment could include as comparable under the law, disability due to other lung diseases, such as emphysema and chronic bronchitis.

To extend benefits under the law to nonoccupational diseases such as emphysema and chronic bronchitis is inconsistent with the concept of occupational causality which is basic to title IV of the Coal Mine Health and Safety Act as it is to all workmen's compensation laws without exception.⁴ For these reasons we join with the Social Security Administration in opposing the enactment of section 4 of the committee bill.

³ The general Subcommittee on Labor received a thorough briefing on the subject of black lung by the British National Coal Board during its visit to London for that purpose about 2 years ago. If anything the agency is administering our black-lung provisions as liberally (probably more so) than the British.

⁴ Occupational causality is not required for social security disability benefits. Total disability, regardless of the cause, is sufficient to procure these benefits to an otherwise qualified claimant. Hence, the social security disability benefits program is not itself a workmen's compensation law or plan.

CONCLUSION

Section 1 of the committee bill provides benefits for surviving dependent children of deceased miners who were afflicted with compensable pneumoconiosis and whose mothers have also died. The present law provides no benefits for such surviving dependent children. We support the principle of granting benefits to such surviving dependent children who are commonly referred to as "double orphans." Hence, we feel that section 1 should have been presented in a separate bill and with a few minor changes it would have been acceptable on a bipartisan basis. The remaining three sections of the bill are highly controversial and as we have shown, are both unnecessary and undesirable. Therefore, like the Social Security Administration we are strongly opposed to their enactment.

ALBERT H. QUIE.
JOHN N. ERLNBORN.
EDWIN D. ESHLEMAN.
WILLIAM A. STEIGER.
EARL F. LANDGREBE.
EDWIN B. FORSYTHE.
JACK F. KEMP.

SEPARATE VIEWS OF CONGRESSMAN REID OF NEW YORK

The black-lung payments provision in title IV of the Federal Coal Mine Health and Safety Act of 1969 was a bold step forward by the Congress, and it is important that the intent of the Congress be carried out even more effectively. The pending amendments do represent marked improvements in the current law, but above all, far more must be done to administer this law more equitably.

Coal miners, their widows, and their families, have suffered in silence for too many years while medical doctors blindly overlooked or denied the existence of the deadly "black-lung" disease. The Social Security Administration must not rely for medical advice on those doctors and their medical associations who have failed to take the initiative to correct a deep injustice. Rather, the Social Security Administration must give the full benefit of the doubt to those pioneer physicians who have demonstrated their capacity to recognize pneumoconiosis, and know how difficult it is to prove through simple and ancient methods.

Testimony indicates that only 28 percent of the black-lung applications have been approved in Kentucky, 44 percent in West Virginia and 69 percent in Pennsylvania. Just because Pennsylvania has had an effective State black-lung compensation law, and better medical facilities for examinations, the approval rate for applications under Federal law has been higher. In my view, it is unfair to penalize a coal miner or his widow in Kentucky or West Virginia just because the medical facilities or records are unavailable. The Department of

Health, Education, and Welfare must take positive steps to insure that all coal miners be treated fairly, wherever they might live. This means, of course, that better examining facilities must be provided, and if necessary, mobile clinics should be provided for miners in isolated areas who cannot travel to better hospitals.

It is evident that the claims of thousands of miners and widows are being turned down because they cannot produce sufficient evidence. In my view, it is not the responsibility of a coal miner's widow, who knows her husband had disabling shortness of breath and black-lung disease, to assemble and produce huge sets of records. Furthermore, when a death certificate, the only item a widow possesses, records "heart failure" as the cause of death, the Social Security Administration should understand that many coal company doctors filling out these certificates did not recognize pneumoconiosis as a disease, or failed to record the fact that black lung put an additional burden on a coal miner's heart. The burden of proof should not be on the widow; rather, the Social Security Administration must take the initiative to seek out the facts from personal testimony by the widow, family, and friends of the deceased miner.

Basically, the Social Security Administration must greatly humanize its entire operation in administering title IV of the Federal Coal Mine Health and Safety Act. No matter how many detailed provisions we write into law, justice will not be forthcoming unless those who administer the law at the grass roots understand the problem. Coal miners and their widows are simply not equipped to deal with a vast computerized bureaucracy. Miners have risked their lives digging coal, not assembling elaborate records. Now the bureaucracy must spend a little of their time helping the miners and widows assemble the evidence to prove what an autopsy will conclusively prove; the existence of coal dust in the lungs to a disabling degree.

There is no simple way to measure this deadly and complicated disease. But the intent of the Congress in this area must be crystal clear: the law and the amendments are for the coal miners, and if it takes a little extra effort to insure that the law is fairly and sympathetically administered, then the Social Security Administration must go the extra mile or so to do so.

Finally, let me commend the subcommittee for their work on this legislation. In addition, I wish to commend the man who has done more for the coal miner, both within the Congress and without, over recent years than anyone else I know. I refer to my colleague and friend from West Virginia, Representative Ken Hechler, to whom all miners and their families should be deeply indebted.

OGDEN R. REED.



BLACK LUNG BENEFITS

SEPTEMBER 14, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,
submitted the following

REPORT

[To accompany H.R. 9212 Pt. II]

Since the filing of Report No. 92-460 on August 5, 1971, to accompany H.R. 9212, it has been noted that the report mentioned does not accurately describe the committee amendment. The committee amendment should be described as follows:

Strike out the first section and insert in lieu thereof the matter which appears in the reported bill in italic type.

Authority for the supplemental report is contained in Rule XI, clause 27, paragraph (d) (ii), which reads:

“This subparagraph does not preclude—

* * * * *

“(ii) the filing by any such committee of any supplemental report upon any measure or matter which may be required for the correction of any technical error in a previous report made by that committee upon that measure or matter.”

○

92^D CONGRESS
1ST SESSION

H. R. 9212

[Report No. 92-460]

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1971

Mr. PERKINS (for himself, Mr. DENT, Mr. DANIELS of New Jersey, Mr. HAWKINS, Mrs. MINK, Mr. CLAY, Mr. GAYDOS, Mr. WILLIAM D. FORD, Mr. BLAGGI, Mr. MAZZOLI, Mr. PUCINSKI, and Mr. BRADEMAS) introduced the following bill; which was referred to the Committee on Education and Labor

AUGUST 5, 1971

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That (a) section 412 (a) of the Federal Coal Mine Health~~
4 ~~and Safety Act of 1969 is amended by redesignating para-~~
5 ~~graph (3) as paragraph (1), and by inserting after para-~~
6 ~~graph (2) the following new paragraph:~~

7 ~~“(3) In the case of the child or children of a miner~~
8 ~~whose death is due to pneumoconiosis or of a miner who is~~
9 ~~receiving benefits under this part at the time of his death, and~~

1 who leaves no widow, and in the case of the child or children
2 of a widow who is receiving benefits under this part at the
3 time of her death, benefits shall be paid to such child or chil-
4 dren as follows: If there is one such child, he shall be paid
5 benefits at the rate specified in paragraph (1). If there is
6 more than one such child, the benefits paid shall be divided
7 equally among them and shall be paid at a rate equal to the
8 rate specified in paragraph (1), increased by 50 per centum
9 of such rate if there are two such children, by 75 per centum
10 of such rate if there are three such children, and by 100 per
11 centum of such rate if there are more than three such
12 children."

13 ~~(b)(1)~~ Section 412(b) of such Act is amended by
14 inserting after "widow" each time it appears the following:
15 "or child".

16 ~~(2)~~ Section 402 of such Act is amended by adding at
17 the end thereof the following new subsection:

18 ~~"(g)~~ The term 'child' means an individual who
19 is unmarried and ~~(1)~~ under eighteen years of age, or
20 ~~(2)~~ incapable of self-support because of physical or
21 mental disability which arose before he reached eighteen
22 years of age or, in the case of a student, before he ceased to
23 be a student, or ~~(3)~~ a student. Such term includes step-
24 children, adopted children, and posthumous children. For
25 the purpose of this subsection the term 'student' means an

1 individual under ~~twenty-three~~ years of age who has not
2 completed four years of education beyond the high school
3 level and who is regularly pursuing a full-time course of study
4 or training at an institution which is—

5 “(1) a school or college or university operated or
6 directly supported by the United States, or by a State
7 or local government or political subdivision thereof;

8 “(2) a school or college or university which has
9 been accredited by a State or by a State-recognized or
10 nationally recognized accrediting agency or body;

11 “(3) a school or college or university not so
12 accredited but whose credits are accepted, on transfer,
13 by at least three institutions which are so accredited,
14 for credit on the same basis as if transferred from an
15 institution so accredited; or

16 “(4) an additional type of educational or training
17 institution as defined by the Secretary of Health, Edu-
18 cation, and Welfare.

19 Such an individual is deemed not to have ceased to be a
20 student during an interim between school years if the interim
21 is not more than four months and if he shows to the satis-
22 faction of the Secretary that he has a bona fide intention
23 of continuing to pursue a full-time course of study or train-
24 ing during the semester or other enrollment period immedi-
25 ately after the interim or during periods of reasonable

1 duration in which, in the judgment of the Secretary, he is
2 prevented by factors beyond his control from pursuing his
3 education. A student whose ~~twenty-third~~ birthday occurs
4 during a semester or other enrollment period is deemed a
5 student until the end of the semester or other enrollment
6 period."

7 ~~(3)~~ Section 413(b) of such Act is amended by adding
8 at the end thereof the following new sentence: "In carrying
9 out his responsibilities under this part, the Secretary may
10 prescribe regulations consistent with the provisions of sec-
11 tions 204, 205(j), 205(k), and 206 of the Social Security
12 Act."

13 ~~(4)~~ Section 414(a) of such Act is amended by insert-
14 ing "~~(1)~~" after "~~(a)~~" and by adding the following new
15 paragraph at the end thereof:

16 "~~(2)~~ In the case of a claim by a child, this paragraph
17 shall apply, notwithstanding any other provision of this part.

18 "~~(A)~~ If such claim is filed within six months follow-
19 ing the month in which this paragraph is enacted, and if
20 benefit payments are made pursuant to such claim, such
21 benefit payments shall be made retroactively from December
22 30, 1969, or from the date such child would have been first
23 eligible for such benefit payments had section 412(a)~~(3)~~
24 been applicable since December 30, 1969, whichever is the

1 lesser period. If on the date such claim is filed the claimant
2 is not eligible for benefit payments, but was eligible during
3 the period from December 30, 1969, to the date such claim
4 is filed, benefit payments shall be made for the duration of
5 eligibility during such period.

6 ~~“(B) If such claim is filed after six months following the~~
7 ~~month in which this paragraph is enacted, and if benefit~~
8 ~~payments are made pursuant to such claim, such benefit pay-~~
9 ~~ments shall be made retroactively from a date twelve months~~
10 ~~preceding the date such claim is filed, or from the date such~~
11 ~~child would have been first eligible for such benefit pay-~~
12 ~~ments had section 412(a)(3) been applicable since Decem-~~
13 ~~ber 30, 1969, whichever is the lesser period. If on the date~~
14 ~~such claim is filed the claimant is not eligible for benefit~~
15 ~~payments, but was eligible during the period from a date~~
16 ~~twelve months preceding the date such claim is filed, to the~~
17 ~~date such claim is filed, benefit payments shall be made for~~
18 ~~the duration of eligibility during such period.~~

19 ~~“(C) No claim for benefits under this part, in the case~~
20 ~~of a claimant who is a child, shall be considered unless it is~~
21 ~~filed within six months after the death of his father or mother~~
22 ~~(whichever last occurred) or by December 31, 1974, which-~~
23 ~~ever is the later.~~

24 ~~“(D) No benefits shall be paid under this part to a~~

1 child after December 31, 1974, if the claim therefor was
2 filed after December 31, 1973."

3 That (a) section 412(a) of the Federal Coal Mine Health
4 and Safety Act of 1969 is amended by redesignating para-
5 graph (3) as paragraph (4), and by inserting after para-
6 graph (2) the following new paragraph:

7 " (3) In the case of the child or children of a miner
8 whose death is due to pneumoconiosis or of a miner who is
9 receiving benefits under this part at the time of his death, and
10 who leaves no widow, and in the case of the child or children
11 of a widow who is receiving benefits under this part at the
12 time of her death, benefits shall be paid to such child or chil-
13 dren as follows: If there is one such child, he shall be paid
14 benefits at the rate specified in paragraph (1). If there is
15 more than one such child, the benefits paid shall be divided
16 equally among them and shall be paid at a rate equal to the
17 rate specified in paragraph (1), increased by 50 per centum
18 of such rate if there are two such children, by 75 per centum
19 of such rate if there are three such children, and by 100 per
20 centum of such rate if there are more than three such
21 children: Provided, That benefits shall only be paid to a
22 child for so long as he meets the criteria for the term
23 'child' contained in section 402(g)."

24 (b)(1) Section 412(b) of such Act is amended by

1 inserting after "widow" each time it appears the following:
2 "or child".

3 (2) Section 402 of such Act is amended by adding at
4 the end thereof the following new subsection:

5 "(g) The term 'child' means an individual who
6 is unmarried and (1) under eighteen years of age, or
7 (2) incapable of self-support because of physical or
8 mental disability which arose before he reached eighteen
9 years of age or, in the case of a student, before he ceased to
10 be a student, or (3) a student. Such term includes step-
11 children, adopted children, and posthumous children. For
12 the purpose of this subsection the term 'student' means an
13 individual under twenty-three years of age who has not
14 completed four years of education beyond the high school
15 level and who is regularly pursuing a full-time course of study
16 or training at an institution which is—

17 "(1) a school or college or university operated or
18 directly supported by the United States, or by a State
19 or local government or political subdivision thereof;

20 "(2) a school or college or university which has
21 been accredited by a State or by a State-recognized or
22 nationally recognized accrediting agency or body;

23 "(3) a school or college or university not so ac-
24 credited but whose credits are accepted, on transfer, by

1 at least three institutions which are so accredited, for
2 credit on the same basis as if transferred from an institu-
3 tion so accredited; or

4 “(4) an additional type of educational or training
5 institution as defined by the Secretary of Health, Edu-
6 cation, and Welfare.

7 Such an individual is deemed not to have ceased to be a
8 student during an interim between school years if the interim
9 is not more than four months and if he shows to the satis-
10 faction of the Secretary that he has a bona fide intention
11 of continuing to pursue a full-time course of study or train-
12 ing during the semester or other enrollment period immedi-
13 ately after the interim or during periods of reasonable
14 duration in which, in the judgment of the Secretary, he is
15 prevented by factors beyond his control from pursuing his
16 education. A student whose twenty-third birthday occurs
17 during a semester or other enrollment period is deemed a
18 student until the end of the semester or other enrollment
19 period.”

20 (3) Section 413(b) of such Act is amended by adding
21 at the end thereof the following new sentence: “In carrying
22 out his responsibilities under this part, the Secretary may
23 prescribe regulations consistent with the provisions of sec-
24 tions 204, 205(j), 205(k), and 206 of the Social Security
25 Act.”

1 (4) Section 414(a) of such Act is amended by insert-
2 ing "(1)" after "(a)" and by adding the following new
3 paragraph at the end thereof:

4 “(2) In the case of a claim by a child, this paragraph
5 shall apply, notwithstanding any other provision of this part.

6 “(A) If such claim is filed within six months follow-
7 ing the month in which this paragraph is enacted, and if
8 benefit payments are made pursuant to such claim, such
9 benefit payments shall be made retroactively from December
10 30, 1969, or from the date such child would have been first
11 eligible for such benefit payments had section 412(a)(3)
12 been applicable since December 30, 1969, whichever is the
13 lesser period. If on the date such claim is filed the claimant
14 is not eligible for benefit payments, but was eligible during
15 the period from December 30, 1969, to the date such claim
16 is filed, benefit payments shall be made for the duration of
17 eligibility during such period.

18 “(B) If such claim is filed after six months following the
19 month in which this paragraph is enacted, and if benefit
20 payments are made pursuant to such claim, such benefit pay-
21 ments shall be made retroactively from a date twelve months
22 preceding the date such claim is filed, or from the date such
23 child would have been first eligible for such benefit pay-
24 ments had section 412(a)(3) been applicable since Decem-
25 ber 30, 1969, whichever is the lesser period. If on the date

1 *such claim is filed the claimant is not eligible for benefit*
2 *payments, but was eligible during the period from a date*
3 *twelve months preceding the date such claim is filed, to the*
4 *date such claim is filed, benefit payments shall be made for*
5 *the duration of eligibility during such period.*

6 *“(C) No claim for benefits under this part, in the case*
7 *of a claimant who is a child, shall be considered unless it is*
8 *filed within six months after the death of his father or mother*
9 *(whichever last occurred) or by December 31, 1972, which-*
10 *ever is the later.”*

11 SEC. 2. (a) Section 412 (b) of the Federal Coal Mine
12 Health and Safety Act of 1969 is amended by adding at the
13 end thereof the following: “This part shall not be considered
14 a workmen’s compensation law or plan for purposes of
15 section 224 of such Act.”

16 (b) The amendment made by this section shall be
17 effective as of December 30, 1969.

18 SEC. 3. Title IV of the Federal Coal Mine Health and
19 Safety Act of 1969 is amended—

20 (1) by striking out “1971” where it appears in
21 section 414 (b), and inserting in lieu thereof “1973”,

22 (2) by striking out “1972” each place it appears
23 and inserting in lieu thereof “1974”,

24 (3) by striking out “1973” each time it appears
25 and inserting in lieu thereof “1975”, and

1 (4) by striking out "seven" where it appears in
2 section 422 (e) and inserting in lieu thereof "nine".

3 SEC. 4. The first sentence of section 413 (b) of such
4 Act is amended by inserting before the period at the end
5 thereof the following: ", but no claim for benefits under
6 this part shall be denied solely on the basis of the results
7 of a chest roentgenogram".

Union Calendar No. 212

92^d CONGRESS
1st SESSION

H. R. 9212

[Report No. 92-460]

A BILL

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

By Mr. PERKINS, Mr. DENT, Mr. DANIELS of New Jersey, Mr. HAWKINS, Mrs. MINK, Mr. CLAY, Mr. GAYDOS, Mr. WILLIAM D. FORD, Mr. BIAGGI, Mr. MAZZOLI, Mr. PUCINSKI, and Mr. BRADEMAS

JUNE 16, 1971

Referred to the Committee on Education and Labor

AUGUST 5, 1971

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

tion 412(a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of the child or children of a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are two such children, by 70 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term 'child' contained in section 402(g)."

(b) (1) Section 412(b) of such Act is amended by inserting after "widow" each time it appears the following: "or child".

(2) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'child' means an individual who is unmarried and (1) under eighteen years of age, or (2) incapable of self-support because of physical or mental disability which arose before he reached eighteen years of age or, in the case of a student, before he ceased to be a student, or (3) a student. Such term includes stepchildren, adopted children, and posthumous children. For the purpose of this subsection the term 'student' means an individual under twenty-three years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

"(1) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

"(2) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

"(3) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

"(4) an additional type of educational or training institution as defined by the Secretary of Health, Education, and Welfare.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration in which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose twenty-third birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period."

(3) Section 413(b) of such Act is amended by adding at the end thereof the following new sentence: "In carrying out his responsibilities under this part, the Secretary may prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act."

(4) Section 414(a) of such Act is amended

BLACK LUNG BENEFITS

Mr. PERKINS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, as amended.

The Clerk read as follows:

H.R. 9212

A bill to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) sec-

by inserting "(1)" after "(a)" and by adding the following new paragraph at the end thereof:

"(2) In the case of a claim by a child, this paragraph shall apply, notwithstanding any other provision of this part.

"(A) If such claim is filed within six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payment shall be made retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from December 30, 1969, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.

"(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.

"(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1972, whichever is the later."

Sec. 2. (a) Section 412(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following: "This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act."

(b) The amendment made by this section shall be effective as of December 30, 1969.

Sec. 3. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended—

(1) by striking out "1971" where it appears in section 414(b), and inserting in lieu thereof "1973";

(2) by striking out "1972" each place it appears and inserting in lieu thereof "1974";

(3) by striking out "1973" each time it appears and inserting in lieu thereof "1975", and

(4) by striking out "seven" where it appears in section 422(e) and inserting in lieu thereof "nine".

Sec. 4. The first sentence of section 413(b) of such Act is amended by inserting before the period at the end thereof the following: ", but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram".

The SPEAKER. Is a second demanded?

Mr. ERLÉNBOORN. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Kentucky will be recognized for 20 minutes, and the gentleman from Illinois will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky.

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. Mr. Speaker, I urge speedy House passage of the bill H.R. 9212, the Black Lung Benefits measure which was approved by the Committee on Education and Labor last June 23 by the virtually unanimous vote of 22 to 1.

This bill, I am happy to say, has the overwhelming support of the mine workers' unions as well as of the coal producers and their associations.

For the most part, the bill completes what we thought we were accomplishing 2 years ago when the original act was before Congress. The experience gained through these months of operation has pointed up a few shortcomings, and we want to see that the necessary adjustments are made.

Simple justice requires that we do no less.

The bill sets out to accomplish four major purposes, which I shall briefly discuss.

EXTENSION OF TIME

The bill extends for 2 years—until January 1, 1975—the timeable for transferring from the Federal Government to the various States the responsibility for providing benefits to those unfortunate miners who have contracted the disease pneumoconiosis—black lung—or to their surviving widows and dependent children.

As originally passed, the Federal Coal Mine Health and Safety Act contemplated a shift in responsibility for the program from the Federal Government to the States and the mine operators in 1973. That grace period was allowed so that the States, through their legislatures, could make the necessary modifications of their compensation laws to include black lung among the compensable diseases.

It would appear that some States have made the necessary modifications, and others have made plans to do so. But the majority of States have not yet acted. Since some legislatures meet only biennially—as in the case of my own State—the committee feels that this additional grace period is appropriate.

DOUBLE ORPHANS

The bill extends to an estimated 2,000 "double orphans" benefits under the act. These are the dependent children of a miner who died of black lung, and his widow who is also deceased.

As passed in 1969, the act provides benefits only to coal miners and to their widows, with supplemental sums being added for the care of dependent children. Inadvertently, no provision was made to care for dependent children in the event both parents were deceased.

Simple justice and decency require that we extend coverage to them forthwith.

THE OFFSET PROVISION

The bill clarifies language in the present act which the Social Security Administration has misconstrued with respect to an offset against payments received from the Social Security Disability Trust Fund.

It simply declares that the black lung benefits program "shall not be considered a workmen's compensation law or plan for purposes of" the disability provisions of the Social Security Act. Those provisions require that social security

disability benefits to a worker and his family be reduced if he is entitled to workmen's compensation, and if the combined benefits exceed 80 percent of the worker's average earnings before disability.

The legislative history of the 1969 act shows that time and again that it was the intention of the committee and of the Congress that the black lung benefits program was not to be considered a workmen's compensation plan.

The committee report stated that fact flatly. Debate on the act in the October 29, 1969, CONGRESSIONAL RECORD shows instance after instance in which that fact is categorically affirmed. It never was intended by the Congress that the black lung benefits program be considered workmen's compensation.

Unfortunately, the Social Security Administration has decreed otherwise. Under that agency's interpretation, miners who were drawing disability insurance benefits before the 1969 act and who subsequently were awarded black lung benefits, have had their social security payments reduced. In numerous cases, black lung victims or their widows are receiving less money now than they were before they applied for black lung benefits.

The Social Security Administration estimates that 5 percent of black lung applicants are caught in this situation, but I submit that this is 5 percent too many. We ought to act now to change it.

It is estimated that some 7,000 coal miner victims of black lung would be affected by language in this bill which affirms by statute what was clearly intended at passage of the 1969 act.

SUPPLEMENTS TO THE X-RAY TECHNIQUE

Finally, Mr. Speaker, the bill before the House today authorizes the use of other diagnostic techniques in addition to X-ray in determining a coal miner's eligibility for benefits.

According to figures I have received from the Social Security Administration, this would permit 35,000 coal miners suffering from the disease to qualify for benefits.

To me, this is an absolutely intolerable situation. It is well known that X-ray alone is not always successful in detecting black lung. Medical evidence available to the committee clearly establishes that.

If justice is to be done, therefore, it is necessary that we employ other tools, other techniques. This is not a move to replace X-ray, but to supplement it.

In the social security estimate, there is a tacit admission that 35,000 coal miners whose claims have been denied on the basis of negative X-ray really are eligible to receive benefits.

If the physical disability of these 35,000 miners can be verified by other techniques, then what are we waiting for? We should make those other techniques available to these miners now.

A coal miner whose disability is not detectable by X-ray is just as sick, suffers just as much, as the one whose illness was established by the X-ray technique. The widow of a black lung victim is just as bereaved, just as destitute, when her husband's condition was not detected by X-ray, as the widow of the

miner whose X-ray showed a positive finding.

EXPLAINING THE OPPOSITION

Mr. Speaker, I and other Members of this House who come from coal mining districts, have great difficulty in explaining to our people back home why there should be any opposition to this bill at all.

An answer does not come easily—in fact, it does not come at all—when the question is asked by a disabled coal miner, coughing and gasping for breath, knowing that he will never be able to work again and support his family.

If this bill falls short of the required majority today—and I do not see how it can—then I hope the opponents can tell us how to explain it to these men who have been in the mines all of their working lives.

THE COST OF JUSTICE

The opposition to this bill seems to center upon the cost. They say it is too expensive. They say we ought to be able to amend this bill and to strip out provisions favorable to 35,000 miners whose claims could be established by the use of other techniques in addition to X-ray. They say we ought to amend it and strike out provisions favorable to the 7,000 miners whose disability benefits have been reduced. So far, no one to my knowledge has complained of inability to amend the bill to knock out the "double orphans."

Mr. Speaker, the Committee on Education and Labor believes and those of us who represent coal mining regions through the Nation believe that justice to 42,000 victim miners and to 2,000 orphan children is more important than the price tag.

I urge an overwhelming vote in support of H.R. 9212.

Mr. ERLLENBORN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ERLLENBORN asked and was given permission to revise and extend his remarks.)

Mr. BURTON. Mr. Speaker, will the gentleman yield?

Mr. ERLLENBORN. I yield to the gentleman from California briefly.

Mr. BURTON. Mr. Speaker, first I should like to confirm the representation of the gentleman from Illinois as being for the implementation of the double orphan provision and the record should be very clear on that.

However, with reference to some of the other portions of the bill, the gentleman from Illinois essentially misses the point. As the author of the basic black lung legislation, I think I have some understanding of its provisions.

The provisions state that in order to be entitled to the black lung payment, you must be totally disabled, as is implemented under the disability provisions of the Social Security Act.

The provisions that the gentleman from Illinois cited as being so expensive merely state that you cannot automatically be disqualified solely by X-ray examination.

In other words, if this bill passes, the ultimate determination as to disability is the same. All that this bill provides in the section that is being criticized is that no

claim can be automatically denied solely on the basis of the X-ray evidence.

Mr. ERLLENBORN. Mr. Speaker, I thank the gentleman for his contribution and, particularly, when he affirms that I have consistently been for extending benefits to the double orphans.

Let me point this out. The provision that the gentleman just referred to is an exclusion of the use of X-ray diagnosis as the sole basis for denying a claim.

Our subcommittee when we considered the bill took the time to go to England for study as to what they have done over the past 25 years on research in pneumoconiosis. They are way ahead of us on this.

It is clear from all of their medical research that there is only one way to distinguish coal workers pneumoconiosis from emphysema or chronic diseases of the lungs. There is only one way and that way is by the use of a diagnostic X-ray. If the X-ray is excluded as a means of determining whether or not a miner has pneumoconiosis, we will then in effect be extending the benefits to those who may have emphysema or chronic bronchitis or other impairments of the lungs.

That is the real purpose of this provision in the bill. It is not a matter of simple justice. It is a matter of extending benefits and giving them to people who are disabled for reasons other than the fact that they have coal workers pneumoconiosis.

There is no social justification for doing that. There is no medical justification.

I will read at this point from a recent report issued by the British Ministry of Social Security:

They say that "from a radiograph it is possible to say that a worker is not suffering from the disease."

It is just as simple as that. It is possible to look at an X-ray and say that although the man has lung impairment, he does not have coal workers' pneumoconiosis.

If he is disabled because of emphysema, he should not receive any benefits under this bill.

I reiterate—this is a very bad misuse of the rules of the House to bring this bill up in such a fashion that it cannot be properly debated and so that amendments cannot be offered.

Mr. EVANS of Colorado. Mr. Speaker, will the gentleman yield?

Mr. ERLLENBORN. I am happy to yield to the gentleman from Colorado.

Mr. EVANS of Colorado. I am informed that autopsies have been performed on miners and the miners have been found to have had black lung disease, even though their X-rays showed them to be negative. Can you explain that?

Mr. ERLLENBORN. Yes, it is possible for a man to have evidence of pneumoconiosis as well as other impairments such as emphysema, impairments of the lung. That may be due to excessive smoking, or hereditary difficulties with the lungs. It is possible to distinguish between coal workers' pneumoconiosis and other impairments of the lung only by the use of the X-ray.

You must also recognize that pneumoconiosis has three stages. Simple pneu-

moconiosis should not be compensated because it causes no impairment. As a matter of fact, when we considered this bill it was only complicated pneumoconiosis that would give rise to benefits. That was true in both bills, the House bill and the Senate bill. It was after the bill went to conference that the word "complicated" was taken out—I think contrary to the rules of the House, even though the Speaker ruled against me. We have since changed the rules so that cannot happen. Both the House bill and the Senate bill extended the benefits of the bill only to those with complicated pneumoconiosis. In the conference we took out the word "complicated," which made it possible to give compensation for pneumoconiosis even of a simple nature, which all the medical evidence shows is not disabling.

Mr. DENT. Mr. Chairman, I yield myself as much time as I may consume.

The SPEAKER. The gentleman from Pennsylvania is recognized.

Mr. BEVILL. Mr. Speaker, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Alabama.

(Mr. BEVILL asked and was given permission to revise and extend his remarks.)

Mr. BEVILL. Mr. Speaker, the bill which we are now about to consider. H.R. 9212, a bill to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969, is one more step toward the resolution of an enormous debt which the people of this Nation owe to coal miners. As our understanding of energy relationships in the environment improved, we recognized that, as pointed out by Dr. Barry Commoner in his First Law of Ecology, "Everything is Connected to Everything Else." In the case of coal mining, we have involved a number of our citizens in the hazardous task of extracting coal under conditions which we now consider unacceptable in order to use this coal for the production of energy to benefit us all. The conditions of coal mining were so hazardous that many of these miners became disabled or died as a result of preventable accidents or diseases, with the dread disease pneumoconiosis, or as it is more commonly known, black lung disease, being one of the most frequently encountered diseases. The ecological connection is obvious—one form of energy has been expended for another form. We had traded human energy and life for fossil fuel for our industries. What we had to learn in our consideration of the problem is that a worker's life and health are not expendable items which we, as a nation, can dispose of without cost. There was a cost to society, one way or another, and the cost could not be ignored indefinitely. Although the debt was postponed for a long time, the time for collection arrived when the dilemma of the miner and his family was brought to the attention of the public and the Congress. The Congress responded by enacting what has been hailed as one of the most significant pieces of occupational health legislation in modern times—Public Law 91-173, the Federal Coal Mine Health and Safety Act of 1969.

As with a lot of legislation, however, our work in Congress was not completed with the enactment of the law. Experience with this law thus far has revealed a number of imperfections which have introduced obstacles or slowed progress toward implementation. In the act of 1969, the Congress attempted to define the responsibilities of the Federal Government for assisting the disabled coal miner and his family. One aspect in particular, the rights of the orphaned children of miners who had died from black lung disease, requires additional attention. H.R. 9212 provides for clarification and change of those aspects of Public Law 91-173 which have not been clear in regard to benefits for the care and support of such orphaned children. Although the law provides benefits for the miner or his widow, the children of the family remained destitute in those relatively few instances where both parents had died. It was certainly not the intent of the Congress to ignore our obligation to the children. Section 412(a) will be revised by the proposed amendment to provide such changes as are necessary to insure benefits for orphaned children.

The amendments proposed within H.R. 9212 also provide for clarification of the relationship between social security, State compensation laws, and the payment of black lung benefits in order to insure that benefits are not reduced as a result of eligibility for benefits under Public Law 91-173. Section 3 of the amendment extends the timetable of the act for 2 additional years to permit additional time for the States to assume their responsibilities for providing black lung benefits.

As has been noted, title IV of the act of 1969 provides for the payment of benefits to miners identified as having black lung disease. One step of critical importance in the overall assessment of the right of a miner to these benefits is the interpretation and emphasis being placed upon the X-ray evaluation. It appears that this aspect of the medical examination has been introducing some undesirable inequities in the awarding of benefits. The assessment of damage to health is, under many circumstances, an imperfect art. Physicians learn to recognize the clinical signs of a disease as the disease occurs within most individuals. Generally, little difficulty ensues in diagnosis if the disease follows a course which experience has shown to be a classic pattern. But individuals respond in different ways to an attack by a disease and the dust of a mine affects individuals in different ways. We have all heard of the many cases where diagnosis is confirmed "after the fact" in those instances where the signs and symptoms of disease have been typical and confused. The evidence for black lung disease can be obscured in a similar fashion. This is a disease of the respiratory tract. We have to keep in mind that there was a time when physicians could not even agree on a definition for black lung disease. In the world today there are still some nations where the disease has no official recognition. The point of importance here is that there are some very serious disagreements about the degree of confidence which should be placed in the chest ra-

diograph in arriving at a decision on the extent and nature of black lung disease. The physician has several tools available for the estimation of both the presence of black lung disease and the extent of its effect. One of these tools, and an important one, is the chest X-ray.

But this is not the only tool. With experience, the radiograph is valuable as an indicator of the presence of the disease and to support an estimate of disability but it should not be the sole determining criteria. By the time that pneumoconiosis is visible on a radiograph, the first step has been taken toward disability. While continuing exposure to coal dust may frequently be required to complete the destruction of the lung, it is not possible at the present time to determine the ultimate influence of the disease on any disability which is present. When other factors are present simultaneously, many associated with the respiratory system such as bronchitis and emphysema, the task of determining the contributions to disability of such diseases in the presence of black lung disease is not simple. For this reason, H.R. 9212 provides that no claim shall be denied solely on the basis of a chest X-ray. This change should insure that all diagnostic tools, such as pulmonary function tests and other tests which may reveal individual differences in disease effects, shall also be a part of the determinations for the award or denial of benefits. This amendment will help make the Federal Coal Mine Health and Safety Act more responsive to the needs of our miners, their widows, and dependent children. I urge your wholehearted support and favorable consideration.

Mr. DENT. Mr. Speaker, sponsoring and managing the coal mine health and safety bill—which later became the Federal Coal Mine Health and Safety Act of 1969—was one of the great moments in my 40 years as a legislator. I grew up in a coal mining town; my father was a miner, as were many in my family, and I was associated with mining in both a laboring and operating capacity. I was well aware of the dangers of that occupation when I spoke on this floor 2 years ago in support of the bill and cognizant of the fact that it could—if properly and intelligently administered—be the panacea to the mounting toll of life, limb, and lung in the mines. Subsequent events have not borne out that belief, but I do suspect that a new and positive attitude is beginning to permeate the Bureau of Mines. And an attitude which could lead to an enlightened administration of that landmark legislation.

But we are here today to discuss and consider amendments to only one segment of the law; that dealing with black lung benefits—title IV.

Mr. Speaker, the bill H.R. 9212 embodies the concepts of several bills designed to improve the administration of the black lung benefits program, and to make it more equitable.

Section 1 provides for the payment of black lung benefits to "double orphans." Title IV of the act now provides that benefits may be paid only to miners or their widows. When both the miner and his spouse are deceased, the dependent surviving children—referred to as "dou-

ble orphans"—are not entitled to benefits. The act permits augmented benefits to a miner or his widow for the support of their dependent children, but withdraws that support when both the miner and widow have died, section 1 of the bill corrects this inequity.

"Child" is defined in accordance with the Federal Employees Compensation Act, and would mean: "An individual who is unmarried and, first, under 18 years of age, or, second, incapable of self-support because of physical or mental disability which arose before he reached 18 years of age or, in the case of a student, before he ceased to be a student, or, three, a student." "Student" is also defined to mean "an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution."

If the claim of a child is filed within 6 months after the month in which the bill is enacted, benefit payments—assuming the child meets the eligibility requirements—will be made to the child retroactively to December 30, 1969—the date of enactment of the Federal Coal Mine Health and Safety Act—except that payments cannot be made for a period before the date a child actually met the eligibility requirements. If the child is not eligible for benefits at the time of filing, but was eligible during a period since December 30, 1969, he is entitled to benefit payments for that period of eligibility.

If the claim of a child is filed after 6 months following the month in which the bill is enacted, benefit payments—assuming the child meets the eligibility requirements—will be made retroactively to a date 12 months preceding the date the claim is filed, except that payments cannot be made for a period before the date a child actually met the eligibility requirements. If the child is not eligible for benefits at the time of filing, but was eligible during the 12-month period preceding, he is entitled to benefit payments for that period of eligibility.

The bill was amended in committee to insure that benefit payments to a child shall only be paid for so long as the child meets the eligibility criteria. The bill was also amended to permit the payment of benefits to a child claimant if the claim is filed within 6 months after the death of his father or mother—whichever last occurred—or by December 31, 1972, whichever is the later. This provision was included notwithstanding the requirements of any other provision, thereby establishing the "double orphans" provision as a total Federal responsibility. The committee does not intend that the requirements of part C of title IV of the act include a "double orphans" provision.

The committee is not aware of many cases of "double orphans" who would be eligible for benefits under the bill, but those few cases brought to the attention of the committee are truly heart-rending. In presenting testimony on the subject, Mr. Bernard Popick, Director of the Bureau of Disability Insurance in the Social Security Administration, supported the inclusion of "double orphans"

within the coverage of the black lung benefits program.

Section 1 also permits the Secretary of Health, Education, and Welfare to prescribe regulations consistent with provisions of the Social Security Act relating to overpayments and underpayments, payments to incompetents, and claimant representation.

Section 2 states that the existing black lung benefits program "shall not be considered a workmen's compensation law or plan for purposes of" the disability insurance provisions of the Social Security Act. Under those provisions, social security disability benefits to a worker and his family must be reduced under certain specified circumstances if he is also entitled to workmen's compensation, and if the combined benefits exceed 80 percent of the worker's average predisability earnings.

This section of the bill merely proposes to affirm by statute what was stated repeatedly during congressional consideration of the original legislation, and what was clearly intended. Under an erroneous interpretation some miners, who were receiving disability insurance benefits and who were eligible for and awarded black lung benefits, have suffered an actual reduction in total benefits received. They have found themselves in the position of receiving less in benefits once their black lung claims were approved, than they had been receiving prior to such approval.

The Social Security Administration estimates that less than 5 percent of black lung applicants are affected by this provision.

To support this provision and to demonstrate the clear intent of the Congress, the following legislative history is presented at this point:

The House report on the bill (H.R. 13950) states:

This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. . . .

The following excerpts are from the House debate on the bill:

Mr. STREIGER of Wisconsin. It (the committee report) states:

"This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan."

I am sure that the chairman would clearly agree with that statement.

Mr. PERKINS. It is not a workmen's compensation plan even though it is included in the bill because the committee found workmen's compensation statutes in various States totally inadequate to compensate the victims of black lung. It is a special compensation plan because of the hazardous nature of the employment of coal miners.

Mr. STREIGER of Wisconsin. I understand.

Mr. DENT. This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. Moreover, it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for the death, injury, or illness of workers.

Mr. BURTON of California. Mr. Chairman, I rise in opposition to the amendment. Of all the sections of the bill, this is the one section that by no stretch of the imagination could be called in any manner, shape, or form anything but bipartisan.

It is intended, as the committee report so very emphatically and unambiguously states:

This payment program is not a Workmen's Compensation program. It is not intended to be so. It contains none of the characteristic features which mark any Workmen's Compensation plan, and it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for death, injury, or the illness of other workers.

Mr. STREIGER of Wisconsin. Mr. Chairman, I appreciate the gentleman from California yielding. I wish simply to reassert what I said during the general debate and what the gentleman from California has just now said so well, and that is that the provision to which the amendment refers is not a precedent. The committee report spells this out. The gentleman from California has stated it clearly and with equivocation. This is not a workmen's compensation provision.

My argument with the distinguished gentleman from Iowa, who has sponsored the amendment which I oppose, is that he is considering this a compensation plan, and it is not. It has none of the characteristics of such, and clearly ought not to be viewed by those who are concerned about this provision as being a precedent.

Mr. HANSEN of Idaho. Mr. Chairman, will the gentleman yield?

Mr. BURTON of California. I yield to the gentleman from Idaho.

Mr. HANSEN of Idaho. Mr. Chairman, I appreciate the gentleman yielding. I associate myself with the remarks made by the gentleman from California and add this comment, that the bill has been worked out over a long period of time, very painfully, and we have come up with some limited response to the problem. I am aware of the precedent-setting possibilities of this bill, but I think the history has been such that those possibilities have been eliminated or virtually minimized.

Mr. SAYLOR. So this is not a workmen's compensation bill. This is a responsibility of mankind—we the Congress represent the mankind of the country—it is our responsibility to take care of this in one operation. We have provided the method whereby men suffering from this dread disease and their survivors can get some benefit. This is our responsibility as a Congress. I believe it is one of the prices we have had to pay for the mistakes of the past. I hope that this amendment will be defeated.

Mr. ESCH. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to my colleague from Michigan.

Mr. ESCH. I thank the gentleman for yielding. I wish to associate myself with the remarks of the gentleman from Pennsylvania and to compliment him on his leadership on this bill and on this section. As one who has a personal interest, having been born in his district, and having had a father who served in the mines at the age of 14 in his district, I am aware that the gentleman in the well knows firsthand the problems of the miners and our responsibility toward them.

Hopefully this legislation in total will bring about a new era in the mines, but this amendment must be defeated so that we can give recognition to a related problem: that is, with the miners who are already afflicted from the past.

Mr. MORGAN. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to my colleague from Pennsylvania.

Mr. MORGAN. Mr. Chairman, I wish to

associate myself with the gentleman. We represent the two largest active mining areas in the great State of Pennsylvania.

This is not a workmen's compensation act, as it has been described by the proponents of this amendment. It contains none of the characteristic features which mark any workmen's compensation plan. We are moving in this bill toward dust-free mines. The provisions in this bill are a limited response in a form of emergency assistance to the miners. This is not a permanent proposition.

I commend the gentleman from Pennsylvania for his remarks, and I associate myself with them.

Mr. DENT. I want to reassure the gentleman from Wisconsin that this is not a compensation act in any way. It is a benefit payment for services rendered in an industry that did not take care of its problem and in the States that did not take care of their problem. This is a Federal obligation as this Congress sees it.

The following excerpts are from the House debate on the conference report:

Mr. BURTON of California. . . . we have long since agreed that we were going to write a clear history that for the House portion of this bill these payments were not to be workmen's compensation payments.

Mr. ERLBORN. . . . It was made very clear in this House when this bill was passed that this was not intended to be a workmen's compensation provision.

The following excerpt is from the Senate debate on the conference report:

Mr. JAVITS. . . . Now let me be clear on one matter: I am certainly not an advocate of federalization of workmen's compensation law, either generally or with respect to black lung in particular; and the conference report does no such thing. . . .

The proposal which is embodied in Title IV of the bill is, in fact, much less of an intrusion on the general principles of workmen's compensation than was in the House bill. . . .

Section 3 of the bill extends, for 2 years, the existing program for payment of black lung benefits. Under the act, the program will be modified by 1973 to shift responsibility from the Federal Government to the States and mine operators. Although some States appear to have modified their workmen's compensation laws as necessary to provide adequate coverage for pneumoconiosis, and several others have bills pending in their legislatures to do so, the great majority have not yet acted. Moreover, as of June 23, only 18 State legislatures were meeting in regular session. This section will permit a reasonable and necessary additional period of time for the States to prepare to assume responsibilities for the payment of black lung benefits, thereby relieving the Federal Government of future responsibilities.

Section 4 prohibits the use of chest X-rays as the sole basis for denial of claims under part B of title IV of the act, and is included to clarify congressional intent with respect to the determination of total disability due to pneumoconiosis. Though the Secretary of Health, Education, and Welfare has authority to prescribe standards for determining whether a miner is totally disabled due to pneumoconiosis, there are legislative guidelines within which such standards are to be set. The

enumeration of the guidelines in section 411(c)(3) of the act, for instance, did not establish a mutual exclusivity of diagnosis. That enumeration was an explicit direction to the Secretary, that the Congress recognized the desirability of utilizing a combination of diagnostic methods. The committee report is specific on this point of congressional concern:

The committee heard testimony¹ to the effect that X-ray examinations alone could not always establish the existence of pneumoconiosis. As the Surgeon General testified, frequently miners who have shown no X-ray evidence of the disease are found, in an autopsy, to have contracted the disease. Therefore, the committee is authorizing the Surgeon General to require any medical examinations which, in his judgment, are necessary to establish the extent and severity of the disease and otherwise to promote the health of miners.

Following are pertinent excerpts from the testimony to which the report refers:

Excerpts from the written statement of the Surgeon General of the United States: . . . Coal miners' pneumoconiosis is a distinct clinical entity, resulting from inhalation of coal dust. Physicians diagnose it on the basis of X-ray evidence of nodules in the lungs of a patient with a history of long exposure to coal dust. However, it should be pointed out that data from postmortem examinations indicate a higher prevalence of the disease than can be diagnosed from X-ray examinations. (Emphasis supplied.)

Testimony of Dr. Donald L. Rasmussen, Chief, Pulmonary Section, Beckley Appalachian Regional Hospital, Beckley, W. Va.: Of interest is the fact that those miners who have worked primarily at the face in mechanized operations become impaired on an average of 5 years earlier than men engaged in all other mining jobs. These face workers also show somewhat more X-ray abnormality, although there is little relationship between impairment and X-ray category pneumoconiosis . . . (emphasis supplied.)

Testimony of Dr. H. A. Wells, Director, Pulmonary Research Laboratory, Conemaugh Valley Memorial Hospital, Johnstown, Pa.: But I would hasten to interject here that X-ray alone without being coupled with functional testing is going to be a poor indicator of the disease (pneumonoclosis) . . .

Testimony of Dr. Jethro Gough, Professor and Head, Department of Pathology and Bacteriology, Welsh National School of Medicine, Cardiff, Wales: . . . Now, since then it has been, as I answered your question, how do we go about saying who gets it (pneumoconiosis) and how long does it take? We do this survey which runs about every 5 years . . . That is, it is going to test out the function of breathing, how well a man can breathe, every 5 years, to see whether this matches up with the X-ray change. If he is not getting X-ray changes, maybe he is getting a disturbance in his breathing capacity, and this is being tested out as well . . .

Excerpts from the Annual Report 1967-68, Medical Service and Medical Research, National Coal Board, Great Britain: . . . Secondly, it was also rapidly apparent that the X-ray film was not, by itself, a reasonable measure of disability . . .

From the British Government Publication "Pneumoconiosis and Allied Occupational Chest Diseases", Ministry of Social Security, London, England:

The disease (pneumoconiosis) is difficult to diagnose, especially in the early stages, and

accurate diagnosis depends on three essentials—a high quality full size radiograph of the chest, a full clinical examination (including lung function tests) and complete industrial history . . .

The radiograph remains the most important single factor in the diagnosis of pneumoconiosis, as defined . . . on the other hand the opacities seen in the radiograph are not in themselves diagnostic and must be interpreted in the light of a detailed occupational history and clinical examinations . . . (emphasis supplied)

Similar testimony before the Senate Labor Subcommittee enabled ready concurrence by both Houses of the Congress that exclusive reliability on X-rays is not sufficient to establish total disability due to pneumoconiosis. A very compelling statement was made on this point by Dr. Werner A. Laquerur, director of Laboratories, Appalachian Regional Hospital, Beckley, W. Va.:

Although I am very happy to say that some of the great pathologists concur with this point, every technique which we are using in determining disease has its limitation of precision and accuracy. Unfortunately the tool of X-ray . . . is a rather crude tool, and all it does is show evidence . . . So the fact that we do not have positive X-ray evidence does not rule out that a patient or a miner does not have a coal worker's pneumoconiosis . . .

It is to be noted that the committee does not intend that the preceding, in any way, disparage the use of X-ray in detecting pneumoconiosis. Rather, the committee is of the belief that no single test is presently superior to X-ray; but, that X-ray should not act as the sole determinant in denying a claim when other evidence may establish pneumoconiosis to the extent of total disability.

The American College of Radiology has been of considerable and generous assistance in the implementation of the program, and in advising the committee with respect to the instant subject. In a letter to the chairman of the subcommittee, Dr. Seymour F. Ochsner, chairman of the Board of Chancellors of the American College of Radiology, suggested "language which would direct the Secretary—of Health, Education, and Welfare—to take into consideration any and all clinical findings which would be provided by the miner or his physicians—including the X-ray findings." The committee anticipates the eventual development of improved medical techniques even more precise in detecting and categorizing pneumoconiosis.

Section 4 of the bill applies only with respect to part B of title IV of the act, notwithstanding any other possible implication to the contrary. The committee does not intend that section 4 be a requirement of part C.

Mr. Speaker, I read the minority views attached to the committee report on this bill with great interest. I was immediately struck with two reactions. One was that the views went to great lengths to defend the liberality of the Social Security in interpreting and administering title IV. The other reaction was that the views, while carefully discussing the issue, could not adequately conceal the primary and only sincere reason for opposing this legislation; that reason being the cost of the program.

Mr. Speaker, with respect to the first reaction, I do not and have never criticized the Social Security Administration in its administration of the program. I think they did an incredible job in initially implementing the program, and I simply do not believe they are determined to deny benefits to any eligible claimant. But I hasten to add, that we would not be here today debating sections 2 and 4 of the bill if social security had been diligent in following congressional intent. Those sections, although amendments to title IV, are really legislative mandates to do nothing more than our original intent in passing the 1969 law.

Now, let us talk about cost. The minority views are endless in describing the cost of the black lung benefits program. Moreover, they state:

The proponents of the black lung benefits (title IV) program asserted that the annual cost of the program would be in the neighborhood of \$40 million.

They go on to demonstrate the disparity between those estimates and the actual cost.

Mr. Speaker, I have researched the legislative history of the program—the committee reports, floor debates, conference report and debates, and so on. And I find few, if any, references to cost. During House debate on the bill, the gentleman from New Jersey (Mr. DANIELS) made reference to an estimated 22,300 coal miners in the Nation who had complicated pneumoconiosis. That figure was based upon a U.S. Public Health Service survey. Assuming those miners would receive benefits, and assuming further that they each had one dependent, the total benefit cost would be about \$50 million annually. This was the only mention made of the scope of the program during House debate on the bill, and it was not even a direct reference.

Yet, the minority views point to a \$40 million annual estimate of cost by "proponents" of the program. Although such estimates were not made, they would not in fact, have been inaccurate. Because—and this is what the minority views do not say—the House bill provided benefits only to miners suffering from complicated pneumoconiosis and the widows of those who died with the disease. The ultimate law provides benefits beyond that, and differs from the House bill in that respect. So it is a deliberate distortion to tie a \$40 million estimate to the actual final cost, and point to the disparity between the two. If ever there was a case of talking about "apples and oranges," surely this is it.

Even during debate on the conference report, proponents of the compromise version refrained from making positive statements about the actual cost of the program. The chairman of the committee, Mr. PERKINS, stated then:

This legislation transcends petty arguments over costs.

At that time, I said:

I do not know what the total cost of this provision will be . . .

In my only specific reference to cost, I was speaking of complicated pneumoconiosis. The gentleman from California

¹ Hearings of the General Subcommittee on Labor, U.S. House of Representatives, on H.R. 4047; H.R. 4295; and H.R. 7976, 91st Cong., 1st Sess.

(Mr. BURTON), the virtual father of this provision, stated, with respect to cost, that only "time will tell."

In actual fact, Mr. Speaker, the only cost estimates made on the floor at that time were made by opponents of the conference report—including the gentleman from Illinois (Mr. ERLBORN)—who put before us estimates made by the then Secretary of the Interior, Hickel. In response to that estimate, I inserted in the RECORD a rejoinder which pointed to several fallacies in the assumptions made by Secretary Hickel in making his estimate; I did not, I repeat, I did not offer or even suggest a counterestimate.

Mr. Speaker, I did not intend to dwell so long on the subject of who made what cost estimate and when. I am not an actuary and would not presume to act in that capacity. We must rely on the best information we can get at the time we can get it. The committee report on this bill contains a section entitled "Estimate of Costs," and most of the information contained therein was provided by the Social Security Administration.

But I am growing weary of the continuous carping by some opponents of this legislation, whose concern with the cost of the black lung benefits program is emphasized by constant references to fictitious estimates. These individuals are against the program, because it costs money. Theirs is a philosophy which permits them to vote for subsidies, tax concessions to industries, Federal relief for bankrupt companies, and piecemeal approaches to the serious and human misery in our country. At the same time, they wring their hands over the token cost of providing some recompense to spitting, coughing, wheezing miners, and their widows and orphaned children. When they sit in the air-conditioned comfort of their all-electric homes, they could never sense the hopelessness of the bedfast miner or lonely widow or frightened orphan in Pennsylvania or Kentucky or Virginia or any of the other dozen coal-mining States, all of whom paid dearly for the energy enjoyed by us all.

Mr. Speaker, we are talking about "double orphans" today; children who have lost both of their parents. And we are trying to provide some small measure of assistance to them, because nobody else does, and because their fathers gave so much for so little. We are also trying to conform the black lung benefits program to that which we intended in approving it 2 years ago. That is all; nothing more. So let us at least be honest in our support or opposition, and not cloud up these simple questions with tired and heartless rhetoric. And, if this bill is defeated, let the message be clear: That the Government of the United States, through its duly elected representatives, is unwilling to acknowledge the destitution of an orphaned child.

Mr. Speaker, I would like to speak again with special reference to the X-ray provision in the bill. I call your attention to page 8 of the report, and this is in answer to the gentleman from Illinois. The Surgeon General, during our subcommittee hearings, said—

However, it should be pointed out that data from postmortem examination indi-

cate a higher prevalence of the disease than can be diagnosed from X-ray examinations.

The British, whom the gentleman also called attention to and used as an example, said this—

The radiograph remains that most important single factor in the diagnosis of pneumoconiosis, as defined . . . on the other hand the opacities seen in the radiograph are not in themselves diagnostic and must be interpreted in the light of a detailed occupational history and clinical examinations . . .

Mr. Speaker, 60 percent of the examined miners have been turned down so far, and nearly 63 percent solely on the basis of X-ray.

In Beckley, W. Va., a large delegation of eminent lung specialists from all over the United States, and particularly from the Appalachian region, made a report stating that it was necessary to have other than X-ray or radiological examination. Their names and their findings will be included in the RECORD, and follow my remarks at this point:

STATEMENT CONCERNING CRITERIA FOR EVALUATING COAL MINERS' COMPENSABLE RESPIRATORY DISEASE, BECKLEY, W. VA., SEPTEMBER 12, 1971

Consideration of existing criteria for compensable respiratory disease of coal miners forces us to conclude that:

(a) There is a diversity of pulmonary diseases and conditions associated with coal mining for which the rigid definition of "pneumoconiosis" (possessing as its *sine qua non* a radiologic lesion) is not tenable;

(b) That disability resulting from work-associated respiratory disease after appropriate review be compensated;

(c) That criteria for eligibility for all work-associated pulmonary disease be based upon functional impairment rather than solely upon anatomic or radiologic criteria;

(d) That eligibility be based upon either total or partial disability and compensation graduated accordingly;

(e) In assessing disability consideration must be given the nature of the coal workers experience in which mining is often the only work for which these men are prepared.

We believe that the present regulations and administrative policies are unduly and unnecessarily restrictive.

(1) In limiting the initial qualifying diagnostic criteria to x-rays, biopsy, and autopsy evidence;

(2) In denying consideration of the data concerning the applicant's respiratory functional status including history, physical examination and laboratory findings;

(3) By recognizing primarily spirometry as a measure of disability while excluding equally valid functional measures of disability;

(4) By failing to provide a comprehensive medical evaluation as part of the reconsideration and appellate process.

FROM CHARLOTTE, N.C.

Dr. Carl Lyle, former OEO consultant in Appalachia Executive Secretary of Health Care Committee of Appalachian Regional Commission Associate in internal medicine in Charlotte.

Dr. William C. Sugg, Internalist specialized in lung disease Co-director of pulmonary clinic at Charlotte Memorial Hospital.

Dr. William Porter, Internalist specialized in hematology.

Dr. Edward Landis, Jr., Pulmonary specialist Co-director of pulmonary clinic of Charlotte Memorial Hospital.

FROM MORGANTOWN, W. VA.

Dr. Robert Nolan, Professor of medicine and Chairman of WVU School of Medicine,

Division of Public Health & Preventive Medicine.

Dr. Walter Morgan, WVU School of Medicine Associate Professor, Public Health and Preventive Medicine.

FROM HOUSTON, TEX.

Dr. Harry Lipscomb, Professor of Physiology and Director of the Xerox Center for Health Care Research at Baylor College of Medicine.

FROM MADISON, WIS.

Dr. John Rankin, Professor of Medicine and Chairman of the Department of Preventive Medicine, University of Wisconsin.

FROM CHICAGO, ILL.

Dr. Harold Levine, Director of Chest Service, Cook County Hospital Associate Professor of Medicine, Abraham Lincoln College of Medicine, University of Illinois.

Dr. Bertram Carnow, Chief of Division of Environmental Health, Abraham Lincoln School of Medicine at the University of Illinois, Medical Director of the Tuberculosis Institute of Chicago, Cook County, Chest Consultant and Director of The Respiratory Clinic.

Dr. Milton Levine, Medical Director of Miles Square Medical Center, an OEO-associated clinic, Professor at Rush Medical School of Presbyterian St. Luke's Medical Center.

FROM BOSTON, MASS.

Dr. Gordon Harper, pediatric fellow in psychiatrics at the Children's Hospital Medical Center in Boston.

[From the Appalachian Research and Defense Fund, Inc., Charleston (W. Va.)]

LUNG SPECIALISTS FIND FAULT WITH BLACK LUNG STANDARDS

BECKLEY, September 12.—A statement issued this morning by a team of 12 doctors, most of whom are lung specialists, severely criticizes the medical evaluation procedures used by the Social Security Administration to evaluate most of the applicants for the controversial federal black lung benefit program.

Most of the more than 200,000 coal miners who have applied for federal black lung benefits are currently evaluated with a single chest x-ray and a simple breathing test. The statement by the specialists labeled these tests as "unduly and unnecessarily restrictive" and called for more thorough medical evaluation of black lung applicants.

The statement stressed the need for medical evaluation of the ability of the miners to "function" (to actually work), rather than the simple evaluation of his ability to breathe gases in and out of his lungs while his body is at rest.

Dr. John Rankin, chairman of the Department of Preventive Medicine at the University of Wisconsin and a specialist in lung diseases said the simple breathing test employed by the SSA often fails to measure black lung disability.

The test measures the ability of a person to breathe air in and out. Rankin added that black lung interferes with the lung's ability to transfer oxygen to the blood, an impairment that does not show up in the simple breathing test. "A man can have a perfectly normal breathing test and be severely disabled," Rankin said.

Pointing to the inadequacy of the chest x-ray, one of the doctors said, "It seems medically unjustified to restrict disability benefits to these coal miners who happen to have acquired a certain kind of abnormal chest film along with whatever other pulmonary diseases they have.

"Solely on the basis of a chest film—without even a history being taken or a physical examination performed—such men are currently being denied, by the hundreds and thousands, the black lung benefits which

Congress voted for them. Such practice should offend us all as doctors. The denial of benefits to men too short of breath to walk half a flight of stairs should offend us all as citizens."

Dr. Bertram Carnow, professor of medicine and chairman of the Division of Environmental Health at the Abraham Lincoln School of Medicine at the University of Illinois, in criticizing the medical procedures, said, "You're talking about an x-ray and a number. The sick man gets lost in the shuffle." He added, "There is no single test that will show you anything about large groups of people."

"If a man's whole future life is affected by the outcome, you have to take time to consider the total person." He continued, that the denial of claimants of the basis of a single X-ray is "ridiculous" and said, "I teach medicine and if a student of mine made a judgment on the basis of a single test, I'd knock him in the head."

The findings of the team is likely to add additional weight to critics of the black lung program who charge that high denial rates are due to overly restrictive medical criteria set by the SSA. In West Virginia, 62 per cent of the coal miners who have applied for benefits have been denied. The figure is 78 per cent in Kentucky and 72 per cent in Virginia.

The team of doctors traveled to Beckley Saturday from Chicago, Ill., Charlotte, N.C., Boston, Mass., Madison, Wis., Houston, Tex., and Morgantown, W. Va., to examine the miners. Several of the doctors are going on to New York for a week-long conference sponsored by the New York Academy of Sciences concerning coal miners pneumoconiosis. They will discuss their findings of their Beckley examinations with fellow specialists from the United States and Europe.

Congress is scheduled to vote Sept. 20 on amendments to the federal black lung law, one of which would abolish the practice of denying coal miner applicants on the basis of x-ray evidence alone. In a report issued recently, the House of Representatives Committee on Education and Labor stated that the law as originally enacted never intended that coal miners be evaluated with such restrictive tests.

The Appalachian Research and Defense Fund (ARDF) is currently preparing a suit to challenge the x-ray requirement.

The Doctors' trip to Beckley was sponsored by ARDF under the auspices of the Field Foundation in New York.

We also have for the record an answer to the question of cost, which the gentleman is holding back as his trump card. He says it will cost \$1.2 billion. He does not know any more about that than I do. In fact, the Lord will have more to do about what it will cost than he, I, or anybody else, simply because this is a declining group of people. All of these, you understand, are old cases of pneumoconiosis.

They are from among the miners who have long ago worked in the mines. We have said on this floor, and I made a solemn promise to this House, that if we could not achieve the goal this law intended to achieve in respect to the miners with black lung disease, I would be the first to come to the floor and tell the House about it.

We have achieved that goal in major part. We have aimed for a 2-milligram dust content. The British, with all their years of experience, have said pneumoconiosis is not probable if there is a dust content of less than 3.0 milligrams. We are achieving this goal, and have achieved it in many instances.

We are on our way to achieving 2 milligrams, and in many instances where the conditions have allowed it, we have reached a virtual zero point of dust in the mines. This is what we wanted to achieve. There will be no new cases of pneumoconiosis after we achieve this great breakthrough in dust control.

Mr. BURTON. Mr. Speaker, will the gentleman yield?

Mr. DENT. I yield to the gentleman from California for just one comment, please.

Mr. BURTON. Mr. Speaker, as I understand it, the gentleman from Illinois stated this is a windfall for the coal operators. The fact of the matter is that, under the law, the Secretary of Labor had the responsibility to contact all the States to have them implement the various State workmen's compensation statutes. Is it not a fact that only three of the smallest States of the country, and none of the major coal mining States, have implemented this law? And if we do not pass this bill by the end of this year, the Secretary of Labor is going to intervene against every coal operator in the country, because there is no State legislation for them to follow?

This is not a windfall to the coal operators. The facts of life are that the laws have not been implemented at our State levels, and they have only some 2 months to comply with the statutory obligations. This is just a recognition of the real state of the facts, and that is why they need a period of time for the State bodies to enact their legislation.

And I would be remiss, Mr. Speaker, if I did not recognize the fantastic contributions of the gentleman from Pennsylvania (Mr. DENT) in bringing desperate relief to thousands of grateful and suffering miners and widows across this land. His concern for their plight has been his singular motivation and he deserves the plaudits of us all.

Mr. DENT. I thank the gentleman. If I might continue at this point, the statement was made that proponents stated it was going to cost \$40 million in the first year. I have looked through the legislative record and all I can find is a statement of the gentleman from New Jersey (Mr. DANIELS) making reference to an estimate of 22,300 coal miners in the Nation who had complicated pneumoconiosis. These were not the facts of Mr. DANIELS, the gentleman from New Jersey. They were provided by the same authority the gentleman from Illinois (Mr. ERLENBORN) now quotes.

Mr. ERLENBORN. Mr. Speaker, will the gentleman yield?

Mr. DENT. No. The gentleman has not been yielding time to people on our side of the aisle.

Mr. ERLENBORN. If the gentleman will yield, later on if I have any time left, I will be glad to yield to the gentleman.

Mr. DENT. And later on I will be glad to yield to the gentleman. I will let him have all the time he needs.

Mr. Chairman, they say that this is a bad way to take up the legislation. They say it ought to go through the route of the Rules Committee. The gentleman knows the difficulty we are having with the Rules Committee, with the shutdown date to get rules.

The gentleman said he had no time to offer amendments. He had time in the committee to offer amendments. He offered them, they were defeated. The bill was reported by the subcommittee unanimously, and it came out of the full committee by a vote of 22 to 1. The only thing is, the gentleman from Illinois wants to confuse the Members and to try to confuse me. I know Members will not be confused.

The issue is very simple. The biggest change in this is the fact that we are going to compensate for the double orphan. The gentleman professes to love and pity the double orphan. The Republicans all do. And they all want to do this, except that the gentleman says although he wants to pay them, this is not the vehicle he wants to use. But if the gentleman will show me any other vehicle that can be used, I will be glad to go along with it.

The gentleman has said that the legislation does not deal with the situation correctly. At no time until now has anybody questioned the technical aspects of the bill. If they are wrong, we will correct them. That is not what we are fighting for. We are fighting for simple justice. Simple justice is that no other class of Americans at this time has been recognized by the Congress—as the coal miners have been for the problems the coal miners have.

Mr. FLOOD. Mr. Speaker, will the gentleman yield?

Mr. DENT. May I make one other statement?

Mr. FLOOD. The gentleman certainly may.

Mr. DENT. Mr. Speaker, the miners are ineligible for any of the job training programs.

Let them march up to the centers for job training. Let them ask for an opportunity to be trained for another job. They do not have a prayer, because they are not able to do any kind of work for which they could be trained. The jobs do not exist in their part of the world.

Thousands upon thousands of them live in the desolate, bleak towns still left in Pennsylvania.

Many of us do not realize that this is nothing new. It should have been taken care of many years ago.

I say that in my 40 years as a legislator, the proudest moment I had was serving with this body, which almost unanimously accepted a responsible cost to the Government of the United States for these citizens who have contributed more than any other single group to the welfare and building of this Nation. There is no other job in the entire United States of America which is less rewarding financially or physically than the digging and mining of coal.

There is not a man in this room who would go down in a coal mine and work for the wages paid, even if they paid him three times those wages.

Unless one has been in a coal mine as a miner—such as the gentleman from Lucerne County now standing, who worked in the mines, and some of the rest of us, one cannot understand. Even on visits, I have had committee members of my committee stay outside, and only

got their pictures taken with a miner's lamp on, to show they had been there.

Mr. FLOOD. Mr. Speaker, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Pennsylvania.

Mr. FLOOD. Mr. Speaker, I presided in this House when the bill was debated, as the chairman of the Committee of the Whole.

I heard these proposals of my friend. They were mostly withdrawn. A great disaster in West Virginia silenced opposition, by 78 deaths.

Now you are not opposed to orphans. Well, well, well—what a gesture. What a gesture.

The best argument today, Mr. Speaker, would be if I could bring in one of the 35,000 miners denied the right to take a look because of his illness.

This is a sham, a disaster. The great place is Germany for this, and the X-ray is not a sole test. It cannot be done.

I was born and raised in the hard coal area. How nice for my orphans. What a gesture. This X-ray is a mistake. It is an error.

I am the chairman of the Appropriations Subcommittee for this matter. Do Members believe I would not back my friend when we talk about mere dollars, mere dollars when our hearts bleed for orphans?

This is here as an emergency, as a necessity. You know I would not be for it otherwise.

The SPEAKER. The proponents have consumed 15 minutes.

Mr. PERKINS. Mr. Speaker, I yield 1 additional minute to the distinguished gentleman from Pennsylvania.

Mr. DENT. Mr. Speaker, I just want to read why Pennsylvania happens to be the leading State in claims.

You will hear about the cost. The total cost to this moment, for almost 2 years of operation of this legislation, after having considered claims of over 323,000 miners, which far and above might be 90 percent of all claims which will ever be considered, shows claims paid of 147,000 to date, and a total cumulative cost of \$405 million.

Let me give the figure which I think might be a little more enlightening. Of a sample of 743 black lung deaths, 93.8 percent came from the State of Pennsylvania. There were 697 deaths in Pennsylvania out of the 743 black lung deaths. That is also why there are so many orphans, and that is why we are fighting for them.

Mr. ERLBORN. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. MICHEL).

Mr. MICHEL asked and was given permission to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker and Members of the House, I supported this bill in its original form for its original intent and purpose. However, we are now moving out to broaden the scope of the legislation without proper safeguards and it concerns me. Mention has been made of what the bill would cost. I hesitate to talk about life itself in terms of dollars and cents, but let us not delude ourselves by thinking the figure the gen-

tleman just mentioned is the total cost of this program.

For the past week we held hearings before our Labor-HEW Subcommittee on Appropriations on several supplemental items including one for this program. In the fiscal year 1971 it will cost \$297 million; in 1972 \$548 million; in 1973 \$538 million; in 1974, \$515 million, in 1975 \$491 million. Then it tails off slightly over a period of years. But that is half a billion dollars a year without liberalizing it. If you are going to extend it for another 2 years, we will be paying until the year 2000 to the extent of about half a billion dollars a year.

Mr. PERKINS. Will the gentleman yield to me?

Mr. MICHEL. In one moment I will.

Mr. PERKINS. I would like to make a statement—

Mr. MICHEL. I did not yield to the gentleman.

Mr. PERKINS. While you are making this statement to the Chamber.

Mr. MICHEL. The reason why this bill ought to be debated under the regular procedure is because it ought to be modified.

I have strip miners in my district. There are some who have worked at the tippie or crusher for years above ground inhaling this very same dust. Should they be discriminated against simply because they work above ground instead of under ground? There is a serious question about their eligibility and I would like to have this cleared up with an amendment to the legislation. I have been told there may be 400 of them throughout the country.

I support the arguments of the gentleman from Illinois that we ought to be debating this bill under the regular procedures where we can offer amendments and have them debated fully under an open rule. Then justice and equity will prevail. I thank the gentleman for yielding.

Mr. ERLBORN. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. REID).

Mr. REID of New York. I thank the distinguished gentleman from Illinois for yielding to me.

I think it is clear that simple justice requires that we support this bill partly because it extends benefits to double orphans, the 2,000 children whose fathers have died of pneumoconiosis, whose mothers are also deceased, and who clearly are entitled to justice.

Equally important, however, is section 4 of this bill which prohibits the use of X-rays as the sole basis for the denial of benefits under title IV. Numerous doctors have indicated as they practice medicine near the coal mines of West Virginia or Pennsylvania, that chest X-rays simply do not show up many cases of advanced pneumoconiosis.

This is a deadly disease. Our committee has heard medical evidence time and time again that X-rays simply do not always record black lung. Those of you who watched NBC's evening news on Friday or Saturday saw a coal miner who could not even walk to his front sidewalk because his breathing had been so

impaired, and yet he was denied benefits because X-rays registered negatively.

New tests are being developed. There is one pioneer doctor, Ronald Rasmussen, who draws blood samples to determine the amount of oxygen a man inhales before and after the patient walks or runs on a treadmill.

Mr. HECHLER of West Virginia. Will the gentleman yield?

Mr. REID of New York. To facilitate a check on this disease, I wrote the Secretary of HEW to request information on this matter. Although the report he sent me from the Social Security Administration says that there is, and I quote "some minority medical opinion to the effect that the disabling pneumoconiosis may exist in the absence of positive X-ray evidence thereof," the Social Security Administration objects to the test referred to above because they think it is too complicated, requiring too much medical expertise to be widely used. And yet the fact is that whether or not it is complicated it is being used in various parts of the country and it is showing the existence of black lung where X-ray failed to do so.

Apparently the Social Security Administration objects to new tests simply because they might be too complicated, or more complicated than their present practice of just taking a picture.

I might add that in Pennsylvania, where decent medical facilities for examinations are available, 69 percent of the applications for benefits have been approved. On the contrary, only 28 percent have been approved in Kentucky and only 44 percent in West Virginia. In sum, it is unfair to penalize a coal miner or his widow in Kentucky or West Virginia simply because medical facilities and detailed records are unavailable.

I say that coal miners, who risk their lives almost daily, are entitled to the best in medical tests, not the cheapest or easiest.

Mr. ERLBORN. Will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from Illinois, and then I will yield to the gentleman from West Virginia.

Mr. ERLBORN. I appreciate the gentleman yielding to me.

The gentleman expressed support of one section of the bill. Will he not agree with me that this bill should not be heard on the floor under suspension of the rules but should be here under a rule where amendments can be offered to it?

Mr. REID of New York. I agree with the gentleman. I think it is far preferable to have it on the floor where amendments can be offered to it. Nonetheless, however, I am supporting the bill as it stands and I very strongly urge my colleagues to do the same.

The SPEAKER. The time of the gentleman has expired.

Mr. REID of New York. May I have an additional 30 seconds so I can yield to the gentleman from West Virginia (Mr. HECHLER) who has done more for the coal miner, both within Congress and without over recent years than anyone else I know, and a man to whom all miners and their families should be deeply indebted.

Mr. ERLNBORN. Mr. Speaker, how much time do I have remaining?

The SPEAKER. Each side has 4 minutes remaining.

Mr. ERLNBORN. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. HALL).

(Mr. HALL asked and was given permission to revise and extend his remarks.)

Mr. HALL. Mr. Speaker, I know not about the portents of this bill, or equity as far as cost per lost soft-coal miner is concerned, nor about the double orphans, or even the virtues of the bill as a whole; but, I would like to straighten out something in the minds of Members here who have not had the privilege of ever performing postmortem examinations on cases of pneumoconiosis, and/or cases of anthracosis, silicosis, and asbestosis, and others. I come from an area of lead, zinc, and lime—calcinosis—mines.

Mr. Speaker, the term "black lung" is an appealing and catchy label, but it is not an encoded disease entity. So-called black lung is nothing but the arresting in the filtering process of soft coal, which is not abrasive to the lung, in the lymph and glandular process. It is quite different from that of anthracosis, silicosis, or others which do not produce black lung, but are more severe in point of lung parenchyma distribution.

The breathing cells, the resting wandering cells of the body known as the histocytes and reticulo-endothelial cells—take care of this.

Mr. Speaker, the X-ray should not be considered in either direction. There is great evidence that one can have a completely black lung upon the performance of an autopsy and not have it show on X-ray. All should remember that the X-ray machine is just another diagnostic aid.

Conversely, X-ray does not exclude pneumoconiosis, and this proves the legislation before us should not deal with an aid, but a total professional diagnosis based on all aids, skills, and experience. Anthracosis is death dealing. Pneumoconiosis is not.

In strict pathological interpretation based on biopsy and surgical pathology, and diagnosis as a result of such determinations; the question finally evolves as to whether or not this bill is going to make presumptive total and permanent disability predicted upon appealing packaged, but not scientific data; and, second, whether or not we are going to make all such respiratory diseases come under this bill.

Mr. DENT. Mr. Speaker, I yield myself 1 minute.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Speaker, I would like to point out something else in relation to the figures which we heard from the gentlemen from Illinois (Mr. MICHEL) as to cost. And, incidentally, I do not know where the gentleman got his figures, but the figures which I have obtained show that in 1972 the cost will be \$190 million, in 1973 \$135 million, in 1974, \$231 million, and, up to 1977, \$219 million, presuming that we do pass this legislation

today. These figures are Social Security Administration estimates and are dated August 20, 1971.

The SPEAKER. The time of the gentleman from Pennsylvania has expired.

Mr. DENT. Mr. Speaker, I yield myself an additional 30 seconds.

The SPEAKER. The gentleman from Pennsylvania is recognized for an additional 30 seconds.

Mr. DENT. I might say that when you are talking about costs, I voted in this Chamber, along with every other coal-mining State Member, over a period of many years, for much legislation that was expensive to the Treasury.

Let us see what some programs have cost us down through the years.

Federal aid to State and local governments for public assistance is \$5.4 billion; highways, \$4.2 billion; extension work in research, \$3 billion, and I would like to call to your attention the fact that we spend \$4.4 billion for the Department of Agriculture as the cost to the Federal Government in 1971.

Federal budget outlays for national defense in 1971 are about \$73.6 billion; for veterans benefits and services, about \$8.5 billion; and for military assistance, about \$500 million.

In 1965, disbursements for public assistance approached \$12 billion; the Federal share was one-half, or \$6 billion.

In 1970, price support and related programs administered by the Department of Agriculture cost the Federal Government \$3.5 billion; in 1971, the estimated cost is \$4.4 billion. The removal of surplus agricultural commodities in 1970 cost nearly \$500 million.

Federal aid to State and local governments for public assistance in 1968 totaled \$5.4 billion; for highways, \$4.2 billion; and agricultural conservation, extension work, and research, \$3.2 billion.

Corporate profits in mining exceeded \$800 million in 1968; those for electric power companies approached \$5 billion in 1969.

Federal expenditures for research and development in 1969 exceeded \$15.5 billion; for the National Aeronautics and Space Administration, over \$4.1 billion; and for the Department of Defense, nearly \$8 billion.

Federal funding for the performance of industrial research and development exceeded \$4.5 billion in 1968 for the aircraft and missile industry alone, and exceeded \$8.5 billion for all industries.

Federal outlays for international affairs and finance were \$4.1 billion in 1970; and totaled \$2.7 billion for economic and financial assistance alone.

Mr. Speaker, there have been over 80,000 recorded fatalities in coal mining since 1910. This does not include the thousands more who have died from black lung.

We have been told the estimated cost of H.R. 9212 is \$1.2 billion for the next 6 fiscal years. On the other hand, the value of coal production over the past 6 years has been \$16.3 billion; and the value of coal production for last year—1970—alone was \$3.8 billion—or more than 3 times what the bill is expected to cost for the next 6 years, and almost 10 times more than the program has cost thus far.

The total value of coal production since 1890 is nearly \$100 billion. This is the recorded figure, and cannot possibly include the production of the thousands of "dog holes" in existence over time.

Throughout history, no one has been able to put a price tag on human life.

And I do not think we should be persuaded by the arguments of those who try.

Mr. ERLNBORN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ERLNBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLNBORN. Mr. Speaker, let me set the record straight.

The gentleman from Pennsylvania apparently is confused. The gentleman from Illinois (Mr. MICHEL) read figures that represent the estimated cost of the present law, running about \$500 million a year. The figures which the gentleman from Pennsylvania read by comparison are not comparisons at all. Those figures are the additional costs that would be occasioned by the passage of this bill.

The Social Security Administration has estimated the additional cost of this bill over the next 6 years will be \$1.2 billion.

I reiterate, as I have done each time in the letters that I have written to the Members—and the gentleman from Kentucky has pointed out that I have written to the Members quite often. And I should explain that, and the reason for that is because he put the bill on and then he took the bill off, and then he put the bill on and then he took the bill off, and then he put the bill on and then he took the bill off, and it has been on and off the calendar half a dozen times. Each time the gentleman put the bill back on the calendar I wrote to the Members and told them that this would cost \$1.2 billion additionally, and with the price tag of that size, regardless of the controversy surrounding this bill, one would think that the gentleman would have shown courtesy to the House by going to the Committee on Rules and getting a rule so that we could debate the bill and offer amendments in a proper way.

Mr. PERKINS. If the gentleman will yield, the gentleman, I am sure, knows one instance there was a Jewish holiday that I had no control over this bill. In the day it was to be called up under a suspension.

Mr. ERLNBORN. I will accept that explanation from the gentleman. But I would like the gentleman also to understand that I have no control over the fact that I have to continually bother the membership of this House to point out to them that the bill is again on the calendar. I just wanted the membership to know that this was a bill that ought to be considered in the usual process.

The SPEAKER. The time of the gentleman from Illinois has expired.

Mr. PERKINS. Mr. Speaker, I yield the remainder of my time to the distinguished gentleman from Pennsylvania (Mr. SAYLOR).

(Mr. SAYLOR asked and was given permission to revise and extend his remarks.)

Mr. WAMPLER. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from Virginia.

Mr. WAMPLER. Mr. Speaker, I rise in support of this legislation.

(Mr. WAMPLER asked and was given permission to revise and extend his remarks.)

Mr. WAMPLER. Mr. Speaker, the life of a coal miner is a hard one, involving back-breaking work and hazardous working conditions, resulting in many a death and disability. Not the least of these is the dread black lung disease, which often ends in paraplegia and a wheezing death.

Two years ago, Congress, with wisdom and compassion, passed the Federal Coal Mine Health and Safety Act. The purpose of the act was to help eliminate the hazards in the coal mines and to compensate those miners who had fallen victim to the damaging accumulation of coal dust in their lungs as a result of their service in the underground mines.

The act has been a good one and many have benefited. In the Commonwealth of Virginia, 11,671 miners, their widows and dependents are receiving monthly benefits totaling \$1,263,500. I am grateful for this obvious accomplishment. But, 18,949 Virginia miners have filed claims for black lung benefits. No doubt, some of the approximately 7,000 whose claims have been disallowed are really ineligible. But others are the victims of inequities in the law.

As with any new program, misinterpretation of intent, oversight, and the need for improvement has become apparent through trial and error. H.R. 9212, which you are asked to consider today, would bring greater equity and stability to the black lung program.

Briefly, it would: First, extend benefits to "double orphans", children of deceased parents who had been drawing compensation. Second, clarify language of the present law relating to social security disability benefits so there can be no reduction in total disability benefits which a miner might be drawing when he qualified for black lung compensation.

Third, Extend for 2 years the timetable for transferring from the Federal Government to the States the responsibility for providing black lung benefits to beneficiaries. This additional time is urgently needed to enable the States to pass necessary legislation and establish administrative machinery to take on this new and complex task. Fourth, Authorize the use of diagnostic techniques in addition to X-ray in determining eligibility for benefits.

Mr. Speaker, I urge the House to suspend the rules and pass H.R. 9212.

Mr. GRAY. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from Illinois.

(Mr. GRAY asked and was given permission to revise and extend his remarks.)

Mr. GRAY. Mr. Speaker, I thank my distinguished colleague for yielding this time. I first want to thank the distinguished gentleman from Kentucky (Mr. PERKINS), the chairman of the full com-

mittee, and the distinguished gentleman from Pennsylvania (Mr. DENT), the subcommittee chairman, for their outstanding work on this important legislation.

Mr. Speaker, I rise in support of H.R. 9212, the so-called black lung legislation amendments. I stand here filled with mixed emotions. I am delighted that Congress saw the need of helping black lung sufferers, their widows and orphans and I am very pleased that the Democratic-controlled Congress is trying to correct some very severe inequities in the previously passed legislation, but I am extremely distressed that one of my good friends and Illinois colleagues (Mr. ERLENBORN), would lead a fight against this bill. I am sure if he could come to southern Illinois, his native State, and see and talk to our coal miners and their families who have been enduring hardships because of physical disabilities and death due to black lung, he would have a completely different outlook on this bill.

Mr. Speaker, in my district alone, over 4,000 needy persons have received benefits under this legislation and are now drawing approximately \$15 per year; however, an almost equal amount or more than 3,000 claims have been turned down. Many of these persons are more needy than some who have received approval previously because they were not able to obtain X-ray reports or the X-ray reports did not show a progressive stage of black lung disease. In many instances, the family physician had passed away and all records had been destroyed of a deceased miner who leaves the widow without enough proof to receive approval even though her husband died of black lung disease or a contributory factor to death was black lung. Also, many miners who have retired are unable to get X-ray data for the same reasons that the medical X-rays and other data are not available.

This bill would correct these inequities and others. I cannot conceive of the Republican side of the aisle opposing this legislation. I realize it will cost additional money, but, in many instances, Federal welfare dollars are now being paid to these same people. Others are receiving food stamps paid for by the Federal Government. All we are trying to do is to recognize the coal miner and his family as a great contributing factor to an industry that has brought victory in war and peacetime progress and is now supplying fuel that generates our vital electricity that keeps America humming. If my colleagues on the Republican side of the aisle who are speaking against this bill would go down in the bowels of the earth and dig coal for \$30 or \$40 a day, never knowing at what time a catastrophic explosion might snuff out his life or that of his fellow workers, he would change his mind.

Mr. Speaker, 3 years before I came to Congress, my home town of West Frankfort, Ill., experienced the worst coal mine disaster in the history of the country at that time. One hundred twenty miners lost their lives in the Orient No. 2 Mine explosion. I drove an ambulance hauling charred and twisted bodies to a makeshift morgue in the Central Junior High

School gymnasium at West Frankfort, Ill. This was an experience I shall never forget. In many instances, the entire manhood of a family was wiped out—fathers, sons, brothers, uncles, and cousins. I wish my Republican colleagues who are opposing this bill today would talk to some of those families and they would be glad to tell them that black lung benefits are needed, a small remuneration for those who labor in this hazardous occupation.

Knowing of the Nixon administration's opposition to this bill, it may not receive the required two-thirds vote for passage today; if this be the case, I hope the American people will know who upholds the banner for the workingman and who is consistently in opposition. If the bill does not pass by two-thirds majority as required under the rules, I am indeed hopeful the legislation can be considered very quickly under a rule which would permit passage by a simple majority. To do less will be denying equity to those who are deserving of these benefits but, under the present law are being denied.

I strongly urge all of my colleagues to support this legislation. Thank you.

Mr. McDADE. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from Pennsylvania.

(Mr. McDADE asked and was given permission to revise and extend his remarks.)

Mr. McDADE. Mr. Speaker, the legislation before us today is a significant and positive contribution to a better Coal Mine Health and Safety Act, with specific reference to title 4 of that act.

It would, in the first place, correct an obvious inequity in granting benefits to those who should receive benefits under the black lung program. It was certainly never the intent of those of us who sponsored the Coal Mine Health and Safety Act, nor of Congress as a whole, to take any action which would deprive orphans of benefits under the Act. Through a legislative oversight, however, the language of the act does not provide for such benefits for orphans. My own bill, H.R. 4236, was placed before Congress this year, and the provisions of that bill have been incorporated here as part of the black lung amendments.

In the second place, the legislation before us would extend for 1 year the timetable for transferring the black lung program from the Federal Government to the States. My own bill, H.R. 9130, which I placed before Congress this year, proposed to do precisely that, and I am pleased to see it included in the black lung amendments presently before us. This seems to me to be a very responsible proposal. In the creation of the black lung program, with its eventual transfer to each of the States which might be involved, we were well aware that the transfer could be accomplished only after the States had modified their own workman's compensation laws, had established administrative procedures for handling the working of the act, and had provided sufficient funding for the not insubstantial payments

which would have to be made. All of us are aware of the great financial burdens which many of our States bear today, and it does not seem unreasonable to give them one additional year to prepare for this increased caseload and the additional disbursement of money.

As a third provision, the legislation would exempt the benefits from black lung payments from the computation of income for the purpose of drawing social security benefits. The action of Congress in creating title 4 of the Coal Mine Health and Safety Act seems to me to be a clear expression of Congressional intent to make black lung benefits a very special case. To permit the reduction of social security disability benefits when a minor is qualified for black lung payments would, in my opinion, negate the intent of Congress in writing the original act. This section, too, is worthy of support by my colleagues.

Finally, the legislation removes the requirement that X-ray evidence, or the lack of it, be the sole determining requirement in the affirmation or the denial of black lung benefits. Testimony was heard by the committee to the effect that experts in the field of disabling pneumoconiosis judge that this situation may indeed be present in a miner even in the absence of positive X-rays. Studies in Germany, where mining is also a major industry, have been publicized in a recent magazine article, and the experts in that country agree with our own American authorities on the subject.

Because of this, I placed before the House this year H.R. 5472, which would grant a presumption of the existence of disabling pneumoconiosis in any miner who had worked a specific number of years in the mines. The present legislation does not go that far, but I believe this amendment to title 4 is a desirable change, and will receive my support as it deserves the support of my colleagues here in the House.

In summary, therefore, I would urge the passage of this legislation by the House today. The great industrial empire which we know as America today has been fueled by the product of the work of countless of thousands of miners. We have taken the fruit of their industry, the hard and soft coal of America, and we have translated it into the greatest industrial nation on the face of the earth. But in producing the coal that gave us the energy needs we required, many of those miners suffered a disease known as pneumoconiosis.

It seems to me that America has a real debt which we owe these miners. The legislation before the House today is a just payment of that debt, and I urge its passage.

Mr. KEE. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from West Virginia.

(Mr. KEE asked and was given permission to revise and extend his remarks.)

Mr. KEE. Mr. Speaker, I rise in support of this legislation, and wish to associate myself with the remarks of the gentleman in the well (Mr. SAYLOR).

Mr. Speaker, as the Representative

from the largest coal producing congressional district in the United States I have felt for some time that some of the provisions of the Federal Coal Mine Health and Safety Act of 1969 needed clarification to make it more equitable. Therefore, I do want to take this opportunity to commend the distinguished chairman of the House Committee on Education and Labor and those other members of the committee who have worked so diligently toward making substantial improvements in this legislation. In my judgment, this bill that is before us today, H.R. 9212, does correct some of the inequities that we have found in this act.

I rise to express my profound hope that my colleagues in the House will join me in supporting this meritorious measure.

With the passage of the Federal Coal Mine Health and Safety Act of 1969, a measure which I supported enthusiastically, it was my hope that the disabled miner would at last get relief from the rigors of his hazardous employment. This is the reason I introduced H.R. 9850 in April 1969. The very first bill introduced in the Congress for those suffering from black lung and their families. However, from what we have learned about the black lung disease benefit program established by title IV, we know that many coal miners with the disease are not receiving the benefits to which they are entitled. In some instances, this injustice is caused by the fact that far too much emphasis is placed on X-rays. To deny claims for black lung benefits solely on an X-ray examination was never intended by the Congress, and is a most unfortunate situation insofar as justice is concerned to the coal miners in this country.

In May 1971, at the time that I testified during the hearings on this legislation, I stated that in my own State of West Virginia, there were claims filed amounting to 58,300. According to the latest black lung statistics that figure has now risen to 59,234; 32,981 of these claims were made in my district. Claims paid for the entire State of West Virginia are 24,491. The claims paid in my district amount to 14,501.

On the other hand, the statistics show that there were 15,513 denials. There is no way of knowing whether or not all of these denials would be approved, but I do state that under this new legislation which prohibits the use of chest X-rays as the sole basis for denial of claims, quite a few of them will.

A third of the black lung benefits claims which have been turned down to date have been disallowed because the miner was not totally disabled. In fact, what the Federal Government is saying to these miners is that they do not qualify because they are not totally dead. I have contended from the very beginning that the requirements for determining "total disability" should be made more realistic. It seems to me that any miner who is rendered incapable of performing his usual mining job should be considered "disabled" under the Federal black lung compensation provision. And this bill recognizes this phase of the matter.

I am also pleased that the Federal Coal Mine Health and Safety Act will be amended to extend black lung benefits to orphans whose fathers died of pneumoconiosis. Likewise, the bill states that the existing black lung program shall not be considered a workmen's compensation law or plan for purposes of the disability insurance provisions of the Social Security Act. And this bill asks for an extension for 2 years of the existing program for payment of black lung benefits.

With the passage of this bill some of the inequities that have arisen over the past 2 years will be rectified, which is of tremendous importance to many, many deserving people.

I am glad to have had a part in developing this legislation and it has my wholehearted support.

Mr. SKUBITZ. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Speaker, I rise in support of this legislation.

(Mr. SKUBITZ asked and was given permission to revise and extend his remarks.)

(Mr. SKUBITZ addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

Mr. BIESTER. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from Pennsylvania.

Mr. BIESTER. Mr. Speaker, I rise in support of this legislation, and ask to associate myself with the remarks of the gentleman from Pennsylvania.

(Mr. BIESTER asked and was given permission to revise and extend his remarks.)

(Mr. BIESTER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

Mr. BYRNE of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from Pennsylvania.

Mr. BYRNE of Pennsylvania. Mr. Speaker, I rise in support of this legislation.

(Mr. BYRNE of Pennsylvania asked and was given permission to revise and extend his remarks.)

(Mr. BYRNE of Pennsylvania addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Speaker, I rise in support of the legislation, and wish to associate myself with the remarks of the gentleman from Pennsylvania.

(Mr. MAZZOLI asked and was given permission to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, I would like to speak briefly in support of the provision in this legislation which would prohibit the denial of black lung disease benefits solely on the basis of negative X-ray findings.

I think I can offer my colleagues a most concrete example of the problems inherent in relying on chest X-rays to determine the presence of this disabling disease.

Within the last week, I received from one of my constituents the report of an autopsy performed on his father, a retired coal miner from Pike County, Ky.

The father had been denied black lung disability benefits on the basis of X-ray examinations. Yet when the autopsy examination was performed after his death, the pathologists found extensive lung damage associated with large amounts of coal dust in his lungs.

In the technical language of the autopsy report, the condition was described as "extensive areas of fibrosis containing large amounts of anthracitic pigment."

The conclusion of the pathologist was that the victim, who had been denied benefits while still alive, had indeed been suffering from "coal miner's pneumoconiosis," more commonly known as black lung disease.

There are other diagnostic techniques, including pulmonary function tests, which can and should be used in addition to chest X-rays in diagnosing disabling black lung disease. I do not believe the men who labor in our mines should be forced to wait until there has been an autopsy before their disability claim is established.

Mr. SAYLOR. Mr. Speaker, and Members of the House, I rise in support of this legislation. I do so because after the legislation was reported I went to see some doctors practicing in mining towns who take care of and live with people whose cases have been turned down because the X-rays did not show the victims had complicated pneumoconiosis. These doctors were convinced that men whom they treated for the disease for years who later died, did indeed have the disease. Autopsies were performed upon those former patients. The autopsies proved conclusively that they had complicated pneumoconiosis.

The single most important part of the legislation before us today is H.R. 9212's provision to eliminate a negative X-ray as the sole basis for the denial of a victim miner's claim.

It is well known that X-ray is not always effective in determining whether a person has the black lung disease. According to medical evidence presented to the Committee on Education and Labor and my independent conversations with medical practitioners, it is clear that the X-ray is but a single tool in the discovery of the existence of black lung. H.R. 9212 provides for the use of diagnostic techniques in addition to X-ray in determining a miner's eligibility.

The medical testimony shows us that black lung is more prevalent in miner's than previously believed. We must not allow those miner's so afflicted to suffer the disease without proper compensation as received by their fellow sufferers because of a technical legislative oversight in the original act. Equity demands this technical and humanitarian change in existing law.

Mr. Speaker, I urge all the Members of the House to support this bill.

Mr. ANDERSON of Illinois. Mr. Speaker, I rise to urge defeat of the motion to suspend the rules and pass H.R. 9211, the black lung benefits amendments to the 1969 Coal Mine Safety Act. I do so, not because I oppose the bill in its entirety; indeed, there are portions of this bill which in my opinion should be enacted into law. But rather, I do so because I object to the manner in which this legislation is brought before us today—under a suspension of the rules which allows no opportunity for amending the bill.

The chairman of the committee knows full well that the suspension procedure was designed specifically to deal expeditiously with bills of a noncontroversial nature. And yet, we have before us today a bill which is surrounded with substantial controversy; a bill to which no less than seven members of the committee have filed dissenting views; and a bill to which the administration has raised substantive objections. It is therefore my considered opinion that this bill is too important and too controversial to be considered under a suspension of the rules.

As a member of the Rules Committee, I would urge my colleagues to defeat the motion to suspend so that this can be given a rule and brought to the floor for the full and open consideration it deserves. And in case there are any doubts that this will be done, let me assure my colleagues that this bill has been placed on the Rules Committee agenda for tomorrow in the event the motion to suspend is defeated today; and at this time I would like to pledge my support for reporting this to the floor under an open rule.

Mr. HECHLER of West Virginia. Mr. Speaker, having received unanimous consent to extend my remarks in the RECORD, I would like to indicate that I am not really speaking these words. Try as I might, I could not get the floor to deliver my plea on behalf of the coal miners disabled by pneumoconiosis. I do not want to kid anyone into thinking that I am now on my feet delivering a stirring oration. As a matter of fact, I am back in my office typing this out on my own hot little typewriter, far from the maddening crowd, and somewhat removed from the House Chamber. Such is the pretense of the House that it would have been easy to just quietly include these remarks in the RECORD, issue a brave press release, and convince thousands of cheering constituents that I was in there fighting every step of the way, influencing the course of history in the heat of debate.

As a matter of fact, Mr. Speaker, I have been more than slightly interested in legislation to compensate those coal miners and their families disabled by pneumoconiosis. There was a major rebellion in West Virginia in 1969 which led to the enactment of this legislation and the inclusion of "black lung" benefits in the Federal Coal Mine Health and Safety Act of 1969. This landmark law needs the clarifying amendments which

the Congress is considering today. All we are doing is perfecting the 1969 law in order to insure that the principles of justice and humanity are extended to the coal miners of this Nation.

Today, some 60 coal miners from West Virginia and Virginia, many of whom are my constituents, visited the Capitol and called on a number of Congressmen. I have been with these miners much of the day, and appreciate their efforts in bringing home to the Congress the inequities in carrying out the provisions of the law. They know from experience in the coal mines that there are many doctors who have down through the years denied the existence of pneumoconiosis. They know from experience that there are many miners in the coal fields who have been denied the benefits justly due them, by reason of negative X-rays. Since pneumoconiosis interferes with the ability of the coal miner to transfer oxygen into the blood, what is really needed is to measure how much oxygen is actually getting into the blood. This necessitates an arterial blood gas test with exercise, to measure the oxygenation of the blood—and these tests are being performed daily at such places as the Appalachian Regional Hospital in Beckley, W. Va., by Dr. Donald Rasmussen and his associates.

The X-ray may possibly pick up positively lumped coal dust in one section of the lung, but frequently overlook very fine coal dust which is spread out in the lung in such a way as to severely impair the ability of the lungs to transfer oxygen into the blood. This is why it is so important to supplement the X-ray with other tools like the arterial blood gas test with exercise in order to prove conclusively whether a miner is disabled by pneumoconiosis.

On September 12, 1971, a statement by 12 doctors assembled in Beckley, W. Va., indicated that the Social Security Administration use of a single chest X-ray and simple breathing test was "unduly and unnecessarily restrictive." Dr. John Rankin, chairman of the department of preventive medicine at the University of Wisconsin and a specialist in lung disease said the simple breathing test employed by the Social Security Administration often fails to measure black lung disability. The New York Academy of Sciences sponsored an international conference on coal workers' pneumoconiosis on September 13 through 17, and lung specialists from all over the world presented their analyses of how to test and measure pneumoconiosis. These papers conclusively demonstrate that you cannot rely on a simple X-ray to determine either the presence of pneumoconiosis, or the extent of disability resulting from it.

I refer to the October 5, 1971, RECORD, at pages H9181 to H9208 for a more complete account of these matters which I have included for the information of Members.

I would also like to include a table prepared by the Social Security Administration which sets forth the most recent figures on black lung claims filed, processed, and paid in various States:

(BLACK LUNG STATISTICS CUMULATED TO OCT. 8, 1971)

	National		Illinois		Kentucky		Pennsylvania		Virginia		West Virginia	
Claims filed.....	328,278		19,493		35,670		103,860		18,680		62,397	
Claims processed.....	305,944		18,204		33,132		97,759		17,678		58,066	
Claims paid:												
Miners.....	77,274		4,248		5,689		32,923		3,566		15,087	
Widows.....	64,727		3,648		4,385		29,581		2,812		9,913	
Terminations.....	8,379		350		528		4,608		297		1,205	
Additional dependents paid.....	86,401		3,672		9,040		29,774		5,517		21,210	
Total beneficiaries paid (miners, widows, and dependents).....	228,402		11,568		19,114		92,278		11,895		46,210	
Total monthly amount.....	\$26,576,000		\$1,475,000		\$1,961,000		\$11,231,000		\$1,289,000		\$4,988,000	
Total cumulative amount.....	\$435,510,000		\$19,743,000		\$33,373,000		\$190,177,000		\$22,205,000		\$85,068,000	
Denials:												
Miners.....	118,288		6,493		18,661		19,873		9,289		25,602	
Widows.....	34,865		3,369		3,624		9,844		1,643		5,844	
Disallowance.....	2,391		96		245		930		71		414	
Total.....	155,544		9,958		22,530		30,647		11,003		31,861	
	Allowed	Denied	Allowed	Denied	Allowed	Denied	Allowed	Denied	Allowed	Denied	Allowed	Denied
Allowance/denial ratio:												
Total.....	49.0	51.0	45.0	55.0	32.0	68.0	68.0	32.0	38.0	62.0	45.0	55.0
Miners.....	40.0	60.0	40.0	60.0	23.0	77.0	62.0	38.0	28.0	72.0	37.0	63.0
Widows.....	35.0	65.0	52.0	48.0	55.0	45.0	75.0	25.0	63.0	37.0	63.0	37.0

Mr. Speaker, it is unfortunate that so much misinformation has been circulated concerning this legislation. During the debate, I tried and tried to get the gentleman from Illinois (Mr. ERLNBORN) to yield to me for a brief question on his statistics, and he made it abundantly clear that he did not desire to recognize I was on my feet to try and clarify the rather misleading statistics emanating from his office. Just to give one brief example: A letter circulated from Mr. ERLNBORN dated October 14, 1971, stated unequivocally:

I do want to remind you, however, that H.R. 9212 carries a price tag or more than \$1.2 billion.

Then on October 15, 1971, came a subsequent letter from Mr. ERLNBORN which included a letter to him from the Commissioner of Social Security, Robert M. Ball. Mr. Ball's letter discusses both H.R. 9212 and H.R. 5702, despite the fact that H.R. 5702 is not being considered on the House floor. Mr. Ball then states:

Taken together, these two measures alone could add as much as \$300 million per year to the total cost of the black lung program.

How can the gentleman from Illinois contend the price tag of H.R. 9212 is \$1.2 billion, when the Social Security Commissioner himself says that both H.R. 9212 plus H.R. 5702 "could" add "as much as \$300 million per year"?

It is difficult to follow either the logic or arithmetic of this argument. In any event, justice and humanity dictates that H.R. 9212 should be passed.

Mr. Speaker, I enjoyed writing up this argument almost as much as I would have appreciated the chance to deliver it personally. It is refreshing to contemplate the fact that coal miners as a class are far above average in their ability to recognize sham or pretense. I know I can rely on their respect for candor to counterbalance their disappointment in the fact that I did not speak this piece.

The SPEAKER. The question is on the motion offered by the gentleman from Kentucky (Mr. PERKINS) that the House suspend the rules and pass the bill H.R. 9212, as amended.

Mr. ERLNBORN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 227, nays 124, not voting 78, as follows:

[Roll No. 302]
YEAS—227

- Abzug
- Adams
- Addabbo
- Alexander
- Anderson, Calif.
- Anderson, Tenn.
- Andrews, Ala.
- Andrews, N. Dak.
- Annunzio
- Aspin
- Aspinall
- Baker
- Barrett
- Begich
- Bennett
- Bevill
- Biaggi
- Biester
- Bingham
- Blanton
- Boggs
- Boland
- Bolling
- Brademas
- Brasco
- Bray
- Brinkley
- Brooks
- Broomfield
- Brown, Ohio
- Broyhill, Va.
- Buchanan
- Burke, Fla.
- Burke, Mass.
- Burlison, Mo.
- Burton
- Byrne, Pa.
- Byron
- Cabell
- Carey, N.Y.
- Carney
- Casey, Tex.
- Celler
- Chisholm
- Clancy
- Clark
- Clausen, Don H.
- Clay
- Collins, Ill.
- Corman
- Coughlin
- Daniels, N.J.
- Davis, Ga.
- Dellums
- Denholm
- Dent
- Dingell
- Donohue
- Dorn
- Drinan
- Dulski
- Duncan
- Dwyer
- Edmondson
- Edwards, Calif.
- Eilberg
- Eshleman
- Evans, Colo.
- Evins, Tenn.
- Fascell
- Findley
- Flood
- Flowers
- Foley
- Ford, William D.
- Fraser
- Fulton, Tenn.
- Gallagher
- Garmatz
- Gaydos
- Gettys
- Gialmo
- Gibbons
- Gonzalez
- Grasso
- Gray
- Green, Oreg.
- Green, Pa.
- Griffiths
- Gude
- Hamilton
- Hammer-schmidt
- Hanley
- Hansen, Wash.
- Harrington
- Harsha
- Harvey
- Hathaway
- Hays
- Hechler, W. Va.
- Helstoski
- Hicks, Wash.
- Hogan
- Hollifield
- Howard
- Hull
- Hungate
- Hunt
- Jacobs
- Koch
- Kyros
- Landrum
- Latta
- Leggett
- Link
- Long, Md.
- Lujan
- McCormack
- McCulloch
- McDade
- McDonald, Mich.
- Mich. Eshleman
- McKay
- McMillan
- Macdonald, Mass.
- Madden
- Mahon
- Mailliard
- Matsunaga
- Mazzoli
- Meeds
- Melcher
- Metcalfe
- Mikva
- Miller, Ohio
- Mink
- Mintsh
- Mollohan
- Monagan
- Moorhead
- Morgan
- Mosher
- Moss
- Murphy, Ill.
- Myers
- Natcher
- Nedzi
- Nichols
- Nix
- O'Hara
- O'Konski
- Patten
- Pepper
- Perkins
- Pickle
- Pike
- Podell
- Preyer, N.C.
- Price, Ill.
- Pryor, Ark.
- Pucinski
- Purcell
- Quillen
- Randall
- Rangel
- Rees
- Reid, N.Y.
- Reuss
- Riegle
- Rodino
- Roe
- Rogers
- Roncallo
- Rooney, N.Y.
- Rooney, Pa.
- Rosenthal
- Rostenkowski
- Roush
- Roy
- Ruppe
- Ryan
- St Germain
- Sarbanes
- Saylor
- McDade
- McDonald, Mich.
- Mich. Eshleman
- McKay
- McMillan
- Macdonald, Mass.
- Madden
- Mahon
- Mailliard
- Matsunaga
- Mazzoli
- Meeds
- Melcher
- Metcalfe
- Mikva
- Miller, Ohio
- Mink
- Mintsh
- Mollohan
- Monagan
- Moorhead
- Morgan
- Mosher
- Moss
- Murphy, Ill.
- Myers
- Natcher
- Nedzi
- Nichols
- Nix
- O'Hara
- O'Konski
- Patten
- Pepper
- Perkins
- Pickle
- Pike
- Podell
- Preyer, N.C.
- Price, Ill.
- Pryor, Ark.
- Pucinski
- Purcell
- Quillen
- Randall
- Rangel
- Rees
- Reid, N.Y.
- Reuss
- Riegle
- Rodino
- Roe
- Rogers
- Roncallo
- Rooney, N.Y.
- Rooney, Pa.
- Rosenthal
- Rostenkowski
- Roush
- Roy
- Ruppe
- Ryan
- St Germain
- Sarbanes
- Saylor

- Schneebell
- Schwengel
- Seiberling
- Shipley
- Sisk
- Skubitz
- Slack
- Smith, Iowa
- Snyder
- Stanton, James V.
- Steed
- Stokes
- Stratton
- Stubblefield
- Sullivan
- Tiernan
- Udall
- Vanik
- Vigorito
- Waldie
- Wampler
- Ware
- Whalen
- Whalley
- White
- Widnall
- Williams
- Wilson, Charles H.
- Wright
- Yates
- Yatron
- Young, Tex.
- Zion
- Zwach

- Abernethy
- Anderson, Ill.
- Archer
- Arends
- Ashbrook
- Belcher
- Bell
- Betts
- Blackburn
- Bow
- Brotzman
- Brown, Mich.
- Burleson, Tex.
- Caffery
- Camp
- Cederberg
- Chamberlain
- Chappell
- Clawson, Del.
- Cleveland
- Collier
- Collins, Tex.
- Colmer
- Conable
- Conte
- Daniel, Va.
- Davis, Wis.
- Dellenback
- Dennis
- Devine
- Dickinson
- Dowdy
- Downing
- du Font
- Edwards, Ala.
- Erlenborn
- Esch
- Fish
- Fisher
- Ford, Gerald R.
- Forsythe
- Fountain
- Frenzel
- Frey
- Goldwater
- Gooding
- Griffin
- Gross
- Grover
- Haley
- Hall
- Hansen, Idaho
- Hastings
- Hébert
- Heckler, Mass.
- Henderson
- Horton
- Hosmer
- Hutchinson
- Jarman
- Jonas
- Jones, N.C.
- Keating
- Keith
- Kemp
- King
- Kyl
- Lennon
- Lloyd
- McClure
- McClister
- McKevitt
- Martin
- Mathias, Calif.
- Michel
- Minshall
- Mizell
- Morse
- Nelsen
- Passman
- Pelly
- Pettis
- Peysner
- Pirnie
- Poff
- Powell
- Quie
- Rarick
- Roberts
- Robinson, Va.
- Robison, N.Y.
- Runnels
- Ruth
- Satterfield
- Scherle
- Schmitz
- Scott
- Sebellus
- Shoup
- Shriver
- Sikes
- Smith, Calif.
- Smith, N.Y.
- Spence
- Springer
- Stanton
- J. William
- Steiger, Ariz.
- Steiger, Wis.
- Talcott
- Taylor
- Teague, Tex.
- Terry
- Thompson, Ga.
- Thomson, Wis.
- Thone
- Veysey
- Waggoner
- Whitehurst
- Wiggins
- Winn
- Wylie
- Wyman
- Young, Fla.

NOT VOTING—78

- Davis, S.C.
- de la Garza
- Delaney
- Derwinski
- Diggs
- Dow
- Eckhardt
- Edwards, La.
- Flynt
- Frelinghuysen
- Fuqua
- Gallifanakis
- Gubser
- Hagan
- Halpern
- Hanna
- Hawkins
- Hicks, Mass.
- Hillis
- Ichord
- Kuykendall
- Landgrebe
- Lent
- Long, La.
- McCloskey
- McEwen
- McKinney
- Mann
- Mathis, Ga.
- Mayne

Miller, Calif.	Rallsback	Teague, Calif.
Mills, Ark.	Rhodes	Thompson, N.J.
Mills, Md.	Roussetot	Ullman
Mitchell	Roybal	Van Deerlin
Montgomery	Sandman	Vander Jagt
Murphy, N.Y.	Scheuer	Whitten
Obeu	Staggers	Wilson, Bob
O'Neill	Steele	Wolf
Patman	Stephens	Wyatt
Poage	Stuckey	Wydler
Price, Tex.	Symington	Zablocki

So (two-thirds not having voted in favor thereof) the motion was rejected.

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Rhodes.
 Mr. Thompson of New Jersey with Mr. Frelinghuysen.
 Mr. Staggers with Mr. Broyhill of North Carolina.
 Mr. de la Garza with Mr. Carter.
 Mr. Miller of California with Mr. Bob Wilson.
 Mr. Hanna with Mr. Crane.
 Mr. Van Deerlin with Mr. Gubser.
 Mr. Wolf with Mr. Halpern.
 Mr. Bergland with Mr. Derwinski.
 Mr. Blatnik with Mr. Hillis.
 Mr. Zablocki with Mr. Byrnes of Wisconsin.
 Mr. Mathis of Georgia with Mr. Kuykendall.
 Mr. Mann with Mr. Landgrebe.
 Mr. Conyers with Mr. Murphy of New York.
 Mr. Hawkins with Mrs. Hicks of Massachusetts.
 Mr. Diggs with Mr. Dow.
 Mr. Mitchell with Mr. Scheuer.
 Mr. Ashley with Mr. Lent.
 Mr. Abourezk with Mr. McCloskey.
 Mr. Stephens with Mr. Mayne.
 Mr. Culver with Mr. Steele.
 Mr. Danielson with Mr. Wydler.
 Mr. Davis of South Carolina with Mr. Wyatt.
 Mr. Galifianakis with Mr. Teague of California.
 Mr. Fuqua with Mr. McEwen.
 Mr. Mills of Arkansas with Mr. Sandman.
 Mr. Montgomery with Mr. McKinney.
 Mr. Ichord with Mr. Price of Texas.
 Mr. Cotter with Mr. Mills of Maryland.
 Mr. Delaney with Mr. Rallsback.
 Mr. Flynt with Mr. Roussetot.
 Mr. Baring with Mr. Vander Jagt.
 Mr. Abbitt with Mr. Hagan.
 Mr. Roybal with Mr. Badillo.
 Mr. Stuckey with Mr. Symington.
 Mr. Ullman with Mr. Whitten.
 Mr. Eckhardt with Mr. Edwards of Louisiana.

The result of the vote was announced as above recorded.

* * * * *

9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Missouri is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. SMITH). Pending that I yield myself such time as I may consume.

Mr. Speaker, the bill that would be made in order by this 1-hour open rule is controversial. I know of no great controversy over the rule.

Mr. Speaker, I yield to the gentleman from West Virginia.

Mr. HECHLER of West Virginia. Mr. Speaker, I strongly support this resolution.

(Mr. HECHLER of West Virginia asked and was given permission to revise and extend his remarks.)

Mr. HECHLER of West Virginia. Mr. Speaker, I strongly support this resolution, and also express the hope that the bill will receive overwhelming support in the House. The bill will furnish much-needed clarification of certain provisions of the Federal Coal Mine Health and Safety Act which cover benefits for pneumoconiosis. Even so, there are other improvements which are needed in the bill and when the occasion arises I intend to offer two amendments to the committee bill, as follows:

AMENDMENT A TO H.R. 9212, AS REPORTED.
OFFERED BY MR. HECHLER OF WEST VIRGINIA

Page 1, line 3, insert "(1)" after "The (a)".

Page 2, after line 14, insert the following new paragraph:

(2) Section 412(a) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5) If an individual's benefits would be increased under clause (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment."

AMENDMENT B TO H.R. 9212, AS REPORTED
OFFERED BY MR. HECHLER OF WEST VIRGINIA

Page 7, after line 11, insert the following new subsection (and redesignate the succeeding subsection accordingly):

(f) The third sentence of section 413(b)

**PROVIDING FOR CONSIDERATION
OF H.R. 9212, BLACK LUNG BENEFITS**

Mr. BOLLING. Mr. Speaker, I call up House Resolution 658 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 658

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R.

of such Act is amended by inserting before the period at the end thereof the following: "Provided, That where a deceased miner had been employed in a mine for ten or more years and there are no available medical

records that reasonably establish the cause of death, determination as to entitlement of his widow shall take account of information obtained from any persons who had a close relationship to him during his life".

Mr. Speaker, I also include a table which indicates the status of black lung applications and payments through October 22, 1971:

BLACK LUNG STATISTICS (CUMULATED TO OCT. 22, 1971)

	National	Kentucky	Pennsylvania	West Virginia	4th Congressional District		National	Kentucky	Pennsylvania	West Virginia	4th Congressional District
Claims filed.....	331, 203	35, 994	104, 780	62, 937	10, 390	Dentals.....	157, 429	22, 791	31, 131	32, 325	6, 710
Claims processed.....	309, 377	33, 525	98, 774	58, 811	9, 709	Miners.....	120, 559	18, 968	20, 578	26, 096	5, 432
Claims paid.....	151, 948	10, 734	67, 643	26, 486	2, 999	Widows.....	36, 870	3, 823	10, 553	6, 229	1, 278
Miners.....	84, 238	6, 154	36, 551	16, 137	1, 971	Percentage figures:					
Widows.....	67, 710	4, 580	31, 092	10, 349	1, 028	Claims allowed:					
Additional dependents paid..	88, 263	9, 132	30, 033	21, 414	2, 996	Miners.....	39.5	23.4	62.1	37	26.7
Total beneficiaries paid (miners, widows and dependents).....	231, 812	19, 338	93, 068	46, 695	5, 895	Widows.....	65	54.8	75	62.7	44.6
Total monthly payment amount.....	\$26, 864	\$1, 987	\$11, 326	\$5, 042	\$584	Overall.....	48.1	31.3	67.6	44.2	30.9
Total cumulative payment amount.....	\$437, 137	\$33, 567	\$190, 620	\$85, 413	\$10, 436	Claims denied:					
						Miners.....	60.5	76.6	37.9	63	73.3
						Widows.....	35	45.2	25	37.3	55.4
						Overall.....	51.9	68.8	32.4	55.8	69.1

1 Rounded to nearest thousandth.

Mr. SMITH of California. Mr. Speaker, I yield myself such time as I may use. (Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, House Resolution 658 does provide an open rule with 1 hour of consideration of the bill H.R. 9212. As I understand it, the purpose of the bill is to extend to a new class of beneficiaries—orphans whose fathers died of pneumoconiosis—the Federal cash benefits payments provided for by the Federal Coal Mine Health and Safety Act. Further, the bill provides that no cash-benefit recipient under the act shall have his social security payments reduced because of his receipt of such benefits, and prohibits the use of chest X-rays as the sole basis for a denial of claim for disability due to pneumoconiosis. Finally, the bill postpones for a 2-year period, until 1975, the time when the States and mine operators will be required to assume the responsibility for future cash benefit payments under the program created by the act.

The bill extends for 2 years the existing program for payment of black lung benefits by the Federal Government. Under the act, in 1973 and thereafter, the burden of making payments to disabled miners and their dependents was to be borne by the States and mine operators. Most States are not moving quickly enough to have their own programs operational by the end of next year. The bill postpones until 1975 this responsibility.

Cost estimates for the 5-year period 1972-77 are as follows:

Payments to orphans.....	\$5, 500, 000
Payment of claims now denied solely on X-ray evidence.....	50, 000, 000
Extend Federal payment responsibility.....	646, 000, 000
Total.....	701, 500, 000

No departmental letters are contained in the report. I understand the administration opposes the bill, except for the provisions making orphans eligible for benefits.

Mr. QUIE and six other members have filed minority views. They support the benefits for orphans but oppose the remainder of the bill.

As stated by the gentleman from Missouri, I know of no objection to the rule, though there is some objection to the bill itself.

Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. ERLLENBORN).

(Mr. ERLLENBORN asked and was given permission to revise and extend his remarks and to include extraneous matter.)

Mr. ERLLENBORN. Mr. Speaker, I do not oppose this rule. I am happy that the bill is now out on the floor under a rule where amendments will be in order, rather than the procedure that was attempted before to try to pass it under suspension of the rules where amendments are not in order.

As the gentleman from California has stated, a portion of this bill is not opposed by this administration. The Department of Health, Education, and Welfare, Social Security Administration, has made it clear that they support the principle of the extension of benefits to the so-called double orphans. However, as far as eliminating the use of the X-ray as a diagnostic tool in the denial of claims, the administration does oppose this provision. I have put matters in the record concerning this in the past.

The administration opposes the elimination of the social security disability offset because such action would treat one group of workers receiving industrial disease compensation differently from all other workers under social security disability who are receiving industrial or workmen's compensation benefits. In addition, the extension of the obligations of the Federal Government for an additional 2 years is objected to by the administration.

General debate will show that this has nothing to do with resolving those claims that have been filed and are unresolved at this point, but merely will extend as a full-time obligation of the Federal Government such claims as may be filed within the next 2 years rather than putting the burden on the States and the coal mine operators, as was contemplated in the original passage of the act.

Mr. Speaker, I have received a letter today from Robert M. Ball, Commissioner of Social Security, in which he again ex-

presses the opposition of the Social Security Administration, backed by HEW, which I will place in the RECORD.

The letter follows:

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Washington, D.C., November 8, 1971.
Hon. JOHN N. ERLLENBORN,
House of Representatives,
Washington, D.C.

DEAR MR. ERLLENBORN: You have asked for the comments of the Social Security Administration on certain statements that have been made concerning H.R. 9212 and the administration of the black lung benefit program.

The point has been made that a miner whose social security disability benefits are reduced because of simultaneous entitlement to black lung benefits may get less than he would otherwise receive in social security benefits alone. There were a few cases where the rounding of the figures in the computation process resulted in a reduction of few cents in total income. This has been corrected so that, as a result of eligibility to black lung benefits, no one gets less in combined benefits than he previously received.

Actually, this provision for reducing social security benefits when the combined benefits exceed 80 percent of the individual's usual earnings has resulted in a reduction in social security benefits in less than 5 percent of the cases where black lung benefits are paid. Moreover, H.R. 1, which passed the House of Representatives some time ago and is now pending before the Senate Finance Committee, contains a provision that would liberalize this rule so that the combined benefits could be somewhat higher than they are under present law. This liberalization would apply also to the black lung cases.

There is considerable doubt whether it is desirable to have an offset apply to all other social security disability beneficiaries who receive workmen's compensation payments from a State or Federal program, but not have it apply to social security disability beneficiaries who receive payments under the black lung program, particularly since H.R. 9212 does not continue this exemption when the payment of claims for black lung becomes the responsibility of the States and the mine operators.

You have also asked for the Social Security Administration's reaction to the provision of H.R. 9212 which prohibits the denial of black lung benefits solely on the basis of a negative x-ray. Dr. DuVal has written you a letter on this point which reflects the position being followed by the Social Security Administration. It is quite clear that the overwhelming consensus of expert med-

ical opinion is that there is no medically-acceptable means other than x-ray (except lung biopsy in very unusual cases) for diagnosing coal worker's pneumoconiosis in the living miner.

If the agency is prohibited by H.R. 9212 from denying claims on the basis of a negative x-ray, there would be no sound medical way to tell which miners have breathing trouble due to black lung and which have similar trouble arising from some other lung condition. Numbers of people in every part of the country have breathing trouble due to emphysema, chronic bronchitis, or other respiratory disorders not peculiar to coal miners.

To pay black lung benefits on the basis of such non-occupational diseases would be altogether inconsistent with the expressed purpose of the law. At least of equal importance, it would be inequitable to provide the special payments to miners on the basis of non-occupational kinds of impairment—payments over and above social security disability benefits—when no such additional payments would be available to the great many nonminers suffering from similar problems.

Paying the black lung benefits on this non-occupational disease basis would give benefits to about 35,000 additional claimants. The estimated first-year cost is \$182 million, and the total over the next 6 years could run to more than \$800 million.

Let me repeat again that the Administration fully supports those provisions of H.R. 9212 which would extend benefits of the program to 2,000 orphaned children, the so-called double orphans.

Sincerely yours,

ROBERT M. BALL,

Commissioner of Social Security.

Mr. DENT. Mr. Speaker, the following statement answers quite adequately the arguments of the gentleman from Illinois:

THE CHILDREN'S HOSPITAL

MEDICAL CENTER,

Boston, Mass., September 24, 1971.

Representative JOHN H. DENT,
House Office Building,
Washington, D.C.

DEAR SIR: I have recently seen a copy of HR9213 and of Report No. 92-460 concerning proposed amendments to the Federal Coal Mine Health and Safety Act of 1969.

The extension of benefits to "double orphans" of fathers who died with pneumoconiosis can only be applauded. The extension of the period during which federal benefits will be given also deserves support.

I write with particular reference to the medical criteria for determining the presence of pneumoconiosis. As the enclosed article indicates, this issue has been of some concern to me and to a number of other doctors.

As testimony led your committee to conclude, the use of rigid xray criteria to determine pulmonary disability in coal miners cannot be supported medically, and has prevented large numbers of disabled miners from receiving benefits to which Congress felt they were entitled by virtue of decades of hard work in the mines.

Accordingly, Section 4 of HR9212, barring the denial of benefits solely on the basis of a chest roentgenogram, deserves full support, and the Committee deserves credit for bringing this important reform before the whole Congress.

There is a further problem with the administration of the 1969 law, however, which HR9212, as reported out by the Committee, will not rectify.

Many miners and former miners have disabling pulmonary impairment which cannot properly be called "coal-dust pneumoconiosis." They are presently being denied benefits under the same thrifty but narrow interpretation of the law which gave rise to the

xray requirement. These hundreds and thousands of men are too short of breath to get about, let alone work, but they will still be turned down for federal benefits, even if HR9212 is enacted, unless Congress spells out that it intends this legislation to benefit all miners with work-related pulmonary impairment, not just those with the more spectacular "black-lung" pneumoconiosis. This is not just a medical word game, nor is it as complicated as it seems at first.

Many physicians who have cared for and studied coal miners have found them susceptible to a variety of lung conditions which a single term like "pneumoconiosis" does not encompass. Some of these have been recognized for decades, like silicosis; others, like difficulty in moving oxygen from the lungs to the bloodstream, have only been described more recently. They are not so uniquely related to coal-mining as is the characteristic "black-lung," proverbially (and often literally) full of coal dust, but they occur in coal miners in proportion to the years they spend underground, and so are a work-related condition. Their causes, too, involve other factors besides coal dust, like silica dust from sand, and harmful gases from cable and motor fires; these affect the miners' lungs in ways still to be precisely defined. Medical science still has many unanswered questions in this area.

One former miner, who grew short of breath just standing and talking and who has been denied black lung benefits, expressed his own bewilderment in terms many doctors would agree with, when he told me, "I don't know where it came from, but I know what I've got."

The point is simply that many such breathless men are presently incapacitated by pulmonary insufficiency which is just as disabling and just as related to their exposure underground as is the specific entity coal-dust pneumoconiosis, but they will still be excluded from benefits under HR9212 unless Congress instructs those administering the law to include them.

I prepared the enclosed review of this topic as background for a group of doctors who traveled to Beckley, West Virginia, two weeks ago to examine such men. The group released the enclosed statement. The names of the members of the group are attached. Rather than try to establish a list of specific diseases for which miners should be compensated, the group avoided that morass and concluded that benefits should reflect how much a man is impaired, not what diagnosis we can fit him into. Otherwise, he (and his family) would be paying for the incompleteness of our knowledge. What we do know now, without further study, is that many men are too short of breath to work after decades in the mines; medical advice hardly seems necessary to decide that they deserve benefits.

The Black Lung program, we feel, will remain both medically unjustified and cruel and arbitrary to the nation's miners until it makes benefits go to men according to how limited their lungs are, and not according to the presence of that one of the several kinds of pulmonary impairment which miners acquire underground which we decide is the "right" one.

Yours truly,

GORDON HARPER, M.D.

Mr. PERKINS. Mr. Speaker, debate on H.R. 9212, the black lung benefits bill amending the Federal Coal Mine Health and Safety Act of 1969, provides for the payment of benefits to so-called double orphans—the orphans of a miner who has died of pneumoconiosis, whose spouse has pre-deceased him or has died after establishing her entitlement to benefits. When both the miner and his spouse have died, dependent surviving children are

not presently entitled to benefits. This is in spite of the fact that the act permits augmented benefits to the miner or his widow for the support of such dependent children.

Section 2 of the act provides that the black lung benefits program shall not be considered a workmen's compensation law or plan for purposes "of the disability insurance provisions of the Social Security Act."

If there is anything that was established in the legislative history of the Coal Mine Health and Safety Act, it was that we did not intend the black lung benefits program to be a workmen's compensation program.

Section 3 of the bill extends for 2 years the existing program for payment of black lung benefits. Under the act, the program responsibility is to be shifted from the Federal Government to the States and mine operators in 1973. No State at this point has modified their workmen's compensation law to provide adequate coverage for pneumoconiosis. Several have bills pending in their legislature but it is evident that the vast majority will not have time to legislate on this problem.

Section 4 of the bill prohibits the use of chest X-rays as the sole basis for denial of claims under the act. This is apparently necessary to clarify the congressional intent with respect to the determination of total disability due to pneumoconiosis. This act was passed and expressly intended by the Congress to be liberally and generously interpreted. The administration has not so interpreted it, and it is necessary for the Congress again to act.

To show you the extent of the default of the Social Security Administration, I am inserting in my remarks a copy of a letter from Dr. Roy Neal Calhoun of Hopkinsville, Ky., which he directed to FRANK A. STUBBLEFIELD, our colleague. It shows the utterly heartless and unconscionable extremes to which the administration has gone to deny benefits to black lung sufferers. I am inserting also in the RECORD an article by Dr. Donald L. Rasmussen, the director of the Pulmonary Laboratory of the Beckley Appalachian Regional Hospital in West Virginia entitled "Breathlessness of Appalachian Coal Miners." My colleagues will be able to learn about black lung, about its rehabilitating character, and about the difficulty of diagnosis which motivated the Congress to leave flexibility to those who were to interpret the law and administer it in the hope that they could use that flexibility to the benefit of the black lung sufferer.

The letter follows:

OCTOBER 9, 1971.

HON. FRANK A. STUBBLEFIELD,
House of Representatives,
Washington, D.C.

DEAR FRANK ALBERT: I called you yesterday about Wesley Fox of Mortons Gap, Kentucky. We discussed the fact that I recently prepared his application, which in essence is a first-appeal application, for "Black Lung" benefits. Mr. Fox's Social Security number is 400-09-4440. In my opinion, Mr. Fox certainly has chronic lung disease that was caused by his occupation as a coal miner for 51 years. Recently, every application that we have sent to the Social Security Administration for Black Lung Benefits has been turned down.

I believe that I can explain to you why this is true, and this is certainly not fair, and if this procedure is going to continue, I think that Congress should repeal the Coal Miners Health and Safety Act that was passed in 1969.

Mr. Fox is 73 years old. He worked underground in the coal mines for 51 years, and at the present time, he is practically dead with chronic lung disease. By chronic lung disease, I mean asthma, emphysema, pulmonary fibrosis, atelectasis, bronchiectasis, and pneumoconiosis. The Social Security Administration, however, refuses to grant these people their pneumoconiosis benefits unless they have drastic reduction of their pulmonary function and typical findings of pneumoconiosis on the chest x-ray. This is perfectly ridiculous and insulting to anyone who has seen and worked with these patients.

Your not being a doctor, let me explain some of the terms that we are using. *Pneumoconiosis* means scarring of the lungs because impurities which could not be excreted or coughed out while the applicant was working in the coal mines, and scar tissue was laid down by the body around this foreign particle. The lung further goes on to try to compensate for this injury, and it tries to compensate by enlargement of the chest. Instead of improving itself, it damages the pulmonary system by forming *emphysema*, which in lay terms means that the small cavities of the lung that you breathe with have been replaced by scar tissue and large cavities which cannot exchange oxygen well. The patient will get air into these cavities, and it does not get out quickly, and a small surface is exposed to the air which he inhales. Consequently, the patient cannot obtain enough oxygen in order to continue doing work other than very light work.

Charles Howell of Dawson Springs, Kentucky, whose Social Security number is 401-14-9031 A, was turned down twice for his Black Lung Benefits while he was alive. He died on my service here at Jennie Stuart Hospital recently, and at autopsy, the patient was found to have pneumoconiosis.

Finis Johnson of St. Charles, Kentucky, had been turned down twice by the Social Security Administration for Black Lung Benefits. By doing an open lung biopsy, it was found that the patient had pneumoconiosis, and then the Social Security Administration grudgingly gave him his benefits. His Social Security number is 406-30-8447.

Now we are being faced with a large number of applicants who have worked "at the face of the coal," who have been cutters and pinners, and worked in the mines years before there was any control of the dust particles. Only common sense dictates that these patients have breathed in particles of sand, limestone rock, carbon, which is the main element of coal, and this has produced silicosis, pneumoconiosis with its scarring, decreased ability to exchange air, and of course, making the patient "a sitting duck" for recurrent lung infections.

These people, to describe them more fully, have a barrel-shaped chest, which is nature's way of trying to increase their breathing capacity. They have widened ribs; whereas, a man like you can expand his chest approximately three inches with inspiration, these poor individuals do well to go anywhere from 1½" to ½". Therefore, they literally are "gasping for breath." They are forever developing pneumonia, attacks of asthma. They develop heart disease as a result of the increased resistance, where the heart has to pump blood through the lungs, and they develop *bronchiectasis*, which is a complete change and distortion of the bronchi in the lungs, which fills with mucous, pus, and other materials that are infected and cause the individual to be a "*pulmonary cripple*."

The Social Security Administration refuses to accept the clinical impression of the pa-

tient's family physician; they refuse to accept anything except drastic reduction of pulmonary functions and pneumoconiosis on the chest X-ray, or autopsy findings, or biopsy findings. This prevents thousands of people from obtaining their benefits which are justly due them. I have several patients who have such poor pulmonary functions that they cannot undergo open lung biopsy because they would die with pneumonia from such a minor procedure. The people in the Social Security Administration know this, and consequently they feel safe in rejecting these individuals, knowing that their physician will not jeopardize their lives in order to obtain their benefits. Therefore, we, the practicing physicians, and the patients are forced to wait until he dies and get an autopsy.

It is my opinion and the opinion of numerous other physicians that the "Black Lung Law" of the Social Security Administration should be repealed unless Congress takes a new look at it and changes some of the methods of its administration and allow the benefits that are due the patient to reach the patient who qualifies for the benefits.

At the present time, it is only keeping a horde of bureaucrats on the payroll, and only a few individuals are receiving any benefits. Of course, the people who are administering this program can furnish you all kinds of statistics showing how many people they have processed and how many people who have gained benefits after processing, and how they are so short of help that they cannot possibly process these applicants' benefits any faster.

Your being an old Western Kentucky boy, remember the saying in our area: "Figures don't lie, but liars do figure."

In summary, I believe Congress should intervene in the Black Lung situation. Applicants have scarred lungs, decreased breathing capacity, foreign bodies infiltrated into their lungs that precipitated this decreased breathing capacity, but this cannot be proven until the patient dies because of the rigid standards the Social Security Administration has placed upon the applicant and the medical profession. If this cannot be changed or modified, the law should be abolished, because no one except those who have open lung biopsies, autopsies at death, and only a very few who happen to be lucky enough to show pneumoconiosis on their chest X-rays and marked decreased pulmonary function studies, can obtain these benefits.

It would be only reasonable and appropriate to evaluate the history and physical of the individual who is applying; to evaluate the pulmonary function studies, or breathing studies, which gives the figures on what percent of normal a patient can still breathe, and the chest x-ray interpretation with comments from the physician should be instituted in place of the rigid standards that are now enforced.

Mr. Fox, who I have mentioned previously, has chronic lung disease, only one kidney, and it has a stone and cyst on it, diverticulosis of the colon, arteriosclerotic heart disease, and he is grossly underweight and extremely frail. An open-lung biopsy, in my opinion, would cause this patient to develop pneumonia and die. If it is necessary to die in order to obtain Black Lung benefits, the tax payers should be relieved of this unreasonable burden.

I am asking you to intervene with the Social Security Administration for Mr. Fox. I will be in contact with you about others. The present program and the rejection of the applicants is not in keeping with the purpose of the act passed by Congress in 1969, and something has to be done.

Your consideration of this is highly appreciated, and I hope that you will talk to your friends in Congress who will activate

some type of movement that will bring sense and stability out of chaos.

We look forward to seeing you the next time you are at home and Congress is in recess. We appreciate all that you have done for us in the past.

Sincerely and gratefully yours,
NEAL CALHOUN, M.D.

[From Appalachia Medicine, September, 1969]

BREATHLESSNESS IN SOUTHERN APPALACHIAN COAL MINERS

(By Donald L. Rasmussen, M.D.)

Most authorities on occupational respiratory diseases believe disabling pulmonary impairment among bituminous coal workers is limited to cases of complicated pneumoconiosis ("Progressive Massive Fibrosis or PMF") or to those miners who develop chronic, non-specific, obstructive, bronchopulmonary disease. In either case, significant obstructive ventilatory insufficiency is felt to be a major factor leading to disabling symptoms. The simple nodular forms of coal workers pneumoconiosis are thought to be responsible for dyspnea only rarely. Simple pneumoconiosis is considered significant only as a precursor to PMF, by many. Our experience in performing physiologic studies in 4,087 bituminous miners from southern West Virginia and adjacent areas of Virginia and Kentucky, leads us to differ in some respects with these conclusions.

BACKGROUND

Since our observations began in 1962 and 1963, we have regularly encountered miners who complained of effort dyspnea of varying degrees, whose roentgenograms revealed only minimal abnormalities and whose ventilatory capacities were normal. In the majority of such cases, no evidence for non-pulmonary causes of dyspnea could be found. It seemed unlikely that anxiety or other functional causes could be responsible for the symptoms in the majority. For these reasons, we endeavored to evaluate more thoroughly additional parameters of respiratory function. In addition to the routine pulmonary function testing (ventilatory capacity) and lung volume determinations, we have investigated the mixing of inspired gas, the mechanical properties of the lung, alveolar gas exchange, blood gases, diffusion and the response to exercise. The complete studies have been performed on all patients referred for evaluation, regardless of roentgen findings, severity of complaints, ventilatory capacity or reasons for referral.

SUBJECTS

The more than 4,000 miners evaluated in this laboratory were referred mainly from southern West Virginia, eastern Kentucky and southwestern Virginia. Approximately 10 per cent denied effort dyspnea. Some of these were referred because of the incidental finding of pneumoconiosis on a chest roentgenogram alarmed the patient or his physician. A few subjects sought medical evidence of good health in an effort to obtain re-employment in the mines, since this had been denied them because of X-ray abnormalities. Other asymptomatic men were curious about the status of their lungs. Many men with minimal effort dyspnea were referred for the same reasons.

More than one-half were referred in connection with claims for disability or compensation benefits.

Slightly more than 60% were currently employed in the mining industry. Almost all were ambulatory out-patients.

One outstanding characteristic of the entire group was the high level of cooperation shown.

The subjects studied are not a representative sample of miners in this region. They have, however, provided us with the opportunity to observe a wide range of symptomatology of varied degrees of severity.

OBSERVATIONS

Roentgenographic evidence of definite pneumoconiosis was present in four-fifths of the subjects. Abnormally increased linear markings ("nonspecific fibrosis") were noted in most of the remaining cases. Complicated pneumoconiosis (PMF) was noted in fewer than 10%.

Ventilatory insufficiency was detected in fewer than 45% of the total patients studied. In no more than one-fourth of these could the ventilatory abnormalities be classified as severe. It should be noted, however, that many physicians and agencies refrained from patients with obvious severe obstructive disease.

We have consistently observed a lack of correlation between ventilatory function and x-ray categories of pneumoconiosis.

While abnormalities of gas exchange, on the average, are slightly greater in men with advanced x-ray categories, severe gas exchange impairment may occur in the presence of only minimal roentgen abnormalities.

Among those men who denied effort dyspnea, impaired oxygen transfer, slight hypoxia and reduced diffusing capacities were noted in nearly one-half. Ventilatory function and response to moderate to moderately heavy exercise were usually normal, however. We consider these findings evidence of preclinical pulmonary insufficiency. Serial studies have yet been too few for conclusions, but we suggest that evidence of impaired oxygen transfer may be the earliest detectable physiologic abnormality in our miners.

In those patients who complain of moderate to severe dyspnea in the presence of normal ventilatory function, impaired oxygen transfer and increased dead space ventilation are almost always more marked than in the asymptomatic group. Inappropriately increased ventilatory response to exercise is almost invariably noted as well. There is a poor correlation between oxygen tension values per se and dyspnea or exercise intolerance. The hyperventilation is often sufficient to maintain oxygen tension at only minimally to moderately reduced levels. Alveolar-arterial oxygen tension gradients are significantly abnormal, however. The degree of hyperventilation is variable, and no doubt affected by conditions other than pulmonary disease. Apprehension, lack of familiarity with exercise apparatus, poor physical conditioning, and possibly musculoskeletal abnormalities may contribute to the increased ventilatory response. Efforts to reduce or eliminate some of these extraneous factors often result in a considerable reduction in ventilation in our subjects. This is invariably followed by a decline in arterial oxygen tension, not infrequently to very low levels.

Somewhat greater impairment in oxygen transfer is observed in those subjects with impaired ventilatory capacity. There is, however, a poor correlation between the degree of impairment in oxygen transfer and ventilatory dysfunction.

Significant physiologic abnormality can be demonstrated in the majority of our miners who complain of effort dyspnea. Tests of ventilatory capacity alone fail to detect abnormalities in many of our subjects. The poor correlation between functional impairment and x-ray category leads us to conclude, that while the roentgenogram is an essential part of the evaluation of each case, it is of little value in determining the degree of incapacity. It is of interest, however, that the roentgenogram is abnormal in almost all of our impaired subjects. In those subjects who are severely disabled, but whose roentgenograms fail to reveal diffuse abnormalities, obstructive bronchopulmonary disease is usually present.

We regard the respiratory diseases of coal miners as falling into two major categories. One is characterized predominantly by ob-

structive airway disease, indistinguishable from the chronic nonspecific obstructive respiratory disease which affects many men and women in all areas. At the opposite end of the spectrum are those patients without ventilatory insufficiency, but who exhibit impaired oxygen transfer, increased dead space ventilation and inappropriately increased ventilation with exercise. Encountered between these major groups are cases showing varying degrees of ventilatory disturbances plus impairment in gas exchange. Most often increased dead space ventilation and impaired oxygen transfer are out of proportion to the degree of ventilatory impairment.

In serial studies of a limited number of cases, we have noted the appearance of mild obstructive ventilatory impairment in cases originally presenting with disturbances in gas exchange only. We have no information to indicate the ultimate course of these patients, however.

DISCUSSION

Our data does not allow us to predict the incidence of respiratory impairment in coal miners in this region, nor does it allow us to predict the relative predominance of primary gas exchange versus ventilatory impairment. Judging by the constant flow of cases with significant symptoms, the incidence of respiratory impairment in general must be very high.

The question of etiology cannot be answered from our data. However, the average age and years of employment among our impaired subjects are about five years lower among face workers in mechanized mining operations than all other workers. In addition, those miners who smoke show greater impairment than nonsmokers. This distinction is very clear with regard to impairment of oxygen transfer even in those subjects with normal ventilatory functions. There can be no doubt that cigarette smoking is very deleterious to men who engage in coal mining.

That our observations do not support some of the generally held concepts regarding pulmonary impairment among coal workers is obvious from the above. Others have also taken exception to these conclusions, pointing out that neither roentgen findings nor tests of ventilatory capacity alone are adequate for assessment of disability among coal workers. Impairment in oxygen transfer and impaired diffusion have been reported by a number of European observers among patients with only simple forms of pneumoconiosis of coal workers.

This single definitive study, from which most authorities derive the presently held concepts, is that of Gilson and Hugh-Jones. This monograph is a classic in terms of the physiologic investigations performed. There is a grave and readily recognized error in sample selection, however, which throws serious doubt as to the validity of the conclusion of these authors regarding the relationship between X-ray abnormality and impaired function. The cases selected for study were obtained from two entirely different populations. Those subjects with no pneumoconiosis and those with simple pneumoconiosis were drawn from the largely non-symptomatic miners activity working. Their subjects with complicated pneumoconiosis (PMF), on the other hand, were selected from men attending a clinic and from men hospitalized because of respiratory symptoms. It is not surprising that their cases of PMF resembled patients with chronic bronchitis. Their failure to encounter significantly impaired men from the active working force may have been the result of selective removal of symptomatic men from the mining industry.

It is recognized that many miners with simple pneumoconiosis may continue working for years before symptoms occur or abnormalities of function can be detected. The

time of earliest x-ray appearance of diffuse abnormality is unknown in our miners. In our very limited experience with miners whose x-ray were diagnostic of pneumoconiosis 15 to 25 years earlier, we have not been impressed with a marked change in x-ray corresponding to the onset or progression of symptoms.

Efforts to reduce dust levels in European coal mines contrasted sharply with the situation in coal mines of Southern Appalachia. We believe this factor, along with the failure to examine our miners at intervals, can largely account for any difference in functional capacities between European and American miners.

There is no reason to conclude that coal miners are less subject to nonspecific obstructive respiratory diseases than are other segments of the population. Whether occupational exposure in the mines causes or aggravates these conditions is unsettled. It is not unreasonable to presume that both are true. It must be concluded, however, that other mechanisms are operational in the causation of impairment in gas exchange.

We have previously suggested that the periarterial pigment mantles around the smallest muscular arteries of our miners may be responsible for the impaired function which we observe. Further evidence for this concept has recently been reported by Naeye, Laqueur and Wells. They have demonstrated significant pathologic changes in small muscular arteries in cases of uncomplicated, simple, coal workers pneumoconiosis. The lesions are localized to the segments surrounded by pigment mantles. These lesions are believed capable of causing the physiologic disturbances in our miners. The physiologic findings in our breathless miners are very similar to those reported by Nadel and others in dyspneic patients with pulmonary vascular lesions.

SUMMARY

Studies of more than 4,000 bituminous coal miners in the laboratory lead us to conclude that disabling pulmonary insufficiency is common among bituminous coal miners. Chronic nonspecific obstructive bronchopulmonary disease, similar to that seen in the general population, is encountered frequently. Breathlessness is also often associated with abnormalities of oxygen transfer, increased dead space ventilation, and inappropriately increased ventilation with exercise, in the absence of reduced ventilatory capacity. We believe the latter disturbances may be the result of primary vascular damage.

There is a poor correlation between roentgen categories of pneumoconiosis and functional loss. Disabling impairment is a frequent finding in miners with only minimal x-ray abnormalities. Roentgenographic abnormalities may exist for many years in working miners before symptoms or abnormal function tests are manifest. Impaired oxygen transfer may be demonstrated in some miners, prior to the onset of symptoms.

Definite abnormalities of function can usually be detected in dyspneic miners providing appropriate methods of study are employed.

* * * * *

BLACK LUNG BENEFITS

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 9212), to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

* * * * *

Under the disability insurance provisions of the Social Security Act disability benefits to a worker and his family must be reduced under certain circumstances if he is also entitled to workmen's compensation and if the combined benefits exceed 80 percent of the worker's average predisability earnings. Let me be more specific as to the effect of this application of the black lung benefit provisions. The Social Security Administration is setting off black lung benefits against social security disability payments even though the law states that the payments are not to be treated as workmen's compensation. The effect in many cases reported to me is that a miner receiving social security benefit disability before he filed a black lung claim received less total funds after his black lung claim was allowed than he received before. Let me give you an actual example of one miner. Prior to black lung, he was drawing \$257 a month in social security disability payments. He filed a claim for black lung benefits which the Social Security Administration found he was eligible to receive black lung disability payments of \$98.30 a month. The Social Security Administration deducted his black lung benefits from his social security disability entitlement and he actually wound up with 50 cents less than he had when he got his social security benefits.

By setting off black lung benefits against disability payments the Administration is taking away with the left hand what Congress granted with the right. H.R. 9212 would remedy this.

Thirdly, despite a wealth of medical evidence to the contrary, the Administration is denying pneumoconiosis claims solely on the basis of negative X-ray examinations. Let me recite some of the testimony on this point.

EXCERPTS FROM WRITTEN STATEMENT OF THE SURGEON GENERAL OF THE UNITED STATES

Coal miners' pneumoconiosis is a distinct clinical entity, resulting from inhalation of coal dust. Physicians diagnose it on the basis of X-ray evidence of nodules in the lungs of a patient with a history of long exposure to coal dust. However, it should be pointed out that data from postmortem examinations indicate a higher prevalence of the disease than can be diagnosed from X-ray examinations. (Italic supplied).

TESTIMONY OF DR. DONALD L. RASMUSSEN, CHIEF, PULMONARY SECTION, BECKLEY APPALACHIAN REGIONAL HOSPITAL, BECKLEY, W. VA.

Of interest is the fact that those miners who have worked primarily at the face in mechanized operations become impaired on an average of 5 years earlier than men engaged in all other mining jobs. These face workers also show somewhat more X-ray abnormality, although there is little relationship between impairment and X-ray category pneumoconiosis . . . (Italic supplied).

TESTIMONY OF DR. H. A. WELLS, DIRECTOR, PULMONARY RESEARCH LABORATORY, CONEMAUGH VALLEY MEMORIAL HOSPITAL, JOHNSTOWN, PA.

But I would hasten to interject here that X-ray alone without being coupled with functional testing is going to be a poor indicator of the disease (pneumoconiosis) . . .

EXCERPTS FROM THE ANNUAL REPORT 1967-68, MEDICAL SERVICE AND MEDICAL RESEARCH, NATIONAL COAL BOARD, GREAT BRITAIN

. . . Secondly, it was also rapidly apparent that the X-ray film was not, by itself, a reasonable measure of disability . . .

. . . The disease (pneumoconiosis) is difficult to diagnose, especially in the early stages, and accurate diagnosis depends on three essentials—a high quality full size radiograph of the chest, a full clinical examination (including lung function tests) and complete industrial history . . . The radiograph remains the most important single factor in the diagnosis of pneumoconiosis, as defined . . . on the other hand the opacities seen in the radiograph are not in themselves diagnostic and must be interpreted in the light of a detailed occupational history and clinical examinations . . . (emphasis supplied)

H.R. 9212 in this regard provides that claims for benefits may not be denied solely on the basis of the results of a chest X-ray.

And, Mr. Chairman, H.R. 9212 would continue the timetable under the act for 2 additional years, permitting an additional period for the States to prepare to assume responsibility for providing black lung benefits to beneficiaries under the act.

Finally, Mr. Chairman, I ask leave to have printed in the body of the Record an article by Estie Stoll from the August-September 1917, issue of The Sciences, published by the New York Academy of Sciences.

This article, entitled "Coal Mining: The Way to Dusty Death," deals with the major problem of coal workers' pneumoconiosis, or black lung, as it is commonly called.

One of the features of this bill would eliminate a negative X-ray as the sole basis for denial of a victim miner's claim for benefits. As this article so clearly demonstrates, X-ray is not effective in detecting the disease until it is far advanced. To quote:

Unfortunately, by the time lung pathology becomes visible on X-ray CWP (coal workers' pneumoconiosis) may be irreversible.

COAL MINING: THE WAY TO DUSTY DEATH (By Estie Stoll)

In 1861, John Evelyn wrote that coal "causeth consumptions, phtisicks and the indisposition of the lungs . . . speedily destroy[ing] those who dig it in the mines. . ." After coal was first used to generate electricity in 1880, the demand for carbonaceous fuel increased sharply and mines were deepened; later, continuous-mining machines added to respirable dust concentrations. By 1950, the U.S. Public Health Service had found that coal miners were five times more prone to fatal respiratory disease than other workers. Some current estimates suggest that 125,000 active and former U.S. miners have X-ray evidence of coal workers' pneumoconiosis, or black lung disease, and more than a third of them may be severely disabled.

CLINICAL PATTERNS

Coal workers develop pneumoconiosis from prolonged inhalation of coal dust particles that saturate mine air. They cough up coal-stained sputum, may have chest pain and dyspnea, or shortness of breath; if dust exposure continues, symptoms can become incapacitating.

After ten years' exposure, simple pneumoconiosis, the first stage of disease, may

show up on X-ray, generally as widely scattered fine nodules. They represent coal-dust aggregates around bronchioles whose associated air spaces are usually dilated. Clinical symptoms and lung-function abnormalities usually appear later, but in West Virginia—with one of the highest rates of coal workers' pneumoconiosis (CWP) in the U.S.—many men with "simple, nodular pneumoconiosis . . . were significantly disabled," says Dr. Donald L. Rasmussen, Director of the Pulmonary Research Laboratory, Appalachian Regional Hospital, Beckley, West Virginia. (Med. Tribune, Mar. 13, 1969)

More advanced or complicated pneumoconiosis develops in about three per cent of active soft-coal miners and in up to 25 per cent of hard-coal miners, usually appearing radiographically after 20 years of work underground. As fibrosis of coal-dust nodules progresses, the nodules grow and coalesce, destroying large portions of lung tissue. Viable tissue is distorted by scarring and contraction, and there are changes in pulmonary function. Impaired oxygen transport increases disability; destruction of small pulmonary blood vessels often leads to right-side heart strain and enlargement—*cor pulmonale*—and death from cardiac failure.

THE PROGRESSION OF X-RAY CHANGES

CWP is diagnosed by X-ray abnormalities and a history of coal-dust exposure. The International Classification of Radiographs of Pneumoconioses—a standard description of X-ray changes—was formulated at an ILO conference 20 years ago and revised most recently in 1968. The Classification divides CWP into seven categories of progressive dust opacity. Though significant ventilatory changes almost never occur before grade 3 simple pneumoconiosis, initial X-ray signs are infallible precursors of later disability, says Dr. Lorin E. Kerr, Director of Occupational Health for the United Mine Workers of America. (Industrial Med. and Surgery, Aug., 1956) If their exposure to mine dust is stopped, workers with grade 1 simple pneumoconiosis are rarely disabled; once more massive X-ray shadows have appeared, deterioration continues even after the worker leaves the mine.

DISCREPANT SYMPTOMS AND SIGNS

Unfortunately, by the time lung pathology becomes visible on X-ray, CWP may be irreversible, and radiologic category does not always correlate with disability. "Some miners with massive pulmonary fibrosis are doing their full eight-hour shift, while others with seemingly early pneumoconiosis are on their deathbeds," Dr. Kerr says. (Medical World News, Mar. 27, 1970.) The disparity between disability and objective signs of illness was highlighted in a study of 18,000 soft-coal miners from Central and Western Pennsylvania. Conducted ten years ago by Dr. Jan Lieben and his associates at the Pennsylvania Department of Health, it revealed that nearly a third of Central Pennsylvania miners with coalescent lesions denied shortness of breath, but nearly half the miners without X-ray signs complained of it. Among the Western Pennsylvania miners with advanced lesions, nearly two-thirds denied breathlessness.

Dr. R. Krémer of the Université Catholique de Louvain, Belgium, has investigated the relationships between obstruction, X-ray findings and prognosis in 100 CWP patients. He found that clinical health is closely related to pulmonary obstruction as determined by the amount of air that can be forcibly expelled in one second, the FEV_{1.0}. Forty per cent of the men unable to expel more than 1,000 ml of air in one second were dead within a year; 80 per cent were dead within five years. Pulmonary arterial hypertension, caused by increased pulmonary

vascular resistance, was also a poor prognostic sign; 70 per cent of the CWP patients whose mean pulmonary arterial pressure exceeded 30 mm/Hg at rest died within a year. When pressure was 15 mm/Hg or less, patients were likely to do well regardless of the X-ray stage of pneumoconiosis. Dr. Krémer reported. Thus, measurements of pulmonary function are often more accurate than X-rays in evaluating CWP. (*Apport de L'Hémodynamique Pulmonaire a L'Etude de la Pneumoconiosis des Houilleurs*, 1969.)

In the U.S., autopsy studies confirm that right heart hypertrophy, rather than the amount of pulmonary coal dust seen on X-ray, is critical in evaluating CWP. Dr. Richard L. Naeye, Chairman of Pathology at Pennsylvania State University, recently performed autopsies on 175 Appalachian soft-coal miners. Half of the men who'd been dyspnea-free had nearly twice as much tissue containing coal dust macules as dyspneic miners. But breathless miners had thicker heart walls, more abnormal air spaces, and a higher ratio of bronchiolar goblet cells to non-goblet cells than the non-dyspneics. These results "weaken the value of X-rays as an evaluating tool and strengthen the case for lung function studies," according to Dr. Kerr.

COAL DUST: A COMPLEX PATHOGEN

Although simple pneumoconiosis is apparently caused by accumulation of coal-dust particles smaller than 5 microns in diameter, the pathogenesis of complicated pneumoconiosis is uncertain. Massive coal-dust accumulation appears to alter tissue response so that the disease progresses independently of dust inhalation. But CWP's initial stages are directly related to both quantity and duration of exposure to mine dust. The Lieben study revealed that in Central Pennsylvania, 16 per cent of soft-coal miners under the age of 45, 41 per cent aged 45-64, and 55 per cent of retired miners had X-ray signs of pneumoconiosis; in Western Pennsylvania, incidence rose from four to 15 to 29 per cent, respectively, for these same age groups. Mine workers with the dustiest jobs also face the highest risk. A U.S. Public Health Service study by Dr. William S. Lainhart, of nearly 4,000 bituminous coal miners from Utah, Appalachia, Southern Illinois and Indiana, revealed that cutting and loading machine operators were twice as vulnerable as other coal-face workers; motormen and brakemen were four times more disease-prone than other transportation workers. (*J. of Occ. Med.*, Aug., 1969)

Geographic differences also contribute to CWP risk. A four-year study of nearly half a million British miners showed that prevalence varies regionally from 5.8 to 25.3 per cent; regardless of mine dustiness, South Wales' CWP rate is consistently higher than England's. Central Pennsylvania's rate is almost 2.5 times higher than Western Pennsylvania's CWP affects only four per cent of Utah miners compared to 10 per cent of those in Appalachia.

COMPLEXITY OF COAL COMPONENTS

Type of coal mined affects coal dust potency and, therefore, CWP incidence. The higher a coal's rank the "greater the prevalence of disease," according to Dr. William K. C. Morgan, Director of the USPHS laboratory in Morgantown, West Virginia. (*Am. Rev. Resp. Dis.* Vol. 98, 1968) Anthracite, a high-rank coal is older, less volatile, contains more carbon and releases more heat when burned than lignite, a low-rank coal. CWP incidence rates may jump from ten per cent, for men who have worked low-grade coal for twenty years, to nearly 50 per cent for men who have worked high-rank coal for the same length of time.

Because in one form or another, coal contains nearly half the known elements, its constituents have clouded the picture of

CWP. Silica, a major coal component, was once held exclusively responsible for all coal miners' respiratory disease. Anthracite, higher in silica content than bituminous coal, causes more severe and extensive CWP. Progressive massive fibrosis appears earlier, afflicting 25 per cent of hard-coal miners compared with only three per cent of bituminous miners. Dr. Charles E. Myers, Director of the Anthracosilicosis Treatment Project, Wilkes-Barre General Hospital, Pennsylvania, told The Sciences. After World War I, anthracite was largely replaced by such cheaper fuels as soft coal, gas and oil; today anthracite mining is a dying industry, virtually limited to five Northeastern Pennsylvania counties. But the hazard of CWP in anthracite mines is still staggering: in one Pennsylvania anthracite county, miners spent 23,000 patient days in the hospital in 1969, at a cost to the county of \$1.25 million. Dr. Myers fears that extensive anthracite mining may be revived when other fuel reserves are depleted.

Although silica contributes heavily to pulmonary pathology in anthracite workers, CWP also strikes carbon-electrode workers, coal-loading longshoremen and others exposed to virtually silica-free coal dust. Silicosis and CWP are now recognized as clinically separate diseases which may co-exist and interact in the same individual; on autopsy, they are usually distinguishable.

Miners, too, vary in their response to apparently identical mining conditions, leading some investigators to speculate about the possible roles played by individual susceptibility and auto-immunity. Nearly 20 years ago, Dr. A. Caplan discovered a predisposition to rheumatoid arthritis in Welsh miners with CWP. Caplan's syndrome has since been reported in patients with other pneumoconioses. In the mid-sixties, Swedish researchers found that individuals lacking serum alpha-sub-one antitrypsin factor, which prevents trypsin from digesting protein, are more prone to chronic respiratory illness than those with adequate antitrypsin factor; they may also be more susceptible to CWP. Miners speak of "Coal fever," a response in some men new to the mines who are apparently sensitized to coal dust. Dr. Warfield Garson, of the UMW Welfare and Retirement Fund, reports a response resembling coal fever in test animals; the reaction may indicate a predisposition to CWP.

The role of air pollution and smoking in CWP pathogenesis is ambiguous. In 1963, the USPHS compared respiratory disease rates in miners and non-miners in two West Virginia coal towns with high dust pollution levels. In one town, 15 per cent of 200 miners had X-ray evidence of CWP, compared to less than one per cent of 200 non-miners in the same town. (*Mining Congress J.*, Aug. 1965) Other studies indicate that coal-dust exposure for nonminers may be much less benign. "In hundreds of autopsy reports, not of miners but their families, I noted a high degree of lung involvement . . . [suggesting] a community problem," says pathologist Richard Naeye. (*Medical World News*, Mar. 27, 1970) Soft-coal miners who smoke have more bronchitis, emphysema and *cor pulmonale* than non-smoking miners. Because miners cannot smoke at work, their smoking time is more compressed than that of smoking non-miners, perhaps with greater adverse effects. says Dr. Morgan. (*Va. Med. Monthly*, Dec., 1969)

"Although coal dust may be the specific cause, the expression of disease is the summation of all of the physical, emotional and social stresses [fatigue, heat and humidity, noise, isolation, etc.] to which the miner is exposed," stated Dr. Irving R. Tabershaw, Professor of Occupational Medicine at the University of California, Berkeley. (National Conference on Medicine and the Federal Coal Mine Health and Safety Act of 1969, Washington, D.C., June 1970) High on the

list of stresses are respiratory infections, which may co-exist with, contribute to, or occur more often because of CWP. Minor respiratory infections often precipitate dyspnea in miners afflicted with CWP, resulting in serious acute illness.

EUROPE'S LEADERSHIP

Although the U.S. has been very slow to acknowledge CWP as a distinct disease entity, Western Europe and Great Britain have been working on CWP for decades. In 1937, the British Medical Research Council initiated a comprehensive CWP study; six years later, the British government declared CWP a compensable disease, distinct from silicosis. From 1955 to 1965, preventive medicine—diligent X-ray check-ups and early transfer of affected miners from hazardous dust areas—reduced the number of new compensation awards in Britain by four-fifths. When the European Coal and Steel Community was established 20 years ago, financing and co-ordination of CWP research took a great leap forward. Nine million dollars went for CWP research in Europe in 1963, in sharp contrast to the \$100,000 granted to the USPHS that same year for a single CWP study. By 1966, when cumulative United States appropriations had just passed \$1 million, the annual research budget in Europe was nearly \$20 million.

RESISTANT U.S. PHYSICIANS

"The attitude of the medical profession in the U.S. to the problem of CWP has been . . . characterized by obscuritism and a persistent refusal to face the facts," Dr. Morgan asserts, and history bears him out. Coal dust was recognized as a health hazard in American mines early in the twentieth century, but the solution was seen as improved ventilation. Britain's CWP incidence was attributed to English climate and urbanization, both unmatched in rural U.S. coal towns. Public attention was also directed away from coal dust to silica, and silicosis was soon considered "the only important dust disease," writes Dr. Kerr. (*Arch. Env. Health*, Apr., 1968) State and Federal compensation laws covered silicosis but excluded other industrial dust diseases. Until its tenth edition in 1959, Cecil's influential Textbook of Medicine denied the danger of "anthracosis," and stated that coal dust benefited the miner by modifying silica's effect and slowing the progression of silicosis. Mine employed physicians failed to appreciate the occurrence of CWP; in one state, the chairman of the silicosis board threatened to resign if CWP became compensable. Death certificates were often incomplete or misleading; heart disease was listed as the cause of death, without mention of CWP as the cause of cardiac failure.

MINE ACCIDENTS—TRIGGER FOR ACTION

Eventually, mine accidents rather than dust disease aroused public ire and forced Congressional action. Coal mining is the most dangerous occupation in the U.S.; a man who enters the mines at 20 runs a 25 per cent risk of death from lung disease or mine accident. On any day of the year, 28 miners suffer disabling injuries; each month, 100 miners die of accidents, a total of 120,000 fatalities in the past century.

In one West Virginia county, there were 11 major mine disasters in 20 years. Three years ago, after 78 men died in a coal-mine explosion at Farmington, West Virginia, Congress began to act. Supposedly safe, the Farmington mine spewed out 8 million cubic feet of methane a day—enough to supply the cooking and heating needs of a small city!

RELATED FEDERAL LAW

The Federal Coal Mine Health and Safety Act of 1969 sets mandatory health and safety standards for underground mines, appropriates aid to the States to help establish or improve local programs for protection and

compensation, and provides for Federal funding of CWP research. The Act limits average concentrations of respirable dust in the mines to 3.0 mg per cubic meter of air; in 1973, it drops to 2.0 mg per cubic meter. Unless adequate respirators are provided, mechanical ventilators must remove harmful gases from the mine and maintain an atmospheric content of at least 19.5 per cent oxygen and no more than .5 per cent carbon dioxide. Mine operators must submit dust samples for government analysis, Interior Department officials must make at least four unscheduled mine inspections annually, and penalties are established for offenses.

Mine owners, especially the marginal operators, claim that they cannot comply with the Act and remain in business. "We believe that most mines can comply with the 3.0 standard with presently available technology," Henry P. Wheeler, Jr., Acting Deputy Director of Health and Safety, Bureau of Mines, told the Washington Conference in June, 1970. To facilitate compliance, the Bureau is investigating the use of electrostatic devices to collect dust, foaming agents or steam and water sprays with wetting agents to suppress it, and chemicals to reduce the surface hardness and friability of coal. Dust-producing factors related to mine-machine design are being evaluated. The Bureau is also investigating such innovations as a high-powered waterjet to replace the saw-wheel, transport methods that scatter less dust, effective respirators and life support systems. But "ventilation is the single most important factor affecting the concentrations of dust in coal mines," Mr. Wheeler stresses. Mine owners pump fresh air in to avoid methane buildup but the air either dilutes coal-dust concentrations or stirs up settled particles. Dr. Welby G. Courtney, of the Bureau's Safety Research Center, told *The Sciences*. In fiscal 1972, the Federal government will spend about \$6 million on dust control.

The new law also entitles miners to free, periodic chest X-rays and gives those with radiologic signs of pneumoconiosis the option of transferring to less dusty work without reduction in pay. At the end of 1970 the USPHS, the American College of Radiology and the American College of Chest Physicians co-sponsored brief teach-ins on CWP X-ray diagnosis for physicians in several cities.

COMPENSATION FOR CWP

The Black Lung Benefits section of the Act guarantees compensation to miners disabled by pneumoconiosis or to their widows, if the disease was definitely caused by underground mining. Disability is established by evidence of complicated pneumoconiosis on chest X-ray, biopsy or autopsy. A miner with X-ray signs of simple pneumoconiosis is also considered disabled if demonstrable lung function impairment rules out continued mine work, and if age, work experience or educational limitations preclude other employment. Within a month after the law was passed, the Social Security Administration, which will administer compensation claims until 1973, received 100,000 compensation applications. By June of this year, SSA had received 297,162 claims and processed 267,042 of them: disability payments to the 126,396 miners or their widows whose claims were approved range from \$153 to \$306 per month. SSA's cumulative total of payments is more than \$313 million, but 102,000 miners' claims have been disallowed, nearly half because CWP did not appear on X-ray. After 1973, administrative responsibility shifts to the Department of Labor and to state compensation agencies; only eight of the 23 coal-mining states offer compensation for CWP.

OBSTACLES TO ACTION

But law and implementation are still far apart. "The men for whom this statute was enacted are even more outraged today by what they consider inadequate administra-

tion of the law than they were months ago before the new law was enacted," Mr. Gerald M. Feder, Associate Council for the Senate Subcommittee on Labor, told the Washington Conference in June, 1970. The Appalachian Research and Defense Fund, a public service law firm in Barbourville, Kentucky, accused the Social Security Administration of dealing inequitably with CWP disability payments. The Fund asserted at a mock trial that only 20 per cent of claims were refused nationally, but 32 per cent were disallowed in West Virginia and 57 per cent in Eastern Kentucky, regions that account for one third of all claims. The Bureau of Mines has been under fire for having too few inspectors, for permitting mines to continue operating with known violations and for excessive identification with the owners.

INHERENT WEAKNESSES IN THE LAW

President Nixon described the Black Lung Benefits section of the law as "temporary, limited and unique, and in no way should it be considered a precedent for future federal administration to workmen's compensation programs . . . all federal responsibility in this area will expire in seven years." Continued miner protection, therefore, depends on state programs—traditionally weak in the past—or on new Congressional legislation. Significantly, the current law applies only to underground mines; strip or surface mining, the fastest-growing branch of the coal industry, goes unregulated.

Because miners who have inadequate X-ray evidence of CWP but are severely disabled by obstructive airway or cardiac disease are excluded from compensation, the "law must already be judged a failure," says Dr. William H. Anderson, Chief of the Pulmonary Diseases Section, University of Louisville School of Medicine. Faced with a mine shut-down, he points out, a miner untrained for other work may be virtually unhirable because of early pneumoconiosis signs on a pre-employment X-ray. He is also ineligible for CWP compensation and may be too young for social security or a miner's pension. Because many physicians are still unconvinced that CWP exists, "to make this law work . . . [you must] gain the interest and the cooperation of physicians who are actually out in the field," Dr. Naeye told the Conference.

Despite these problems, the Act has been hailed as the most comprehensive health and safety law in U.S. history. Because of cooperation between several Government agencies and departments—including HEW, Interior and Labor—it may serve as a problem-solving model in such other areas as Medicare and Medicaid, says Dr. George James, President and Dean of the Mt. Sinai School of Medicine, New York. "Federal law has, for the first time, focused national attention on pollution of the working environment of a major industry in so clear a way that it becomes imperative that all major industries, and, eventually, all cities, improve the quality of their environments."

Because better health and safety may be the only way to attract new miners to an industry already faced with severe manpower shortages, both miner and owner may benefit from the Act. Though improved technology has steadily reduced labor requirements—one-fifth the number of miners produced the same amount of coal in 1969 as in 1920—workers will always be needed to run increasingly complex machinery. By the mid-1970s, 50,000 new mine jobs will be available: by the turn of the century—when coal demand is expected to be four times current annual coal production—manpower needs will be much higher.

The U.S. has about a third of the world's supply of recoverable coal; each U.S. miner produces about 20 tons of coal per day, compared with three tons in West Germany and Britain, and two tons in the U.S.S.R. Greater productivity has led to more dust and higher health risk. CWP disability, once rare in men

under fifty, now strikes 35-year-old miners. "The time has come to replace . . . fatalism with hope by substituting action for words," President Nixon told Congress in March, 1969. "Catastrophes in the coal mines are not inevitable. They can be prevented and they must be prevented."

(Mr. ERLBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLBORN. Mr. Chairman, I yield myself 10 minutes.

The benefit program we are talking about here—the black lung benefit program—was presented and passed in 1969 as a sort of small residual program. It was designed to let Federal general revenues pay monthly checks to a relatively small group of ex-miners and their widows who had generally been bypassed by other benefit programs. The point made was that in some coal-mining States the workmen compensation laws had failed to recognize in an adequate way the lung and related problems that miners can develop from coal dust.

Of course, compensation for disease and injury caused workers by their employment in private industry has been handled by the respective States usually through their workmen compensation programs. But in this instance, it was argued that there was an unmet need that the Federal Government should take care of temporarily. Under the law as passed, the Federal Government would take care of black lung claims filed during the first 2 or 3 years. Then the whole thing would revert to the States. The whole Federal cost of the benefits was said to be around \$40 or \$50 million a year.

Now let us see what has happened since the bill was enacted in 1969.

First. We are already paying out of general revenues over \$300 million a year in the black lung benefits. The total outlay under existing law will have reached close to \$1 billion by the end of 1972.

Second. About three out of every four of the people drawing these benefits also get social security benefits. Many get a monthly check from the union pension fund. Some get a veteran's payment, or a railroad retirement payment. So, for the greatest part this has been an add-on benefit that goes to one particular group. For the quarry workers, the ore miners, the textile workers, the grain elevator people, the farmers—along with countless other groups who do work involving risk—for none of these is there a special add-on Federal benefit program on top of social security.

Third. Despite the claims being pushed by special-interest groups—and despite the news stories—the administering Federal agency has taken a rather liberal approach in carrying out the law. Bear in mind that the benefit payments are already running 5 or 6 times what was supposed to be the cost of the program.

Notwithstanding these facts—which come as a big surprise to those who had not looked into the situation thoroughly—we now have before us Mr. PERKINS' bill to greatly expand this payment of benefits to one special group in the country. Let me point out briefly what it would do.

First. It would say—I think rather incredibly—that the Social Security Administration is forbidden to deny claims on the basis that the X-ray of the miner's chest shows no black lung disease. Remember that the law on the books says the miner—to get the money—must be totally disabled due to black lung, or pneumoconiosis as it is termed. Now, if the claims—still coming in, incidentally, at a great rate—cannot be denied where the X-ray as interpreted by highly competent radiologists shows no black lung problem, on what can a denial be based? How could the agency tell which person is disabled of black lung and who is not? Remember that to qualify under the law the applicant must be totally disabled due to black lung. If he is disabled from other causes, he is no doubt getting benefits under the regular social security program like other disabled people.

The backers of the Perkins bill say there is medical opinion that maybe a miner could have black lung that would not show on the X-ray. But the question is not whether a person has black lung in some minute degree, but whether he has it to a fully disabling degree. The black lung starts like everything else from nothing, and it may go from a hint of something in the lung, then a barely perceptible degree, and so on. Until it reaches at least the point that it shows up on the X-ray, there is no accepted medical basis for finding that the individual is really suffering from black lung, let alone being disabled from it. A great many people who have never seen a mine have some degree of something in the lung that should not be there—from smoking, from emphysema, and so on—and they are not treated as disabled.

But the Perkins bill would say the man may be totally disabled—due to black lung, remember—even when the radiologists say they see no black lung problem and in fact there may be nothing at all unusual in his lung X-ray. What would be the practical effect of this? The backers of the bill say, well, you would have to give him other tests before you conclude he is not disabled of black lung. What tests? You could give him exercise tolerance tests or various others—at heavy expense and a lot of trouble or even danger to the applicant. But what would they prove as to whether the man is or is not totally disabled due to black lung—when you start from the knowledge that an X-ray of his chest shows no black lung? You might get a doctor's report from the difficult tests that the man has this or that problem. But the same kind of problems could be found in all kinds of people who would not know a coal mine if they saw one. So, how could you make a finding that this ex-miner with no black lung showing on his X-ray is disabled of black lung because he has some physical problem similar to what nonminers often have? The simple fact is the overwhelming consensus of medical authority holds that, in the absence of an X-ray showing of black lung in the living miner, there is no sound medical basis for determining what the law requires to be determined—namely, that the miner is disabled due to pneumoconiosis.

You can see from this what the direc-

tion of the bill actually is. It is to greatly broaden the program by making tens of thousands of people eligible for benefits who have ailments not peculiar to miners. In other words, these people, the great majority of whom are already eligible for social security benefits, would be paid a special extra benefit whereas large numbers of people throughout the country with the same kinds of physical problems get social security only. Where is the justice or reason in that?

The proponents of the bill say "Oh, no, we can show you doctors who assert they can take a man with a clear chest X-ray, give him some exams, and if a physical problem is found—a problem like those found in nonminers—tell you whether that problem is due to black lung." But let us see what the weight of medical authority is. In 1970, a group of physicians eminent in the field assembled at Spindletop, Ky., to explore this and related matters. Among them were Dr. Benjamin Branscomb, professor of medicine, University of Alabama; Dr. Charles E. Andrews, provost for health sciences, University Medical Center, W. Va.; and Dr. William H. Anderson, professor of medicine, University of Louisville. I will quote from their findings:

"Coal worker's pneumoconiosis cannot be diagnosed in the living in the absence of radiographic changes." Also, the British have been in the black lung matter for over a generation. Their official publication contains this wording: "From a radiograph it is possible to say that a worker is not suffering from the disease."

No, the Perkins bill would not, as it is claimed, correct error in the administration of the law. It would instead open up the special benefit program to many thousands of additional persons whose claim to added tax-free payments cannot be greater than would be the claims of hundreds of thousands of nonminers all across the country. The extra outgo would be well over \$1 billion through the next 6 years alone.

One part of the bill would change the whole set of ground rules on how long the Federal Government is to continue to receive and handle these claims for black lung benefits. As I indicated, the law is that the Federal Government is to be responsible for continuing payment of all claims made through 1971. For these, the responsibility for Federal payment continues for the lifetime of the miner, of course. But for claims made after 1971, the States and the employers are liable for long-term payment. This bill would make the Federal Treasury responsible for continuing payment on all claims made in 2 additional years—through 1973.

You have no doubt seen a letter from coal mine operators on this feature of the bill. They endorse it, and you can readily see why. It shifts a financial burden to the Federal Government involving many millions of dollars.

A third part of the bill would even tap the social security trust funds. At present, in some cases, if a miner is getting social security disability payments and then qualifies for black lung, the total of the two benefits paid him may not be more than 80 percent of his usual earnings when he worked. This rule,

which is in the social security law, has limited application but it says—where it does apply—that a person, whether or not he has ever been near a coal mine—cannot get a combined amount in workmen's compensation and social security disability checks that would be unduly large in relation to his usual earnings. This bill would give the miners an advantage over everyone else, so that many miners could get considerably more per month in combined social security disability benefits and black lung payments than they earned by working full time. I do not see how people from all other walks of life—with their own financial problems—can view that as fair or reasonable. They will surely ask why they have to pay taxes for this special treatment of a particular group. And, as I indicated, the provision would have a cost to the social security trust funds. Why? Because at present if a miner's social security disability benefits plus his black lung benefits are more than 80 percent of his usual earnings, the social security part is reduced in some cases to bring the total down to 80 percent. Under the Perkins bill, the full social security disability benefit would have to be paid regardless. This would cost the trust funds \$20 million in the first year.

Let me conclude this by making a few special observations:

One. What this bill brings into sharp play is a major public policy question—not a minor question of paying some added miners. By providing these payments to the additional people who cannot be shown by any of the accepted rules to have become disabled by black lung, what we would do is actually to provide extra payments pretty much on the basis that everyone who has worked in the mines and who has problems like the common ones of emphysema, asthma, and so forth, is eligible. This is to say that we would provide a double layer of benefits to a selected group largely because they are members of that group and not because they have problems different from those of other people across the country. The question, then, is how far can we go in providing an extra benefit beyond the social security benefits? Can you expect people in all the nonmining areas—people who have health problems similar to the ones on which the extra benefits to miners would be paid—to do other than demand equal treatment? What of the ore miners, sulphur miners, grain elevator workers, textile workers, and all the other groups I have mentioned? As a matter of fact, are there not even white-collar workers who could get medical testimony that the stress conditions of their jobs had a bad effect on their health? So, I say to you that the bill involves much more than appears on its face.

Two. The section of the Perkins bill dealing with so-called double orphans is one that the administration supported in hearings on the bill. I support it and I know of no one who does not. It has never been in question. It merely corrects what must have been an oversight in the bill. We can take care of this quickly by another approach. The strategy to add on three very undesirable and major

changes in the program and to get them through on the back of the widely-accepted double orphan correction ought to be defeated.

I ask that you join in an effort to do justice by insuring that we turn down this unfair, costly, and dangerously implicated bill.

Mr. DENT. Mr. Chairman, I yield myself 5 minutes.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, we have very limited time on this piece of legislation. However, we have hashed it out pretty well on this floor on previous occasions.

If I sum up the statement of the gentleman who preceded me on the floor, it comes down to dollars. Regardless of how you might disguise it or try to make out some logical reasoning for his opinions and for the amendments that he is going to offer, it just comes down to dollars.

Mr. Chairman, I would like to clear up one thing for the record. In order that there be no mistake about what I might have said while debating this bill before the House on its first go-around about the cost being estimated at \$40 million a year, I researched the whole legislative history of the program, going through the committee reports, conference reports, debates and hearings in the Senate, and so forth. Very few references were made to cost, but this much of a reference was made.

During the House debate on the bill the gentleman from New Jersey (Mr. DANIELS), who had held hearings before his subcommittee on this legislation, got an estimate from the Public Health Service through a survey that they made that there would be 22,300 coal miners in the Nation who would and could possibly be candidates for these payments. That was because at that time no State except Pennsylvania had legislation that was enacted. Moreover, we were only discussing miners suffering from complicated pneumoconiosis.

And, so, therefore the Health Department could not get a more accurate estimate of the number of persons, and we said at that time that it would go to \$40 million and possibly \$50 million a year.

I would say that based upon the estimates we had, we do have to come down to the fact that 323,000 claims have been processed under this act. That is 14 times as many miners as we estimated. So, when come up with the figure of \$400 million-plus the cost, we are only dealing with the original estimate.

But, Mr. Chairman, who in this House or who in this Nation had any idea that that many miners were suffering from black lung.

Certainly, it is a matter of conscience more than it is a matter of dollars.

I have stood on this floor and I have voted repeatedly for farm subsidies, and what is the cost of farm subsidies for this year

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield to me at that point?

Mr. DENT. I shall be glad to yield to the gentleman later under the 5-minute rule.

Mr. STEIGER of Wisconsin. On this question of the numbers?

Mr. DENT. Of what?

Mr. STEIGER of Wisconsin. On this numbers question.

Mr. DENT. Go ahead.

Mr. STEIGER of Wisconsin. You have indicated a total of 323,000 miners would be eligible; am I correct.

Mr. DENT. Yes; I said 323,000 claims were filed but 147,000 were receiving compensation when this figure was given to us, and that was in September.

Now, what of the rest of the hundred-and-some-odd thousand who are still to be reprocessed because of the fact that science has come up now with the statement that the examination by X-ray alone is not conclusive and should not be used to deny the right of a coal miner who is suffering from black lung to be paid if he indeed has black lung that is discovered through a number of other examinations?

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield further?

Mr. DENT. Now, let me finish my statement.

Let me give you some figures. For instance, you are interested in figures.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the chairman of the full committee.

Mr. PERKINS. First, I wish to compliment the subcommittee chairman on his statement and ask the gentleman in the well if it is not a fact that we have had millions of people working in the coal mines over a period of years. When I first came to the House in 1949 we had more than 800,000 people working in the coal mines, is that not correct?

Mr. DENT. It is correct. But, when you are talking about numbers, and especially when it comes to dollars, we cannot afford to talk in terms of dollars when it comes to human beings.

One additional matter, and let me just read a statement from the Secretary of Agriculture, Secretary Clifford Hardin, when he said that the 1972 farm program would cost \$2 billion, I voted for that and yet it comes out of the Treasury of the United States. It is paid for by the coal miners and every taxpayer in the confines of this country through taxes because we think it is essential to the welfare of the farming communities of this great country.

Therefore, can we do any less for the coal mining community?

The gentleman scoffs at the idea of continuing this legislation for 2 more years so that the States can pass a State plan. Of course, the mine operators would be happy because it shifts the burden. Do you believe that any person, any group of examiners, any Member of Congress could have determined that 323,000 miners and widows who have now applied and another 150,000 who may well apply, that we can allow the responsibility for the payment of these black lung payments to any individual to the State government. We have had miners who have worked 15 or 20 years in different

mines. You will find very few who have worked their entire time in one mine or have worked in one mine all of their lives, because coal mines have a habit of running out of coal.

So they moved to another vein, or they moved to another location, and your people either move with you or they move to another operation. This is not a question of dollars, but simple justice, and it is the responsibility of the people of the United States just as much, or even more so, as it is the responsibility of the people of the United States to pay farm subsidies or any other subsidy.

The CHAIRMAN. The time of the gentleman from Pennsylvania has again expired.

Mr. ERLNBORN. Mr. Chairman. I yield 5 minutes to the gentleman from Ohio (Mr. ASHBROOK).

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Chairman, it is with deep and sincere concern that I must express my dissatisfaction with certain provisions of H.R. 9212—the bill to amend the Federal Coal Mine Health and Safety Act of 1969. Title IV of this act provides for payment of cash benefits to coal miners—and their dependents—who were found to be “totally disabled” due to pneumoconiosis—black lung disease—and for survivors of coal miners who died from this disease. While I find considerable equity and humanitarian justification in one provision of this bill—the one which permits payment of black lung benefits to dependent surviving miner's children who have lost both parents—this redeeming provision does not favorably alter my opinion that the bill should not be approved. I would strongly urge that we consider this particular provision independently so that it may be singularly and positively acted upon.

Mr. GROSS. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 374]		
Abourezk	Gettys	Pryor, Ark.
Ashley	Goldwater	Rangel
Barrett	Goodling	Rees
Blackburn	Gubser	Riegler
Blanton	Halpern	Satterfield
Brown, Mich.	Hansen, Wash.	Scheuer
Buchanan	Horton	Schwengel
Camp	Jones, Ala.	Smith, Calif.
Carey, N.Y.	Karth	Stanton.
Clancy	Kee	J. William
Clark	Keith	Stanton.
Clawson, Del.	Landgrebe	James V.
Clay	Link	Stokes
Collier	Lloyd	Stuckey
Derwinski	Long, La.	Ullman
Dickinson	McKinney	Vander Jagt
Diggs	Madden	Veysey
Dorn	Mann	Vigorito
Dowdy	Melcher	Whitten
Dwyer	Mills, Ark.	Wilson
Eckhardt	Morse	Charles H.
Edwards, La.	Mosher	Wydler
Evins, Tenn.	O'Konski	Wyman
Frelinghuysen	Fatman	
Gallagher	Felly	

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. STEED, Chairman of the Committee of the Whole House on the State of the

Union, reported that that Committee, having had under consideration the bill H.R. 9212, and finding itself without a quorum, he had directed the roll to be called, when 360 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. When the point of order was made that a quorum was not present, the gentleman from Ohio (Mr. ASHBROOK) had the floor; and the gentleman has 4 minutes remaining.

Mr. ASHBROOK. Mr. Chairman, the first provision to which I offer strong objection permits exemption of black lung benefits from the existing provision of the Social Security Act that requires offset of workmen's compensation payments. This change is entirely inappropriate since the black lung program is, by design, a workmen's compensation benefit program. To exempt black lung benefits from offset when they are paid by the Federal Government but offset them when paid by a State would be most inequitable. I fully believe that this provision serves as an unjustified duplication of workmen's compensation benefits. In addition, this same offset exists for those receiving social security disability benefits and this provision would be prejudicial to these beneficiaries.

Second, this bill provides that a finding of pneumoconiosis may be made even though X-ray evidence does not demonstrate the presence of the disease. Presumption that the disease exists would be an unusually precarious conclusion since the majority of medical authorities accept X-ray evidence as the only valid means of verifying the presence of pneumoconiosis. While further testing would be necessary to establish the degree of respiratory impairment, the cause of this impairment could be due to emphysema, asthma, chronic bronchitis, or a combination of any conditions other than pneumoconiosis. To permit a finding of this disease in the face of negative X-ray evidence would alter the specialized nature of the original act and, in fact, would permit payment for pulmonary conditions other than pneumoconiosis. This represents unreasonable and unjustified permissiveness which would defeat the purpose of the black lung benefit program and would greatly increase its costs. It is virtually impossible for any miner to have pneumoconiosis to the degree necessary to qualify him for benefits under this bill—disabling black lung, but just some trace of black lung—and not have it detected by X-ray.

Finally, the bill permits an extension of the Department of Health, Education, and Welfare administration of the black lung program by 2 years. It would delay transfer of responsibility for this program to the States, under the administrative guidance of the Department of Labor. Federal administration of this program by DHEW was intentionally temporary in order to permit States an opportunity to take appropriate legislative action for the proper and justified improvement of workmen's compensation programs to cover pneumoconiosis.

Many States have taken or are taking this legislative action and to further defer transfer of this responsibility to States would be entirely unwarranted.

This bill is an undue subsidy to coal-mine operators. By bypassing workmen's compensation laws and paying these benefits out of the Federal Treasury, they go scotfree—an unequitable bonanza for them.

I fully recognize the fine intent of this bill. However, it unduly delays the acceptance by the States of responsibility for workmen's compensation programs. The merits of this bill are extremely questionable and I am, therefore, definitely opposed to its passage.

Mr. DENT. Mr. Chairman, I yield myself 1 minute in order to make a quick response to the gentleman from Ohio.

I might say that if a State elects to take the action that would save the State money in offsetting the State compensation, all you are doing in the State is saving money for the operators who pay the workmen's compensation on the basis of hourly payments, and on the basis of hourly earnings, because the coal miners who are suffering from pneumoconiosis are going to be asked to pay or give money to the rest of the workers in the State in other industries. That is all you are doing, you are not saving one red cent from the State treasury. All you are doing is taking that out of the coal miner's pocket who is injured.

Secondly, medical evidence has proven that it requires more than X-rays to determine the full impact of pneumoconiosis, or miners' asthma. The record is clear on that point.

Why are you worried about another examination for a determination of disability if that examination would show proof that the miner has pneumoconiosis to the extent of total disability? He is then entitled to benefits. If you are confident that X-ray examination is absolutely accurate in every case, why are you fighting another supplementary test? If the X-ray is all that you say it is, then the additional testing will also correlate with the X-ray findings. We are not proposing to pay benefits to ineligible miners. We just want them to have the benefit of the doubt, and the benefit of the division of medical opinion on this subject.

Mr. ERLBORN. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota (Mr. QUIE).

(Mr. QUIE asked and was given permission to revise and extend his remarks.)

Mr. QUIE. Mr. Chairman, I recognize and appreciate that there have been many considerations that have gone into the preparation of this bill and at this time I want especially to commend the gentleman from Illinois (Mr. ERLBORN) for the efforts he has made to write sound legislation affecting black lung. A bill assisting people who are ill and who contracted this disease because of their employment in the coal mines is difficult to oppose because you want to help the men who suffer from pneumoconiosis and their families.

However, the gentleman from Illinois has pointed out some shortcomings in the

legislation, and I support his position. However, before I go into that I do want to express definite interest in and support of one provision in the bill.

As you know, the existing act does not permit benefit payment to surviving dependent children of a deceased miner whose widow is also deceased. In fact, if a widow and a child or children of a deceased miner are receiving black lung benefits and the widow dies, the surviving child or children can no longer receive benefits. This is an unusually harsh and inequitable position. For that reason, I would fully support this relief provision which would recognize the extended and continuing dependency needs of a miner's surviving children.

My opposition to H.R. 9212 is in connection with the other provisions in the bill—exemption of black lung benefits from workmen's compensation offset, prohibition of denial of black lung claims based on negative X-ray evidence, and extension of Federal administration for 2 additional years.

I particularly object to the 2-year extension of Federal administration by HEW and their Social Security Administration. The original purpose of permitting Federal administration of this benefit program was to give States an opportunity to modify their workmen's compensation laws and programs so that adequate coverage for disablement due to pneumoconiosis could be developed. By 1973, when transfer of responsibility to States is scheduled to occur, the States will have had 3 years to develop and modify their workmen's compensation laws. I consider this ample time for States to take appropriate and needed action. To delay this transfer would defy the recognized principle of State administration of workmen's compensation programs. In addition, this provision would further encourage Federal involvement in an administrative area which has traditionally belonged to the State.

Again I strongly object to this particular provision, and then to the bill in general the way it is written and, therefore, recommend that we adopt the amendments that are going to be offered by the gentleman from Illinois and the gentleman from Wisconsin. If these amendments are accepted I would surely support the bill.

Mr. QUIE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman from Minnesota has consumed 3 minutes.

Mr. DENT. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. FLOOD).

Mr. FLOOD. Mr. Chairman, on a subject like this, because of the House rules—in 2 minutes—it is almost presumptuous and impertinent for me to even appear on this subject.

I could take the time of this Committee and the time of the House ad infinitum on this. I was born and raised in the hard coal fields. My family on both sides for three generations worked in the hard coal fields—and now I come here.

I first appeared in this well in 1945, and year after year since then in defense of the farmer and his appropriations and laws—and in defense of cotton growers,

in defense of wheat, in defense of rice, in defense of rivers, in defense of harbors, in defense of all these interests because you, my colleagues, told me it was essential for the welfare of your people and of your district—and I believed you, because I know that you knew more than I did.

So today my reputation, my integrity in this House, since the 79th Congress is on the line. I have IOU's through this House without number—blue chips—and today I collect them for this bill.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey (Mr. MINISH).

(Mr. MINISH asked and was given permission to revise and extend his remarks.)

Mr. MINISH. Mr. Chairman, I rise in support of H.R. 9212. As I indicated at the time H.R. 13950 was debated here on the floor, I worked in a coal mine. My father before me and his father before him worked in the anthracite region in eastern Pennsylvania. I do not know of any more hazardous job, unless it is as a member of the combat forces in our Armed Forces.

I can tell you that in eastern Pennsylvania where I spent part of my life, if a man wanted to get out of the mines, he was not able to get a job in any other industry because of an unwritten law under which they would not hire anyone who worked in the mines. My father worked there, starting at the age of 9, and he died at the age of 35. During the last 4 or 5 years of his life he never slept in bed, because if he did he would choke from the dust that he had inhaled since he was 9 years old.

I heard the gentleman from Illinois (Mr. ERLBORN) say that the cost of the program went five or six times over what was intended. That only goes to show that the committee did not do an effective job. They underestimated the problem. We have had cost overruns before.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. MINISH. I am happy to yield to the gentleman from Illinois.

Mr. ERLBORN. I would point out to the gentleman that the estimate of cost of \$40 or \$50 million came from the other side of the aisle, the proponents of the bill. I must also point out that at that time HEW estimated it would run \$300 to \$400 million, which merely proves that their estimate was correct and false estimates were given to the House to help pass the bill.

Mr. MINISH. I do not know that I would agree that false estimates were given. Possibly, it was the best available information they had at the time.

As I said, we have had cost overruns before. The one that comes to mind, of course, is the C-5A.

If this legislation is passed, I do not see that it is going to increase the cost beyond \$700 million, because if we do a job and police the mines the way they should be policed under this law then this ought to diminish the need for workers to get black lung benefits.

So far as this legislation is concerned, anyone, I am sure, who has worked in

a mine or who has seen people who have worked in the mines—and I recall what the gentleman from Pennsylvania (Mr. SAYLOR) said, that many of his friends who worked in the mines would have to take a rest before they got home—I have seen that happen a thousand times in the anthracite region.

Mr. Chairman, this is legislation that any Member here could support. As the previous speakers have said, we support appropriations for farm subsidies, and since 1964, they have amounted to \$19 billion. We have provided foreign aid in a total of \$149 billion from the year 1945 to 1971. We have loaned Lockheed \$250 million.

I hope we can support this legislation and do something for the men who made their tax money available for farm and business subsidies.

Mr. ERLBORN. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin (Mr. STEIGER).

(Mr. STEIGER of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Chairman, it is exceedingly difficult to have to come to the well of the House this afternoon and talk about this bill. Frankly, the Committee on Education and Labor ought to take a rest from its labors for a period of time, and I hesitate to enter into the continuing saga of controversy surrounding every bill that we report to the floor. There are some who have argued that once a week the House ought to have the privilege of having a bill from the Education and Labor Committee just so that Members might have a greater sense of participation in the legislative process. I am as yet unpersuaded that that would be in the best interests of the Congress or the country.

The bill that is before us today, H.R. 9212, makes various amendments to the black lung benefit provisions of the Federal Coal Mine Health and Safety Act of 1969. I wholeheartedly believe in the purpose of the provisions; namely, to recompense, at least in some small measure, those brave and industrious men who toil underground to provide this Nation with sinews of our industrial progress, and many of whom pay with their health or their lives for this progress.

At the same time I recognize that the black lung disease is an industrial hazard peculiar to the coal mining industry and that, in the long run, compensation costs arising out of employment in a specific industry should be borne by that industry.

Beyond that, Mr. Chairman, I am one of those who, at the time we argued about the Scherle amendment at the time the Coal Mine Health and Safety Act was passed, disagreed about removing the pneumoconiosis provisions from that bill. One of the reasons I did was I did have confidence that the integrity of that program would not be undermined.

Clearly those on the majority side of the aisle were not being fair with the Members of this House at the time this bill was being considered. Some of us did raise the question about the potential cost of the program. That cost analysis

is being borne out by the \$500 million that has thus far been paid, and the effort of this bill to expand and modify the black lung benefit provisions so as to make them available to people on other than strictly a pneumoconiosis basis would be a serious mistake.

The black lung benefit provisions, as President Nixon pointed out when he signed the act on December 30, 1969, are of a temporary nature. As Members know, they are designed to bridge a time period of 3 years so that those States whose workmen compensation programs do not now adequately cover pneumoconiosis will have an opportunity to improve their programs accordingly. Mr. Chairman, the very temporary nature of the black lung benefits provisions suggest that it would be unwise to attempt to make more than the most needed changes in them.

A most desirable change in this, of course, is the provision in H.R. 9212 under which "double orphans" would become eligible for benefits. I am happy to applaud the distinguished chairman and the members of the Committee on Education and Labor for the bipartisan support they have given to this provision, and I wholeheartedly join them in urging its passage, with technical amendments to be offered by the gentleman from Illinois.

On the other hand, I am chagrined that the majority of the committee has seen fit to support the remaining provisions of the bill. Let me elaborate on one specific provision: The bill would enjoin the Social Security Administration from denying claims for black lung benefits solely on the basis of a negative X-ray. Mr. Chairman, the Social Security Administration's first annual report on the black lung benefits program gives not only an impressive account of the Agency's efforts to get the program off to a quick start and to handle expeditiously the unexpectedly large volume of claims, but it also describes significant problems and issues that have come to the fore in the administration of the program. The report states clearly that the Agency's regulations which require X-ray evidence of pneumoconiosis before a claim can be allowed are based on "the prevailing medical judgment that in the absence of positive X-ray evidence, the disease does not exist or exists to a degree that would have no significant effect on the claimant's functional capacity."

Mr. Chairman, I submit that in its zeal to get the black lung program off to a quick start the Social Security Administration may have alerted not only miners and their widows rightfully entitled to benefits but may have also unfortunately raised the hopes of a disproportionately large number of persons who just could not qualify for benefits under the law. No matter where we draw the line in any law, there will always be people who fall just short of meeting the requirements. But it seems absurd to me to deprive the Agency of the one tool which in prevailing medical judgment enables it to effectively administer the black lung program. Without the screening and diagnostic device of an X-ray

we can expect to see the Social Security Administration award black lung benefits to many people who have lung problems not connected with pneumoconiosis. Let us not make the mistake of blowing apart a limited program designed to temporarily alleviate a specific inequity.

Furthermore, Mr. Chairman, another section deserves modification. Under the workmen's compensation offset provisions, the social security disability benefits of a worker and his family must be reduced under certain specified circumstances if the worker is also entitled to workmen's compensation, and if the combined benefits to him and his family exceed 80 percent of the worker's average predisability earnings. The principle behind the workmen's compensation offset provisions is to prevent duplication of benefits to the extent that combined benefits equal or even exceed the worker's earnings before he became disabled. The rationale is, of course, to avoid creating a situation where it is more profitable to collect benefits than to attempt to become rehabilitated and return to work. Because the offset provision is limited to applicants under age 62 who became disabled after June 1965, it has resulted in a reduction of social security benefits for only a small percentage of those awarded black lung benefits. Data from the Social Security Administration show that less than 5 percent of black lung benefits have been affected. However, even though the impact is limited, I believe that the principle involved is sound and should apply to black lung benefits. H.R. 9212 would eliminate the workmen's compensation offset for black lung benefits and should be modified.

Mr. DENT. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. BURTON).

Mr. BURTON. Mr. Chairman, I rise in support of the legislation reported out by the Committee on Education and Labor. As the author of this basic section of the Coal Mine Health and Safety Act, I must commend again the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. DENT), for his courageous leadership on this question when the matter was dealt with in the last Congress as well as the distinguished chairman of our full committee for proposing a number of needed strengthening and improving amendments this year.

Mr. Chairman, there are one or two amendments that have been suggested from the other side that I would hope the House would adopt. One would be a clarification by the gentleman from Illinois on the orphans' section and a second is the suggestion by the gentleman from Illinois (Mr. MICHEL) that we extend equity to the surface as well as the underground miners.

Mr. DENT. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I would like to say just in passing that there seems to be a penchant around this House always to kick the Committee on Education and Labor around.

In my 40 years of being a legislator I have never seen a piece of legislation

come to the House or the Senate, to a congressional floor, from the Committee on Education and Labor, or from Agriculture, that did not invite everybody to become an expert and get in on it.

We have come in with a clean bill. If there is this disturbance, it is a disturbance of the poor people over there who do not understand it. They put amendment after amendment before the subcommittee and were defeated decisively. The trouble is, they do not know when they are licked. If they would only find out there is a limit to where they can go with futile attempts to do what they want to impose on the majority, the Committee on Education and Labor would go as smoothly as the Committee on Ways and Means.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Iowa.

Mr. GROSS. Has the gentleman so soon forgotten the 2:30 in the morning session, when we wound up rewriting a bill out of the House Committee on Education and Labor?

Mr. DENT. Yes, and I can remember when we stayed all day on a little thing called insecticides. Everybody knows what insecticide is. It is not hard to understand.

Mr. GROSS. We did not go until 2:30 in the morning.

Mr. DENT. If the gentleman will look up the Record, he will find that more time was spent answering useless quorum calls than there was in debate.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. I appreciate the gentleman's comment. I might remind the gentleman that this bill as it comes to the floor is an example of the way the committee works.

The CHAIRMAN. The time yielded by the gentleman from Pennsylvania has expired.

Mr. DENT. Mr. Chairman, I yield myself 2 additional minutes.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield.

Mr. STEIGER of Wisconsin. What started out to be a simple bill to insure equity for double orphans suddenly blossomed into a wholesale rewriting of the black lung provisions of the Health and Safety Act.

It seems to me if the gentleman from Pennsylvania had been willing to stay with that portion readily agreeable, instead of attempting to goof up the works by adding in this bill extraneous matter which makes it so much more difficult, we would all get along.

Mr. DENT. I want to say to the gentleman that what makes a horserace in that no two fellows agree which horse is going to win. When you have lost the horserace you cannot respend that money. You fellows keep trying to spend the same money at the same window all the time.

There never has been a bill dealing with justice and equity for the little people ever acceptable to the minority in

our committee. Somewhere along the line there has to be a lobby for those who cannot lobby for themselves, so we are here as a lobby for the poor people, the downtrodden, the sick, the halt, and the weary.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Iowa.

Mr. GROSS. I cannot think of a committee that more richly deserves the reputation of being the most rewritten committee in the House of Representatives.

Mr. DENT. I think it does good, because in the end we get all of the ideas and come out with good legislation. That is why today we have aid to education for general and higher education. That is why today we have the best social legislation on the face of the earth in this country, because the Committee on Education and Labor had the courage to bring it out.

Mr. ESCH. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Michigan.

Mr. ESCH. I appreciate the gentleman's yielding.

I strenuously personally object to the chairman of the subcommittee even facetiously suggesting that there is a difference between sides of the aisle when it comes to humanitarian causes.

I will not support this legislation—

The CHAIRMAN. The time yielded by the gentleman from Pennsylvania has expired.

Mr. DENT. Mr. Chairman, I yield myself 1 minute, so that the gentleman may proceed.

Mr. ESCH. I will not support this legislation even though my father was a coal miner at the age of 14 and contracted the disease that this legislation deals with.

I seriously object to the subcommittee chairman's suggesting this even facetiously, or questioning the motives of Members of the committee and Members of this body, the House.

Mr. Chairman, it is with some reluctance that I must speak against H.R. 9212, a bill to amend the Coal Mine Health and Safety Act. I recognize that Chairman PERKINS and our committee have worked long and hard to bring out a bill which would be of aid to the coal miners. Unfortunately this bill does not do this, although it has some excellent features. My father was a coal miner at the age of fourteen, so I have a personal interest in this matter.

The coal miner who spends his life below the surface of the earth, who faces dangers every day of his working life, whose earnings are often insufficient to sustain his family and who may have his work life cut short by the horrors of black lung disease deserves our most serious consideration. Although the well-meaning sponsors of this bill feel they are aiding the coal miners I believe they are misleading themselves, the miners, and the public by promising too much.

Under present law, benefits are payable to a miner only if he is totally disabled due to pneumoconiosis, that is, if

he has pneumoconiosis and such functional breathing limitation, or other impairment due to pneumoconiosis, as to prevent him from engaging in any type of substantial gainful activity.

Diagnostic X-ray evidence is the primary source in determining if a miner has pneumoconiosis. If positive X-ray evidence of complicated pneumoconiosis is found, no further evidence is required and the claim is allowed. If negative X-ray evidence is ascertained, the individual's claim is denied. If positive X-ray evidence reveals simple pneumoconiosis, other medical tests are needed to determine the level of severity of the impairment.

If H.R. 9212 is enacted the Social Security Administration, in administering its program, would be required to abandon the position that coal worker's pneumoconiosis can be diagnosed in the living person only by chest X-ray. The consensus of expert medical judgment is that no means, other than chest X-ray, is presently available to diagnose coal worker's pneumoconiosis, as distinguished from other respiratory ailments. Thus the bill would include other lung diseases not related to the coal mining occupation. This clearly is not the purpose of the legislation, it would be costly and would compensate coal miners for impairments not at all related or caused by coal mining. In addition, there are other ill-conceived and poorly thought out provisions which makes this bill clearly undesirable and I, therefore, request my colleagues to reject it.

(Mr. ESCH asked and was given permission to revise and extend his remarks.)

Mr. DENT. I might say to the gentleman there is no other way to determine how a man feels about an issue in a legislative body except to look at the books. I stand on the record of the votes on any statement I have ever made.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. McDADE).

Mr. DENT. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. McDADE).

(Mr. McDADE asked and was given permission to revise and extend his remarks.)

Mr. McDADE. Mr. Chairman I rise in enthusiastic support of this bill as it has been reported by the committee.

It seems to me that the time has long since passed when we can argue whether or not the Federal Government has a responsibility for trying to make right some of the wrongs that have occurred in the past.

One of these wrongs which did occur and which has occurred is whether or not people suffering from pneumoconiosis or black lung ought to be compensated in a special Federal program. It seems to me there cannot be any argument on that point.

I have talked to people in my State, which is a major coal producer in the United States, and whether you talk to the producers or whether you talk to the men who mine the coal or to those in the State government, all of them favor extending this program for an additional

2 years, until the end of 1974, before the State responsibility reasserts itself to take over the program.

The men we are talking about are mostly aged. I see them in my office every time I go back to my district. They are 60 or 65 or 70 years of age and are barely able to walk up a flight of steps because they mined the coal that made this Nation great in its very beginnings. It seems to me only just and responsible that we should pass this bill today without amendment by an overwhelming vote.

Mr. Chairman, the legislation before us today is a significant and positive contribution to a better Coal Mine Health and Safety Act, with specific reference to title 4 of that act.

It would, in the first place, correct an obvious inequity in granting benefits to those who should receive benefits under the black lung program. It was certainly never the intent of those of us who sponsored the Coal Mine Health and Safety Act, nor of Congress as a whole, to take any action which would deprive orphans of benefits under the act. Through a legislative oversight, however, the language of the act does not provide for such benefits for orphans. My own bill, H.R. 4236, was placed before Congress this year, and the provisions of that bill have been incorporated here as part of the black lung amendments.

In the second place, the legislation before us would extend for 2 years the timetable for transferring the black lung program from the Federal Government to the States. My own bill, H.R. 9130, which I placed before Congress this year, proposed to do precisely that, and I am pleased to see it included in the black lung amendments presently before us. This seems to me to be a very responsible proposal. In the creation of the black lung program, with its eventual transfer to each of the States which might be involved, we were well aware that the transfer could be accomplished only after the States had modified their own workman's compensation laws, had established administrative procedures for handling the working of the act, and had provided sufficient funding for the not insubstantial payments which would have to be made. All of us are aware of the great financial burdens which many of our States bear today, and it does not seem unreasonable to give them additional time to prepare for this increased caseload and the additional disbursement of money.

As a third provision, the legislation would exempt the benefits from black lung payments from the computation of income for the purpose of drawing social security benefits. The action of Congress in creating title 4 of the Coal Mine Health and Safety Act seems to me to be a clear expression of congressional intent to make black lung benefits a very special case. To permit the reduction of social security disability benefits when a miner is qualified for black lung payments would, in my opinion, negate the intent of Congress in writing the original act. This section, too, is worthy of support by my colleagues.

Finally, the legislation removes the requirement that X-ray evidence, or the

lack of it, be the sole determining requirement in the affirmation or the denial of black lung benefits. Testimony was heard by the committee to the effect that experts in the field of disabling pneumoconiosis judge that this situation may indeed be present in a miner even in the absence of positive X-rays. Studies in Germany, where mining is also a major industry, have been publicized in a recent magazine article, and the experts in that country agree with our own American authorities on the subject.

Because of this. I placed before the House this year H.R. 5472, which would grant a presumption of the existence of disabling pneumoconiosis in any miner who had worked a specific number of years in the mines. The present legislation does not go that far, but I believe this amendment to title 4 is a desirable change, and will receive my support as it deserves the support of my colleagues here in the House.

In summary, therefore, I would urge the passage of this legislation by the House today. The great industrial empire which we know as America today has been fueled by the product of the work of countless of thousands of miners. We have taken the fruit of their industry, the hard and soft coal of America, and we have translated it into the greatest industrial nation on the face of the earth. But in producing the coal that gave us the energy needs we required, many of those miners suffered disease known as pneumoconiosis.

It seems to me that America has a real debt which we owe these miners. The legislation before the House today is a just payment of that debt, and I urge its passage.

Mr. WAMPLER. Mr. Chairman, will the gentleman yield to me?

Mr. McDADE. I am delighted to yield to my colleague from Virginia.

(Mr. WAMPLER asked and was given permission to revise and extend his remarks.)

Mr. WAMPLER. Mr. Chairman, I rise in enthusiastic support of this legislation as it was reported by the committee, and I also desire to associate myself with the remarks of my friend and colleague from Pennsylvania.

Mr. McDADE. I thank the gentleman.

Mr. WAMPLER. Mr. Chairman, I wish to call the attention of the Members to H.R. 9212 that would extend Federal benefits to black lung victims in the coal industry under the Federal Coal Mine Health and Safety Act of 1969 for 2 years.

The problem, simply stated, is that very few coal mining States have so far enacted necessary State legislation to take over benefit payments. The possibility is that thousands of black lung victims may be deprived of benefits unless this Congress acts.

When the Congress enacted the health and safety law for coal miners, we directed that the Federal Government would pick up the great backlog of black lung victims and pay them disability benefits for the fact that they are no longer able to work because of their ravaged lungs. The job of paying such benefits was gradually to be assumed by the sev-

eral coal mining States. I must report to you that the States, so far, are not assuming their responsibilities.

H.R. 9212 also makes other changes and improvements in the law as it affects black lung victims so that, for example, the 2,000 children who are double orphans and whose fathers died of black lung may receive benefits.

Mr. Chairman, in the course of working in behalf of this vitally needed legislation I have been in continual contact with representatives of the coal miners of this country, including James Kmetz, a legislative representative for the United Mine Workers of America. I am convinced on the basis of my discussions with these representatives that the amendments to the black lung section of the health and safety law are necessary to protect the victims and their families of this dread occupational disease of our coal industry. I am told, for example, that Dr. Lorin E. Kerr, director of the union's department of occupational health, has conservatively estimated that as many as 4,000 coal miners a year are dying as the result of this illness.

It has come to my attention that some misinformed reporter has published a report that Mr. Kmetz has not been working for the passage of H.R. 9212 because he felt that if the bill did not pass his union would be blamed. This is a completely fallacious report because I know personally that Mr. Kmetz has worked and continues to work most diligently in behalf of H.R. 9212—and I might say all similar legislation for the benefit of the coal miners he represents.

As a part of my remarks, I include the following news release from the United Mine Workers of America:

UMWA NEWS

The United Mine Workers of America today called upon the U. S. House of Representatives to enact H.R. 9212 as quickly as possible without crippling amendments as "a matter of social justice and humanity for the nation's black lung victims."

The Union's call came in the wake of an unsuccessful effort several days ago to win adoption of the legislation under a suspension of the rules. The effort failed to obtain the required two-thirds majority by eight votes. The legislation is expected to be returned to the floor under an open rule in the next several days.

H.R. 9212 would extend federal benefits to black lung victims under the Federal Coal Mine Health and Safety Act for two years. Few states have so far enacted necessary legislation and the benefits of thousands of black lung victims will soon be endangered unless Congress acts.

Despite the legislative history of the Federal Coal Mine Health and Safety Act, the Department of Health, Education and Welfare has insisted upon interpreting black lung benefits as workmen's compensation. As a result, benefits due disabled miners under the Social Security Act are deducted from black lung payments. H.R. 9212 specifically would provide that black lung benefits shall not be considered workmen's compensation for purposes of the disability provisions of the Social Security Act.

H.R. 9212 would also authorize the use of techniques other than X-rays to determine the presence of black lung. Under the existing provisions of the law, thousands of black lung victims are denied benefits because X-ray tests are not conclusive. The U. S. Surgeon General has testified that miners who have

shown no evidence of the disease with the use of X-rays were frequently found to have contracted it upon autopsy.

The proposed legislation would provide black lung benefits to some 2,000 children who are "double orphans" as a result of the deadly affliction. The present law continues benefits to widows when black lung victims die, but denies them to the children when both parents become deceased.

"The provisions contained in H.R. 9212 are overdue. They would provide essential directives to HEW which has used all kinds of technicalities to refuse black lung benefits, and which has ignored the history of the law in denying social security disability benefits due black lung victims. In establishing payments for minor children, the legislation would make some amends for the death of the family bread-winner as a result of black lung. Finally, the need to continue the federal program at this time is imperative to insure continued benefits to thousands who have contracted terminal black lung and who can no longer hold gainful employment," W. A. (Tony) Boyle, UMW president said.

Mr. ERLÉNBOEN. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. REID).

Mr. REID of New York. Mr. Chairman, I thank the distinguished gentleman from Illinois for yielding to me.

I would like to rise in support of this bill and particularly to discuss title IV. I will endeavor to try to bring a little clarity to a subject that I think has gotten somewhat confused.

Earlier this year I wrote to the Secretary of HEW, Mr. Richardson, specifically on this legislation. He replied under date of September 29, referring with his letter a report from the Director of the Bureau of Disability Insurance in the Social Security Administration. This report in turn said several things. This relates to title IV.

First it acknowledged that—

In establishing criteria for evaluating total disability due to pneumoconiosis we were directed by Congress to use the best medical means available.

Second, it indicated that the regulations as published provide that there must be X-ray evidence of pneumoconiosis, thus reflecting a prevailing medical judgment that pneumoconiosis can be diagnosed in a living person only by use of the X-ray. But then it added this:

There is some minority medical opinion to the effect that disabling pneumoconiosis may exist in the absence of positive X-ray evidence thereof.

The report pointed out that the department was trying to carry out a pilot project in conjunction with the Public Health Service in order to determine "the effectiveness and feasibility of developing a simplified exercise test," and that Dr. Rasmussen had agreed to participate in this pilot project. The project the report notes, "is expected to lead the way to establishing additional methods and criteria for evaluating total disability under the black lung program, as well as to the availability of more adequate medical facilities in the coal mining areas to perform this testing."

I in turn have been in touch on the phone and in writing with Dr. Rasmussen. He points out very explicitly that—

No objective, informed member of the medical profession would suggest that the

chest x-ray has greater validity in diagnosing occupational lung disease than the GI x-ray in diagnosing peptic ulcer, the ECG in diagnosing myocardial infarction or the sputum examination in diagnosing tuberculosis. The point which, in my opinion is crucial, is that the tenacious clinging to x-ray evidence of pneumoconiosis is *medico-legal, not medical*. It is . . . not scientific medical judgment.

He goes on to say:

I challenge the statement that the prevalent medical judgment places this reliance on the chest X-ray, regardless of its practicality . . . I have been anxious to begin a study suggested by HEW and I will do so eagerly when the first patient has been referred to our facility.

Unfortunately, Dr. Rasmussen points out, the SSA has not awaited the results of this study before continuing the practice of denying requests for reconsideration without additional information. He notes that there are a number of factors that can lead to an overall diagnosis and that the X-ray is one, but definitely not the only one.

He believes in an overall professional diagnosis before making the judgment.

I think, accordingly, that section 4 is simple justice.

Mr. Chairman, the gentleman from West Virginia (Mr. HECHLER) has pointed this out time and time again and the subcommittee has pointed it out, that to permit the X-ray to be the sole basis is an injustice.

Mr. DENT. Mr. Chairman, I yield 1 minute to the gentleman from West Virginia (Mr. HECHLER).

(Mr. HECHLER of West Virginia asked and was given permission to revise and extend his remarks.)

Mr. HECHLER of West Virginia. Mr. Chairman, the gentleman from New York (Mr. REID) has made a very significant statement. I also subscribe to the sentiments of the gentleman from Pennsylvania (Mr. McDADE) and the gentleman from Virginia (Mr. WAMP-LEER).

I do not understand why there is such lavish devotion exclusively to X-rays in diagnosing pneumoconiosis; X-rays are helpful but not conclusive, and they are only one tool in the diagnosis. Pneumoconiosis simply interferes with the ability of the lungs to transfer oxygen into the bloodstream. I know of totally disabled living miners whose X-rays do not show any evidence of pneumoconiosis. Subsequently, these miners have had a few ribs removed by surgery—a painful operation—and then they have had biopsies, where pieces of their lungs were taken out. The biopsies have then conclusively proven that these totally disabled miners have pneumoconiosis.

Obviously, Mr. Chairman, we cannot force every living miner to have a biopsy. Yet Dr. Donald Rasmussen has indicated conclusively that the use of the arterial blood gas test with exercise is frequently the most reliable means of measuring whether or not a miner has pneumoconiosis, because such a test measures the oxygenation of the blood.

Mr. Chairman, section 4 of this bill is sound. This entire bill is sound. It will bring justice to the coal miners and to the families of the coal miners of this Nation.

Of course, I would like to see additional improvements which would enable widows to utilize testimony of friends and relatives where medical records have been destroyed. The Social Security Administration should be doing this already under the existing law.

But I feel that the many crippling amendments proposed should be defeated.

Therefore, I urge that this bill be adopted without amendment.

Mr. ERLÉNORN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. ERLÉNORN asked and was given permission to revise and extend his remarks.)

Mr. ERLÉNORN. Mr. Chairman, I have no desire to go over ground already covered. However, let me make just one or two additional points.

The gentleman from West Virginia (Mr. HECHLER) points out the fact that there is another alternative test in the living person to the X-ray and that is a biopsy. I would hope that they would look at this problem in this fashion: If you outlawed the use of the X-ray, you would be mandating the use of the biopsy. Do you want every coal miner to have a biopsy in order to determine whether or not he has this disease?

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. I cannot yield to the gentleman from Kentucky at this point.

Secondly, if you are going to expand these benefits and give them, in effect, to those with emphysema and with other lung-related diseases because you cannot use the X-ray any longer, you will increase the burden on the States when they ultimately take over.

Third, this legislation contemplates the benefit being paid in the future through workmen's compensation laws. If you limit the workmen's compensation setoff, then the men who are getting Federal benefits will get greater benefits than the man who is getting the State workmen's compensation benefits. The man who qualifies in the third year or fifth year, which is the year in which the claims are determined by the Federal Government would ultimately affect the obligation of the State government in having the burden to meet matching payments without the offset, and then when the State workmen's compensation takes over and the offset applies, he will have his pension reduced.

Mr. Chairman, in my opinion this points up the fact as to how ridiculous is the approach contained in the bill before us.

I submit there are really one or two things being attempted here. First of all, to extend benefits to those who are disabled from something other than pneumoconiosis by denying the diagnostic tool, the X-ray, and, secondly, to expand the benefits to the point where it would be unfeasible for the State to take it over under workmen's compensation. I believe if this passes, the States will never take it over.

Mr. MORGAN. Mr. Chairman, I rise in strong support of H.R. 9212. Those of us who represent coal mining areas have

too long been aware of the meaning of black lung not only to the miners who suffer it, but also to their families.

There are few who disagree with the provision the bill makes for taking care of the double orphans. This is a situation which obviously requires new legislation.

I believe that the Congress should make clear that we do not want black lung benefits to be considered as a workman's compensation plan. Coal miners are subject to this danger, and most other workers are not. This is a special hazard, and we should make special provision for those who suffer from black lung.

I urge particularly that we provide for some flexibility in the Social Security Administration's requirements with regard to X-rays. The purpose of this bill and of legislation previously passed is to take care of the people who in the normal course of their work have contracted this disease. The important thing is to take care of those who have black lung, not to establish diagnostic procedures by Government regulation or by legislation.

Finally, Mr. Chairman, let me say a word about the cost of doing what should be done and has to be done for the victims of black lung.

As long as those who mine coal are threatened with black lung, society ought to pay as much of the cost as it can.

The heaviest cost will always rest on the miners and their families. Men whose lives are shortened and who are physically unable to earn a living will always bear most of the cost.

Every man, woman, and child in the United States benefits from coal even though most of us have no occasion to buy it. Just as we benefit indirectly from coal as a source of power, light, and manufactured products, we ought to share the indirect cost of mining coal, such as the care of the miners who contract black lung and their dependents.

Mr. Chairman, I urge passage of this bill.

Mr. PRICE of Illinois. Mr. Chairman, we are in the midst of an emergency. The inequities that face thousands of coal miners and their dependents have not been alleviated adequately by the Coal Mine Health and Safety Act of 1969, the bill that was designed to help these people live with the debilitating reality of pneumoconiosis or black lung disease.

I do not mean to say that the act of 1969 was totally ineffective. On the contrary, I am merely saying that we now can see from subsequent medical evidence that black lung disease symptoms are not so easily detected by the use of a simple X-ray. Too many times have autopsies shown what X-ray did not.

The legislation we are considering today—H.R. 9212—is designed to modernize the 1969 act, bring it up to date in the light of its workings over the past 2 years. H.R. 9212 would prohibit automatic denial of benefits solely on the basis of chest X-ray results. Other additional methods, such as the arterial blood gas test, would have to be used to prove more conclusively whether or not the miner has the disease. The Congress must clarify its original intention by re-

ducing the power of the X-ray in final determination of physical condition, thereby restoring just administration of benefits to black lung victims formerly barred from relief by unfortunate interpretation of the law.

Mr. Chairman, I have been aware of the problem of inequitable administration in my home State of Illinois. According to the Social Security Administration, which handles the claims, the following figures have been cumulated to October 8, 1971. I think they may serve to shed light on the problem. Of the 19,493 claims filed and 18,204 claims processed in the State of Illinois, only 4,248 have been paid to miners, 3,648 to miners' widows, and 3,672 to additional dependents; 6,493 miners' claims and 3,369 widows' claims were denied. The total allowance/denial ratio was 45/55; for widows the ratio was 52/48; and for the miners themselves, the ratio was 40/60. These figures indicate the tragic insufficiency of the X-ray determination, for as the program has thus far been administered, a black lung victim too often has to be dead before he can receive any benefits. Mr. Chairman, I think my point is clear enough.

Furthermore, today's bill extends benefits to approximately 2,000 so-called "double orphans," the dependent children of a miner who died of black lung disease and his widow who is also deceased. The 1969 act provided that benefits be paid only to the minor or his widow with supplemental sums allowed for the care of dependent children. But experience has shown the hardships resulting from the lack of any provision for the care of double orphans.

In the interest of justice to sufferers of black lung disease—the miners and their families—I urge my colleagues to lend this legislation their enthusiastic support.

Mr. HELSTOSKI. Mr. Chairman, the legislation before us today goes a long way toward clearing up many of the administrative difficulties and inequities contained in the original black lung benefits program adopted by Congress in 1969. A much more compassionate approach to this problem should result from passage of H.R. 9212.

However, I would also like to associate myself with the separate views expressed by my colleague (Mr. REED) of New York in the committee report. As he points out, the Social Security Administration must recognize the human problems involved here and compassionately assist miners and their families in trying to prove their eligibility for black lung benefits.

After decades of neglect by coal mine operators, company doctors, and lax State officials, it is no surprise to find that miners in States such as Kentucky and West Virginia have difficulty in proving their eligibility for the benefits program. Testing facilities usually did not exist and medical records have often been scanty or misleading. The Social Security Administration must, therefore, bend over backwards and give the benefit of the doubt to the miner or his survivors. It would be most inequitable to deny benefits to eligible persons simply be-

cause, through no fault of their own, they have been the victims of neglect on the part of the coal bosses and State authorities.

Mr. Chairman, the legislation before us today is needed and overdue. Congress has done its part; now it is up to the Social Security Administration to exercise the maximum compassion in carrying out the provisions of this bill and the 1969 legislation. If that agency is not fully responsive to the needs of black lung disease victims and their survivors, then we must be prepared for further legislative action.

Mr. DENT. Mr. Chairman, this bill was before the House on October 18. At that time, it was considered under suspension-of-the-rules and did not receive the required two-thirds vote.

Although 227 Members voted "aye," 124 voted "nay." Most of the "nay" votes were inspired, I am certain, by the cost estimates thrown around on that day. We were told that the bill would cost \$1.2 billion over the next 6 years; that comes to \$200 million a year, or an average of \$16.6 million a month. Even though we disagree with those estimates, and consider them deliberately inflated, we are not troubled by them. After all, we are talking about compensating orphans of coal miners who have died from black lung, or who suffered from the ravages of that dread disease. We are talking about modifying the existing law with respect to their tragic plight, and that of their widows.

In any event, the bill—although receiving a substantial majority—was not approved at that time because two-thirds of us apparently did not agree on the priority of recognizing and reacting to destitution, despair, and human misery.

It was coincidental but fitting, Mr. Chairman, that the edition of the Washington Post on the morning following our action carried two stories of particular relevance to that action.

On page 3 of that edition, an article entitled "Farm Aid In '72 May Hit \$2 Billion" appeared. The entire article will appear at the conclusion of my remarks, but a few excerpts are quite appropriate at this point. In fact, the first two paragraphs tell enough:

Candidly acknowledging he hoped it would help President Nixon's re-election, Agriculture Secretary Clifford M. Hardin yesterday announced a 1972 farm program designed to slash feed grain surpluses and boost their sagging prices.

Hardin, who has been under heavy political fire because record-breaking 1971 grain production has depressed prices, told a news conference that next year's program of supports and production control for corn and other feed grains may cost \$1.8 billion and perhaps as much as \$2 billion. This compares with this year's estimated cost of \$1.2 billion.

Mr. Chairman, I can appreciate the fact that the expenditure of \$2 billion next year on supports and production control for corn and other feed grains might enhance President Nixon's re-election possibilities, as Secretary Hardin has acknowledged; but when I compare that \$2 billion for crops, with the \$135 million this bill will provide desperate people in fiscal 1973, I cannot help but be

concerned about the lack of compassion and wisdom in this Congress.

The second story in the Post I referred to, which appeared on the back pages of that day's edition, was entitled, "Miners Work To Keep Children From Mines." It was datelined, Grundy, Va.

Mr. Chairman, I could not find Grundy, Va., on a map, but I know where it is and what it is like because I have seen a hundred little coal towns just like it.

Grundy is the home of Virginia Pocahontas Mine No. 1, and near six other mines just like it. And the Dismal River—quite appropriately named, I might add, for the benefit of those of you who have never seen a coal town—winds its way by.

Grundy is also the home of Robert Musick, a coal miner for more than 20 years.

I've got five children, two of them in college.

The article quotes Mr. Musick as saying.

I can't make ends meet,

He continues:

I've got everything I own in hock to get them an education so they won't have to go through in the mines what I went through.

If I can get these two through, they might help me with the other three. That's what I'm hoping.

Mr. Musick earns \$7,500 to \$8,500 a year—average for a miner—depending on overtime and how many days he can not work. And when he leaves for work each day during the twilight hours—unlike the farmer on the other end of a Federal subsidy—he is not sure he will be coming home that night.

The article also quotes Ray Thompson, a coal miner for 27 years:

You need some things right away. Then it grows on you. And you have to eat. If you were to eat, you had to go to work in the mines.

Mr. Thompson is out of work waiting for the coal strike to be settled. He is hoping for a contract, as he says:

Will help you pay all your bills—provided the people that run the stores don't raise their prices and eat it all up.

About two weeks before a new contract, the stores raise their prices.

He said, and also added that it costs him \$12.37 just to go to work each day—his car, lunch, clothes, and taxes.

Maybe it was Chris Deel, however, who summed it up the best. Chris is 46 years of age, and first went into the mines at 18. He said:

A coal miner's got the most dangerous job in the world.

The younger generation don't want to go into the mines. They've heard about black lung. It's slow, but it's a killer.

Mr. Chairman, I have no eloquence beyond that simple statement of truth.

[From the Washington Post, Oct. 19, 1971.]

FARM AID IN 1972 MAY HIT \$2 BILLION

Candidly acknowledging he hoped it would help President Nixon's re-election, Agriculture Secretary Clifford M. Hardin yesterday announced a 1972 farm program designed to slash feed grain surpluses and boost their sagging prices.

Hardin, who has been under heavy political fire because record-breaking 1971 grain production has depressed prices, told a news conference that next year's program of supports and production control for corn and other feed grains may cost \$1.8 billion and perhaps as much as \$2 billion. This compares with this year's estimated cost of \$1.2 billion.

But Hardin said the new plan—which calls for a sharp increase in land retirement plus higher direct payment to farmers—would bring higher market prices for feed grain by next fall.

Hardin also announced that the 1972 government support plan for cotton will be basically unchanged from this year's program and that soy bean supports will be kept unchanged at the 1971 level.

Under the 1972 feed grain program, Hardin said he hoped to get producers of corn, sorghums and barley to idle a total of at least 30 million acres of crop land—more than double this year's retirement of 18.2 million acres by corn and sorghum growers.

[From the Washington Post, Oct. 19, 1971]

MINERS WORK TO KEEP CHILDREN FROM MINES—8,500 OUT IN SOUTHWEST VIRGINIA

(By William Nye Curry)

GRUNDY, VA.—Except for the whine of the ventilators still drawing the deadly fumes from the mine shafts, Virginia Pocahontas Mine No. 1, like six other mines near here, is closed, shut down by the United Mine Workers.

Along the Dismal River, threading through Buchanan County, long lines of empty coal cars stand idle, for the biggest industry in Southwest Virginia has been halted by 8,500 striking miners who say, "No contract, no work."

Among the reasons for a new contract cited by the miners are rising prices, making enough to give their children a chance to escape the mines, and obtaining better benefits for those who stay and bring up coal from the earth.

New talks begin Tuesday between the United Mineworkers Union and the coal mine operators, who have been accused of stalling by UMW president W. A. (Tony) Boyle. Negotiations in the 18-day-old strike broke off last Thursday.

"I've got five children, two of them in college," said Robert Musick, 40, a miner since he finished high school, who was sitting in the John L. Lewis Union Building near here.

"I can't make ends meet. I've got everything I own in hock to get them an education so they won't have to go through in the mines what I went through.

"If I can get these two through, they might help me with the other three. That's what I'm hoping."

Earning \$37 a day under the old contract, Musick makes \$7,500 to \$8,500 a year—average for a miner—depending on overtime and how many days he can't work.

He, along with 8,500 striking miners in Southwest Virginia and 72,000 others nationwide, want higher pay and more money to fatten the union's welfare fund for men stricken with various mining ills, and for their widows. The UMW has proposed a \$50-a-day wage and a doubling of the 40-cents-a-ton royalty the mine owners pay to the union's pension and welfare fund.

The miners get no strike benefits from the UMW until they have been out four weeks; until then, they dig into their savings and stretch their credit.

It is unknown what effect, if any, President Nixon's Phase II economy controls would have on a new contract. When the men talk of it here, they talk only of equitable controls—ones that include profit and interest rates.

Technically, the men are not on strike; they just don't have a contract under which to work, and are operating under the principle of "no contract, no work."

Musick works in Buchanan County, one of 4,200 miners in the county situated 350 miles southeast of Washington. Buchanan is the biggest producer of coal in the state, but getting at that coal is considered the most dangerous occupation in the country.

"You need some things right away," mused 51-year-old Ray Thompson as he reflected on the day 27 years ago that he started mining. "Then it grows on you. And you have to eat. If you were to eat, you had to go to work in the mines. There were no jobs in the city then."

"They had the key to your belly," said Arthur Welch of the coal companies. He has been a miner for 33 of his 50 years, and he says that "if I were to choose to leave here with no more skill than I have, I'd be a low-paid man at a factory." Even that would mean retraining, he said, and another miner observed to him that "nobody would retrain you at your age."

So they stayed with the mines, and now they're waiting for a new contract to be negotiated.

Some passed their days watching the World Series. Others went fishing or hunting in the rocky streams and mountain woodlands. This is rugged but scenic land—except for the great, black slag heaps of coal-mine wastes dumped over the years in the hollows among the hills.

A group of miners killing time in the Lewis Building talked of what they would do with money won under a new contract. Thompson, who has helped one son through college and hopes to do the same for three others, said it "will help you pay all your bills—provided the people that run the stores don't raise their prices and eat it all up."

"About two weeks before a new contract, the stores raise their prices," Thompson said. He added that it costs him \$12.37 just to go to work each day—his car, lunch, clothes and taxes.

"We've come a long way," said Welch, "but we've got a long way to go."

The men talked of black lung—coal dust in the lungs—and the general hazards of working in the nation's most dangerous industry. As they spoke, a miner who lost an eye to coal chip a year ago haggled in a little office with a UMW attorney over what compensation he would get for the injury, if any.

Four men sitting together—Thompson, Musick, Welch and Beecher Elswick—are all sons of miners; among them they have 18 children, and so far only one has become a miner. Others have grown up and left the area; the men hope the boys remaining at home will not have to work in the mines, and that means moving away.

From 1960 to 1970 Buchanan County recorded a 17 per cent drop in its population, from 38,724 to 30,490. The state's five other major coal-producing counties also sustained population losses.

All told, the six counties lost 32,520 people in the 10 years between censuses.

"A coal miner's got the most dangerous job in the world," says Chris Deel, 48, who first went into the mines at 18. Of his six children, three have moved to Michigan for factory work.

"The younger generation don't want to go into the mines. They've heard about black lung. It's slow, but it's a killer," said Deel.

Elswick, 45, who started work as a miner in 1948, said, "There's nothing else for them to do, but leave to get a job. And I don't want to see our kids get cut up, butchered up (in the mines)." He has a son, in the Navy and a married daughter.

"That's the reason I'm in hock," Musick said. "So I don't have to send my children to the mines."

Mr. BLATNIK, Mr. Chairman, it is most unfortunate that our distinguished colleague, JIM KEE, is absent on official business, on the authority of the House Public Works Committee, and cannot vote for the black lung bill. JIM fought long and hard for this bill, which is of great consequence to the people of West Virginia, and to coal miners everywhere.

Several weeks ago, before we had any idea this legislation had been scheduled for this week, I, as chairman of the House Public Works Committee, approved a series of important out-of-town hearings on watershed development, by the Conservation and Watershed Development Subcommittee, of which JIM KEE is chairman.

Up until the very last moment, we were juggling the timing of the trip around the bill's possible scheduling. When, at last, we were advised on sound authority that the bill would be delayed until later, we went ahead with the plan for the subcommittee's trip.

After the hearing had been scheduled and announced, the black lung legislation was brought to the floor this afternoon.

But for these pressing and long-promised hearings, JIM would have been here to vote on this extremely important legislation.

Mr. DENT, Mr. Chairman, may I inquire how much time I have remaining?

The CHAIRMAN. The Chair will state that the gentleman has 2 minutes remaining.

Mr. BEVILL, Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Alabama.

Mr. BEVILL, Mr. Chairman, I rise in support of this legislation.

(Mr. BEVILL asked and was given permission to revise and extend his remarks.)

Mr. BEVILL, Mr. Chairman, the purpose of H.R. 9212 is to correct certain defects in the administration of the Federal Coal Mine Health and Safety Act of 1969 and to provide for the extension of benefits in that act to the orphans of workers who die of pneumoconiosis.

If the act has not been imperfectly administered, it has at least not accomplished the intent of Congress when it was passed. What we are trying to accomplish here is a clarification of intent by certain amendments to title IV of the original act. For example, we did not intend the desperate need of individuals eligible for benefits under the act be set off against social security disability payments, thus neutralizing or decreasing one of the prime purposes of the act. It was our intent that "black lung" benefits be over and above those provided under workmen's compensation payments, otherwise the provision for special disability benefits would not have been written into the legislation in the first place.

In another amendment proposed under H.R. 9212, we are simply but importantly extending the timetable for certain provisions under section 3 for 2 additional years in order to permit the States an additional working period to assume their responsibilities under the act. While this will extend the time of Federal responsibility, we recognize the

problems inherent in some States in coming to grips with the benefit provisions of the program. We hope the States will use this additional period for resolve rather than delay.

The amendment to the first sentence of section 413(b) that "no claims for benefits under this part shall be denied on the basis of the results of a chest roentgenogram" is absolutely necessary. The fact that the Social Security Administration utilizes the services of a group of eminent radiologists in X-ray classification to reinforce the accuracy and consistency of X-ray readings under the black lung program is good but beside the point. They are still X-rays with their controversial and time-proven limitations in diagnosis for pneumoconiosis. As Dr. May Meyers states in his book on Occupational Health (William and Wilkins, 1969):

Physicians in general tend to place too great reliance upon the x-ray picture alone, and give too little weight to the clinical picture . . . That extent of medical disability can only be determined, with any degree of accuracy, by cardiorespiratory function tests, with which some physicians are still unfamiliar.

The amendment does not deny the usefulness, nor does it call for the elimination, of X-rays in the adjudication of claims for benefits: it calls by implication for an accurate medical diagnosis based upon all relevant medical tests in the disposition of claims.

Finally, while the original act permits augmented benefits to a miner or his widow for the support of their dependent children, there is no provision for support of the children should the father and mother die. While I am not now aware of a large number of such "double orphans," there is a great disadvantage created in such youngsters and the national responsibility for them as defined in the paragraphs in H.R. 9212 related to this problem. From a social consequence point of view the detailed provisions on this matter are clearly the most important components of the four-amendment legislative package.

If the health standards prescribed in title II of the Federal Coal Mine Health Safety Act are effective in eliminating the cause of lung disease, the personal burden of incapacitation as well as the burden of benefit payments will be reduced in the future. However, irreversible damage has already been done to miners, and we mean to correct that so far as it affects their dependent children. We should not allow conditions which have disabled the miner to also disable his children, either with respect to the necessities of life or educational opportunity. H.R. 9212 provides the necessary prescription and guidelines for preventing the conversion of occupational disease of the miner into socio-economic "disease" for his children. This spirit of this amendment is the spirit of the entire bill; I strongly urge the passage of H.R. 9212.

Mr. DENT, Mr. Chairman, I yield myself the remaining time.

Mr. Chairman, it has been said, and repeatedly said throughout history, that if a person lies that it is not bad if it is not believed, but when you get to be-

lieving a lie, then it becomes wrong, and everybody comes to think that it is right.

We are not in any sense or by any means even advocating the outlawing of the X-ray examination. We are adding to that, new scientific, medical, and science improvements.

The second lie which is deliberate, in my opinion, and ought not to be brought back time after time into this controversy, is that there is no such thing—

Mr. ERLNBORN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I do not yield to the gentleman because I have only about 1 minute remaining.

Mr. ERLNBORN. If the gentleman refuses to yield, then, Mr. Chairman, I demand that the gentleman's words be taken down.

Mr. CHAIRMAN. Does the gentleman insist upon his request?

Mr. ERLNBORN. Yes, I do, Mr. Chairman, where the gentleman said that it is a deliberate lie.

Mr. DENT. You do not know what the lie is yet, I have not repeated it. Read the RECORD, and let him get the words from the RECORD.

Mr. ERLNBORN. Mr. Chairman, I demand that the gentleman's words be taken down.

The CHAIRMAN. The Clerk will report the words objected to.

The Clerk read as follows:

Mr. DENT. The second lie which is deliberate, in my opinion, and ought not to be brought back time after time into this controversy, is that there is no such thing—

The CHAIRMAN. The Committee will rise.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. STEED, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, certain words used in debate were objected to and on request were taken down and read at the Clerk's desk, and he herewith reported the same to the House.

The SPEAKER. The Clerk will report the words objected to.

The Clerk read as follows:

Mr. DENT. The second lie which is deliberate, in my opinion, and ought not to be brought back time after time into this controversy, is that there is no such thing—

The SPEAKER. The Chair will state that the words "second lie" are not parliamentary, and without objection will be stricken from the record.

Mr. DENT. Mr. Speaker, what part of that was being stricken?

The SPEAKER. The Chair will state that the words are "the second lie."

Mr. DENT. Mr. Speaker, I have not said what the second lie is. How can you strike it?

The SPEAKER. The manner in which the gentleman referred to the words in the following statement: "the second lie which is deliberate." Without objection, the gentleman may explain his statement.

Mr. DENT. But I have not said what the lie is. I have not accused anybody here of lying. I have accused the second lie of being propagandized all over the State, and through different individuals, and the third lie and the fourth lie. I have not accused the gentleman. There have been many persons on this floor—not many on the floor—but many persons who have put out the word that this deliberately wipes out X-rays as a means of determining pneumoconiosis, and the bill does not do that. And if it does not do that it is all untrue.

The SPEAKER. The Chair will request the gentleman from Pennsylvania to state whether the gentleman was referring to any Member of the Congress.

Mr. DENT. Absolutely not, Mr. Speaker. I will be glad to have that cleared up. But I have not said or named a Member's name yet.

The SPEAKER. If the gentleman was not referring to a Member of the House—

Mr. DENT. I was not. I was referring to two lies, and they are lies, and they have been put out all over the State in letters and newspaper items.

The SPEAKER. But the gentleman from Pennsylvania states that he was not referring to a Member of the House?

Mr. DENT. The RECORD will show that I did not refer to a Member of the House.

The SPEAKER. Does the gentleman state again that he was not referring to a Member of the House?

Mr. DENT. Yes; if I said it, it would have been in the RECORD.

The SPEAKER. Then the Chair will state that the gentleman's words are not unparliamentary, and the Committee will resume its sitting.

Mr. HALL. Mr. Speaker, a point of order. I make the point of order that a quorum is not present.

The SPEAKER. The Chair is of the opinion that the point of order cannot be made at this point.

The Committee will resume its sitting.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 9212, with Mr. STEED in the Chair.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. DENT) has 1 minute remaining.

Mr. DENT. Mr. Chairman, in order that there be no mistake about what we are doing here, what I intended to refer to is a second lie that has been put in all the newspapers by the facts and figures that have gone out—I was going to say that there is no such thing as doing too much for a victim of pneumoconiosis by way of payments. That is all I was going to say. If that is something that is objectionable to anybody, I am sorry for that. But that is the way I feel about it. You cannot do too much for a man who is suffering after working for the benefit of this great Nation, with a disease that leaves no measure for relief whatsoever.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That (a) section 412(a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or of a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children."

(b)(1) Section 412(b) of such Act is amended by inserting after "widow" each time it appears the following: "or child".

(2) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'child' means an individual who is unmarried and (1) under eighteen years of age, or (2) incapable of self-support because of physical or mental disability which arose before he reached eighteen years of age, or in the case of a student, before he ceased to be a student, or (3) a student. Such term includes stepchildren, adopted children, and posthumous children. For the purpose of this subsection the term 'student' means an individual under twenty-three years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full time course of study or training at an institution which is—

"(1) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

"(2) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

"(3) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

"(4) an additional type of educational or training institution as defined by the Secretary of Health, Education, and Welfare.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration in which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose twenty-third birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period."

(3) Section 413(b) of such Act is amended by adding at the end thereof the following new sentence: "In carrying out his responsibilities under this part, the Secretary may prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act."

(4) Section 414(a) of such Act is amended by inserting "(1)" after "(a)" and by adding

the following new paragraph at the end thereof:

"(2) In the case of a claim by a child; this paragraph shall apply, notwithstanding any other provision of this part.

"(A) If such claim is filed within six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from December 30, 1969, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.

"(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.

"(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1974, whichever is the later.

"(D) No benefits shall be paid under this part to a child after December 31, 1974, if the claim therefor was filed after December 31, 1973."

Mr. DENT (during the reading). Mr. Chairman, I ask unanimous consent that this section be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The Clerk will report the committee amendment.

Mr. HALL. Mr. Chairman, I was on my feet to reserve the right to object. My sole purpose is to know whether the entire bill is to be considered as read and printed in the Record and open to amendment, or just the first section?

The CHAIRMAN. Just the first section.

Mr. HALL. Thank you, Mr. Chairman.

COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: strike out the language beginning on line 3, page 1, through line 2, page 6, and insert in lieu thereof the following:

That (a) section 412(a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or of a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of

the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term 'child' contained in section 402(g)."

(b) (1) Section 412(b) of such Act is amended by inserting after "widow" each time it appears the following: "or child".

(2) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'child' means an individual who is unmarried and (1) under eighteen years of age, or (2) incapable of self-support because of physical or mental disability which arose before he reached eighteen years of age or, in the case of a student, before he ceased to be a student, or (3) a student. Such term includes stepchildren, adopted children, and posthumous children. For the purpose of this subsection the term 'student' means an individual under twenty-three years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

"(1) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

"(2) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

"(3) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) an additional type of educational or training institution as defined by the Secretary of Health, Education, and Welfare.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration in which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose twenty-third birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period."

(3) Section 413(b) of such Act is amended by adding at the end thereof the following new sentence: "In carrying out his responsibilities under this part, the Secretary may prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act."

(4) Section 414(a) of such Act is amended by inserting "(1)" after "(a)" and by adding the following new paragraph at the end thereof:

"(2) In the case of a claim by a child, this paragraph shall apply, notwithstanding any other provision of this part.

"(A) If such claim is filed within six months following the month in which this paragraph is enacted, and if benefit payments

are made pursuant to such claim, such benefit payments shall be made retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from December 30, 1969, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.

"(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.

"(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1972, whichever is the later."

Mr. DENT (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AMENDMENT OFFERED BY MR. ERLBORN TO THE COMMITTEE AMENDMENT

Mr. ERLBORN. Mr. Chairman, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLBORN to the committee amendment: Beginning at page 9, line 6, strike the language through page 10, line 10, and in lieu thereof substitute the following language:

"(A) If such claim is filed within six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

"(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective

for the duration of eligibility during such period.

"(C) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

"(D) No claim for benefits under this part, in the case of a claimant who is a child of a miner or widow (as described in section 412(a)(3)), shall be considered unless it is filed within six months after the death of such miner or widow (whichever last occurred) or by December 31, 1972, whichever is the later.

"(5) Subsections 422 (c) and (d) of such Act are amended by striking out 'section 412 (a)' wherever it appears and inserting in lieu thereof 'section 412(a) (1), (2), and (4)'."

Mr. ERLBORN (during the reading). Mr. Chairman, in view of the fact that I have made a copy of the amendment available to the other side, I ask unanimous consent that further reading of the amendment be dispensed with and that the amendment be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. BURTON. Reserving the right to object, is this the 2-page amendment that, in the last paragraph of page 2, states:

(5) Subsections 422(c) and (d) of such Act are amended by striking out "section 412 (a)" wherever it appears and inserting in lieu thereof "section 412(a) (1), (2), and (4)".

Is this the amendment that the gentleman left at the Clerk's desk, and conforms in all respects with the amendment that he previously gave to our side?

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. BURTON. I yield to the gentleman from Illinois.

Mr. ERLBORN. I thank the gentleman for yielding. The gentleman is correct. It is identical with the amendment that I gave to the staff of the subcommittee some days ago. It is identical to the amendment that I gave to the gentleman today.

Mr. BURTON. Mr. Chairman, as for this one Member, I think the amendment clarifies the double orphans section and eliminates any ambiguities that the committee amendment may have contained. I withdraw my reservation.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLBORN asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentleman from Pennsylvania.

Mr. DENT. We have looked the amendment over, understand it perfectly, and we will accept it.

Mr. ERLBORN. Mr. Chairman, I do not desire to take any more of the time of the House in debate. I ask that the amendment be agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLBORN) to the committee amendment.

The amendment to the committee amendment was agreed to.

The CHAIRMAN. Are there further amendments to the committee amendment?

AMENDMENT OFFERED BY MR. HECHLER OF WEST VIRGINIA TO THE COMMITTEE AMENDMENT

Mr. HECHLER of West Virginia. Mr. Chairman, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. HECHLER of West Virginia to the committee amendment: Page 6, line 3, insert "(1)" after "That (a)".

Page 6, after line 23, insert the following new paragraph:

(2) Section 412(a) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5) If an individual's benefits would be increased under clause (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment."

The CHAIRMAN. The gentleman from West Virginia is recognized in support of his amendment.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I understand the amendment. However, if I am not mistaken, apparently there is an error in the draft.

Mr. HECHLER of West Virginia. Mr. Chairman, I beg the gentleman's pardon, but that has been corrected in the official copy.

Mr. DENT. It has been corrected in the gentleman's copy? The copy I have is not so corrected.

Mr. HECHLER of West Virginia. The copy as read by the Clerk was correct, I will advise the gentleman.

Mr. DENT. Mr. Chairman, if I may address the gentleman from Illinois, does the gentleman have a copy of the amendment?

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to the gentleman from Illinois.

Mr. ERLBORN. Mr. Chairman. I thank the gentleman for yielding.

Mr. Chairman, I am advised by the Social Security Administration that they are well aware of this language and indeed I believe gave the gentleman in the well help in drafting the language. It accomplishes a good purpose, which is to protect the rights of the dependent

minor children where there is some past disability on the part of the main recipient of the fund, be it the retired coal miner with the disease or the widow of the retired coal miner, and the Social Security Administration has no objection to this language and believes it will be helpful.

Mr. HECHLER of West Virginia. Mr. Chairman, the gentleman from Illinois has described my amendment much better than I could.

Actually, as the gentleman from Illinois indicated, it merely provides that the entire benefit should not be paid to the coal miner where dependents may be separated from the coal miner, or where it would be in the interest of dependents to have payments made in such a way to benefit the dependents. For example, if a coal miner is incompetent to care for his dependents, it is logical that he should not receive the increases the law now gives him by reason of additional dependents.

This amendment does not raise the total cost of the program, but merely brings justice into its administration.

Mr. BURTON. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to the gentleman from California.

Mr. BURTON. Mr. Chairman, I think it is a good amendment and I think we ought to accept it.

Mr. DENT. Mr. Chairman, if the gentleman will yield, the gentleman from California has said we should accept it, and we accept it.

Mr. HECHLER of West Virginia. Mr. Chairman, I quit while I am ahead.

(Mr. HECHLER of West Virginia asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia (Mr. HECHLER) to the committee amendment.

The amendment to the committee amendment was agreed to.

PARLIAMENTARY INQUIRIES

Mr. BYRNES of Wisconsin. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BYRNES of Wisconsin. Mr. Chairman, I have an amendment to page 10, lines 11 through 17. Is that to be presented at this time?

The CHAIRMAN. No.

Mr. BYRNES of Wisconsin. Then, the committee amendment has to be acted on first?

The CHAIRMAN. The gentleman is correct.

Are there any further amendments to the committee amendment to section 1?

Mr. BYRNES of Wisconsin. Mr. Chairman, another parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BYRNES of Wisconsin. Mr. Chairman, is my understanding correct that the committee amendment is one whole amendment to the whole of the bill, or are there several committee amendments pending?

The CHAIRMAN. This is the committee amendment to section 1.

Mr. BYRNES of Wisconsin. I thank the Chair.

The CHAIRMAN. The question is on the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

Sec. 2. (a) Section 412(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following: "This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act."

(b) The amendment made by this section shall be effective as of December 30, 1969.

AMENDMENT OFFERED BY MR. BYRNES
OF WISCONSIN

Mr. BYRNES of Wisconsin. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BYRNES of Wisconsin:

Page 10, strike out lines 11 through 17 and insert in lieu thereof the following:

Sec. 2. (a) Section 412(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following: "In applying section 224 of such Act with respect to benefits payable to an individual under this part, such individual's 'average current earnings' shall be considered to mean the larger of (1) his average current earnings as determined under the next to last sentence of subsection (a) of such section, or (2) one-twelfth of the total of his wages and self-employment income (computed under title II of such Act without regard to the limitations specified in sections 209(a) and 211(b)(1) thereof) for the calendar year in which he had the highest such wages and self-employment income during the period consisting of the calendar year in which he became disabled (as defined in section 223(d) of such Act) and the five years preceding that year; and the reference to 'clause (B) of the preceding sentence' in the last sentence of such subsection (a) shall be considered to include a reference to this sentence."

(Mr. BYRNES of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. BYRNES of Wisconsin. Mr. Chairman, it is with some trepidation that I involve myself in a matter brought to the floor by the Committee on Education and Labor. However, my amendment relates not so much to the black lung disease or to the legislation which is currently before us as to the Social Security Act.

Let me say at the outset that neither the language to be stricken, nor the replacement language, would in any way affect the amount of black lung compensation. That amount is going to be paid regardless of the addition I would make.

Recipients of black lung compensation can apply, as can other people who have injuries and are receiving compensation from other source, for disability benefits under social security. And it is only the benefit payable under the Social Security Act that I would affect in any way with this amendment.

The Committee on Education and Labor, in acting in this area, has affected the law as it exists under the Social Security Act. Therefore, I believe that is justification for injecting myself into this debate and suggesting what I consider to be an improvement in the bill

as it relates to our treatment of people who are beneficiaries under disability provisions of the Social Security Act and other State or Federal acts as well.

Mr. BURTON. Mr. Chairman, will the gentleman yield?

Mr. BYRNES of Wisconsin. I yield to the gentleman from California.

Mr. BURTON. I am constrained not to express my own view on the gentleman's amendment, but I should like to applaud and note that the gentleman from Wisconsin most accurately stated that under the basic black lung benefit bill we would change the law as it affects social security. The Social Security Administration has not been recognizing that change, and that hence gave rise to the proposed amendment of the distinguished chairman of our full committee.

Mr. BYRNES of Wisconsin. Mr. Chairman, it seems to me that section 2 could be subject to a point of order because it does affect payments made under the disability provisions of the Social Security Act. I did not pursue that course because I believe, first, that the matter should be faced on its own merits here in the House, and second, that the situation as it relates to the so-called disability offset provision can and should be improved.

This House passed H.R. 1, which provides a liberalization in that offset provision, and I think we have now a real opportunity to update that liberalization, in enacting this particular provision.

Mr. BURTON. Will the gentleman yield?

Mr. BYRNES of Wisconsin. I yield to the gentleman from California.

Mr. BURTON. As I understand the effect of the amendment, in virtually all cases, by bringing this act in conformity with the social security amendments that were sent to the other body, this would result in almost all cases in some increase in the social security disability payments and in no way would it in any possible respect result in any diminution of total benefits.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

(By unanimous consent, Mr. BYRNES of Wisconsin was allowed to proceed for 5 additional minutes.)

Mr. BYRNES of Wisconsin. Let me explain the situation in this way. As I do so, bear in mind that this amendment in no way affects the amount of the check for black lung, or the eligibility for black lung payments. The amendment relates only to the social security disability benefit payments which individuals might be otherwise entitled to.

Under present law—and this has been the case ever since the social security disability benefit program was instituted—the social security disability payment is limited in cases where the recipient is receiving additional disability payments of some kind under another Federal or State program.

In these cases, the social security disability payments are reduced by the amount that total monthly benefits under the two programs exceed 80 percent of the individual's average current earnings before he became disabled.

There have been two ways of determining an individual's average current earnings: By using the average monthly earnings for purposes of social security benefit computation; or by using his average monthly earnings over his 5 highest earnings years.

In H.R. 1, we liberalized this provision by adding a third alternative, under which an individual's average earnings could be based upon his highest year's earnings in a period consisting of the year in which he became disabled and the 5 preceding years.

This is a definite improvement, and my amendment would insure that this liberalization would apply in the case of black lung benefits regardless of what is done in connection with H.R. 1.

Let me suggest that by approving the bill before us without also approving this amendment, we would be saying that a person with black lung disease is in a different, and a more favored, situation, as far as social security disability payments are concerned, than any other individual in the country, no matter how disabled he may be. The "basket case" in an industrial accident, who is getting compensation under a State law and who is getting social security disability payment because he is totally and permanently disabled, would have a stricter rule applied to him.

We would put him in a less favored position than the black lung victim.

I have the greatest sympathy for black lung victims, but I wonder if we want to carve out a special treatment niche for them as far as the Social Security Act is concerned. Should not disability payments be on the same basis?

My amendment would provide for equalized treatment under the law, and I do not know, Mr. Chairman, what could be fairer, both to black lung victims and to other people in this Nation who are disabled and who are receiving benefits in addition to social security benefits.

Mr. Chairman, I hope this amendment is adopted.

Mr. PERKINS. Mr. Chairman, I move to strike the last word.

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. Mr. Chairman. I ask unanimous consent to proceed for 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. HALL. Mr. Chairman, reserving the right to object, I wish the gentleman would withhold that until the completion of his first 5 minutes; otherwise, I will be constrained to object.

Mr. PERKINS. Yes.

The CHAIRMAN. The gentleman from Kentucky is recognized for 5 minutes.

Mr. PERKINS. Mr. Chairman, when we enacted the so-called pneumoconiosis statute in 1969 we spelled out clearly in the report the fact that this statute, or the so-called black lung statute was not workmen's compensation.

H.R. 9212 establishes again in even stronger terms what the House said on December 17, 1969. That is all we are trying to do.

In the report back in 1969, on page 13, let me read this language:

This program of payments—maintained in the bill by a committee vote of 25 to 9—is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. Moreover, it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for the death, injury, or illness of workers.

Mr. Chairman, it was not until the President signed the bill that the Social Security Administration could find something to hang its hat on insofar as construing the black lung statute to be a workmen's compensation act so that it could reduce social security benefits in conformity with section 224 of the Social Security Act. I am sure you will see what a difficult task the Social Security Administration had in finding a legislative intent that black lung benefits were workmen's compensation, and to get down to it here is what they say—

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE. SOCIAL SECURITY ADMINISTRATION.

Baltimore, Md., August 4, 1970.

HON. CARL D. PERKINS,
House of Representatives,
Washington, D.C.

DEAR MR. PERKINS: This is in further reference to your letter of July 6 concerning the reduction in social security disability benefit payments in some cases when the beneficiary also receives federal black lung benefits.

I appreciate having the benefit of your point of view on this subject, and can assure you that careful consideration was given to the legal issues involved. A copy of our ruling being published on this matter is enclosed for your information.

As you know, the reduction provision does not apply where the miner has reached age 62, or where his disability began before June 1965. We estimate that only about five percent of black lung beneficiaries will be affected by this reduction provision, and many of these will have their social security disability benefits only partially reduced.

Hugh Johnson and Bernie Popick have told me of their recent meetings with you. I understand that it was agreed that in the near future they will meet again with you to discuss in more detail our experience in the payment of black lung claims in Kentucky, as well as the extent to which reduction in disability benefits has occurred in these claims.

I will be following closely these developments of special interest to you and will review with them fully the results of your further discussions.

Sincerely yours,

ROBERT M. BALL,
Commissioner of Social Security.

SECTION 224(a).—DISABILITY INSURANCE BENEFITS—REDUCTION FOR WORKMEN'S COMPENSATION—BLACK LUNG BENEFITS (PNEUMOCONIOSIS) 20 CFR 404.408

Held: Black lung payments under Title IV, Part B, of the Federal Coal Mine Health and Safety Act of 1969 constitute "periodic benefits" under a Federal workmen's compensation law, thus requiring the application of the reduction provision of section 224 (pertaining to disability insurance benefits) of the Social Security Act.

Advice has been requested as to whether payment of Federal Black Lung benefits:

under Title IV, Part B, of the Federal Coal Mine Health and Safety Act of 1969 constitutes payment of benefits under a workmen's compensation law or plan for the purpose of offset under section 224 of the Social Security Act.³

Section 224(a) of the Social Security Act provides for reduction of an individual's disability insurance benefits (and other benefits based on the individual's earnings), in accordance with a statutory formula, for months for which the individual is entitled to periodic benefits (or their equivalent) for a disability "under a workmen's compensation law or plan of the United States or a State"

That Federal black lung benefits are periodic benefits for a disability requires no discussion.⁵ Whether they are paid under a "workmen's compensation law or plan of the United States" is not wholly clear from the legislative history. Neither the committee reports on the bill (S. 2917) that was finally enacted, nor the debates in the Senate on the bill, offer an authoritative basis for determining the congressional intent regarding the nature of black lung benefits. In the debates in the House of Representatives, there are expressions both ways.

The question, however, appears to be clarified in some measure by the following excerpt from the statement by the President on December 30, 1969, when he signed the Coal Mine Health and Safety Act:

"First, workmen's compensation has been and should be a State responsibility. Title IV of this Act gives the Federal Government responsibility in this area. I want to emphasize very strongly that Title IV is temporary, limited and unique and in no way should it be considered a precedent for future Federal administration of workmen's compensation programs. With the exception of continuing benefit payments to claimants establishing eligibility during the period prior to December 31, 1972, all Federal responsibility in this area will expire within seven years.

"Next, this Act creates confusion about the consistency of standards in Federally administered disability programs. I have therefore instructed the Secretary of Health, Education, and Welfare in administering this program to apply wherever possible standards consistent with those under the existing Social Security Act disability program."

The quoted passages in the President's statement give direction for the treatment of black lung benefits for purposes of the disability program, strongly indicating that such benefits should be viewed to be comparable to benefits for other occupational diseases for offset purposes under Title II of the Social Security Act. The Administration's regulations treat injury and occupational disease both as bases for workmen's compensation offset. See Social Security Administration Regulations No. 4, section 404.408(d).⁶ Next, it is clear from the legislative history of section 224 that the basic purposes of the enactment of that section were twofold: one, to prevent erosion of State workmen's compensation programs, the other, to prevent duplication of benefits to the extent that it would be more profitable for a beneficiary not to work than to work. Neither of these purposes would be served by differentiating out occupational diseases.

Also bearing on the classification of black lung benefits for purposes of section 224 of the Social Security Act is the characterization given like diseases under other Federal statutes providing benefits which would be offset against Title II disability benefits. Thus, in *Urie v. Thompson*, 337 U.S. 163 (1949), the Supreme Court considered whether an occupational disease—silicosis—was a compensable injury under the Federal Employer's Liability Act, or whether only accidentally caused injuries were covered. The court held (pp. 186-7):

"While no decision of this Court involving the Federal Employers' Liability Act has dealt specifically with silicosis, the New York Court of Appeals, as we have indicated above, has sustained recovery under the Act for that disease when resulting from the carrier's negligence. . . . Moreover, other state and federal decisions have authorized recovery under the Act for injuries not caused by accidental or violent means. . . . Not all of these decisions could be sustained if the statutory term 'injury' were held to require that the harm suffered from the employer's negligence must be confined to that inflicted by 'external, violent and accidental' means or be an 'accidental injury,' as respondent's narrow view of the statute's coverage seems to contemplate.

"We would be most hesitant to adopt a construction of 'injury' as used in this Act which would overrule the decisions last cited or seriously impair their authority. We think they were made in the spirit the statute contemplated for its administration and application. That spirit is one not in conformity with importing nice distinctions in applying the Act's broad and general terms or cutting down their full scope by inference or implication.

"In our view, when the employer's negligence impairs or destroys an employee's health by requiring him to work under conditions likely to bring about such harmful consequences, the injury to the employee is just as great as when it follows, often inevitably, from a carrier's negligent course pursued over an extended period of time as when it comes with the suddenness of lightning. Silicosis is as much 'injury,' leading in time as certainly to permanent disability, as scalding from a boiler's explosion. We do not think the mere difference in the time required for different acts of negligence to take effect and disclose their harmful, disabling consequences would justify excluding the one type of injury from the Act's coverage or that such an exclusion would be consistent with its language, purposes, or unvarying standards of construction."

See also *A. T. and S. F. Ry Co. v. Preston*, 257 F.2d 933 (10 Cir., 1958).

The designation of the Federal black lung benefits as workmen's compensation would appear to be consonant with the pattern of Title IV in its entirety. The purpose of this title is to provide a benefit program, in cooperation with the States, for miners totally disabled due to pneumoconiosis and their surviving dependents (section 401 of the Act). Part B is an interim and short-term part of this program. The longer-term program is contained in Part C. This part provides that, beginning January 1, 1973, claims for benefits based on total disability or death due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law; but that if and when the State law does not provide adequate coverage (as defined by the statute), each operator of an underground coal mine in the State shall be liable under the Federal Longshoremen's and Harbor Workers' Compensation Act, and shall secure the payment of the benefits by either obtaining insurance or qualifying as a self-insurer. The Federal Government's involvement in this program is to set the standards for adequate coverage under the State workmen's compensation laws, and to pay benefits in cases in which the mine operator has failed to pay them or provide insurance to pay them (in which cases the Government may recoup the payments from the operator) or there is no operator required to secure the payment of the benefits.

The benefits provided by Part C clearly are workmen's compensation, payable under either a State or a Federal workmen's compensation law. The benefits are payable to the same class of beneficiaries as, and in amounts the same as or greater than, those

Footnotes at end of article.

specified in Part B (for a period of 4 years), for the same causes (sections 421(b)(2), 422).

Parts B and C thus seem to be complementary parts of a single program to provide compensation to miners and their dependents for the consequences of occupational disease sustained in the course of their employment.

Accordingly, it is held that the black lung benefit provisions in Title IV, Part B, constitute a Federal workmen's compensation law within the meaning of section 224 of the Social Security Act.

FOOTNOTES

¹ These benefits are designated *Federal Black Lung* benefits to distinguish them from those authorized by Part C of Title IV, which are designed in the main as State benefits.

² The Federal Coal Mine Health and Safety Act of 1969, hereinafter "the Act," was enacted as Public Law 91-173 on December 30, 1969, 83 Stat. 742 ff. Title IV of the Act is to be codified beginning at section 901 of title 30, United States Code.

³ 42 U.S.C. 424(a)

⁴ Section 224 of the Act, as pertinent here, provides that social security disability benefits must be reduced where the total of the applicant's benefits from sources specified in the statute would otherwise exceed the greater of either 80 percent of his "average current earnings," or the total social security benefits payable to the beneficiary and his dependents based on his disability. This provision does not apply where the beneficiary has reached the age of 62, or where his disability began before June 2, 1966. About 90 percent of black lung beneficiaries will not be affected at all by this reduction provision. The social security disability benefit of those who are affected will usually be only partially reduced.

⁵ Title IV, Part B, Section 412(a) (P.L. 91-173) provides that: "(a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code . . . The latter constitutes the Federal Employees' Compensation Act."

⁶ 20 CFR 404.408(d).

Mr. BYRNES of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. Wait just a moment and then I shall yield to the gentleman.

But, Mr. Chairman, here we have as many as 7,000 miners adversely affected by this erroneous interpretation.

Mr. BYRNES of Wisconsin. Mr. Chairman, will the gentleman now yield to me?

Mr. PERKINS. I yield briefly; yes.

Mr. BYRNES of Wisconsin. I think the gentleman recognizes the fact that when I addressed the committee I intentionally tried to avoid the use of the word "compensation." I did so because I knew it was a sensitive word.

But I would call the gentleman's attention to the fact that the offset provision under the Social Security Act is not called into play only under workmen's compensation cases, because—and let me read to you section 281—

Mr. PERKINS. I am well acquainted with that.

Mr. BYRNES of Wisconsin. If the gentleman will just let me finish this.

Mr. PERKINS. Certainly.

Mr. BYRNES of Wisconsin. It says that a workmen's compensation—and this is the important part—plan of the United States or a State for the payment of periodic benefits for a total of partial disability—and it seems to me that that certainly indicates a plan for black lung, for the payment of periodic payments for a total or partial disability, and that is what the law says when the offset provision is triggered, and that is what you have in the Social Security Act by section 2.

Mr. PERKINS. Let me say to my distinguished colleague, the gentleman from Wisconsin, that we held a conference report up some 3 weeks in 1969 to make sure that this offset provision was not applicable to people receiving disability payments under the Social Security Act.

Now, I am well aware—

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

(By unanimous consent, Mr. PERKINS was allowed to proceed for 5 additional minutes.)

Mr. PERKINS. Mr. Chairman, we have 7,000 miners affected here, and if a miner qualifies for black lung benefits, and earns more than \$1,680 a year, his monthly benefits under this statute will be reduced \$1 for every two earned between \$1,680 and \$2,880.

The benefits are further reduced by \$1 for every \$1 earned over \$2,880. To be more direct to the point, it is wrong to offset workman's compensation against social security benefits. Workmen's compensation is a payment to a worker in lieu of his common law right to sue in court for his injury, a right which he surrenders under workmen's compensation coverage. Social security disability compensation is insurance for which the recipient has paid a premium.

Mr. Chairman, I hold in my hand here letters—

Mr. BYRNES of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. Please let me continue. I have only a short time remaining.

Mr. BYRNES of Wisconsin. But the gentleman is referring to the Social Security Act.

Mr. PERKINS. That is correct, certainly I am referring to the Social Security Disability Act because it is social security disability checks that are reduced, it is not the black lung checks that are reduced. Certainly I am referring to the social security disability checks.

Now, it was intended that the individual entitled to black lung benefits, because of that relationship of coal miners working in the mines and contracting this disease, that they would be paid these benefits in addition to the social security disability benefits, and never was it intended that the social security disability benefits would be reduced.

But as the Black Lung Law is being administered, these payments are being reduced. This legislation will stop the reduction.

In numerous cases in my congressional district, and I think it is the same all over the Nation, where a coal miner is disabled and receives the benefits under

the disability statute of the Social Security Act, and is entitled to black lung benefits, after he becomes entitled to black lung benefits he is receiving even less today from both laws than he was receiving before he became entitled to the black lung benefits. I will cite some random cases, and will put them in the RECORD.

For example, here is the case of Gulf Newsome of Dema, Ky., and here is what he writes to me:

This was the way I was receiving social security checks before I got my black lung:—

And I am quoting from his letter, and Mr. Newsome states under that before his black lung claim was approved he was getting under social security:

Gulf, \$178.20; my wife, \$30.30, children, \$90.90.

A total of \$299.40, in social security.

He says:

I now receive a total of \$299.10 a month. I have not received fair treatment.

Thirty cents less.

And there are numerous cases of injustice where the Social Security Administration is simply not carrying out congressional intent.

I can read on here about cases of this type. I think it is terribly unfair to let the Social Security Administration itself rewrite a law so as to reach a result never intended by the Congress.

We made our intention clear in plain language in this report that I have read. All we are trying to do here, Mr. Chairman, is to clarify this situation and give justice to some 7,000 coal miners. It is not a big item—but there is a big principle involved.

Mr. Chairman, I ask that the amendment of the gentleman from Wisconsin be defeated.

Mr. ERLNBORN. Mr. Chairman, I move to strike out the last word.

(Mr. ERLNBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLNBORN. Mr. Chairman, the chairman of our committee continually makes the point that the present pneumoconiosis benefits were not intended to be workmen's compensation. He continually points to statements in the RECORD when we were considering the bill in the last Congress. As the gentleman from Wisconsin has so aptly pointed out, that is completely immaterial. It makes no difference whether workmen's compensation or any other plans for compensation on a periodic basis for disability—if it is such a plan for periodic benefits, the Social Security disability offset should and does apply under the present law.

What the gentleman from Kentucky is trying to do is to get a special benefit for one particular class. Those who are getting pneumoconiosis compensation will be able to also get full social security disability payments, without offset, a dual benefit that is not available to anyone getting workmen's compensation or disability compensation under any other type of plan.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. ERLNBORN. I will be happy to

yield to the gentleman, if the gentleman from Kentucky can say that this is going to treat these men the same as all other workers who are getting disability compensation.

Mr. PERKINS. I will say to the gentleman, you should understand the statute as we wrote it 2 years ago, 1969.

Mr. ERLBORN. Mr. Chairman, I will not yield to the gentleman unless he is going to address himself to that particular point.

Mr. PERKINS. I am going to address myself to your question—and this is, in general, we are saying that these benefits were not treated as workmen's compensation benefits legislatively in 1969 and the administration should not administer it so as to reduce Social Security benefits. That is what this argument is about—and everyone so understands it.

Mr. ERLBORN. Mr. Chairman, I refuse to yield to the gentleman any further.

I have already pointed out that that is completely immaterial.

Any periodic benefits whether they are called workmen's compensation or not are subject to the disability offset. The gentleman continually drags a red herring in front of the House. I think the gentleman, and I do not think there is any question about it, is attempting to get a special benefit for a certain class of workers.

When we were considering this in committee 2 years ago, what the cost of this program would be, one of the things the people on the other side of the aisle pointed out was that the actual cost of black lung benefits should be reduced because there was going to be an offset of savings in the social security funds because of the disability offset provision.

Now they come here and say that this was unintended. How did this happen? They computed that when they were determining the cost on the original bill.

This is going to have the ridiculous effect of saying that a man who is injured and is drawing State workmen's compensation is subject to a disability offset and a man who is drawing pneumoconiosis compensation is not.

Think of two coal miners who are working together side by side. One man is injured by a roof fall and has both legs cut off—he gets State workmen's compensation. He gets disability compensation from social security and the offset applies to him.

But the other man working alongside of him who has pneumoconiosis—or maybe under this bill has emphysema from smoking too much, and because we cannot use the X-ray for diagnosis he gets pneumoconiosis benefits—he gets more than the worker alongside of him who had two legs cut off. How ridiculous can you get? I think that points out how foolish this provision is.

Mr. Chairman, this is a good amendment offered by the gentleman from Wisconsin. It treats everyone equally and fairly. I hope that it is adopted.

Mr. DENT. Mr. Chairman, I rise in opposition to the amendment.

(Mr. DENT asked and was given per-

mission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, I think it is a question that this House has to determine, and maybe at some future date it may have to go into the broader question of disability benefits under compensation laws and their relationship to social security. Social security in reality is an insurance plan. There is a specified amount of return for a specified amount of payment into the fund. Your benefits depend upon how much you have to your credit in social security. There is nothing anywhere in that fund that says because you happen to be injured somewhere along the line under another act, which is in essence a property right, because while an individual receives compensation payments under workmen's compensation, he has given away his rights in court by agreeing to come under the act, so therefore it develops into a property right. How can we in good conscience cut a man's insurance rights and benefits away, because he is receiving something that is a property right to him? This is a question of whether or not we understand what we are saying and doing here.

Besides, the gentleman talks about the individual who has workmen's compensation and gets periodic payments. Under this particular act every miner receives exactly the same amount for the same injury. There is no such thing as being paid like, in some States, a total of 8 years limitation for any crippling injury under the Compensation Act or payment for life on either partial or total disability, as it is in my State of Pennsylvania. There are differing laws in differing States.

A person under social security receives a certain amount according to what he has paid in. We have payments under social security, because an individual has paid in for a number of years. In higher salaried positions he may receive a considerable amount. But then we have others who have worked in low income brackets and who receive \$70 a month. I checked recently and I found that in a year or so I shall be eligible for \$70.40 a month, because I have not been under the coverage of social security for a great number of years, having served in legislative bodies most of my life. However, a miner receives a minimum of \$306.10 if he has 3 children or 10 dependents. He receives the same amount, and that is the top limit under the law.

So then you say to this miner, "For your disability compensation you receive a certain amount, but it will be cut if you receive \$306.10 a month, and you get so much off the top here." I applaud the action of the gentleman from Wisconsin in moving to the single-year base. I think it is a step in the right direction. I think the bill that passed the House deservedly should be credited with that reform. But I do not agree with it in this specific legislation dealing with a permanent total injury that has only one ending, and that ending is in death.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. BYRNES).

TELLER VOTE WITH CLERKS

Mr. ERLBORN. Mr. Chairman, I demand tellers.

Tellers were ordered.

Mr. ERLBORN. Mr. Chairman, I demand tellers with clerks.

Tellers with clerks were ordered; and the Chairman appointed as tellers Messrs. BYRNES of Wisconsin, DENT, PERKINS, and ERLBORN.

The Committee divided, and the tellers reported that there were—ayes 158, noes 224, not voting 49, as follows:

[Roll No. 375]

[Recorded Teller Vote]

AYES—158

Abbott	Frey	Nelsen
Abernethy	Gettys	Nichols
Alexander	Gross	Pettis
Andrews,	Grover	Peyster
N. Dak.	Haley	Pirnie
Archer	Hall	Poage
Arends	Hamilton	Poff
Ashbrook	Hammer-	Powell
Baker	schmidt	Freyer, N.C.
Belcher	Hansen, Idaho	Price, Tex.
Bell	Harvey	Purcell
Betts	Hastings	Qule
Bow	Heckler, Mass.	Railsback
Brinkley	Henderson	Rarick
Broomfield	Hillis	Reid, N.Y.
Brotzman	Hogan	Rhodes
Brown, Mich.	Hosmer	Roberts
Brown, Ohio	Hutchinson	Robinson, Va.
Broyhill, N.C.	Jarman	Robison, N.Y.
Broyhill, Va.	Jonas	Rogers
Burke, Fla.	Jones, N.C.	Rousselot
Burleson, Tex.	Jones, Tenn.	Runnels
Byrnes, Wis.	Keating	Ruppe
Cabell	Keith	Ruth
Caffery	Kemp	Satterfield
Cederberg	King	Scherle
Chamberlain	Kuykendall	Schmitz
Chappell	Kyl	Scott
Clausen,	Latta	Sebelius
Don H.	Lent	Shoup
Cleveland	Lujan	Shriver
Collins, Tex.	McClure	Smith, Calif.
Conable	McClure	Smith, N.Y.
Conte	McCollister	Spence
Crane	McCulloch	Springer
Daniel, Va.	McDonald,	Steiger, Wis.
Davis, Wis.	Mich.	Stuckey
Dellenback	McEwen	Talcott
Dennis	McKevitt	Taylor
Devine	McKinney	Teague, Calif.
Dickinson	Mahon	Terry
du Pont	Mailliard	Thompson, Ga.
Edwards, Ala.	Mann	Thomson, Wis.
Erlborn	Martin	Thone
Esch	Mathias, Calif.	Vander Jagt
Findley	Mathis, Ga.	Whitehurst
Fish	Mayne	Wiggins
Fisher	Michel	Wilson, Bob
Flynt	Millie, Md.	Winn
Ford, Gerald R.	Minshall	Wyatt
Forsythe	Mizell	Wylie
Fountain	Montgomery	Young, Fla.
Frelinghuysen	Morse	Zion
Frenzel	Mosher	Zwack

NOES—224

Abourezk	Bolling	Culver
Abzug	Brademas	Daniels, N.J.
Adams	Brasco	Danielson
Addabbo	Bray	Davis, Ga.
Albert	Brooks	Davis, S.C.
Anderson,	Buchanan	de la Garza
Calif.	Burke, Mass.	Delaney
Anderson, III.	Burlison, Mo.	Dellums
Andrews, Ala.	Burton	Denholm
Annunzio	Byrne, Pa.	Dent
Ashley	Byron	Dingell
Aspin	Carey, N.Y.	Donohue
Aspinall	Carney	Dorn
Badillo	Carter	Dow
Begich	Casey, Tex.	Downing
Bennett	Celler	Drinan
Bergland	Chisholm	Dulski
Bevill	Clark	Duncan
Biaggi	Clay	Dwyer
Biester	Collins, Ill.	Eckhardt
Bingham	Colmer	Edmondson
Blanton	Conyers	Edwards, Calif.
Blatnik	Corman	Eilberg
Boggs	Cotter	Eshleman
Boiland	Coughlin	Evans, Colo.

Evins, Tenn.	Koch	Rooney, Pa.
Fascell	Kyros	Rosenthal
Flood	Leggett	Rostenkowski
Flowers	Long, Md.	Roush
Foley	McCloskey	Roy
Ford,	McCormack	Roybal
William D.	McDade	Ryan
Fraser	McFall	St Germain
Fulton, Tenn.	McKay	Sarbanes
Fuqua	McMillan	Saylor
Gallifanakis	Matsunaga	Scheuer
Gallagher	Mazzoli	Schneebeil
Garmatz	Meeds	Seiberling
Gaydos	Melcher	Sikes
Gialmo	Metcalfe	Sisk
Gibbons	Mikva	Skubitz
Gonzalez	Miller, Calif.	Slack
Grasso	Miller, Ohio	Smith, Iowa
Gray	Minish	Snyder
Green, Oreg.	Mink	Stagers
Green, Pa.	Mitchell	Stanton,
Griffin	Mollohan	James V.
Griffiths	Monagan	Steed
Gude	Moorhead	Steele
Hagan	Morgan	Stokes
Hanley	Murphy, Ill.	Stratton
Hanna	Myers	Stubblefield
Hansen, Wash.	Natcher	Sullivan
Harrington	Nedzi	Symington
Harsba	Nix	Teague, Tex.
Hathaway	Obey	Tiernan
Hays	O'Hara	Udall
Hechler, W. Va.	O'Neill	Van Deerlin
Heinz	Passman	Vanik
Helstoski	Patten	Waggonner
Hicks, Mass.	Pepper	Waldie
Hicks, Wash.	Perkins	Wampler
Hoffield	Pickle	Ware
Horton	Pike	Whalen
Howard	Podell	Whalley
Hull	Price, Ill.	White
Hungate	Pucinski	Widnall
Hunt	Quillen	Williams
Ichord	Randall	Wilson,
Jacobs	Rees	Charles H.
Johnson, Calif.	Reuss	Wolf
Johnson, Pa.	Riegle	Wright
Karth	Rodino	Yates
Kastenmeier	Roe	Yatron
Kazen	Roncalio	Young, Tex.
Kluczynski	Rooney, N.Y.	Zablocki

NOT VOTING—49

Anderson, Tenn.	Hébert	Pryor, Ark.
Baring	Jones, Ala.	Rangel
Barrett	Kee	Sandman
Blackburn	Landgrebe	Schwengel
Camp	Landrum	Shipley
Clancy	Lennon	Stanton,
Clawson, Del	Link	J. William
Collier	Lloyd	Steiger, Ariz.
Derwinaki	Long, La.	Stephens
Diggs	Macdonald,	Thompson, N.J.
Dowdy	Mass.	Ullman
Edwards, La.	Madden	Veysey
Goldwater	Mills, Ark.	Vigorito
Gooding	Moss	Whitten
Gubser	Murphy, N.Y.	Wylder
Halpern	O'Konski	Wyman
Hawkins	Patman	
	Pelly	

So the amendment was rejected.

AMENDMENT OFFERED BY MR. MICHEL

Mr. MICHEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MICHEL: Page 10, after line 17, insert the following new section:

SEC. 3. (a) Sections 401, 411(c)(1), 411(c)(2), and 422(h) of the Federal Coal Mine Health and Safety Act of 1969 are each amended by striking out "underground".

(b) Sections 402(b), 402(d), 422(a), and 423(a) of such Act are each amended by striking out "an underground" and inserting "a" in lieu thereof.

(c) The amendments made by this section shall be effective as of December 30, 1969.

And renumber the succeeding sections accordingly.

(Mr. MICHEL asked and was given permission to revise and extend his remarks.)

Mr. MICHEL. Mr. Chairman, the provisions of the Federal Coal Mine Health

and Safety Act relating to the black lung program currently limit the program to underground miners. This means that those who have worked exclusively in surface mines—the strip miners—are presently ineligible for program benefits.

Now, this would be fair if we knew that strip miners cannot be afflicted with pneumoconiosis—new-mo-cone-e-osis—but the fact of the matter is that we have no idea whether or not those who work only in surface mines can contract this disabling disease.

While the very limited prevalence studies conducted by the Public Health Service have shown little incidence of pneumoconiosis among surface miners generally, and no evidence of it among those miners who had worked exclusively above ground, no one has ventured to contend that strip miners are not subject to the disease.

On the contrary, it would seem reasonable to assume that those strip miners who have worked in extremely dusty situations—at the tipple, for example—for long periods of time, might be subjected to conditions similar to those which result in the development of black lung among underground miners.

In any case, where the possibility of the disease exists, a miner should not be denied the benefits of the black lung program because of circumstance—simply because he has always worked above the ground rather than below it. The amendment I am offering would correct this inequity by striking the word "underground" from the present law, so that the program would apply to all coal miners, regardless of the physical characteristics of the mine.

This does not mean, of course, that all strip miners would automatically become eligible for black lung benefits. Like all other coal miners, they would have to undergo the same tests, the same examinations, and would be diagnosed on the same criteria applicable to other coal miners.

The Public Health Service prevalence studies I mentioned indicate that we could expect few, if any, strip miners to qualify for benefits under the program. But, if even one coal miner has been excluded from the program because he worked only above the ground, then I believe equity demands that we change the law to include him. Following, Mr. Chairman, are excerpts from the memo I referred to:

MEMO IN RE PREVALENCE OF COAL WORKERS' PNEUMOCONIOSIS AMONG U.S. STRIP MINERS

Data were obtained from the Public Health Service and from *Pulmonary Reactions to Coal Dust* (Academic Press, 1971), edited by Dr. Marcus M. Key, Director, Bureau of Occupational Safety and Health, U.S. Department of Health, Education and Welfare, and Lorin E. Kerr, United Mine Workers of America, and Merle Bundy, U.S. Steel Corp.

In the above publication, the editors cited prevalence studies conducted between 1963 and 1965 on 3,602 coal miners in the U.S. Of these, some 617 were surface miners, including 67 strip miners. Radiological findings indicated definite pneumoconiosis in 11 of the 617 surface miners—1.8%—compared with positive findings in 287 or almost 10% of the 2,978 underground miners tested (see attached tables).

Prevalence studies conducted this year by the Public Health Service found no evidence of pneumoconiosis among exclusively surface miners. Miners were ranked on a scale of 0 to 4, with category 3 indicating simple pneumoconiosis.

A. Of 523 Pennsylvania anthracite miners, 53, or 10.1% had worked only above ground. None of these were included in categories 3 or 4.

B. Of 1,461 Pennsylvania bituminous miners, 94, or 6.4% had worked only on the surface. None were included in categories 3 or 4.

C. Of 2,216 West Virginia bituminous miners, 211 had worked only on the surface. None were included in categories 3 or 4.

The data indicates, therefore, that the incidence of pneumoconiosis among surface miners could range up to 1.8%. Using the rough estimate of 25,000 surface miners in the U.S., the number affected could range as high as 450 individuals. Since only a portion of surface miners are strip miners, the number of strip miners affected would probably be considerably less.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Pennsylvania.

Mr. DENT. I will say to the gentleman that we do not intend in any manner to change the criteria for payments.

Mr. MICHEL. Excuse me?

Mr. DENT. We do not intend to in any way change the criteria for payments. In other words, a man must have pneumoconiosis in order to qualify under the act.

Mr. MICHEL. I have no intention to change the criteria for eligibility in any way whatsoever.

Mr. DENT. Mr. Chairman, the gentleman's amendment is satisfactory to me and I am sure the committee on our side will accept it.

Mr. MICHEL. I thank the gentleman from Pennsylvania.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I shall be happy to yield to my colleague from Illinois (Mr. RAILSBACK).

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. I thank the gentleman for yielding.

Mr. Chairman, I simply wish to commend my colleague for his amendment. There are many people who would not otherwise be covered by legislation were it not for this amendment. I know that the gentleman has many strip miners in the district which he represents. There are also many in the 19th Congressional District, which I represent and which happens to be contiguous to that of the gentleman from Illinois (Mr. MICHEL). Such strip miners deserve to be protected. I want to congratulate the gentleman from Illinois for his much-needed amendment.

Mr. ERLÉNORN. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Illinois.

Mr. ERLÉNORN. Mr. Chairman, I thank the gentleman for yielding.

I believe the amendment offered by the gentleman from Illinois (Mr. MICHEL) is good. I would point out that in

England, for instance, they refer to the disease not as coal miners' pneumoconiosis; but coal workers' pneumoconiosis, because they work with coal whether underground, or in a ship being loaded with coal, or at the tippie, as the gentleman referred to, and are subject to the same disease, pneumoconiosis.

I commend the gentleman for this amendment.

Mr. SCHERLE. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Iowa.

Mr. SCHERLE. Mr. Chairman, I thank the gentleman for yielding.

(Mr. SCHERLE asked and was given permission to revise and extend his remarks.)

Mr. SCHERLE. Mr. Chairman, I rise in support of this amendment.

We all support safety legislation; however, to inject Federal workmen's compensation would be wrong.

This section of the bill would establish a special system of Federal workmen's compensation payments for a small group of employees in one industry who are affected by one specific disease. For humanitarian reasons alone we are all sympathetic with any employee who is afflicted with an occupational disease—or, for that matter, with any disease, whatever its origin. Everyone is in agreement that the victims of occupational diseases should be adequately compensated; however, this historic, far-reaching proposal for disabled miners is the wrong way to solve this problem.

The great dangers with this bill are twofold. First, it would undermine our State workmen's compensation system. Second, it would begin a new special social security disability program on top of our existing Federal system.

The State workmen's compensation system was our first form of social insurance. Every State has its own system of providing benefits for work-connected injuries and diseases. Such systems have been functioning successfully for over 50 years. They are still being refined and perfected. This is a continuing process.

There is universal agreement that our State workmen's compensation laws should provide adequate compensation for on-the-job diseases as well as on-the-job injuries. Thirty-eight of our States have broad occupational disease coverage for disabled employees. The remaining States list a schedule of compensable diseases. Improvements are being made in these laws by the State legislatures whenever necessary.

Section 112(b) of this bill would start a new system of Federal workmen's compensation payments for retired or active coal miners with pneumoconiosis. If this section is not struck, it will be the first step toward the ultimate federalization of all workmen's compensation.

This bill offers no incentive or encouragement to the States to further improve their occupational disease laws for coal miners. In fact, if the Federal Government is going to foot the bill, the States will be encouraged to do nothing.

The payments made would be discriminatory. They would apply only to workers suffering one specific disease in

one specific industry. This is a step backward. For 50 years we have been working in this country for broad occupational disease or disability benefits. It would be a mistake to begin legislating special payments for this or that group of employees, in this or that industry, for this or that particular disease.

The other great problem to consider is whether this type of legislation would not start a second fragmentary Federal social security disability program. We already have a broad disability program under our social security system. Our citizens are entitled to payments when they are totally disabled without regard to whether the disability arose on or off the job. Section 112(b) of this bill takes no recognition of the fact that coal miners who are totally disabled from black lung disease can apply for disability under the Social Security Act. In fact, a number of the disabled coal miners who appeared at the hearings stated they were receiving monthly social security disability payments.

The great danger here is that we would be starting a third system of governmental disability insurance on top of the already existing State workmen's compensation system and Federal social security disability system. We begin with coal miners with black lung, but where do you stop? The list of industries and occupational diseases is endless. If this legislation is adopted each Congress from now on will be faced with special pleas for special workmen's compensation payments to special categories of employees in various industries for specific diseases. Without question, workmen's compensation should remain the responsibility of the States.

This section of the bill would set an unwise precedent. For the reasons cited, I strongly urge that we not start down this dangerous road.

Mr. MICHEL. Mr. Chairman, I ask for a favorable vote on my amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. MICHEL).

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Sec. 3. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended—

(1) by striking out "1971" where it appears in section 414(b), and inserting in lieu thereof "1973";

(2) by striking out "1972" each place it appears and inserting in lieu thereof "1974";

(3) by striking out "1973" each time it appears and inserting in lieu thereof "1975", and

(4) by striking out "seven" where it appears in section 422(e) and inserting in lieu thereof "nine".

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that section 3 be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

AMENDMENT OFFERED BY MR. ERLENBORN

Mr. ERLENBORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN: Beginning at page 10, line 18, strike the language through page 11, line 2, and renumber the subsequent sections accordingly.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, I rise in opposition to section 3, and in support of my amendment to delete this section from the so-called double-orphan bill. My reasons are three-fold, but before enumerating them let us carefully examine what section 3 would do.

It would extend Federal participation in the black lung program an additional 2 years. Under present law the program will be shifted from the Social Security Administration and Federal responsibility to the States and to the mine operators for claims that are filed after January 1 of 1973.

This extension called for in section 3 should be rejected because there is no evidence in the Record or the hearings, or elsewhere, that such an extension is needed.

This extension represented in section 3 of the bill represents a backward step, since the program was inaugurated with the view that the States would take it over. In my view an extension of Federal participation of this program is the first step in federalizing the entire program. It is an indication that we never intend to turn it over to the States, even though it has cost so far some \$500 million, and will be extended at a much greater expense, an annual expense to the general funds of the U.S. Treasury.

There is no separate fund involved here. There are no payments by the States, no payments by the coal mine operators.

On January 22 of this year the chairman of the full committee, the gentleman from Kentucky (Mr. PERKINS) introduced H.R. 18 to extend for an additional year the existing program for black lung benefits. This has already been supplanted by requests for this 2-year extension.

You do not need a crystal ball to predict 2 years from now the gentleman will be back asking for still another extension. It is about time that Congress got out of the workmen's compensation program.

No one disputes that both the proponents and opponents of the original program understood that Federal participation was to be an interim measure, and the payments for work-related injuries fall properly within the realm of State workmen's compensation laws.

Finally, it should be noted that the failure to grant this extension does not mean that payments to black lung sufferers will cease.

They will continue. If the State does not have a comparable workmen's compensation benefit for black lung, the victims will then still be entitled to have Federal participation to the extent of having their claims adjudicated and payments made on their behalf if the States do not have a program and the cost then would be borne by assessments by the

Federal Government against the coal mine operators.

With the Federal Government's deficit running as large as it is, I see absolutely no reason why we should extend payments from our general revenue funds. These benefits are occupationally related and ought to be treated the same as all other workmen's compensation benefits.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman yield for a question?

Mr. ERLENBORN. I yield to the gentleman.

Mr. ANDERSON of Illinois. Does the gentleman have a breakdown as to what this would mean for the States financially? We are experiencing, as the gentleman well knows, in our own State of Illinois at the present time something of a financial crisis. Welfare cuts have had to be made and other cuts have had to be made.

What would this add to the State's financial burden if we were to turn it back to the States?

Mr. ERLENBORN. My understanding, I would say in response to the gentleman, is that workmen's compensation is not paid for out of the State's general fund but is paid for through premiums paid for by the employer.

So, in my opinion, this would not be an expense to the State.

Mr. ANDERSON of Illinois. It would not exacerbate the financial crisis that is faced by many States?

Mr. ERLENBORN. That is exactly right. What this provision really does is grant relief for the coal mine operators who would otherwise be paying the cost of the workmen's compensation program, at a time when the coal mines are operating at maximum capacity. The cost of coal has been increased and there has been an ever-increasing demand for coal and I see no reason to bail out the coal mine operators in this fashion by the utilization of the taxpayers' funds from the general treasury.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman.

Mr. ASHBROOK. I am particularly glad that the gentleman from Illinois made this point because in the previous colloquy, I should say, the rebuttal that the gentleman from Pennsylvania made to my remarks, he talked in terms of savings of money. I never at any time mentioned savings. I talked in terms of where the burden should properly be. If the gentleman recalls correctly, I stated that this approach would remove the burden from the coal mine operators.

Mr. ERLENBORN. Mr. Chairman, I am glad the gentleman from Ohio has set the record straight in that regard.

An awful lot of debate here today has entailed answering comments that were never made or questions that were never asked. I would not accuse the gentleman from Pennsylvania of purposefully twisting the remarks of the gentleman from Ohio or deliberately in any fashion doing that, but I am afraid that he has not been listening as carefully as he might and he is only too ready to assign motives to other people.

Mr. DENT. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would say to the gentleman from Illinois that if what you accuse me of are faults—I deny them. If they are credits—I accept them.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I do not yield at this time.

Mr. Chairman and members of the committee, apparently the amendments that have been defeated in committee time and again are to be repeated here so we can look forward to at least 2 or 3 or more amendments on this subject.

I only intend to say to the House that the committee has reviewed this amendment. We know that not one single State in the Union has been able to swing their legislative operation into gear since March when the record contained the criteria set up for compliance by the States.

We are meeting here today—right on Capitol Hill—with a committee of Pennsylvania legislators and those who are involved in this particular division of the Pennsylvania State government, for the 4th time, trying to work out some kind of plan so that Pennsylvania, which is the most advanced State in the Union in the matter of payments for black lung, can work its laws and change its legislative enactments in order to comply with and come under the Federal act.

No matter when the responsibility is turned over to the States, all of those who are included in the Federal list will continue to be paid out of the Federal Treasury. The only new payments that will be made by the States will be those that come after the Federal obligation expires.

The House in its wisdom accepted the responsibility for that great population of miners who drifted from State to State but were eligible for payments, and we are paying it out of the Federal Treasury. The payments, when the program reverts to the States, will come, yes, in some instances, from a payment of employer to employee, but in our own State, when we started the act in Pennsylvania, we paid it out of the public treasury of Pennsylvania until we were able to ascertain the responsibility per miner, per operator, per employer. We could not do it in any other way. That is the only manner in which you can do it. In 2 years we fully expect that every State in the Union will be able to implement their laws in complying with the mandate that the States takes over all new claims.

There is a bright side of this thing. This is a disease that will die out with the present victims of pneumoconiosis. We have reached the 3 milligrams of dust level in most of the mines of the United States. We have reached 2 milligrams, which the English said could never be reached. We have reached a virtual zero point in dust in some of the mines in this great country of ours.

There is only one way a person can get black lung and that is from dust, and we are eliminating the dust. There will not be any big load on the States when eventually the States comply with the law. Right now it is impossible. They

do not have the law or the machinery to do so. They need time. I beg of you to defeat the amendment.

Mr. GREEN of Pennsylvania. Will the gentleman yield?

Mr. DENT. I yield to the gentleman from Pennsylvania.

Mr. GREEN of Pennsylvania. Will the Federal Government continue to pay the claims filed in 1972, and through what department, since the responsibility of the Department of HEW ends on December 31, 1972?

Mr. DENT. Yes. The Department of HEW, under current law, is responsible for those claims filed only during 1972, and the Labor Department is ultimately responsible for all those filed after 1972.

Mr. GREEN of Pennsylvania. Will the U.S. Department of Labor accept claims filed after January 1, 1973, from claimants who are disabled but were employed years ago and have no current employer to hold responsible?

Mr. DENT. Yes.

Mr. GREEN of Pennsylvania. Will the U.S. Secretary of Labor, in approving a State plan, require total funding by employers or can funding be shared by the employer and the State?

Mr. DENT. The Secretary will require total funding. If a State makes payments as well as an employer, the State share can reduce the operator's obligation that amounts to joint funding.

Mr. GREEN of Pennsylvania. Will the Federal Government continue payments after 7 years if, first, a State has an approved plan, and, second, if a State does not have an improved plan?

Mr. DENT. Yes, in either situation, provided the claim was filed during the eligible period.

Mr. GREEN of Pennsylvania. On and after January 1, 1973, must a State that has a statutory black lung program provide benefits equal to Federal payments for claimants rejected or terminated under the Federal program but eligible under a State program?

Mr. DENT. No. If a State wants to provide benefits for claimants other than those in the Federal law, the State is not obligated to provide equal benefits for those other claimants as well.

Mr. GREEN of Pennsylvania. I thank the gentleman.

Mr. BURTON. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from California, if I have any time remaining.

Mr. BURTON. Is it not a fact that if this provision as reported out by the committee is not sustained, that starting January 1 the Secretary of Labor will have to directly go to every coal operator individually in the country to enforce the provision which will require those coal operators to comply with the terms of the bill and work out payment arrangements for direct workmen's compensation premiums through the Secretary of Labor? Those who operate the coal mines state there has not been a single large coal mining State legislature that has been able to comply with the terms of the bill, and they are asking for only enough time for the State legislatures to enact wise legislation.

Mr. DENT. The gentleman is correct.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. FLOOD. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Pennsylvania is recognized.

Mr. FLOOD. Now, I did not intend to do this, but I would like to talk to my friends on the other side of the aisle. I have a right to. I have both nominations. Everybody in a sense is really trying to draw blood here, and so will I. I have a very long fuse, after nearly 30 years here. I do not get mad much about anything any more, except when Mrs. Flood says, when she gets mad at me, she is going to cut off half of my mustache. That would be a dirty trick—cut off half. But let me show how far some of these people have gone in their deadpan, sanctimonious, glib presentation. Hold your watch, boys, and if you have gold in your teeth, keep your mouth shut.

The gentleman from Illinois (Mr. MICHEL)—and it is "Mishel" and not "Mikel"—is the ranking Republican on the Appropriations Subcommittee that handles this bill, and I am the chairman. If the gentleman from Kentucky (Mr. PERKINS) and the gentleman from Pennsylvania (Mr. DENT)—and the Members are going to defeat this amendment and pass their bill—come back to MICHEL and FLOOD and we are here, with the help of God, 2 years from now, and they think they are going to get any more extension of time to file under the Federal funds section at the end of that period, they are out of their individual and collective heads, I am telling the Members that now. So scratch that. This will not be extended. It was never intended to be, and it is not going to be.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FLOOD. Mr. Chairman, I have something more to say, and then, of course, I will yield. I will get the time to do it. The gentleman is all right. He is now the new conscience of the House, and I understand my friend, the gentleman from Michigan (Mr. FORD) approves it. The gentleman is all right. He is getting in on the gentleman from Missouri (Mr. HALL) and the gentleman from Iowa (Mr. GROSS) here, but that is all right.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. FLOOD. Just a minute.

Now there is a second point, and the gentleman from Pennsylvania (Mr. DENT) did not mention this. Now hear this.

My friend, the gentleman from Illinois, is a conservative Republican at heart, and he is bleeding now for the taxpayer, but the coal companies—al, yi, yi. The Republican coal companies are going to benefit, and he is going to break down and cry when they do? He is going to have to see the priest if he says that out loud.

The coal companies. Can the Members imagine JOHN FRANCIS ALOYSIUS FLOOD in the well of this House defending the coal companies and in favor of the coal companies? Do not be ridiculous. And go back to my district and say that. Why, the coal companies have held meetings since 1924, when I had 66,000 men—of

course, I have no great interest in this fight. In 1924 I had 66,400 men in the hard coal working underground in my county. Today I have got 1,200. And yet I vote for the gas people and I vote for the oil people for 25 years. I have no great ax to grind here, as the soft coal people do. But the coal companies held meetings every morning before elections for 25 years and called in their fine boys and their mine boys to beat FLOOD in a Republican district, and they could not do it. And I am for the coal companies? No. That is the second "truism" that the Members have heard today. We cannot say "lie," because somebody will take down my words.

No, there are other things, my friend says.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FLOOD. I yield to the gentleman from Illinois.

Mr. ERLENBORN. I thank the gentleman for yielding.

Mr. FLOOD. I was sure the gentleman would.

Mr. ERLENBORN. The gentleman has said after next year he would not appropriate funds.

Mr. FLOOD. After this bill is passed there are 2 years more.

Mr. ERLENBORN. If the gentleman will yield, I wonder if the gentleman will tell this House about it.

Mr. FLOOD. I am telling the gentleman, and next year he can back me up on it.

Mr. Chairman, I am doing a monologue here.

Mr. BURTON. Mr. Chairman, will the gentleman yield?

Mr. FLOOD. Oh, yes, all right, I yield to the gentleman from California (Mr. BURTON).

Mr. BURTON. As I understood the gentleman, he was not saying he was going to cut off those claimants whose claims were filed or approved under the law.

Mr. FLOOD. Of course, the gentleman knows that.

As a matter of fact my friend from Illinois came down here when we were on suspension and had me in tears. His heart was bleeding for the double orphans. Sacre bleu, mon Dieu. He is going to hell for it. Well, imagine.

Mr. QUIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Illinois (Mr. ERLENBORN).

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yielding.

Let me say I enjoyed the performance of the gentleman who preceded me in the well, a minute ago. I believe the Shakespearean stage has been the loser and the House the gainer by having his presence here.

Let me make clear to the Members of the House what this provision will do. In the law today those who qualify for Federal benefits continue to be the responsibility of the Federal Government. For a period of 2 years we were to pick up the backlog of all those who contacted this disease over the past 40 or 50 years. Then, having taken care of the great bulk of those who suffer from the disease, the law was designed to say that in the future

those who contact this disease should be compensated under State workmen's compensation law; if the State has no appropriate compensation law, however, the Federal Government will continue to adjudicate and pay legitimate claims.

What the existing law does is create a cause of action by the Federal Government against the coal mine operator.

There can be only one result of the extension of Federal responsibility; that is, to wipe out for that 2-year period the cause of action against the coal mine operator.

There can be only one result of the extension of Federal responsibility; that is, to wipe out for that two-year period the cause of action against the coal mine operator.

If the States adopt the program the coal mine operators will pay for it through workmen's compensation insurance premiums.

If we do not extend this and there is no State workmen's compensation law governing it, the Federal Government will sue the coal mine operator to cover.

In no event does it cost the miner. The State does not bear a share of the cost as the bill is. So extending the Federal responsibility saves nothing for the States and simply imposes the costs on the Federal Government. It spares the coal mine operators and puts the burden operators this cost, they should vote general funds.

Members should understand that when they vote on this. If they believe we need a greater drain on our Federal general funds so that we can save the coal mine operators this cost, they should vote against the amendment. If they believe it is fair for the coal mine operators to pay for this type of workmen's compensation, as other employers do pay for it, they should vote for my amendment.

Mr. PERKINS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first let me state that I will take only 1 minute.

We are talking about legislating for the welfare of human beings here, not for cold and impersonal statistics. It is a matter of justice to extend this act from January 1, 1973, to January 1, 1975; to strengthen the legislative mandate to the administration to assure benefits to thousands of people who have been denied them; to let the State legislatures have time to enact appropriate statutes providing pneumoconiosis benefits.

The 2-year extension is the minimum time that should be provided.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN).

The question was taken; and the Chairman announced that the yeas appeared to have it.

TELLER WITH CLERKS

Mr. ERLENBORN. Mr. Chairman, I demand tellers.

Tellers were ordered.

Mr. ERLENBORN. Mr. Chairman, I demand tellers with Clerks.

Tellers with clerks were ordered; and the Chairman appointed as tellers Messrs. ERLENBORN, DENT, QUIE, and PERKINS.

The Committee divided, and the tellers reported that there were—ayes 133, noes 245, not voting 53, as follows:

[Roll No. 378]

[Recorded Teller Vote]

AYES—133

Abbutt	Gross	Pirnie
Abernethy	Grover	Poage
Anderson, Ill.	Haley	Powell
Andrews,	Hall	Price, Tex.
N. Dak.	Hammer-	Purcell
Archer	schmidt	Quile
Arends	Hansen, Idaho	Railsback
Ashbrook	Harvey	Rarick
Belcher	Hastings	Rhodes
Bell	Henderson	Roberts
Betts	Hosmer	Robinson, Va.
Bow	Hunt	Robison, N.Y.
Brinkley	Hutchinson	Rousselot
Broomfield	Jarman	Runnels
Brown, Ohio	Jonas	Ruth
Broyhill, N.C.	Jones, N.C.	Sandman
Burke, Fla.	Jones, Tenn.	Satterfield
Burleson, Tex.	Keith	Scherle
Byrnes, Wis.	Kemp	Schmitz
Caball	King	Scott
Cederberg	Kuykendall	Sebelius
Chamberlain	Kyl	Shoup
Cleveland	Latta	Shriver
Collins, Tex.	Lennon	Sikes
Colmer	Lent	Smith, Calif.
Conable	McClary	Smith, N.Y.
Conte	McCollister	Spence
Crane	McCulloch	Springer
Davis, Wis.	McDonald,	Steiger, Wis.
Dellenback	Mich.	Talcott
Dennis	McEwen	Taylor
Devine	McKevitt	Teague, Calif.
Dickinson	Mahon	Terry
du Pont	Mailliard	Thompson, Ga.
Dwyer	Mann	Thompson, Wis.
Edwards, Ala.	Martin	Thone
Erlenborn	Mathias, Calif.	Vander Jagt
Esch	Mathis, Ga.	Widnall
Fish	Mayne	Wiggins
Flynt	Michel	Wilson, Bob
Ford, Gerald R.	Mills, Md.	Winn
Forsythe	Minshall	Wyatt
Fountains	Mizell	Wylie
Frelinghuysen	Montgomery	Young, Fla.
Frenzel	Morse	
Frøy	Nelsen	

NOES—245

Abourezk	Clay	Gialmo
Abzug	Collins, Ill.	Gibbons
Adams	Conyers	Gonzalez
Addabbo	Cotter	Grasso
Albert	Coughlin	Gray
Alexander	Culver	Green, Oreg.
Anderson,	Daniel, Va.	Green, Pa.
Calif.	Daniels, N.J.	Griffin
Andrews, Ala.	Danielson	Griffiths
Annunzio	Davis, Ga.	Gude
Ashley	Davis, S.C.	Hagan
Aspin	de la Garza	Hamilton
Aspinall	Delaney	Hanley
Badillo	Dellums	Hansen, Wash.
Baker	Denholm	Harrington
Begich	Dent	Harsha
Bennett	Dingell	Hathaway
Bergland	Donohue	Hawkins
Bevil?	Dorn	Hays
Biaggi	Dow	Hechler, W. Va.
Biestler	Downing	Heckler, Mass.
Bingham	Drinan	Heinz
Blanton	Duiski	Helstoski
Blatnik	Duncan	Hicks, Mass.
Boland	Eckhardt	Hicks, Wash.
Bolling	Edmondson	Hillis
Brademas	Edwards, Calif.	Hogan
Brasco	Eilberg	Hollifield
Bray	Eshleman	Horton
Brooks	Evans, Colo.	Howard
Brotzman	Evans, Tenn.	Hull
Brown, Mich.	Fascell	Hungate
Broyhill, Va.	Findley	Jacobs
Buchanan	Fisher	Johnson, Calif.
Burke, Mass.	Flood	Johnson, Pa.
Burlison, Mo.	Flowers	Karth
Burton	Foley	Kastenmeter
Byrne, Pa.	Ford,	Kazen
Byron	William D.	Kluczynski
Caffery	Fraser	Koch
Carey, N.Y.	Fulton, Tenn.	Kyros
Carney	Fuqua	Leggett
Carter	Gallfanakis	Long, Md.
Casey, Tex.	Gallagher	Lujan
Celler	Garmatz	McCloskey
Chisholm	Gaydos	McCormack
Clark	Gettys	McDade

McFall	Podell
McKay	Poff
McKinney	Preyer, N.C.
McMillan	Price, Ill.
Matsumaga	Pucinski
Mazzoli	Quillen
Meeds	Randall
Melcher	Rees
Metcalfe	Reid, N.Y.
Mikva	Reuss
Miller, Calif.	Riegler
Miller, Ohio	Rodino
Minish	Roe
Mink	Rogers
Mitchell	Roncallo
Mollohan	Rooney, N.Y.
Monahan	Rooney, Pa.
Moorhead	Rosenthal
Morgan	Rostenkowski
Moss	Roush
Murphy, Ill.	Roy
Myers	Roybal
Natcher	Ruppe
Nedzi	Ryan
Nichols	St Germain
Nix	Sarbanes
Obey	Saylor
O'Hara	Scheuer
O'Neill	Schneebell
Pasman	Seiberling
Patten	Sisk
Pepper	Skubitz
Perkins	Slack
Peyster	Smith, Iowa
Pickle	Snyder
Pike	Staggers

NOT VOTING—53

Anderson,	Goodling
Tenn.	Gubser
Baring	Halpern
Barrett	Hanna
Blackburn	Hébert
Boggs	Ichord
Camp	Jones, Ala.
Chappell	Keating
Clancy	Kee
Clausen,	Landgrebe
Don H.	Landrum
Clawson, Del.	Link
Coilier	Lloyd
Corman	Long, La.
Derwinski	McClure
Diggs	Macdonald,
Dowdy	Mass.
Edwards, La.	Madden
Goldwater	Mills, Ark.

But a more thorough analysis of the effect of such language discloses a far different result. It is important to keep in proper perspective the original purpose of the benefit program. It was to provide benefits for miners who were totally disabled due to black lung as a result of many years of exposure in the coal mines. The program was not designed or intended to give benefits to miners who become totally disabled from other causes. Thus, a miner who develops emphysema, a lung disease that is contracted by people irrespective of their particular occupation, or bronchitis or pneumonia or any of an innumerable list of other ailments would not be eligible for benefits under this program even if they became totally disabled as the result of such a disease, and even though he may have worked in the coal mines for 20 years. In effect, just being a coal miner for a long period of time does not qualify an individual for benefits under this program.

If a chest X-ray discloses black lungs, benefits can be paid solely on the basis of such an X-ray. If the X-ray discloses some evidence of black lung, additional tests are made to determine its severity and its degree of disability. If an X-ray discloses no evidence of black lung, claims have been denied.

The Social Security Administration report explains the use of the X-ray in this way—this establishment of claims by X-ray is based on the prevailing medical judgment that in the absence of positive X-ray evidence, the disease does or does not exist to a degree that would have a significant effect on the claimant's functional capacity.

Moreover, where other diseases exist like emphysema or chronic bronchitis which have some similarity to black lung, a consensus of medical expert judgment is that there is no other means than the X-ray presently available to diagnose and distinguish black lung from other respiratory diseases in a living person with the exception of a biopsy.

Now there is a great misunderstanding due to a great deal of publicity that has been given on this subject, that some people who have lung troubles have been denied pneumoconiosis compensation, and where such claimant later died and an autopsy shows that there was evidence of pneumoconiosis. However, none of this evidence shows there these cases involved pneumoconiosis that was totally disabling—and that is the basis that is established in the legislation for compensation. Eliminating the X-ray will extend benefits to those who were never meant to be covered. Again that will put a greater burden on those who are supposed to take over this program if it ever becomes anything other than a Federal program.

Contrary to what some would have you believe, social security has been administering this program in a very fair and liberal way. Many claims have been denied. All this means is not everyone who has filed a claim is totally disabled due to pneumoconiosis. Approximately half of the claims have been allowed. A greater number of them have been allowed in Pennsylvania where a great

Gooding
Murphy, N.Y.
O'Konaki
Patman
Pelly
Pettis
Pryor, Ark.
Rangel
Schwengel
Shipley
Stanton,
 J. William
Thompson, N.J.
Veysey
Vigorito
Whitten
Wylder
Wyman
Zwach

Anderson.
Tenn.
Baring
Barrett
Blackburn
Boggs
Camp
Chappell
Clancy
Clausen,
 Don H.
Clawson, Del.
Coilier
Corman
Derwinski
Diggs
Dowdy
Edwards, La.
Goldwater

Sec. 4. The first sentence of section 413(b) of such Act is amended by inserting before the period at the end thereof the following: " but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram".

AMENDMENT OFFERED BY MR. ERLENBORN

Mr. ERLENBORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN: Beginning at page 11, line 3, strike the language through line 7.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, let me first of all announce, because I know it will please the membership, that this is the last amendment I have to offer today. As far as I know it may be the last one that is offered on the bill.

This would strike the last section of the bill, section 4 relative to the prohibition of the use of the X-ray.

On initial examination the insertion of this language that "no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram," seems innocuous and an attempt to give fair and just evaluation of a claim for black lung benefits.

number of coal miners have retired who have worked many years in the anthracite fields. The elimination of the X-ray as a means for diagnosis and a reason for denial of the claim will do nothing to improve this program. It will only extend benefits to those who are suffering from diseases that are not and should not be compensable.

Mr. DENT. Mr. Chairman, I rise in opposition to the amendment.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman and Members, I will not read the entire correspondence from the American College of Radiology, but I will read what they recommended to the committee—and the committee followed their recommendations. I believe it is important to know that these are the top experts in the entire United States on the diagnosis of the disease through the use of X-rays, radiology. They recommended to this committee—and I quote from their correspondence—

Rather, we would suggest language which would direct the Secretary to take into consideration any and all clinical findings which would be provided by the miner or his physicians—including the X-ray findings.

I include the entire letter in the RECORD.

The letter is as follows:

AMERICAN COLLEGE OF RADIOLOGY,
Chicago, Ill., June 30, 1971.

HON. JOHN H. DENT,
Chairman, General Subcommittee on Labor,
House Committee on Education and Labor,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for the opportunity to comment upon the language in H.R. 9212 which is now pending before your committee. As the representative body of the nation's medical specialists in the uses of x-rays for diagnosis of diseases, we are most concerned with the implications in Section 4. This current language would have the effect of disqualifying the one objective medical examination now available to physicians and government officials in determining the condition of a miner or former miner with regard to his status under the law.

It is axiomatic in good medical practice that x-ray examinations are requested and performed as part of a clinical process which leads to a diagnosis and possible treatment of a patient's health problem. For some conditions, the x-ray finding is the definitive evidence for the physician managing the case. In others it is contributory to his conclusion and in still others it provides little or no helpful information. In perhaps a majority of all x-ray examinations, a negative finding (i.e., the part examined appears to be normal) can be vital in ruling out a myriad of possible causes of a patient's complaint.

In the instance of coal workers' pneumoconiosis, the patterns of dust retention in the lung make extremely difficult a positive diagnosis of the disease in its early stages. In the later stages, the accumulation of foreign matter usually becomes more evident on well executed x-ray examinations. However, not all persons exposed to concentrations of coal dust respond in the same way. It has been demonstrated that miners with x-ray evidence of advanced pneumoconiosis are still functional and seemingly have unimpaired lung function. Conversely, other miners with no x-ray evidence of pneumoconiosis are by any clinical standards disabled. There is a further problem in that miners with emphysema, bronchitis, lung tumors

and other respiratory ailments will suffer more from an accumulation of coal dust in their lungs than will their colleagues who do not have these basic problems.

In addition to x-ray examinations, physicians attempting a medical diagnosis of pneumoconiosis would ordinarily rely upon a patient history, a physical examination and, where available, a pulmonary function study. Unfortunately, facilities for pulmonary function studies and physicians skilled in making them are not available to the extent that these can be utilized as a routine procedure in most mining communities. In most cases, reliable efforts to determine the cause of the respiratory disability demonstrated by the minor is still dependent upon the findings of the chest x-ray examination.

There is a further problem in that the production of a roentgenogram which can demonstrate pneumoconiotic lesions requires a level of skill which was not always found in the persons performing such duties in mining communities. Likewise, physicians not specially trained in radiology or chest disease may fail to appreciate the subtle markings which distinguish pneumoconiosis from other lung conditions. Thus, while the x-ray examination is an essential part of the diagnosis of pneumoconiosis, its contribution and reliability could be enhanced by greater attention to the inherent problems in the procedure.

During the months since the passage of PL 91-173, this organization has been working with the National Institute of Occupational Safety and Health of the Public Health Service and the Bureau of Disability Insurance and the Bureau of Hearings and Appeals of the Social Security Administration on an intensive program to acquaint physicians in the mining areas with the special responsibilities under the act. Through this program, more than 850 physicians in the mining areas have become qualified by the PHS for participation in its program and most of these doctors have participated in SSA efforts as well. The training, in seminars and home study materials, has stressed the need for good films and for an appreciation of the type of pathology seen in black lung problems plus the use of the standardized system of reporting findings. In addition, special efforts have been made to improve film quality by instructing the x-ray technologists and other physician's assistants who make the exposures. These efforts not only contribute to the effectiveness of the act but also provide a solid base for better x-ray examinations in the communities served by these physicians.

Thus, we would argue that the language of Section 4 would be detrimental to the purpose of the amendment and of the basic act. Rather, we would suggest language which would direct the Secretary to take into consideration any and all clinical findings which would be provided by the miner or his physicians—including the x-ray findings. Where a miner is deceased, the existing x-ray examination may be the only objective evidence subject to review by the Secretary. The language might more appropriately read, "but a claim for benefits under this part shall be denied solely on the basis of a chest roentgenogram only when no other clinical findings are available or can be provided to the Secretary."

You can appreciate that this brief discussion is necessarily general. It cannot reflect the total subject or the differences of interpretation and opinion held by physicians and others concerned with the black lung problem. We do hope that it has been responsive to your request and that you will feel free to use this material in any way or to call upon us for additional assistance.

Sincerely,

SEYMOUR F. OCHSNER, M.D.,
Chairman, Board of Chancellors.

Mr. Chairman, that is exactly what the legislation before you does. We do not in any way prohibit the use of X-ray, nor do we curtail the use of it. We merely say that there are other examinations that can be conducted to make a complete and honest diagnosis of the case and they can be used. We simply do not want a claim denied solely on the basis of an X-ray.

This is a peculiar thing. Here we are in the United States arguing about a condition that has been known to us for years and which we have done little about. But in Germany, in 1929, they passed the first law on black lung as an occupational disease, and they have been operating under it ever since. It is probably the most advanced legislation in the field of occupational disease in the entire world.

Hopefully, this bill will enable us to have the best piece of legislation in the entire world for the unfortunate victims of black lung.

Let me read what the Germans have said.

The Germans say that X-rays often fail to show the presence of black lung disease. Even without reliable X-rays, German doctors can detect black lung disease in its early stages. That is one of the difficulties with X-ray. One of the difficulties with the X-ray is that it will not, in many cases, detect the disease in its early stages, and it is imperative not only to the health of the miner but to the workings of this legislation that the early stages be detected, because when we detect the early stages, we prohibit the man from working in a place where there is dust. He must be put into a position where there is relatively little dust in order that no further damage will be done to his lungs, and therefore he cannot become a victim of black lung.

So they can use other clinical tests, such as reliable blood tests. They can discover by breathing tests early stages of the disease. Sometimes by their treatment they can prevent further stages of the disease which bring a man to a fatal end.

We have here the testimony of our own Surgeon General before our committee. The Surgeon General said—

... Coal miners' pneumoconiosis is a distinct clinical entity, resulting from inhalation of coal dust. Physicians diagnose it on the basis of X-ray evidence of nodules in the lungs of a patient with a history of long exposure to coal dust. However, it should be pointed out that data from postmortem examinations indicate a higher prevalence of the disease than can be diagnosed from X-ray examinations.

I would much rather take the opinion of the Surgeon General of the United States than some bureaucrat working in some section of the social security group.

Mr. ERLLENBORN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Illinois.

Mr. ERLLENBORN. I thank the gentleman. That does not say "complicated pneumoconiosis" that is totally disabling. The only thing that is compensable under this law is complicated pneumoconiosis which is totally disabling. There is no medical opinion that says this cannot be seen by X-ray. The gen-

tleman is talking about the early stages which are not compensable.

Mr. DENT. I thank the gentleman, for that points up what I said. We do not want to wait until the later stages to make it compensable. We want to discover it in its early stages.

Moreover, the law provides benefits to miners who are totally disabled due to pneumoconiosis without regard to whether the disease has yet reached the complicated stage.

Mr. REID of New York. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise in opposition to the amendment and state at the outset that there is a difference of opinion on this question. I have sought both through the Secretary of Health, Education, and Welfare, Elliot Richardson, and the Bureau of Disability Insurance, to try to get to the truth of the matter. Let me report to the Members from the report the Secretary sent to me, and I will read just one section.

This report stated:

There is some minority medical opinion to the effect that disabling pneumoconiosis may exist in the absence of positive X-ray evidence thereof.

Further, the Secretary, in this report he has sent to me, pointed out:

We are currently carrying out a pilot project in conjunction with the Public Health Service to determine the effectiveness and feasibility of developing a simplified exercise test for individuals who have "simple" pneumoconiosis but whose ventilatory capacity does not demonstrate total disability on the basis of conventional pulmonary function tests. The project is expected to lead the way to establishing additional methods and criteria for evaluating total disability.

The doctor they have selected to participate in this test is Dr. Rasmussen, whom I have been in touch with both on the phone and in writing. He says there are tests that can detect total disability, that is complicated pneumoconiosis, that is serious, that does not show up on X-rays—that can be made by drawing blood samples and determining the amount of oxygen in the blood of an individual as he runs on a treadmill. Dr. Rasmussen strongly feels that using X-rays alone is a mistake and a grave injustice, and that while X-rays will show some black lung, it has been proven that they do not always register the existence of black lung.

Therefore, I am urging that other professional diagnostic techniques and approaches be allowed by the Federal Government in order to determine these benefits.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. REID of New York. I yield to the chairman of the committee.

Mr. PERKINS. Mr. Chairman, first let me compliment the gentleman from New York for opposing this amendment. We are only proposing that negative X-rays shall not be the sole basis for denial?

Mr. REID of New York. That is correct.

Mr. PERKINS. And if we did not protect the individual to that extent, since we have had several millions of indi-

vidual coal miners in this country who have worked in the mines, and the majority of denials, or over 150,000 have been solely on the basis of X-rays, if we let a condition like that exist in the law, I personally feel we would be doing a great injustice. If the gentleman who has expressed it so clearly will permit me to read one paragraph of a letter from Dr. Neal Calhoun of Hopkinsville, Ky., to the Honorable FRANK STUBBLEFIELD, he says:

The Social Security Administration refuses to accept the clinical impression of the patient's family physician; they refuse to accept anything except drastic reduction of pulmonary function and pneumoconiosis on the chest X-ray, or autopsy findings, or biopsy findings. This prevents thousands of people from obtaining their benefits who are justly due them. I have several patients who have such poor pulmonary functions that they cannot undergo open lung biopsy because they would die with pneumonia from such a minor procedure. The people in the Social Security Administration know this, and consequently they feel safe in rejecting these individuals, knowing that the physician will not jeopardize their lives in order to obtain their benefits. Therefore, we, the practicing physicians, and the patient are forced to wait until he does and get an autopsy.

Mr. Chairman, I compliment the gentleman.

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent, Mr. REID of New York was allowed to proceed for 3 additional minutes.)

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from Illinois.

Mr. ERLBORN. I thank the gentleman for yielding.

First of all, the gentleman read from the report of HEW only one sentence of a paragraph. I should like to have the balance of that paragraph in the RECORD. It says:

However, this issue was thoroughly considered by the Social Security Administration, through extensive consultation with a wide range of medical specialists, and the requirement was included in the regulations as reflecting the overwhelming consensus of medical judgment on the issue.

The gentleman in the well, as well as the gentleman from Pennsylvania, has spoken in terms of allowing the Social Security Administration to use other diagnostic techniques. There is nothing in the act which requires them to use an X-ray or any other type of diagnostic technique. They can use any that are, within current medical usage according to the consensus of medical judgment, proper ones.

The first step we are going to take toward dictating to social security how they are to engage in these medical tests is the one proposed in this bill; that is to say, against the greater weight of medical evidence we are going to supplant our judgment and say that the X-ray cannot be used as the sole basis for denying a claim. This is the first intrusion into the Social Security Administration's ability to determine how to administer this law.

Mr. REID of New York. I appreciate the gentleman's comment, but he did not have in his possession the analysis of

the Secretary's document from Dr. Rasmussen, who had been asked by the Department to be part of the study. He said in this analysis that:

The continuing reference to "majority medical opinion" or "prevailing medical judgment" impunes the integrity of the medical profession and implies gross incompetence among specialists in pulmonary diseases.

It might be well to offer some parallels in the pseudoscience of medicine which could impart some degree of understanding into the problems of diagnosis of occupational lung diseases.

In the diagnosis of, for example, peptic ulcer of the duodenum, it is fully recognized by virtually every member of the medical profession that an absolute diagnosis may not be made in the absence of x-ray evidence or anatomic evidence. However, it is known that in perhaps 20% of patients suffering from severe peptic ulcer, the x-ray may not be diagnostic. Few qualified physicians, would, on the basis of negative x-ray evidence, fail to (a) diagnose the disease and (b) treat the patient as though he had a peptic ulcer in light of the patient's symptoms.

In the same light, in a patient whose symptoms strongly suggest a heart attack, the electrocardiogram may not be diagnostic. The electrocardiogram may not reveal evidence of a definite heart attack in perhaps 5 to 10% of affected subjects. No qualified physician would dismiss the patient or fail to treat him as if he had suffered a heart attack, until additional studies were performed.

In establishing a diagnosis of active tuberculosis of the lung, no physician in the entire world would be willing to say the disease did not exist if one, two or three examinations of the patient's sputum failed to reveal mycobacterium tuberculosis. In fact, the diagnosis might well be made and the patient given therapy, in spite of the fact that an absolute diagnosis was not proven.

These departures from the subject of "black lung" are made in order to attempt to understand the peculiar emphasis placed on the diagnosis of occupational lung disease in the United States. The same medical profession which makes diagnoses of peptic ulcer, myocardial infarction and pulmonary tuberculosis, makes diagnoses of occupational lung disease. No objective, informed member of the medical profession would suggest that the chest x-ray has greater validity in diagnosing occupational lung disease than the GI x-ray in diagnosing peptic ulcer, the ECG in diagnosing myocardial infarction or the sputum examination in diagnosing tuberculosis. The point which, in my opinion, is crucial, is that the tenacious clinging to x-ray evidence of pneumoconiosis is *medicolegal*, not *medical*. It is a conditioned reflex, resulting from the impact of judicial and legalistic actions, not scientific medical judgment.

The fact that the United States Public Health Service currently uses x-rays "to establish the presence of pneumoconiosis"—is hardly a valid argument, and hardly portrays that agency as anything more than a rubber stamp for a regressive Administration.

The statement in paragraph 1 on page 2 is totally without foundation in any published or unpublished medical report. It implies, in fact, that x-ray evidence of CWP identifies a miners occupation as being responsible for his "bronchitis, emphysema, and a variety of neurological, infectious, muscular and degenerative diseases". I challenge the statement that the prevalent medical judgment places this reliance on the chest x-ray.

In other words, one of the experts called in differs as to making the X-ray the sole basis for the judgment.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. REID of New York. I yield to the distinguished chairman.

Mr. STAGGERS. I want to congratulate the gentleman from New York on the statement he has made and the position he has taken.

The gentleman mentioned the name of Dr. Rasmussen. I should like to say to him that my son-in-law, Dr. Wells, along with him, first started the study of pneumoconiosis. Those two were sent out by the Public Health Service to study pneumoconiosis among miners in West Virginia. I have heard him say one cannot tell this disease solely from an X-ray. For that reason, the amendment should be defeated.

I should like to say further that while my son-in-law was on that study \$1 million was granted by HEW, and never got to the laboratories in West Virginia where it was supposed to be used, so they were not funded too much.

Mr. GRAY. Mr. Chairman, I move to strike the requisite number of words.

The purpose of H.R. 9212 is to correct certain defects in the administration of the Federal Coal Mine Health and Safety Act of 1969 and to provide for the extension of benefits in that act to the orphans of workers who die of pneumoconiosis, better known as black lung.

The act has not fully accomplished the intent of Congress when it was passed. What we are trying to accomplish here is a clarification of intent by certain amendments to title IV of the original act. For example, we did not intend the desperate need of individuals eligible for benefits under the act be set off against social security disability payments, thus neutralizing or decreasing one of the prime purposes of the act. It was our intent that "black lung" benefits be over and above those provided under workmen's compensation payments, otherwise the provision for special disability benefits would not have been written into the legislation in the first place.

In another amendment proposed under H.R. 9212 we are simply but importantly extending the timetable for certain provisions under section 3 for 2 additional years in order to permit the States an additional working period to assume their responsibilities under the act. While this will extend the time of Federal responsibility, we recognize the problems inherent in some States in coming to grips with the benefit provisions of the program. We hope the States will use this additional period for resolve rather than delay.

The amendment to the first sentence of section 413(b) that "no claims for benefits under this part shall be denied on the basis of the results of a chest roentgenogram" is absolutely necessary. The fact that the Social Security Administration utilizes the services of a group of eminent radiologists in X-ray classification to reinforce the accuracy and consistency of X-ray readings under the black lung program is good but beside the point. They are still X-rays with their controversial and time-proven limitations in diagnosis for black lung. As Dr. May Mayers states in the book on "Oc-

cupational Health," Williams & Wilkins, 1969:

Physicians in general tend to place too great reliance upon the X-ray picture alone, and give too little weight to the clinical picture . . . The extent of medical disability can only be determined, with any degree of accuracy, by cardiorespiratory function tests, with which some physicians are still unfamiliar.

The amendment does not deny the usefulness, nor does it call for the elimination, of X-rays in the adjudication of claims for benefits; it calls by implication for an accurate medical diagnosis based upon all relevant medical tests in the disposition of claims. Many southern Illinois miners and widows are being denied benefits because of the present law. From a social point of view the detailed provisions of this matter are clearly the most important components of the four-amendment legislative package before us.

If the health standards prescribed in title II of the Federal Coal Mine Health Safety Act are effective in eliminating the cause of lung disease, the personal burden of incapacitation as well as the burden of benefit payments will be reduced in the future. However, irreversible damage has already been done to miners, and we propose to correct that so far as it affects their dependent children. We should not allow conditions which have disabled the miner to also disable his children, either with respect to the necessities of life or educational opportunities. H.R. 9212 provides the necessary prescription and guidelines for preventing the conversion of occupational disease of the miner into socioeconomic "disease" for his children. The spirit of this amendment is the spirit of the entire bill; I strongly urge the passage of H.R. 9212 and the defeat of all the Erlenborn amendments that are designed to gut the bill. If the bill is passed and signed into law in its present form, thousands of southern Illinois coal miners and their widows will receive justice.

(Mr. GRAY asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLBORN).

The question was taken; and on a division (demanded by Mr. ERLBORN) there were—ayes 38, noes 131.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. THOMPSON OF GEORGIA

Mr. THOMPSON of Georgia. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. THOMPSON of Georgia: (A) "Pneumoconiosis" as used in this act means any respiratory deficiency caused by the repeated inhalation of coal dust, marble dust, rock dust, other quarry dust or man made or natural textile fibers.

(B) "Miner" as used in this act includes any individual who as a result of the working conditions related to his employment in any industry contracts pneumoconiosis as is defined in (A) above.

(Mr. THOMPSON of Georgia asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of Georgia. Mr. Chairman, what I am attempting to do by this amendment is, by means of defining pneumoconiosis in a broad term, to include those workers in other industries who suffer a similar fate as do coal miners.

Pneumoconiosis as I am defining it would include quarry workers, men who work in granite and marble quarries, asbestos workers, and indeed textile workers.

I know many of my colleagues from the South have seen textile workers as they come out of the textile mills completely covered with lint. They have inhaled the lint and it becomes imbedded in their lungs. It is not soluble and it does not go out of their lungs. Indeed it has the same symptoms and problems and in time death is caused by the inhalation of it just as it is by the inhalation of coal dust.

I am also defining "miner" so as to include an employee in any industry who is affected by the working conditions so as to cause pneumoconiosis as defined in the broad term of this amendment.

Granted it is a sweeping amendment, but it is certainly one that deserves the consideration of the House, and I hope that the House will adopt it.

Mr. DENT. Mr. Chairman, I rise to oppose the amendment.

As much as I would like to assist the gentleman in what he is trying to do, I would suggest that it is not a proper part of the legislative process here. He can pinpoint exactly what he wants done, and if he comes to our committee, I will guarantee him that I will give him hearing and give him every opportunity to make his point. However, at this stage of the game it is completely wrong to suggest that we should include textile workers and workers in these other industries in a bill which is designed for relief of coal mining occupational disease. I prefer to keep it that way.

Mr. MICHEL. Mr. Chairman, as we close the debate on this legislation, I would like to first express my appreciation to members of the Education and Labor Committee on both sides of the aisle for accepting my amendment that would wipe out the requirement that a minor be engaged in work underground as a condition precedent to eligibility for benefits under this program. I am glad to see that Members were in general accord in recognizing the equity of all types of miners being treated the same, whether they work above or below ground and suffer from pneumoconiosis.

I do regret, Mr. Chairman, that several very significant amendments offered by Mr. ERLBORN and Mr. BYRNES of Wisconsin were not adopted, for I believe they were good amendments, and I am afraid because they were not adopted, I will be forced to vote against the bill on final passage.

And finally, Mr. Chairman, to clear up some of the confusion that might reign as a result of an earlier exchange in the debate, relative to what Chairman FLOOD and I might do when the time comes for us to appropriate funds for this legislation, may I make it quite clear that passage of the original act supplemented by these amendments will require vast

expenditures of Federal funds for many years to come.

Members should know that while time for filing is being extended for 2 years, we are going to be obliged to pay for many years to come, and I would like to give you just a little bit of an idea of the best estimates of costs given to us in a recent hearing before our Labor-HEW Subcommittee on Appropriations. They are as follows:

BENEFIT PAYMENT DISBURSEMENTS FOR SPECIAL BENEFITS FOR DISABLED COAL MINERS

Fiscal year	Benefit payments (millions)	Number of miners and widows (and their dependents) at end of year (thousands)		
		Miners	Widows	Dependents ¹
1970 actual.....	\$7	12	1	10
1971 actual.....	297	68	57	73
1972 estimate.....	548	109	89	117
1973 estimate.....	538	101	105	112
1974 estimate.....	515	92	106	107
1975 estimate.....	491	84	107	103
1976 estimate.....	468	76	108	99
1977 estimate.....	447	69	109	95

¹ Represents dependents for whom additional payments are made to the miner or widow.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia.

The amendment was rejected.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. STEED, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, pursuant to House Resolution 658, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. ERLÉNBOEN

Mr. ERLÉNBOEN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ERLÉNBOEN. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ERLÉNBOEN moves to recommit the bill (H.R. 9212) to the Committee on Education and Labor.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. ERLÉNBOEN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 312, nays 78, not voting 40, as follows:

[Roll No. 377]

YEAS—312

- Abbutt
- Abernethy
- Abourezk
- Abzug
- Adams
- Addabbo
- Anderson, Calif.
- Anderson, Ill.
- Anderson, Tenn.
- Andrews, Ala.
- Andrews, N. Dak.
- Annuozio
- Ashley
- Aspin
- Aspinall
- Badillo
- Baker
- Baring
- Begich
- Bell
- Bennett
- Bergland
- Betts
- Bevill
- Biaggi
- Biester
- Bingham
- Blanton
- Blatnik
- Boggs
- Boland
- Bolling
- Bow
- Brademas
- Brasco
- Bray
- Brooks
- Broomfield
- Brotzman
- Brown, Ohio
- Broyhill, N.C.
- Broyhill, Va.
- Buchanan
- Burke, Fla.
- Burke, Mass.
- Burlison, Mo.
- Burton
- Byrne, Pa.
- Byron
- Caffery
- Carey, N.Y.
- Carney
- Carter
- Casey, Tex.
- Cederberg
- Chamberlain
- Chisholm
- Clark
- Clay
- Collins, Ill.
- Conyers
- Corman
- Cotter
- Coughlin
- Culver
- Daniel, Va.
- Daniels, N.J.
- Danielson
- Davis, Ga.
- Davis, S.C.
- de la Garza
- Delaney
- Dellums
- Denholm
- Dent
- Dingell
- Donohue
- Dorn
- Dow
- Downing
- Drinan
- Dulski
- Duncan
- Dwyer
- Eckhardt
- Edmondson
- Edwards, Calif.
- Eilberg
- Eshleman
- Evans, Colo.
- Evins, Tenn.
- Fascell
- Findley
- Fish
- Fisher
- Flood
- Flowers
- Flynt
- Foley
- Ford, William D.
- Forsythe
- Fountain
- Fraser
- Frelinghuysen
- Fulton, Tenn.
- Fuqua
- Gallifanakis
- Gallagher
- Garmatz
- Gaydos
- Gettys
- Gialmo
- Gibbons
- Gonzalez
- Grasso
- Gray
- Green, Oreg.
- Green, Pa.
- Griffin
- Griffiths
- Gude
- Hagan
- Hamilton
- Hammer-schmidt
- Hanley
- Hanna
- Hansen, Idaho
- Hansen, Wash.
- Harrington
- Harsha
- Harvey
- Hastings
- Hathaway
- Hawkins
- Hays
- Hébert
- Hechler, W. Va.
- Heckler, Mass.
- Heinz
- Helstoski
- Henderson
- Hicks, Mass.
- Hicks, Wash.
- Hillis
- Hogan
- Hollifield
- Horton
- Howard
- Hull
- Hungate
- Hunt
- Ichord
- Jacobs
- Jarman
- Johnson, Calif.
- Johnson, Pa.
- Jones, Tenn.
- Karth
- Kastenmeier
- Keating
- Kluczynski
- Kloch
- Kuykendall
- Kyros
- Landrum
- Latta
- Leggett
- Lujan
- McClory
- McCloskey
- McCormack
- McCulloch
- McDade
- McDonald, Mich.
- McFall
- McKay
- McKevitt
- McKinney
- McMillan
- Mahon
- Mailliard
- Matsunaga
- Mazzoli
- Meeds
- Melcher
- Metcalfe
- Mikva
- Miller, Calif.
- Miller, Ohio
- Mills, Md.
- Minish
- Mink
- Minshall
- Mitchell
- Mollohan
- Monagan
- Moorhead
- Morgan
- Morse
- Mosher
- Moss
- Murphy, Ill.
- Myers
- Natcher
- Nedzi
- Nelsen
- Nichols
- Nix
- Obey
- O'Hara
- O'Konski
- O'Neill
- Pasaman
- Patten
- Pepper
- Perkins
- Pettis
- Peyster
- Pickle
- Fike
- Pirnie
- Poage
- Podell
- Poff
- Powell
- Preyer, N.C.
- Price, Ill.
- Price, Tex.
- Pucinski
- Purcell
- Quillen
- Rallsback
- Randall
- Rangel
- Rees
- Reid, N.Y.
- Reuss
- Riegle
- Roberts
- Rodino
- Roe
- Rogers
- Roncalio
- Rooney, N.Y.
- Rooney, Pa.
- Rosenthal
- Rostenkowski
- Roush
- Roy
- Roybal
- Ruppe
- Ryan
- St Germain
- Sandman
- Sarbanes
- Saylor
- Scheuer
- Schmitz
- Schneebell
- Seiberling
- Shipley
- Shoup
- Sikes
- Sisk
- Skubitz
- Slack
- Smith, Iowa
- Smith, N.Y.
- Snyder
- Springer
- Staggers
- Stanton, James V.
- Steed
- Steele
- Steiger, Ariz.
- Stephens
- Stokes
- Stratton
- Stubblefield
- Stuckey
- Sullivan
- Symington
- Teague, Tex.
- Thompson, N.J.
- Thomson, Wis.
- Tiernan
- Udall
- Ullman
- Van Deerlin
- Vander Jagt
- Vanik
- Waggonner
- Walde
- Wampler
- Ware
- Whalen
- Whalley
- White
- Whitehurst
- Widnall
- Williams
- Wilson, Charles H.
- Wolf
- Wright
- Wyatt
- Yates
- Yatron
- Young, Tex.
- Zablocki
- Zion
- Zwach

NAYS—78

- Archer
- Arends
- Ashbrook
- Belcher
- Brinkley
- Brown, Mich.
- Burleson, Tex.
- Byrnes, Wis.
- Cabel
- Cleveland
- Collins, Tex.
- Colmer
- Conable
- Conte
- Crane
- Davis, Wis.
- Dellenback
- Dennis
- Devine
- Dickinson
- du Font
- Edwards, Ala.
- Erlenborn
- Esch
- Ford, Gerald R.
- Frenzel
- Frey
- Gross
- Grover
- Haley
- Hall
- Hosmer
- Hutchinson
- Keith
- Kemp
- King
- Kyl
- Lennon
- Lent
- McClure
- McCollister
- McEwen
- Mann
- Martin
- Mathias, Calif.
- Mathis, Ga.
- Mayne
- Michel
- Mizell
- Montgomery
- Quie
- Rarick
- Rhodes
- Robinson, Va.
- Robison, N.Y.
- Rousslet
- Runnels
- Ruth
- Satterfield
- Scherle
- Scott
- Sebelius
- Shriver
- Smith, Calif.
- Spence
- Steiger, Wis.
- Talcott
- Taylor
- Teague, Calif.
- Terry
- Thompson, Ga.
- Thone
- Wiggins
- Wilson, Bob
- Winn
- Wylle
- Young, Fla.

NOT VOTING—40

- Alexander
- Barrett
- Blackburn
- Camp
- Chappell
- Clancy
- Clausen, Don H.
- Clawson, Del
- Collier
- Derwinski
- Diggs
- Dowdy
- Edwards, La.
- Goldwater
- Goodling
- Gubser
- Halpern
- Jones, Ala.
- Jones, N.C.
- Kazen
- Kee
- Landgrebe
- Link
- Lloyd
- Long, La.
- Long, Md.
- Macdonald, Mass.
- Madden
- Mills, Ark.
- Murphy, N.Y.
- Patman
- Pelly
- Pryor, Ark.
- Schwengel
- Stanton, J. William
- Veyssey
- Vigorito
- Whitten
- Wydler
- Wyman

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

- Mr. Kee for, with Mr. Chappell against.
- Mr. Link for, with Mr. Jones of North Carolina against.
- Mr. Diggs for, with Mr. Dowdy against.
- Mr. Halpern for, with Mr. Goldwater against.
- Mr. Goodling for, with Mr. Collier against.
- Mr. Murphy of New York for, with Mr. Veyssey against.
- Mr. Kazen for, with Mr. Wydler against.

Until further notice:

- Mr. Whitten with Mr. Camp.
- Mr. Barrett with Mr. Clancy.
- Mr. Madden with Mr. Landgrebe.
- Mr. Macdonald of Massachusetts with Mr. Don H. Clausen.
- Mr. Pryor of Arkansas with Mr. Derwinski.
- Mr. Alexander with Mr. Blackburn.
- Mr. Jones of Alabama with Mr. Lloyd.
- Mr. Mills of Arkansas with Mr. Del Clawson.
- Mr. Vigorito with Mr. Pelly.
- Mr. Patman with Mr. Gubser.
- Mr. Long of Maryland with Mr. Schwengel.
- Mr. J. William Stanton with Mr. Wyman.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DENT. Mr. Speaker, I ask unanimous consent that all Members of the House may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

* * * * *

EXTENSIONS OF REMARKS

BLACK LUNG BENEFITS

SPEECH OF

HON. JAMES KEE

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 10, 1971.

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 9212), to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

Mr. KEE. Mr. Chairman, as a representative in this great legislative body, and as a member of the House Committee on Interior and Insular Affairs, our honorable chairman some time ago, and before H.R. 9212 was scheduled for consideration on the floor at this time, extended an invitation for me to represent the majority at a Lead and Zinc Conference in Malaga, Spain, beginning October 28, 1971, and ending November 5, 1971. I accepted this invitation and honored my commitment.

When H.R. 9212, now under discussion, was brought up under suspension of the rules on October 18, 1971. I rose on the floor of the House and strongly urged my colleagues to support it. When the roll was called, I voted for its passage. The vote was 227 ayes and 124 nays. Under the parliamentary rules a two-thirds majority was required, therefore, the bill failed of passage by seven votes.

Once again it is before the House for consideration. This time the Rules Committee has recommended an open rule with 1 hour of debate. Once again I strongly urge my colleagues to support this badly needed legislation.

In my remarks on October 18, 1971, I stated that as the Representative from the largest coal-producing congressional district in the United States I had felt for some time that some of the provisions of the Federal Coal Mine Health and Safety Act of 1969 needed clarification to make it more equitable. In my judgment, H.R. 9212 does correct some of the inequities that we have found in this act.

I supported enthusiastically the Federal Coal Mine Health and Safety Act of 1969, which is now Public Law 91-173. I had long been an advocate of legislation to give the disabled miner relief from the rigors of his hazardous employment and it was for this reason that I introduced H.R. 9850, the very first bill introduced in the Congress for those suffering from black lung, and their families.

We have since learned that the black lung disease benefit program as established by title IV, does not always give the coal miners with this disease the benefits to which they are entitled. In some instances it is found that this injustice is caused by placing too much

emphasis on X-rays. It seems to me that to deny claims for black lung benefits solely on an X-ray examination was never intended by the Congress, and is a most unfortunate situation insofar as justice is concerned to the coal miners in this country.

At the time I testified during the hearings on this legislation in May 1971, I stated that in my own State of West Virginia, there were claims filed amounting to 58,300. According to the latest black lung statistics that figure has now risen to 59,234. About 32,981 of these claims were made in my district. Claims paid for the entire State of West Virginia are 24,491. The claims paid in my district amount to 14,501.

On the other hand, the statistics show that there were 15,513 denials. I have no way of knowing whether or not all of these denials would be approved, but I do state that under this new legislation which prohibits the use of chest X-rays as the sole basis for denial of claims, I am reasonably sure that quite a few of them would.

Likewise, a third of the black lung benefit claims which have been turned down to date have been disallowed, because the miner was not totally disabled. In fact, what the Federal Government is saying to these miners is that they do not qualify, because they are not totally dead. I have contended from the very beginning that the requirements for determining "total disability" should be made more realistic. It seems to me that any miner who is rendered incapable of performing his usual mining job should be considered "disabled" under the Federal black lung compensation provision. I feel that this bill recognizes this phase.

I am also pleased that under this legislation the Federal Coal Mine Health and Safety Act will be amended to extend black lung benefits to orphans whose fathers died of pneumoconiosis; that the existing black lung program shall not be considered a workmen's compensation law or plan for purposes of the disability insurance provisions of the Social Security Act; and, that the existing program for payment of black lung benefits will be extended for 2 years.

With these thoughts in mind, and on behalf of the deserving coal miners, I strongly endorse the passage of this bill, which will rectify some of the inequities that have arisen over the past 2 years.

I am glad to have had a part in developing this legislation.

92^D CONGRESS
1ST SESSION

H. R. 9212

IN THE SENATE OF THE UNITED STATES

NOVEMBER 11, 1971

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) (1) section 412 (a) of the Federal Coal Mine
4 Health and Safety Act of 1969 is amended by redesignating
5 paragraph (3) as paragraph (4), and by inserting after para-
6 graph (2) the following new paragraph:

7 “(3) In the case of the child or children of a miner
8 whose death is due to pneumoconiosis or of a miner who is
9 receiving benefits under this part at the time of his death, and
10 who leaves no widow, and in the case of the child or children

1 of a widow who is receiving benefits under this part at the
2 time of her death, benefits shall be paid to such child or chil-
3 dren as follows: If there is one such child, he shall be paid
4 benefits at the rate specified in paragraph (1). If there is
5 more than one such child, the benefits paid shall be divided
6 equally among them and shall be paid at a rate equal to the
7 rate specified in paragraph (1), increased by 50 per centum
8 of such rate if there are two such children, by 75 per centum
9 of such rate if there are three such children, and by 100 per
10 centum of such rate if there are more than three such chil-
11 dren: *Provided*, That benefits shall only be paid to a child
12 for so long as he meets the criteria for the term 'child' con-
13 tained in section 402 (g)."

14 (2) Section 412 (a) of such Act is further amended by
15 adding at the end thereof the following new paragraph:

16 " (5) If an individual's benefits would be increased
17 under clause (4) of this subsection because he or she has one
18 or more dependents, and it appears to the Secretary that it
19 would be in the interest of any such dependent to have the
20 amount of such increase in benefits (to the extent attributable
21 to such dependent) certified to a person other than such indi-
22 vidual, then the Secretary may, under regulations prescribed
23 by him, certify the amount of such increase in benefits (to
24 the extent so attributable) not to such individual but directly
25 to such dependent or to another person for the use and bene-

1 fit of such dependent; and any payment made under this
2 clause, if otherwise valid under this title, shall be a complete
3 settlement and satisfaction of all claims, rights, and interests in
4 and to such payment.”

5 (b) (1) Section 412 (b) of such Act is amended by
6 inserting after “widow” each time it appears the following:
7 “or child”.

8 (2) Section 402 of such Act is amended by adding at
9 the end thereof the following new subsection:

10 “(g) The term ‘child’ means an individual who is un-
11 married and (1) under eighteen years of age, or (2) inca-
12 pable of self-support because of physical or mental disability
13 which arose before he reached eighteen years of age or, in
14 the case of a student, before he ceased to be a student, or

15 (3) a student. Such term includes stepchildren, adopted
16 children, and posthumous children. For the purpose of this
17 subsection the term ‘student’ means an individual under
18 twenty-three years of age who has not completed four years
19 of education beyond the high school level and who is regu-
20 larly pursuing a full-time course of study or training at an
21 institution which is—

22 “(1) a school or college or university operated or
23 directly supported by the United States, or by a State
24 or local government or political subdivision thereof;

25 “(2) a school or college or university which has

1 been accredited by a State or by a State-recognized or
2 nationally recognized accrediting agency or body;

3 “(3) a school or college or university not so ac-
4 credited but whose credits are accepted, on transfer, by
5 at least three institutions which are so accredited, for
6 credit on the same basis as if transferred from an institu-
7 tion so accredited; or

8 “(4) an additional type of educational or training
9 institution as defined by the Secretary of Health, Edu-
10 cation, and Welfare.

11 Such an individual is deemed not to have ceased to be a
12 student during an interim between school years if the interim
13 is not more than four months and if he shows to the satis-
14 faction of the Secretary that he has a bona fide intention
15 of continuing to pursue a full-time course of study or train-
16 ing during the semester or other enrollment period immedi-
17 ately after the interim or during periods of reasonable
18 duration in which, in the judgment of the Secretary, he is
19 prevented by factors beyond his control from pursuing his
20 education. A student whose twenty-third birthday occurs
21 during a semester or other enrollment period is deemed a
22 student until the end of the semester or other enrollment
23 period.”

24 (3) Section 413 (b) of such Act is amended by adding
25 at the end thereof the following new sentence: “In carrying

1 out his responsibilities under this part, the Secretary may
2 prescribe regulations consistent with the provisions of sec-
3 tions 204, 205 (j), 205 (k), and 206 of the Social Security
4 Act.”

5 (4) Section 414 (a) of such Act is amended by insert-
6 ing “(1)” after “(a)” and by adding the following new
7 paragraph at the end thereof:

8 “(2) In the case of a claim by a child, this paragraph
9 shall apply, notwithstanding any other provision of this part.

10 “(A) If such claim is filed within six months following
11 the month in which this paragraph is enacted, and if entitle-
12 ment to benefits is established pursuant to such claim, such
13 entitlement shall be effective retroactively from Decem-
14 ber 30, 1969, or from the date such child would have been
15 first eligible for such benefit payments had section 412 (a)
16 (3) been applicable since December 30, 1969, whichever is
17 the lesser period. If on the date such claim is filed the claim-
18 ant is not eligible for benefit payments, but was eligible during
19 the period from December 30, 1969, to the date such claim
20 is filed, entitlement shall be effective for the duration of
21 eligibility during such period.

22 “(B) If such claim is filed after six months following
23 the month in which this paragraph is enacted, and if entitle-
24 ment to benefits is established pursuant to such claim, such

1 entitlement shall be effective retroactively from a date twelve
2 months preceding the date such claim is filed, or from the
3 date such child would have been first eligible for such benefit
4 payments had section 412 (a) (3) been applicable since
5 December 30, 1969, whichever is the lesser period. If on
6 the date such claim is filed the claimant is not eligible for
7 benefit payments, but was eligible during the period from
8 a date twelve months preceding the date such claim is filed,
9 to the date such claim is filed, entitlement shall be effective
10 for the duration of eligibility during such period.

11 “(C) Any benefit under subparagraph (A) or (B) for
12 a month prior to the month in which a claim is filed shall be
13 reduced, to any extent that may be necessary, so that it will
14 not render erroneous any benefit which, before the filing of
15 such claim, the Secretary has certified for payment for such
16 prior month.

17 “(D) No claim for benefits under this part, in the case
18 of a claimant who is a child of a miner or widow (as de-
19 scribed in section 412 (a) (3)), shall be considered unless it
20 is filed within six months after the death of such miner or
21 widow (whichever last occurred) or by December 31, 1972,
22 whichever is the later.

23 “(5) Subsections 422 (c) and (d) of such Act are
24 amended by striking out ‘section 412 (a)’ wherever it ap-

1 pears and inserting in lieu thereof 'section 412 (a) (1), (2),
2 and (4)'."

3 SEC. 2. (a) Section 412 (b) of the Federal Coal Mine
4 Health and Safety Act of 1969 is amended by adding at the
5 end thereof the following: "This part shall not be considered
6 a workmen's compensation law or plan for purposes of sec-
7 tion 224 of such Act."

8 (b) The amendment made by this section shall be
9 effective as of December 30, 1969.

10 SEC. 3. (a) Sections 401, 411 (c) (1), 411 (c) (2),
11 and 422 (h) of the Federal Coal Mine Health and Safety Act
12 of 1969 are each amended by striking out "underground".

13 (b) Sections 402 (b), 402 (d), 422 (a), and 423 (a)
14 of such Act are each amended by striking out "an under-
15 ground" and inserting "a" in lieu thereof.

16 (c) The amendments made by this section shall be
17 effective as of December 30, 1969.

18 SEC. 4. Title IV of the Federal Coal Mine Health and
19 Safety Act of 1969 is amended—

20 (1) by striking out "1971" where it appears in
21 section 414 (b), and inserting in lieu thereof "1973",

22 (2) by striking out "1972" each place it appears
23 and inserting in lieu thereof "1974",

1 (3) by striking out "1973" each time it appears
2 and inserting in lieu thereof "1975", and

3 (4) by striking out "seven" where it appears in
4 section 422 (e) and inserting in lieu thereof "nine".

5 SEC. 5. The first sentence of section 413 (b) of such
6 Act is amended by inserting before the period at the end
7 thereof the following: ", but no claim for benefits under
8 this part shall be denied solely on the basis of the results
9 of a chest roentgenogram".

Passed the House of Representatives November 10, 1971.

Attest:

W. PAT JENNINGS,

Clerk.

92^D CONGRESS
1ST SESSION

H. R. 9212

AN ACT

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

NOVEMBER 11, 1971

Read twice and referred to the Committee on Labor and Public Welfare

The Committee amendments, and the retained provisions of the House-passed bill, would:

- Extend fully the Federal parts of the program for one year;
- Make Federal and non-federal aspects of the Federal Black Lung Program permanent so that all claimants and beneficiaries now and in the future will be eligible for, or entitled to, life-time benefits;
- Provide benefits to orphans of deceased miners, along with dependent parents, brothers and sisters:
 - Increase the amount of benefits payable to one who is receiving both Social Security disability and black lung benefits by limiting the combination of those benefits to 100 per cent of "average current earnings;"
 - Relax the often insurmountable burden of proving eligibility by prohibiting a denial of claims based solely on a negative chest roentgenogram and by presuming that miners with 15 years experience who are disabled by a respiratory or pulmonary impairment are disabled by pneumoconiosis;
 - Permit benefits to be paid in specified circumstances to surface, as well as underground, miners;
 - Alter the definition of total disability to permit claims based upon an inability to work at a mining job in which the miner was gainfully and regularly employed over a substantial period of time;
 - Allow a widow to claim benefits if her husband was totally disabled by pneumoconiosis when he died, and make available to widows other means of establishing claims by, for example, providing affidavits of the husband's disability;
 - Provide that additional tests, medical and lay evidence be utilized, where relevant, to establish eligibility for benefits;
 - Authorize the construction of clinical treatment facilities for miners with lung impairments;
 - Permit the Secretary of Health, Education, and Welfare to certify directly to a dependent any increase in benefits attributed to such dependent and accept applications for benefits from dependents in their own right;
 - Authorize the initiation of research to develop tests to be used in the analysis of pulmonary and respiratory diseases and impairments;
 - Prohibit discrimination against any miner solely because he has pneumoconiosis or other respiratory ailments; and
 - Require notification of prior claimants that their claims are being considered with respect to the new amendments.

BACKGROUND

The Federal Coal Mine Health and Safety Act of 1969 recognized, for the first time in Federal legislation, the inadequacy of compensation to miners totally disabled by coal workers' pneumoconiosis, or, as it is commonly called, "black lung." As the Senate Report on the original Act stated, this irreversible disease was "believed to have afflicted 100,000 of the Nation's active and retired miners." President Nixon, in his March 1969 message which called for a new coal mine health and safety act, said, "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".

At the time the Coal Mine Health and Safety Act was signed into law, only two and one-half years ago, it was generally thought that coal miners' occupational breathing disabilities were encompassed by the term "pneumoconiosis". Members of Congress, the knowledgeable press, and many physicians believed this to be the case. It was generally believed that title IV of the Act, relating to black lung benefits, would be a satisfactory means of compensating miners who were incapacitated by respirable diseases, as well as the surviving widows and children of miners who had died from the dread black lung.

Since the passage of that basic, necessary, desirable Act however, experience has taught us that all is not as we expected. As of March 3, 1972, 356,857 claims had been filed since the effective date of the Act, December 30, 1969. According to the Social Security Administration 91,784 disabled miners and 74,809 widows have received benefits, for a total of 166,593 claims, while 169,999 claims have been denied.

Not only have the number of claims far exceeded those earlier expectations of Congress, indicating a more widespread and more serious problem than they anticipated, but also the rate of denials—more than fifty percent nationwide, and as high as 72 percent in some states—suggests strongly that the solution has not been nearly as complete as Congress believed and expected it would be.

The Committee has learned in six days of day-long hearings through the extensive testimony of sixty witnesses—some pulmonary experts, some widows and many miners—that as provided by Congress in 1969 and as interpreted by the Social Security Administration, the provisions authorizing benefits for total disability due to pneumoconiosis do not in fact benefit countless miners and their survivors who were the intended beneficiaries of the Black Lung program.

Comprehensive hearings were held in the Subcommittee on Labor of the Committee on Labor and Public Welfare on all pending legislation to amend title IV of the Federal Coal Mine Health and Safety Act of 1969. The bills included S. 2675, introduced by Senator Randolph and cosponsored by Senators Byrd of West Virginia, Hartke, Williams, and Schweiker; S. 2289, introduced by Senator Hartke; and H.R. 9212, the measure passed by the House of Representatives on November 10, 1971.

Hearings began on December 1, 1971, in Washington, and continued the following day, December 2. The Committee then moved to the field to obtain the testimony of the people directly affected by the legislation. On January 6, 1972, a full day of hearings was held in Beckley, West Virginia, in the heart of the Southern West Virginia bituminous coal mining area. On January 10, 1972 the Committee traveled to Scanton, Pennsylvania to hear from anthracite coal miners and their widows. Each of these field hearings produced upward of 400 spectators. The deep interest in the subject matter by the people who live and work in these areas was clearly evident.

On the two final days of hearings the Committee received testimony from Administration witnesses. The first of these, January 28, 1972, consisted mainly in the presentation of formal statements, while on the last day, February 9, 1972, Administration spokesmen answered questions on their written statements and other matters of interest to the Committee.

Several members of Congress presented testimony in support of S. 2675, including Senator Robert C. Byrd, Senator John Sherman

Cooper, Senator Vance Hartke, Senator William B. Spong, Jr., Representative Ken Hechler, Representative James Kee, and Representative Joseph M. McDade. Senators Schweiker and Randolph, members of the Committee on Labor and Public Welfare, also made statements favoring the legislation. Representative John Erlenborn testified in opposition to most provisions of S. 2675 and H.R. 9212.

A number of legislators from the Commonwealth of Pennsylvania also presented testimony in support of improved black lung benefits, including Hon. John Wansacz, Hon. Paul Crowley, Hon. James Ustynowski, Hon. Frank O'Connell, Hon. Raphael Musto, and Hon. Michael Needham. Also, on behalf of the Governor of West Virginia, Mr. Edgar Heiskell, Commissioner of Workmen's Compensation, supported extension of the black lung benefits program.

Representatives of various organizations who testified in support of S. 2675 and H.R. 9212 included Dr. Lorin E. Kerr, Director, Department of Occupational Health, United Mine Workers of America; Mr. Arnold Miller, President, Black Lung Association; Mr. Paul Kaufman, Director, Appalachian Regional Defense Fund, Inc.; Mrs. Willia Omechinski and Mr. and Mrs. E. E. Cody, Association of Disabled Miners and Widows, Inc.; Mr. Fred Carter, Disabled Miners and Widows of Southern West Virginia; Mr. Ray Slabinski, President, Silicosis National League; Mr. Michael J. Davitt, President, Lackawanna County Chapter, Anthracosilicosis League of Pennsylvania; and Mr. James P. Carney, President, Minooka Chapter, Anthracosilicosis League of Pennsylvania.

Expert medical testimony was presented in support of S. 2675 by Dr. Donald Rasmussen, Director of the Cardio-Pulmonary Laboratory, Appalachian Regional Hospital, Beckley, West Virginia; Dr. Gordon Harper, Children's Hospital Medical Center, Boston, Massachusetts; Dr. Harold Levine, Director of Chest Service, Cook County Hospital, Oak Park, Illinois; Dr. Harry Lipscomb, Professor of Physiology and Director of the Xerox Center for Health Care Research, Baylor College of Medicine, Houston, Texas; Dr. Milton D. Levine, Associate Professor of Medicine, Rush Medical School of Presbyterian, St. Luke's Medical Center, Chicago, Illinois; and Dr. John Rankin, Professor of Medicine and Chairman, Department of Preventive Medicine, University of Wisconsin, Madison, Wisconsin.

Disabled miners who have been denied benefits under title IV of the Federal Coal Mine Health and Safety Act of 1969 and who testified before the Committee in support of S. 2675 included Mr. Bud Morgan Jones, Mr. Earnie W. Morris, Mr. Houston Richardson, Mr. William Ray McConnell, Mr. Clyde Phillips, Mr. Earl Stafford, Mr. Victor Powers, Mr. Vencil Maggard, Mr. Paul Elmer Stillwell, Mr. Lawrence W. Stillwell, Mr. Louie Omechinski, Mr. Albert Barlow, Mr. John Mabe, Mrs. Phillip Stanley (for her husband), Mr. James Abbott, Mrs. Michael Perechinski (for her husband), Mr. Leo Piasecki, Mr. James Cost, Mr. Richard Finnegan, Mr. Frank Denesevich, Mr. Leo Chiavacci, and Mr. William Barnes.

A number of widows who have been denied benefits under title IV also testified. They included Mrs. Martha O'Dell, Mrs. Shelma Mae Russell, Mrs. Beulah Johnson, Mrs. Helen Groom, Mrs. Mary Czarnecki, Mrs. Kathryn Parise, Mrs. Mary Pasdon, and Mrs. Alvina Durkish.

Administration witnesses presented testimony in opposition to most provisions of H.R. 9212 and S. 2675, supporting only the extension of benefits to orphans and certain technical amendments. Witnesses for the Department of Health, Education, and Welfare included Mr. Stephen Kurzman, Assistant Secretary for Legislation; Mr. Robert M. Ball, Commissioner of Social Security; Dr. Marcus M. Key, Director, National Institute of Occupational Safety and Health; Mr. Bernard Popick, Director, Bureau of Disability Insurance, Social Security Administration; Dr. William Roemmich, Chief Medical Officer, Bureau of Disability Insurance, Social Security Administration; and Mr. Richard Verville, Deputy Assistant Secretary for Congressional Liaison.

Other testimony presented or submitted by Federal agencies, included that of Mr. Donald W. Whitehead, Federal Co-Chairman, Appalachian Regional Commission, and Mr. Alvin Arnett, Executive Director, Appalachian Regional Commission. These witnesses described the work of the Commission in respect of the need for more adequate medical facilities and health and safety programs for the coal mining population in Appalachia.

The Secretary of Labor, Hon. James D. Hodgson, submitted a statement for the record which essentially supported the position of the Department of Health, Education, and Welfare concerning the pending legislation. The Office of Management and Budget submitted a report strongly opposing the major provisions of H.R. 9212, S. 2675, and S. 2289.

The American Insurance Association and the American Mutual Insurance Alliance submitted statements for the record which supported the Administration's position on the pending bills.

SUMMARY OF CURRENT LAW

On November 20, 1968, a mine explosion at Consolidation Coal Company's No. 9 mine at Farmington, West Virginia, killed 78 men. Providing proof to the adage that "dead miners have always been the most powerful influence in securing mining legislation," Congress enacted, and the President signed into law, the Federal Coal Mine Health and Safety Act of 1969. With this legislation, however, Congress responded to more than just the immediate disaster. For, in that legislation Congress (1) laid the groundwork for eliminating from the lives of the nation's coal miners the threat of the dread disease, coal workers' pneumoconiosis, commonly known as black lung, and (2) provided a system of benefit payments and minimum compensation standards for miners and the widows of miners who had been totally disabled by that disease.

As stated by the then Surgeon General and reprinted in the Committee's Report on the 1969 legislation:

"Coal miners' pneumoconiosis is a chronic chest disease, caused by the accumulation of fine coal dust particles in the human lung. In its advanced form, it leads to severe disability and premature death.

* * * * *

Coal miners' pneumoconiosis is a distinct clinical entity, resulting from inhalation of coal dust.

"Physicians classify coal miners' pneumoconiosis as simple or complicated, depending on the degree of evidence in the X-ray picture. The physician decides the so-called radiological category of simple pneumoconiosis on the basis of the extent of the opacities.

"There are no specific symptoms and pulmonary function tests seldom enable the physician to say whether or not the patient has the disease. It is generally accepted by physicians that simple pneumoconiosis seldom produces significant ventilatory impairment, but, the pinpoint type may reduce the diffusing capacity, the ability to transfer oxygen from the lung into the blood.

"Complicated pneumoconiosis is a more serious disease. The patient incurs progressive massive fibrosis as a complex reaction to dust and other factors, which may include tuberculosis and other infections. The disease in this form usually produces marked pulmonary impairment and considerable respiratory disability. Such respiratory disability severely limits the physical capabilities of the individual, can induce death by cardiac failure, and may contribute to other causes of death.

"Medical researchers in both Britain and the United States have repeatedly shown that coal miners suffer from more respiratory impairment and respiratory disability than does the general population.

* * * * *

There is no specific therapy for pneumoconiosis in either its simple or complicated form."

Title IV generally provides benefits for miners totally disabled by pneumoconiosis, a chronic dust disease of the lung, and for widows of such miners. Only underground coal miners are eligible for benefits. A widow's benefit (as well as that of the miner) may be augmented where there are dependent children. Orphaned children are not eligible for benefits under existing law. A miner with "complicated" pneumoconiosis is irrebuttably presumed to be totally disabled, and a deceased coal miner who worked ten or more years in the mine who dies from a respirable disease is presumed to have died due to pneumoconiosis.

In dividing the financial responsibility between the Federal Government and the coal industry, title IV provided two separate and distinct programs.

Under Part B of title IV, administered by the Secretary of Health, Education and Welfare, the Federal Government pays benefits for life to successful claimants who filed on or prior to December 31, 1971, and up to one year's worth of benefits to claimant who filed during the calendar year 1972. Under Part C of title IV, administered either by a state workmen's compensation agency meeting minimum Federal standards or the U.S. Secretary of Labor, in the absence of an acceptable state program, the appropriate employer pays the benefits as in traditional workmen's compensation. The industry is financially liable beginning January 1, 1973 for all claims filed after that date and for benefits payments beginning January 1, 1973 for claims filed with the Secretary of Health, Education and Welfare during calendar year 1972.

Although claimants who file on or prior to December 31, 1971 are eligible for lifetime benefits from the Federal government, the indus-

try's liability for claims filed, pursuant to title IV, terminates on December 30, 1976.

The purpose of this two part structure was to assume federal responsibility for the backlog of diseased miners and their widows and to give impetus to a permanent improved state workmen's compensation without enacting permanent federal legislation.

Summary of Major Provisions

PROVISIONS FOR CLAIMS BY ORPHANS

Title IV of the Act now provides that benefits may be paid only to miners or their widows. If a miner and his spouse are both deceased, surviving children now have no basis for claiming benefits. Benefits paid to a miner or his widow may be augmented where there are dependent children, but entitlement stops when both miner and widow die.

This is an anomaly which was not intended by the authors of the 1969 Act, and it is, in fact, a tragic oversight. Both the House-passed bill and the measure reported herein correct this deficiency.

Both versions of H.R. 9212 are intended to meet any situation that arises with respect to claims by orphans. Both bills provide retroactive benefits (to December 30, 1969) for children who file within six months after the bill's enactment. A child is entitled to benefits for any period during which he was eligible for such benefits. Claims filed by a child after six months following the month in which the bill is enacted will be retroactively honored but only to a date twelve months preceding the date the claim is filed.

The language of the Senate bill is different from that in the House-passed measure. Though the results will be the same in most cases, the Committee provided language which parallels that of the Social Security Act in order to insure the most favorable treatment of claimants in doubtful cases. This should ease any administrative burdens or confusion which might result from the processing of claims under two separate Acts.

The Committee added a provision, not in the House bill, which permits dependent parents, brothers and sisters of a deceased miner to succeed to his benefits where no widow or child survives him. The language includes a provision which requires state intestacy laws to be considered in determining who is a legal parent, brother or sister, so that, for example, if state law deems a half-brother to be a brother for intestacy purposes, such persons could be eligible for benefits under this provision. The Committee also adopted a provision which was added to the House bill during debate to permit the Secretary of Health, Education and Welfare to certify the augmentation portion of benefit payments directly to a dependent, or to a third party in his behalf, where he determines it would be in the dependent's best interest to do so. In addition, the Senate measure permits application for such benefits to be filed by a dependent in his own right, where such action is necessary to assure rightful payment to, and receipt of benefits by, such dependent.

This provision recognizes a potential situation in which a miner or widow files a claim for benefits and does not submit evidence to establish augmentation of benefits on behalf of his or her dependents, or

where a miner or widow simply does not file for benefits. In such cases a wife, for herself and for her children, or a child individually, may file for such benefits in his or her own right.

The eligibility of dependent parents, brothers and sisters to file claims for benefits is intended to be determined as of the date of the miner's death. For example, if a miner left a widow and no child and the widow dies one year after the miner, parents, brothers or sisters would not succeed to the benefits for which the widow was eligible. Similarly, where the miner was survived at the time of his death by a dependent parent (and not by a widow or child) the dependent brothers and sisters may not succeed to the benefits for which the parent was eligible.

It is possible that a miner now or in the future may be a female. It is intended that in such cases such a female miner's benefits would devolve to her spouse, and that the terms "wife" and "widow" shall be construed to include "husband" and "widower".

WIDOWS' CLAIMS

Under present law, if a miner dies from a cause totally unrelated to pneumoconiosis, and he is not receiving benefit payments at the time of his death and he does not have an application under consideration, his widow and surviving children may be precluded from receiving benefits even though medical records show conclusively that he was suffering from black lung and would have been receiving payments at the time of his death, if present law had been in effect when he was living.

The Committee bill adds at the end of Section 411(a) of title IV the phrase "or who at the time of his death was totally disabled by pneumoconiosis". This phrase would have the effect of relaxing the requirements now imposed upon widows in claiming benefits under title IV. By the terms of the provision a widow would only have to establish that her miner husband was totally disabled by pneumoconiosis at the time of his death.

Under the operation of the law as it now exists, a widow is at the mercy of circumstance. Although her husband clearly had totally disabling pneumoconiosis, and would have been eligible were he alive, he may have died in a rock fall, an accident, or even a heart attack which may not be established medically to be causally related to pneumoconiosis. Under these circumstances his widow would not be eligible. However, the widow's neighbor, whose husband died of natural causes after receiving title IV benefits, is entitled to the widow's benefits of title IV. Such a result would seem to be unduly harsh with respect to widows whose husbands gave their health, and in many cases their lives, in the service of the nation's critical coal needs.

EXPANSION OF COVERAGE

Existing law limits benefits to those whose claims are based on totally disabling pneumoconiosis, a progressive chronic dust disease of the lung. Although title IV of the 1969 Act is couched in terms of pneumoconiosis, it has become glaringly apparent that the Act is not benefiting many of the nation's disabled coal miners who Congress intended to benefit. Testimony has indicated that miners with dis-

abling breathing impairments who cannot be diagnosed medically as suffering from pneumoconiosis, because of the state of the art, are being denied benefits though they are as severely and often times more severely impaired than miners whose claims have been granted.

The reasons for these denials are many. The great majority of denials are attributed to the inability of the miner to present X-ray evidence of the disease. Some have been denied because the simple breathing test, which measures only ventilatory capacity, may not adequately detect disabling respiratory or pulmonary impairment. Some have been denied because of the failure to recognize the special problems encountered by disabled miners in obtaining gainful employment outside of coal mining in Appalachia.

Over a hundred years ago, Emile Zola wrote his non-medical description of the coal miner in *Germinal*:

"Have you been working long at the mine?"

He flung open both arms.

"Long? I should think so. I was not eight when I went down and I am fifty-eight. They tell me to rest, but I'm not going to: I'm not such a fool. I can get on for two years longer, to my sixtieth, so as to get the pension."

A spasm of coughing interrupted him again.

"I never used to cough; now I can't get rid of it. And the queer thing is that I spit."

The rasping was again heard in this throat, followed by a black expectoration.

"Is it blood?"

He slowly wiped his mouth with the back of his hand.

"No, it's coal. I've got enough in my carcass to warm me till I die. And it's five years since I put a foot down below. I stored it up, it seems, without knowing it."

Suffice it to say that this miner's widow, were she alive today, would have great difficulty in obtaining benefits.

The reality of this projection has been borne out by the rate of denials to black lung claimants and their widows. In some states as many as 70 percent of the applicants have been turned down. The national average is a 50 percent denial rate.

Congress intended, through the 1969 Act, to recompense the disabled miner for his mine-related disease. It was believed that title IV would provide benefits to those who were so disabled.

Congress recognized when the Act was being considered, however, that the chest X-ray, or roentgenogram, was an imperfect means of ascertaining the existence of pneumoconiosis in coal miners. Testimony to that effect was provided by the Surgeon General, who produced a Public Health Service study showing the existence of pneumoconiosis from autopsies performed on deceased coal miners who had, while living, been diagnosed by means of X-ray examination to be free of pneumoconiosis. For this reason the Senate Committee report on the 1969 Act specifically referred to the need to require medical tests other than the X-ray to "establish the extent and severity of the disease." Many cases have come to the Committee's attention in which a miner is suffering from a severely disabling respiratory or pulmonary impairment, and yet he has no X-ray evidence of pneumoconiosis.

Because of the continuing recognition of the fact that X-ray evidence is not always satisfactory, the Committee retained a provision of the House bill which prohibits the denial of a claim solely on the basis of the results of a chest roentgenogram. It was anticipated by Congress in 1969 that other tests to establish pneumoconiosis would be developed through research. This has not been done, and the Social Security Administration continues to rely exclusively on the results of X-ray evidence.

Testimony has further indicated that a negative X-ray is not proof positive of the absence of pneumoconiosis. Studies in addition to that of the Public Health Service confirm the existence of the disease by autopsy where a chest X-ray was negative, indicating an error of 25 percent in diagnosis.

In addition, many believe that coal miners have a greater than average incidence of respiratory and pulmonary impairments other than pneumoconiosis. Considerable testimony was devoted to this premise. Even in 1969 the Surgeon General had stated that "medical researchers in both Britain and the United States have repeatedly shown that coal miners suffer from more respiratory impairment and respiratory disability than does the general population."

Similarly, noted pulmonary experts Drs. William S. Lainhart and Keith G. Morgan have stated that "it is fairly well accepted that coal miners have a higher prevalence of lung disease than does the general male population," and that "Several respiratory diseases occur more frequently in miners."

Other testimony indicates that an X-ray may often be clouded by the presence of emphysema so that pneumoconiosis does not show on the X-ray. In some cases it has been alleged that the X-ray was of poor quality, and for that reason did not show the existence of black lung.

Senator Robert C. Byrd, in testimony before the Subcommittee on Labor on the pending black lung benefits legislation, spoke eloquently of this urgent problem. He said:

"Let us stop quibbling with dying men as to whether their lungs are riddled with black lung or whether they are affected with asthma, or silicosis, or chronic bronchitis."

An acknowledged expert in the field of pulmonary impairments of coal workers, Dr. Donald Rasmussen, Director of the Cardio-Pulmonary Laboratory at the Appalachian Regional Hospital, Beckley, West Virginia, testified as follows:

"The * * * assumption that coal workers' pneumoconiosis per se is the only disease process related to coal mining is not medically justified. Other conditions of the lung, in addition to pneumoconiosis, are commonly encountered among coal miners.

"While the exact causes of these conditions are not completely understood and while other nonoccupational factors may be in part responsible, no medical authority can prove these conditions to be unassociated with the mining exposure.

"Current medical concepts include viewing the lung diseases associated with coal mining as a broad spectrum of disease conditions. Often these conditions coexist with either coal workers' pneumoconiosis or silicosis. Some are in reality, sequelae to pneumoconiosis per se."

“* * * In general, the rewording of the definition of the pneumoconiosis, and other respiratory or pulmonary impairments brings a very needed measure of reality into the situation. By that, I mean, in terms of what is pneumoconiosis, there is a more reasonable approach than simply referring to the disease of coal miners in terms of pneumoconiosis.

“Since we do not know all of the specific disease entities which can arise as a consequence of the mining industry, we do not even know for that matter all of the specific causes of these impairments, and so for this reason, a broadening of the definition, and broadening of the scope makes this a much more realistic situation, and so much more in keeping with the present state of medical knowledge.”

Representatives of the Department of Health, Education and Welfare who testified before the Committee this year asserted that there is no medical evidence to verify that coal miners as a class suffer from a greater incidence of respiratory or pulmonary impairment, other than pneumoconiosis, than the rest of the male population. However, they also testified that there is no medical evidence to rebut the previously quoted testimony. That there is this apparent difference of view is unfortunate. For the miner and his survivors it is calamitous.

For at least the past decade Congress has appropriated funds specifically for research into the diseases of coal miners. And yet, the Executive Branch of Government does not have the answers.

The Black Lung Benefits Act of 1972 is intended to be a remedial law—to improve upon the 1969 provisions so that the cases which should be compensated, will be compensated. In the absence of definitive medical conclusions there is a clear need to resolve doubts in favor of the disabled miner or his survivors.

The Committee bill gives the benefit of the doubt to claimants by prohibiting denial of a claim solely on the basis of an X-ray, by providing a presumption of pneumoconiosis for miners with respiratory or pulmonary disability where they have worked 15 years or more in a coal mine, and by requiring the Social Security Administration to use tests other than the X-ray to establish the basis for a judgment that a miner is or is not totally disabled due to pneumoconiosis.

Following is a discussion of these provisions, and some of the testimony which supports their inclusion in the bill:

DENIAL OF CLAIMS BASED ON X-RAY

A provision of the Senate bill, also contained in the House-passed measure, would eliminate the heavy dependence on the X-ray now exercised by the Social Security Administration in the processing of benefit claims under title IV.

The current Social Security procedure requires that if an X-ray does not show totally disabling pneumoconiosis, no further processing of a claim is allowed. Thus, any further evidence of disability is not allowed if the X-ray shows negative.

As Paul Kaufman, of the Appalachian Research and Defense Fund, stated in his testimony to the Subcommittee on Labor:

“The Social Security Administration is currently using three tests to determine the existence of pneumoconiosis: X-ray, autopsy, and lung biopsy.

"Autopsy, of course, can only be used after death. Lung biopsy is both painful and risky and is rarely used.

"That leaves the X-ray . . .

"[I]n the past X-ray examination has not been sufficient to even prove the existence of pneumoconiosis.

"Research done by ARDF in cooperation with the Appalachian Regional Hospital at Beckley, West Virginia, indicates that X-ray misses the mark in at least 25 percent of the cases.

"It was found that approximately 25 percent of a random sample of some 200 coal miners whose medical records based upon X-ray findings showed no coalworker's pneumoconiosis were found on post mortem examination to have the disease."

Sixty-two percent of the denial of benefits issued by Social Security are based upon the claimant's failure to demonstrate the presence of coal workers' pneumoconiosis by X-ray evidence. In fact, there is strong evidence that emphysema may cloud an X-ray to such an extent that the X-ray shows no concentrations of coal dust, and is therefore read as negative. All medical witnesses before the Committee, save those of the Administration, urged less reliance on the X-ray.

The publication "Pneumoconiosis and Allied Occupational Chest Diseases", issued by the British Ministry of Social Security, states that ". . . the disease (pneumoconiosis) is difficult to diagnose, especially in the early stages, and accurate diagnosis depends on three essentials—a high quality full-size radiograph of the chest, a full clinical examination (including lung function tests) and complete industrial history."

Dr. Donald Rasmussen, a witness previously cited in this report, said this about sole reliance on the X-ray:

"No one is advocating that the X-ray not be employed, because the X-ray is a vital part of every medical evaluation, but the idea it can be used as a means of determining the presence of occupational lung disease is not tenable under the present state of knowledge, not only because all of the conditions which affect the miner may not be shown on the X-ray, the technical requirements of the X-ray are really too great, and the X-ray too unreliable, even for the purpose of detecting one entity, pneumoconiosis."

REBUTTABLE PRESUMPTION

The bill reported to the Senate, H.R. 9212 as amended, establishes a rebuttable presumption that a totally disabled coal miner who worked in an underground mine for 15 years or a surface miner who was employed under environmental conditions similar to those experienced by underground miners, is totally disabled by pneumoconiosis if he has a totally disabling respiratory or pulmonary impairment, even if he has an X-ray which cannot be interpreted as positive for complicated pneumoconiosis. The Secretary of Health, Education and Welfare may rebut the presumption if (1) he establishes that the miner does not, or did not, have pneumoconiosis, or (2) that the miner's disability did not arise out of, or in connection with, his work in a coal mine. Lay evidence alone will not be sufficient to raise the presumption of pneumoconiosis.

For purposes of new section 411(c)(4), the term "totally disabling respiratory or pulmonary impairment" means an impairment which prevents the miner from engaging in gainful mining employment re-

quiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time.

The Committee intends that the burden will be placed on the claimant to prove the existence of pneumoconiosis in cases where the miner worked fewer than fifteen years in a coal mine, but that judgment will be allowed to be exercised in determining the validity of claims in such cases, including the determination that the miner's disability is not due to pneumoconiosis or that it is not related to his employment in a coal mine. A miner's work history reflecting many years of mining work, though short of fifteen, and the severity of his impairment, shall also be considered. It is further intended that a mere showing of a respiratory or pulmonary impairment will not be sufficient to establish a claim for benefits.

It must be made clear by the Committee, however, that it expects and intends that miners with fewer than fifteen years in the mines who are totally disabled and who have X-ray evidence of pneumoconiosis other than complicated pneumoconiosis, who are now eligible for benefits, will remain so under the Committee amendments.

The fifteen year period is not intended to be an inflexible standard serving as a bar to successful claims. It merely reflects the testimony of the Surgeon General in 1969, who stated:

"For work periods less than 15 years underground, the occurrence of pneumoconiosis among miners appears to be spotty and showed no particular trend. For work periods greater than 15 years underground, there was a linear increase in the prevalence of the disease with years spent underground."

Though there may be no particular trend, there will be worthy cases and the committee intends that these cases will be decided consistent with the remedial nature of these amendments.

OTHER TESTS TO ESTABLISH PNEUMOCONIOSIS

The Committee amendment provides that claims for benefits on the basis of pneumoconiosis may be established through one or more of a number of tests. The provision is a logical extension of the section in both the House-passed bill and the Senate measure which stipulate that a claim for benefits shall not be denied solely on the basis on an X-ray examination.

In connection with testimony on the use of the X-ray as the sole basis for denial of a claim, witnesses throughout the hearings urged that provisions be made for more comprehensive evaluation and testing of the miner's physical condition as it relates to respiratory and pulmonary impairments. This provision, taken in conjunction with the X-ray provision, would help achieve that objective, without strictly enumerating which tests shall be used or defining the limitations or extent of such tests. Witnesses who urged provisions for more thorough testing and evaluation were also careful to recommend that Congress should not rigidly define the types of testing, but that flexibility to make such decisions should remain with the Social Security Administration. The Committee's provision will achieve that objective.

During testimony miners, numerous physicians, a public interest legal organization, and the medical officer for the United Mine Workers stressed the urgent need for more thorough examinations of appli-

cants for black lung benefits. Additionally, the entire thrust of the testimony of the Federal Co-chairman of the Appalachian Regional Commission, Donald W. Whitehead, was directed toward the need for more clinical facilities through which comprehensive testing and evaluation could be achieved. Included in this presentation was a summary outline of a plan on which the Commission is presently working to establish a series of fixed-site clinics and mobile testing vans.

It is important also that medical histories, evidence submitted by a miner's physician, affidavits, and other supporting evidence on the miner's physical condition as it relates to pneumoconiosis and its sequelae be considered by the Social Security Administration. There shall be deemed competent evidence in determining benefits, although lay evidence, other than a wife's, will be considered competent only in the case of a deceased miner.

Throughout the hearings, particularly with regard to the cases of widows, there were descriptions of the difficulties in securing complete medical records and other evidence of a miner's disability, while Social Security currently has authority to consider affidavits and supporting materials from persons who have knowledge of the miner's physical condition, the overwhelming weight of the testimony received by our Subcommittee indicates that this was not being done to the extent the committee believes desirable. This amendment will be particularly helpful to widows whose husbands most recently were inactive miners and who do not have extensive medical records, or at least records of respiratory impairments.

Dr. Donald Rasmussen, who has probably made more intensive examinations of miners than any other physician, said with regard to this issue:

"I would like also to urge the people who administer the provisions of the black lung compensation to perhaps make more use of the opinion of the miner's family doctor in terms of the existence of significant lung disease.

"I think very little attention is paid to the opinion of the doctor who has cared for a coal miner for 10 or 15 years.

"I think very little attention is paid to the fact that the doctor may well know his patient suffers one of the general respiratory diseases.

"I have seen many problems that the widows have faced. I have searched the medical records to try to come up with some sort of evidence, to support the claim for the compensation benefits. I must say, it is exceedingly difficult in many cases to find existing medical information that can help, and when the requirements for compensation are as rigid as they are, it is sometimes totally impossible.

"For example, I can recall a widow, who told me that her husband had quit his job in the mines after some 50 years employment because it became too difficult for him, breathing was too short, and he could no longer continue to mine coal. He lived for perhaps 10 years after this time, and he did very little, he was unable to work at anything.

"He had a medical chart that must have been an inch and a half thick, and in the chart were many records of many different medical problems that the man had, but nowhere in the chart did it say

anything about the fact that the man had such severe shortness of breath, that he could not walk one-half flight of stairs. No one had bothered to concern himself with this. The miner never went to see the doctor about those complaints, because this is the way he was all the time.

"Now, he did come to see the doctor when he had pains in his abdomen, and when he had pains in his chest.

"To make a long story short, throughout the entire chart, there is nothing to indicate the severity of this man's lung disease. Yet here is the widow who through the years knows her husband, there were friends who knew this man, and knew that he had this much difficulty.

"The X-ray examination in the man's chart failed to make note of pneumoconiosis, but then nobody was really looking for pneumoconiosis."

"In fact, his chest might have been considered a normal coal miner's chest, if that might mean anything.

"I would like to urge the Committee to bring about some kind of change in terms of administering that particular aspect concerning widows, to liberalize the requirements, and allow for affidavits of friends and acquaintances who knew the miner in question."

The art of medical diagnosis of coal miners' respiratory impairments is not so precise that a miner's benefit should stand or fall on the basis of a single test. Every available medical tool should be used to assist a miner in successfully pursuing his claim for benefits. This provision seeks to expand the number of medical tools available for that purpose.

Section 3(g) of the Committee bill provides, among other things, that all relevant medical tests shall be considered in determining the validity of claims for benefits. The Committee understands that many of the tests described in this provision are now given under regulations of the Social Security Administration. The Committee intends and expects that such tests will continue to be performed in any case in which such tests are relevant to the establishment of the basis for a claim for benefits. It might not be appropriate to give certain tests in certain circumstances, however. For example, a claimant who is obviously so disabled that he can barely walk should not be required to take a test that would be so strenuous and taxing to him as to imperil his health still further. In such a case, alternative tests should be given. Further, inadequacy or unavailability of testing facilities at a particular location shall not diminish the relevancy of such tests to a given claim. If a test is needed or desirable in establishing the validity of a claim, it should be provided, even if it involves some discommodation to the Social Security Administration.

Some of the medical tests now being used to ascertain pulmonary and respiratory impairments include the following:

1. *Ventilatory Study* (airway obstruction).—Test requires subject to inhale and exhale as hard as he can. Extent of obstruction as measured by maximum breathing capacity (MVV or MBC) and forced expiration volume (FEV) is recorded by needle on graph (spirogram). Measurement is determined on a time factor of one second. Normative tables are used to determine ability to do work.

2. *Total Vital Capacity*.—same mechanism as (1) above, but time factor is 3 to 4 seconds, measuring total volume inhaled and exhaled. Values obtained under (1) and (2) are correlated. Less useful than (1).

3. *Diffusing Capacity*.—subject inhales a measured amount of carbon monoxide, then exhales forcibly into a machine. The less content of carbon monoxide exhaled, the better the lungs. This is known as a single breath diffusing capacity test. There are other types.

4. *Arterial Oxygen Saturation*.—(oxygen transfer test or blood gas study)—Blood sample is taken from subject and oxygen content is measured. The greater the prevalence of oxygen, the greater the oxygen pressure exerted on the blood. Higher readings mean better oxygen transfer ability. At rest and especially during exercise, need to measure simultaneously uptake of oxygen and carbon dioxide output.

The mine environment produces a variety of hazards to the miner's health. Not only is he exposed to coal dust, but also sand and rock dust containing harmful amounts of silica, fine enough to reach the innermost portions of the lungs. Few miners have not experienced repeated respiratory insults associated with the inhalation of fumes from cable fires, blasting, or burning hydraulic fluid. Dr. Harold Levine, one of the pulmonary specialists who testified before the Committee stated: "We did not see any miners who did not have a history of being hauled out of the mines unconscious."

The Committee contemplated the inclusion of an amendment which would require the Secretary of Health, Education and Welfare to pay the cost of medical tests and X-rays used to establish a claim for benefits rather than merely reimburse the claimant for such expenses. It was believed that there could be a number of cases in which a claimant would not be able to accept the financial burden of paying the initial fees for such tests. Upon assurances by the Social Security Administration that it was in fact doing as the amendment would require, and also that it is paying for additional tests required for reconsideration of claims, however, it was decided that such an amendment would not be necessary.

Men are being disabled by their work in the mines. As it stands now, their success in collecting benefits rests solely on the artifice of exhibiting on an X-ray picture one or more black spots of a certain dimension. This contrived procedure does not reach the problem. Therefore, the Committee is expanding coverage by providing that miners with pulmonary or respiratory impairments will, in some cases, be presumed to have pneumoconiosis.

DEFINITION OF TOTAL DISABILITY

The Committee believes that experience in the administration of the black lung benefit provisions to date reflects the need to modify the definition of disability applied in the adjudication of claims under these provisions. The Committee makes no judgment on whether the test in title II of the Social Security Act, "inability to engage in any substantial gainful activity," is an appropriate definition of application to the total universe of workers in the Nation. But, it is unrealistic when applied to coal miners, if it results in the denial of claims of miners who for medical reasons can no longer be expected to work in

the mines and for whom there is no, too often, other realistic employment opportunity, or for whom the only opportunity for employment may be at wages far less than the would have earned had they been able to continue to work in their usual jobs.

The Committee substituted for the definition of disability which has been followed to date, the test that a miner will be considered totally disabled when pneumoconiosis "prevents him from engaging in gainful employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time". This change will clearly establish the principle that a coal miner who is prevented from engaging in his usual mining occupation will be considered to be totally disabled. By providing that criteria established under this definition shall not be more restrictive than those applicable under Section 223(d) of the Social Security Act, this section assures that due weight shall be given to such factors as age, education and previous work experience in the application of the revised definition of total disability, in order to insure as broad coverage as possible.

In the section-by-section analysis of the conference Report on the 1969 legislation, the following appears:

"The parameters of the term 'total disability' will be established from time-to-time by the Secretary of Health, Education, and Welfare, but he must not establish more restrictive criteria for determining disability than the criteria applicable under section 223(d) of the Social Security Act, as amended, for purposes of disability under that Act. It is expected that initially this criteria will be followed. As time goes on, the Secretary may develop more liberal criteria consistent with the purpose of this title."

A much clearer intent could not be stated, and is restated now as the intent and expectation of the Committee.

SUMMARY OF EXPANSION FEATURES

The Committee has been informed that it is the policy of the Social Security Administration to consider all relevant evidence submitted by the applicant and to secure such additional medical or other evidence as may be relevant to the adjudicating of claims. However, the Committee believes this is such an important consideration that, in light of past history, it must be reinforced by the weight of statutory authority. Thus the Committee has not only included the provision of the House bill that "no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram" but has added the following language: "In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials." This provision is applicable to both the determination of pneumoconiosis as well as the determination of total disability.

It is not the Committee's intention that all of these types of evidence be secured in every claim, but that such evidence be sought in those claims as is necessary to assure a decision on the claim consistent with the remedial nature of this legislation. The Committee recognizes that there are practical considerations involving the volume of the workload and the limited medical resources for performing certain types of tests, as evidenced by the following statement in the first annual report on the administration of the black lung benefit provisions made by the Secretary of Health, Education, and Welfare: "Breathing impairment may also result from reduction in an individual's capacity to transfer oxygen from his lungs into his blood stream where it is needed to provide energy for working. Tests for this type of impairment are more difficult to conduct and less widely used, involve greater physical exertion on the part of the subject, and require more extensive equipment and highly trained professional personnel to administer them with satisfactory results and safeguards to the individual being tested. Medical resources to perform these tests are in extremely short supply in most of the areas in which black lung claimants are concentrated."

"The Social Security Administration and the Public Health Service are collaborating in a pilot project to evaluate the effectiveness and feasibility of providing testing of this type for black lung benefit claimants. The project will assess results and identify any problems encountered in such exercise testing on a relatively large scale for claimants under this program. This is expected to lead the way to the establishment of additional methods and criteria for evaluating total disability due to pneumoconiosis under this program, as well as to the availability of more adequate medical facilities in the coal mine areas to perform this testing."

The Committee endorses the efforts being made by the Department to develop new tests and facilities to evaluate disability due to pneumoconiosis, but believes a much more intensive effort needs to be made if results are to be achieved within a reasonable period of time. The bill reported by the Committee deals with this problem for the future by authorizing grants for the construction, purchase and operation of clinical facilities for the analysis, examination and treatment of respiratory and pulmonary impairments in active and inactive coal miners, and for the purpose of devising simple and effective tests to measure, detect and treat respiratory and pulmonary impairments in such miners. However, the backlog of claims which have been filed under these provisions cannot await the establishment of new facilities or the development of new medical procedures. They must be handled under present circumstances in the light of limited medical resources and techniques.

Accordingly, the Committee expects the Secretary to adopt such interim evidentiary rules and disability evaluation criteria as will permit prompt and vigorous processing of the large backlog of claims consistent with the language and intent of these amendments. Such interim rules and criteria shall give full consideration to the combined employment handicap of disease and age and provide for the adjudication of claim on the basis of medical evidence other than breathing tests when it is not feasible or practicable to provide physical performance tests of the type described in the above cited section

from the Secretary's annual report. For example, an older miner who has developed pneumoconiosis, or another respiratory or pulmonary disease which is presumed to be pneumoconiosis, and who is no longer working as a miner, would be prevented from returning to or continuing in his usual work as a miner due to the combined employment handicaps of advancing age and respiratory or pulmonary disease, even though the disease may have produced relatively little functional loss. On the other hand, a younger miner might not be so severely handicapped unless the disease has produced sufficient functional limitation that he is unable to meet the work demands of coal mine employment, as determined by medical evaluation.

The amended bill may result in a finding of total disability for some miners who are prevented by pneumoconiosis from working in the mines even though they still may be able to do other kinds of work. However, in these cases the amount of benefits would be reduced according to the formula applied to retired social security beneficiaries who work. Thus, if a miner qualifies for black lung benefits but earns more than \$1,680 a year, his benefit checks will be reduced (unless he is age 72 or older) by \$1 for every \$2 earned between \$1,680 and \$2,880. Benefits are further reduced by \$1 for every \$1 earned over \$2,880.

Extension of Program

SHARING OF RESPONSIBILITY

Under existing law the responsibility for payment of new claims for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969 would shift from the Federal government to the coal operators under workmen's compensation on January 1, 1973. A transition provision specifies that claims filed during 1972 will be paid by the Federal government for that year only, but that after December 31, 1972 such claims are to be paid by the industry either under a State workmen's compensation law or under the procedures of the Longshoremens and Harbor Workers Compensation Act.

Both H.R. 9212, as passed by the House of Representatives, and S. 2675, as introduced, would require the extension of the program's shift of responsibility provisions for two years, so that the industry would assume new claims for black lung benefits on January 1, 1975.

As amended by the Committee on Labor and Public Welfare the transfer provisions would be extended by one year. Thus, generally, the Federal government would not process or pay new claims after December 31, 1973. Reconsideration of any claims filed after December 30, 1969, including refiling of claims which were finally denied prior to the enactment of the Black Lung Benefits Amendments Act of 1972, but which may under such amendments now demonstrate entitlement to benefits, shall be a Federal responsibility, whenever they are reconsidered, and if entitlement of such claims is established, the Federal government will pay lifetime benefits. Lifetime benefits will also be paid by the Federal government for all new claims filed prior to December 31, 1972. For claims filed during calendar year 1973, the Federal government pays benefits only during that year, and for subsequent years claims are to be paid by the industry. Claims filed on or after January 1, 1974 will be paid for by the employer.

The Committee bill provides for the sharing of responsibility for disabled miners and their dependents between the Federal government and the coal industry. This concept was established in the original legislation. Those cases which form the backlog of claims—both those which have been denied previously and those which are newly covered under these amendments to the law—will be the responsibility of the Federal government. All future claims will be the responsibility of the coal industry.

Over and above the cost factor, an extension of the program is needed if Congress is to give the State workmen's compensation system an opportunity to meet the dire needs of the disabled miners and their survivors.

Under the existing law, it was contemplated that States would be given a sufficient period of time to meet the Federal standards established in regulations of the Secretary of Labor consistent with the Act. Unfortunately, the Secretary of Labor failed to promulgate his regulations under March of 1971. By then it was too late for many State legislators to act prior to January 1, 1972.

It is, therefore, essential that the program be extended so that the States can have an additional necessary and reasonable period of time to come into compliance with title IV. Under the existing law, the Secretary of Labor has the responsibility of insuring that State workmen's compensation laws provide adequate benefit coverage for miners and widows of deceased miners. The present circumstances indicate the need for an additional year for the States to enact legislation and develop program to handle black lung claims.

To insure that the States are given adequate notice of the new standards, the Secretary of Labor is required, under the Committee amendments, to promulgate final regulations within four months after enactment.

Title IV of the Federal Coal Mine Health and Safety Act of 1969, Section 422(e) (3) specifies that no payment of benefits shall be required under part C (relating to workmen's compensation) for any period later than seven years after the date of enactment. Thus, for those miners and widows whose claims are not filed under part B, the Federal program, lifetime benefits are not required.

The Federal coal mine health and safety bill passed by the House in 1969, H.R. 13940, provided a federally financed program of lifetime benefits for disabled miners and surviving widows. If a claimant filed during the required period, he or she would be paid benefits for life by the Federal government. It was contemplated that the program would reach all existing cases of black lung, and that in the future, mines would be cleaned up to the point where no pneumoconiosis would develop. In the interim, it was expected that State compensation laws would provide for miners who contract the disease in the future.

The Senate measure at that time provided that the Federal government make full disability payments through June 30, 1971, with the States providing 50 percent of the funds in the third and fourth years. Existing law came about through a conference compromise on this issue.

The Committee on Labor and Public Welfare has determined that the black lung benefits programs must be made permanent. H.R. 9212, as amended, so provides. To do otherwise would not only work a hard-

ship on many disabled miners, widows and children, but it would result in an injustice of the worst kind. Under existing law, claimants who filed on December 31, 1971, would be eligible for lifetime benefits, while one who made the mistake of filing on January 1, 1972, would be paid that year by the Federal government; until December 30, 1976, under workmen's compensation; and thereafter not be paid at all, unless the States enacted satisfactory, permanent programs. The Committee amendment is intended to provide a stimulus to the States to move in this direction while protecting the disabled miner and his survivors should the states fail to fulfill this responsibility.

APPLICATION OF PART B TO PART C

New section 430 requires that amendments to part B be applied, wherever appropriate, to part C. Existing law requires that State workmen's compensation laws conform substantially to the 1969 Act as interpreted by regulations of the Secretary of Health, Education, and Welfare. This provision would further strengthen the intent expressed in existing law.

Questions were raised during the Committee deliberations over whether the amendments to part B would automatically be applicable, where appropriate, to part C.

Under the language of the existing law, the standards to be applied by the Secretary of Labor in administering part C or by a State workmen's compensation agency in adopting a program "which provides adequate coverage for pneumoconiosis," must not only be "substantially equivalent to or greater than the amount of benefits prescribed" in part B, but also "The standards for determining death or total disability due to pneumoconiosis" must be "substantially equivalent" to those under the Federal part of the program.

Although it would appear clear that the same standards are to govern, the Committee concluded that it would be best to so specify.

It is contemplated by the Committee that the applicable portions of following sections of part B, as amended, would apply to part C: section 411, section 412 (except the last sentence of subsection (b) thereof), section 413, and section 414.

SOCIAL SECURITY OFFSET

The Senate and House versions of H.R. 9212 have provisions which limit and eliminate, respectively, the policy of the Social Security Administration of treating black lung benefits as workmen's compensation.

Currently, Social Security is interpreting the black lung benefits program as workmen's compensation, thus subject to offsetting, or reduction, where a claimant also receives social security disability payments. Section 224 of the Social Security Act requires that if the combination of social security disability benefits and workmen's compensation benefits exceeds 80 percent of "average current earnings" (the larger of the average monthly wage used for computing social security benefits or the average monthly wage for the five consecutive years of highest income), such social security disability payments are to be reduced by the excess amount.

Under the House provision, benefit payments under the Federal Coal Mine Health and Safety Act could not be taken into account by

the Secretary in offsetting Social Security disability payments. The House Committee report on H.R. 9212 says of this provision that it "merely proposes to affirm by statute what was stated repeatedly during Congressional consideration of the original legislation".

The Committee on Labor and Public Welfare modified the language in the House bill and S. 2675 by limiting the offset against social security disability payments to not less than 100 percent of "average current earnings". This is a slight narrowing of the House provision. It assures that no claimant will receive more in benefits than he earned while employed immediately prior to his disability. It has been argued that offset avoids a situation in which it is more profitable to collect benefits than to attempt to become rehabilitated and return to work. But there is little opportunity for a disabled miner to return to work when he is afflicted by progressive, irreversible lung disease. There is no sound reason to limit benefits to a level below a miner's predisability earnings where, in the case of social security, workers have already paid for whatever benefits they receive, and where, in the case of the title IV program, miners have paid terribly with their health and lives in extracting a vital national resource.

Surface Miners

Both the House and Senate versions of H.R. 9212 would make miners working on surface or strip mine operations eligible for black lung payments, but would not change the requirements of proof of black lung. The House adopted the provision, sponsored by Rep. Michel, during consideration of H.R. 9212 by that body.

Existing law limits the program to underground miners. This means that those who have worked exclusively in surface mines—the strip miners—are presently ineligible for program benefits. This would be reasonable if it were positively ascertainable that strip miners cannot be afflicted with pneumoconiosis—but the fact of the matter is that there is no evidence that those who work only in surface mines may not contract this disabling disease.

It would seem reasonable to assume that those strip miners who have worked in extremely dusty situations—at the tippie, for example—for long periods of time, would be subject to conditions similar to those which result in the development of black lung among underground miners.

Under the current law, the miners who have worked their entire adult lives at above ground facilities of an underground coal mine are eligible for benefits if they are totally disabled by coal miners pneumoconiosis but those who may have worked their entire adult lives at even dustier above ground facilities of surface mines are not eligible, even if they have complicated pneumoconiosis. This is grossly unfair and was not intended by the legislation passed by the Senate in 1969. The first Black Lung Benefits legislation, approved by a roll call vote of 90-0 in the Senate would have applied to all coal miners. Unfortunately, that provision was lost in the conference of the two Houses. The Committee amendment remedies this unfair treatment.

Where the possibility of the disease exists, a miner should not be denied the benefits of the black lung program because of circumstance—simply because he has always worked above the ground rather than below it. This provision would correct the inequity by striking the

word "underground" from the present law, so that the program would apply to all coal miners, regardless of the physical characteristics of the mine.

Clinical Facilities and Research

This provision of H.R. 9212, as amended would add a new section to Title IV which would (1) authorize the Secretary of HEW through grant and contract, to build new facilities for the analysis, examination and treatment of pulmonary and respiratory impairments in coal miners, and (2) direct the Secretary to initiate research within the National Institute of Occupational Safety and Health and authorize him to make grants for the purpose of developing simple and effective tests and devices to measure, detect and treat such impairments.

During the recent hearings, witness after witness emphasized the need for additional clinical facilities, doctors testified as to the need for research on test devices and mechanisms which would simplify what is now a complex, physically exerting, and time consuming series of examinations to ascertain the existence and degree of pulmonary and respiratory impairments in coal miners.

The Federal Co-chairman of the Appalachian Regional Commission, Donald W. Whitehead, stated in testimony that:

"There is an urgent need for more and improved medical facilities in the coal regions, to provide a variety of diagnostic and health care services. Particularly needed are more facilities with adequate and proper equipment and staff to diagnose the health problems of miners and to perform the battery of tests needed to diagnose black lung and other respiratory diseases and the extent of the resultant disability. For example, there are currently only fifteen fully equipped pulmonary labs accessible to the coal regions of Appalachia, not all of which are fully staffed or operational, or conveniently located for large numbers of coal miners. Good health facilities generally are not located in areas with heavy concentrations of coal miners. Of the counties surveyed in our health inventory, those with the greatest dearth of health facilities were those with the greatest concentration of working miners: * * * This means that miners seeking health care must travel considerable distances—often in poor health—to obtain adequate treatment. In eight counties in Kentucky which have 6,860 working miners, we have identified only two labs with good X-ray equipment (i.e., which has at least a generator current of 500MA, voltage of 150KV is full wave rectified and single or 3-phase) and only one full-time radiologist; no pulmonary specialists; and no complete pulmonary function labs.

"In the four counties in West Virginia, with 16,731 working miners, there are only three pulmonary specialists, none of whom perform sophisticated lung function tests; there are no complete function tests; there are no complete functioning pulmonary labs and no good X-ray facilities.

"Furthermore, since we counted only active miners in the survey, the size of the population to be served is greatly underestimated. We know that the number of retired and former miners who need diagnostic and then some continuing care is also very great. So the real need for such facilities is far greater than indicated above, particularly when one considers that the average age in many Appalachian coal counties is far higher than in the Nation and that the evidence of respiratory ailments among coal miners is higher than for other groups."

The reasonable expectation associated with this provision is better care and treatment facilities for disabled coal miners, who now may be forced to travel hundreds of miles for adequate medical assistance, and a dramatic reduction in the need for elaborate testing mechanisms. The benefits accruing from the research contemplated by this proposal would not, of course, be limited to disabled coal miners, but should be of value throughout the world in the diagnosis and treatment of pulmonary and respiratory diseases and impairments of all kinds.

Discrimination in Employment

A new section is proposed to be added to title IV of the Federal Coal Mine Health and Safety Act which would prohibit any discrimination against a miner because such miner is afflicted with pneumoconiosis or other pulmonary or respiratory impairment.

The problem to be corrected by this provision is one voiced by many working and disabled miners. If a coal mining employer finds that an employee miner is developing black lung, silicosis, emphysema or other breathing impairment, it may be all too likely that the miner will not be retained to avoid paying black lung benefits in the future. Such miners may be considered to be bad risks and not worth hiring or keeping. If they are fully productive now, it is certain that they will not be in the future. At the time of permanent closing of a mine for any reason, the opportunity exists for an operator to refuse a miner's request for transfer to a new mine because of the miner's medical diagnosis and the possibility of expenses for his care and treatment, if and when his condition worsens. This is a potential situation which demands the closest scrutiny. The temptation to thin the ranks of workers will be greatest when a mine is closed.

Until a miner is totally disabled and therefore eligible for benefits, there is no justice in, nor excuse for, denying him his livelihood. This provision is particularly intended to reach the case in which a coal company fires a miner with the result that such miner may not in the future be able to collect black lung benefits.

Under section 203(b)(2) of the Federal Coal Mine Health and Safety Act, a miner who shows evidence of development of pneumoconiosis has the option of transferring to positions in less dusty areas at a rate of pay not less than that immediately prior to his transfer. This provision would strengthen, and to some extent expand, that provision of the law. The 1970 Annual Report to Congress by HEW on the Coal Mine Health and Safety Act recommended such an amendment to the law.

As used in this new section, also true of other provisions in the Federal Coal Mine Health and Safety Act of 1969, the term "representative of such miner" includes any individual or organization that represents any miner at a given mine and does not require that the representative be a recognized representative under other labor laws. A lawyer for the miner, for example, could also be a representative.

Application of Social Security Act Procedures

Section 1(c)(5) of the Black Lung Benefits Act of 1972 makes certain provisions of the Social Security Act applicable to part B of title IV. These provisions, some of which are to be retroactively

applied to December 30, 1969, include most of section 205, relating to hearing rights and procedures, subpoena authority and enforcement, judicial reviewability of all issues, and other judicial and quasijudicial matters. Also included are sections dealing with overpayment and underpayment of claims, limitation on attorneys' fees, antigarnishment or attachment provisions, and criminal penalties for fraud. Those provisions which are retroactive relate to hearing rights and procedures, and judicial review of issues. The House-passed version of H.R. 9212 adopts only those provisions of the Social Security Act dealing with overpayment and underpayment, representative payment and departmental responsibility therefor, and limitation on attorneys' fees. The Committee believes that the application of the other provisions is important to the equitable processing and adjudication of claims under title IV.

Notice to Claimants of Amendments

It is the responsibility of the Secretary to clearly indicate to every claimant who has been denied benefits or whose claim is being reconsidered or under appeal that the new law provides for a *new* consideration of claims and that the claimant has the right to this consideration even though his claim was denied or is currently otherwise under consideration under the 1969 Act.

It is clear that all claims pending or denied as of the date of enactment of the Black Lung Benefits Act of 1972 will be evaluated on the basis of Federal responsibility therefor, and that all such cases, regardless of when they are ultimately decided, will be the administrative and financial responsibility of the Federal government.

The Committee expects the Social Security Administration, in meeting the requirements of this section, to notify all black lung claimants generally through the various communications media of these amendments to title IV, to individually notify by mail each claimant who has been denied benefits, or whose claim is still pending, or who may be entitled to retroactive benefits through the liberalized social security disability offset provision, of the provisions of the Black Lung Benefits Act of 1972. It is anticipated that the Social Security Administration will inform those who are given notification by mail that his or her claim is being automatically considered and reviewed by Social Security, and that there is no requirement that the claimant file an application for review.

Administration in Transition Year

A new provision in the Senate bill, section 415, amends title IV of the Act to assure a smoother, more logical transition from the program under part B, administered and paid for by the Federal government, to part C, to be administered by State workmen's compensation agencies or by the Secretary of Labor.

Under existing provisions in part B (Section 414(b)) the Secretary of Health, Education and Welfare accepts the filing of new claims for the year 1972 (1973 in the Senate bill and 1974 in the House-passed measure), to be paid by the Federal government for the months in that year only. This means that in the following year the affected claimant

would be required to file his claim again with the relevant state workmen's compensation agency or with the Secretary of Labor.

In the view of the Committee this double filing places an unnecessary burden on the claimant, adds unnecessarily to the administrative workload of the Federal government, and may lead to an unwarranted hiatus in the payment of benefits.

Therefore, new section 415 provides that new claims filed during the transition year shall be administered by the Secretary of Labor rather than the Secretary of Health, Education and Welfare. The two departments are to consult and issue joint regulations as to the manner and place of filing these claims, including a provision that claims may be filed with Social Security Administration district offices, as is the existing practice with respect to claims filed under part B. Coal mine operators are to be notified of the pendency of, and allowed to participate in the adjudication of such claims, and the determination of the Secretary of Labor with respect to such claims will bind operators who receive such notice, as if the claims were filed under part C.

Limitation on Filing Certain Claims

The Committee bill amends section 422(f), relating to a time limitation on the filing of claims under part C, by adding a new paragraph thereto.

Existing subsection (f) provides that a claimant under section 422 of part C must file for benefits within three years after the discovery of total disability due to pneumoconiosis. The new provision requires that such claims, in the case of a living miner, the validity of whose claim depends on the rebuttable presumption of section 411(c)(4) as adapted to part C under new section 430, be filed within three years after the miner's last exposed employment in a mine (that is, within three years after working in an environment which might expose him to a pulmonary or respiratory impairment). In the case of a deceased miner, the claimant, the validity of whose claim depends on section 411(c)(4) must file within fifteen years after such last exposed employment.

Tabulation of Votes in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of rollcall votes in Committee:

Motion by Mr. Randolph that the Committee report favorably to the Senate H.R. 9212, as amended by the Committee on Labor and Public Welfare. Agreed to: 17 yeas, 0 nays.

[yeas—17]

Mr. Williams
Mr. Randolph
Mr. Pell
Mr. Kennedy
Mr. Nelson
Mr. Mondale
Mr. Eagleton
Mr. Cranston
Mr. Hughes
Mr. Stevenson

Mr. Javits
Mr. Dominick
Mr. Schweiker
Mr. Packwood
Mr. Taft
Mr. Beall
Mr. Stafford

Cost Estimates

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (P.L. 91-510) the costs which would be incurred by the Federal Government in carrying out the provisions of this bill are estimated to be as follows:

	<i>Million</i>
Combined fiscal years 1972 and 1973—retroactive payments--	\$571
New Claims:	
Fiscal year:	
1973 -----	428
1974 -----	441
1975 -----	389
1976 -----	369
1977 -----	354

SECTION-BY-SECTION ANALYSIS

SECTION 1

The first section displays the short title, amends various provisions of title IV of the Act to allow claims by orphaned children and other dependent survivors, defines "widow," "child," and "dependent", and provides procedural safeguards for claimants.

(a) (1)

This paragraph provides that the amendments to the basic Act may be cited as the "Black Lung Benefits Act of 1972."

(b) (1)

Section 412(a) of the Act is amended by inserting a new paragraph (3) to provide for payment of benefits to children where both the miner and his spouse are deceased. Surviving children are entitled to the full amount of benefits paid, or due, to the miner or his widow. If there is more than one surviving child all children equally share the amount payable; benefits are increased by 50 per centum where there are two children, by 75 per centum where there are three children, and by 100 per centum if there are more than three such children.

(b) (2)

New paragraphs (5) and (6) are added to section 412(a). Paragraph (5) provides for payment of a deceased miner's benefits to surviving dependent parents where at the time of the miner's death there is no surviving widow or child, and where there are no such parents to surviving dependent brothers or sisters. Such a dependent must have been receiving from the miner at least one-half of his support for at least one year immediately prior to the miner's death. The paragraph also established a requirement of proof of such support.

Paragraph (6) permits the Secretary of Health, Education and Welfare to accept, where necessary, an application for benefits from a dependent in his own right, and authorizes him to certify augmented benefits directly to the dependent, or one standing in his place, where the Secretary believes it would be in the dependent's interest to do so.

(c) (1)

This paragraph provides for the inclusion of children, parents, brothers, and sisters in addition to the existing provision in section 412b for miners and widows, with respect to reductions on account of State compensation and disability programs, in section 414(e) with respect to filings requirements for payment of benefits, and in section 424 with respect to operator liability.

(c) (2)

The term "dependent" in section 402(a) is redefined to add the Social Security Act definition to the existing definition, with a minor exception for the age at which a child's disability must have begun.

(c) (3)

The term "widow" in section 402(e) is likewise redefined to conform to the Social Security Act definition.

(c) (4)

The term "child" is defined in the Act for the first time as section 402(g), with language conforming to the Social Security Act.

(c) (5)

This paragraph amends section 413(b) of the Act to apply certain procedural safeguards and other provisions of the Social Security Act to claimants under title IV, including judicial review, attorney's fee limitations, notice and hearing requirements, criminal fraud provisions, and others.

(c) (6)

This provision deals with claims for benefits by children and widows. It requires payment of benefits retroactive to December 30, 1969 where a child or widow files within six months following the month of enactment of the paragraph. If a claim is filed more than six months following such month, benefits are retroactive to one year prior to the date the claim was filed. Claims by a child must, in any event, be filed within six months after the death of the father or mother, whichever last occurred, or by December 31, 1973, whichever is later. A provision similar to the last described imposes like requirements on dependent parents, brothers, and sisters who file claims.

(d)

Subsection (d) applies the provisions of section 1 of the bill retroactively to December 30, 1969 except as otherwise provided therein.

SECTION 2

(a)

This subsection limits the application of the benefit payment offset provision of the Social Security Act (section 224(a)) to benefits under part B of title IV. Section 224(a) requires that if the combination of social security disability benefits and workmen's compensation benefits exceeds an amount equal to 80 per centum of "average current earnings" (the larger of the average monthly wage or the highest computed monthly wage for the five consecutive years of highest income), such disability benefits are to be reduced by the excess amount. Title IV benefits are deemed by the Social Security Administration to be workmen's compensation benefits for purposes of Section 224(a). The new provision prohibits a reduction in social security disability benefits where the combined benefits do not exceed 100 per centum of "average current earnings".

(b)

Subsection (b) provides that the amendment made by section 2(a) is to be effective as of December 30, 1969.

SECTION 3

This section of the bill amends various provisions of title IV to broaden its coverage, to require new implementing regulations, and to assure more thorough and adequate testing of miner claimants.

(a)

The term "pneumoconiosis" in section 402(b) is amended to add the sequelae of the disease to its definition.

(b)

The term "total disability" in section 402(f) is amended to require that regulations of the Secretary of Health, Education, and Welfare provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from mining work which requires skills and abilities comparable to those used regularly in the mines and over a substantial period of time.

(c)

This subsection also requires payment of benefits under part B where a miner was, at the time of his death, totally disabled by pneumoconiosis, regardless of the actual cause to which his death was attributed.

(d)

Section 411(c), dealing with presumptions, is amended by adding a new paragraph (4) which provides that if a miner was employed for 15 years or more in an underground mine or in a mine with conditions comparable to those in an underground mine, if his chest X-ray is negative, and if he has or had a totally disabling breathing impairment, a rebuttable presumption of pneumoconiosis is established. The Secretary may rebut the presumption only by establishing the absence of pneumoconiosis or the absence of a casual connection between the impairment and the miner's work in a mine.

(e)

This provision requires that regulations concerning amendments to title IV be promulgated within four months after such amendments become law.

(f)

This provision amends section 421(b)(2)(C) to require for the listing of a conforming State workmen's compensation law that such law include total disability standards substantially similar to section 402(f), and those established under part B.

(g)

This subsection amends section 413(b) of the Act by adding two major provisions at the end of the first sentence. The first is a clause which prohibits the denial of a claim for benefits solely on the basis of the results of a chest X-ray. The second sets forth some of the medical tests and other evidence which are to be considered, where relevant, in determining the validity of claims.

(h)

Subsection (h) provides that the amendments made by section 3 of the bill are to be effective as of December 30, 1969.

SECTION 4

Section 4 amends title IV of the Act by advancing certain operative dates thereof by one year, by requiring the promulgation of regula-

tions, by clarifying procedures to be followed in issuing regulations, by adding several new sections to the act for various purposes.

(1)

This paragraph extends from December 31, 1971, to December 31, 1972 the deadline for filing permanent claims under section 414(b) of part B of title IV.

(2)

The second paragraph changes all 1972 dates in title IV to 1973, with the exception of that in section 421(b)(1), relating to publication of a list of State workmen's compensation laws. The dates relate to the extension for one year for the filing of claims during the "transition year" from part B to part C, to other deadlines for filing claims, including those with respect to widows, children, and dependents, and to the termination date for new claims filed under part B.

(3)

This paragraph changes all 1973 dates to 1974, which dates relate to responsibility for new claims filed under part C, and to the date of a miner's death for purposes of claims filed by surviving widows, children and dependents.

(4)

The fourth paragraph of section 4 requires the Secretary of Labor to publish regulations to implement the amendments made by the Black Lung Benefits Act of 1972 within four months after the date of enactment of such amendments.

(5)

Paragraph (5) amends section 426(a) to clarify the language of that subsection relating to procedural rules governing the issuance of regulations by the Secretary of Health, Education, and Welfare and the Secretary of Labor. The provision makes no substantive changes.

(6)

This paragraph adds a new section 427 to title IV to authorize the Secretary of Health, Education, and Welfare to enter into contracts and grants for the construction and operation of clinical facilities for the analysis, examination, and treatment of coal miner's respiratory and pulmonary impairments. Appropriations of \$10 million for each of the three fiscal years 1973, 1974, and 1975 are authorized. The provision also directs the Secretary to initiate research to devise simplified tests concerning respiratory and pulmonary impairments in coal miners, and authorizes to be appropriated such sums as are necessary for the purpose.

(7)

Paragraph (7) adds a new section 428 to title IV which prohibits discrimination in employment against any miner because of pneumoconiosis or other respiratory or pulmonary impairment, and provides for investigation of violations and enforcement against such violations.

(8)

This paragraph adds a new section 429 to title IV authorizing to be appropriated to the Secretary of Labor such sums as are necessary to carry out his responsibilities under title IV.

(9)

The final paragraph of section 4 of the bill adds a new section 430 to title IV which assures that all amendments to part B made by the Black Lung Benefits Act of 1972 shall, where appropriate, be applied to part C.

SECTION 5

(a),(b)

These subsections amend various provisions in title IV to strike out the words "underground" or "an underground" so as to apply the benefits under title IV to all coal miners.

(c)

Subsection (c) makes section 5 of the bill effective as of December 30, 1969.

SECTION 6

This section technically amends paragraphs (1) and (2) of section 422(e) and strikes out paragraph (3) thereof. Under existing law no benefits under part C are required to be paid for any period after seven years following the enactment of the original Act. This section strikes that provisions, thus making all of the part C program permanent.

SECTION 7

Section 7 of the bill adds a new section 431 to title IV which requires that notification of all amendments to title IV be sent to all persons whose claims are pending or were denied prior to enactment of the amendments. It requires the Secretary of Health, Education, and Welfare to notify all prior claimants of the provisions of the Black Lung Benefits Act of 1972, and to inform them of their right to review of their claims with respect to such amendments.

SECTION 8

This provision adds a new section 415 to part B of title IV which eases the transition from part B to part C by giving administrative responsibility in the transition year (1973 under the Senate amendments) to the Secretary of Labor. Claims may be filed in district offices of the Social Security Administration. The Secretaries of Health, Education and Welfare, and Labor are to issue joint regulations on the manner and place of filing. Notice of the pendency of claims is to be furnished to operators who may be affected thereby, with an opportunity afforded them to be heard, since they will be bound by the determination of the Secretary of Labor with respect thereto.

SECTION 9

This final section of the bill amends section 422(f) of title IV by adding a new paragraph thereto. The new provision requires claimants under part C who file for benefits on the basis of the rebuttable

presumption of new section 411(c)(4) to file within three years after the miner's last exposed employment in a mine, or in case of a deceased miner, within fifteen years from such employment.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Coal Mine Health and Safety Act of 1969

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's [underground] coal mines; that there are a number of survivors of coal miners whose deaths were due to this [disease;] *disease or who were totally disabled by this disease at the time of their deaths*; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such [disease;] *disease or who were totally disabled by this disease at the time of their deaths*; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

SEC. 402. For purposes of this title—

(a) [The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section S110 of title 5, United States Code.] *The term "dependent" means—*

(1) *a child as defined in subsection (g) without regard to subparagraph (2)(B)(vi) thereof; or*

(2) *a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 216(b) (1) or (2) of the Social Security Act. The determination of an individual's status as the "wife" of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the "insured individual" referred to therein. The term "wife" also includes a "divorced wife" as defined in section 216(d)(1) of the Social Security Act who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement),*

or there is in effect a court order for substantial contributions to her support from such miner.

(b) The term "pneumoconiosis" means a chronic dust disease of the [lung arising out of employment in an underground coal mine] lung, including its sequelae, arising out of employment in a coal mine.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in a [an underground] coal mine.

(e) [The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.] *The term "widow" includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216(c), (1), (2), (3), (4), or (5), and section 216(k) of the Social Security Act, who is not married. The determination of an individual's status as the "widow" of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the "insured individual" referred to therein. Such term also includes a "surviving divorced wife" as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.*

(f) [The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, but such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.] *The term "total disability" has the meaning given it by regulation of the Secretary of Health, Education, and Welfare, except that such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time. Such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.*

(g) The term "child" means a child or a step-child who is—

(1) unmarried; and

(2)(A) under eighteen years of age, or

(B)(i) under a disability as defined in section 223(d) of the Social Security Act,

(ii) which began before the age specified in section 202(d)(1)(B)(ii) of the Social Security Act, or, in the case of a student, before he ceased to be a student; or

(3) a student.

The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, or a "student" as defined in section 8101(17) of title 5, United States Code. The determination of an individual's status as the "child" of the miner or widow, as the case may be,

shall be made in accordance with section 216(h) (2) or (3) of the Social Security Act as if such miner or widow were the "insured individual" referred to therein.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31,
[1972], 1973

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to [pneumoconiosis.] *pneumoconiosis or who at the time of his death was totally disabled by pneumoconiosis.*

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. *Final regulations required for implementation of any amendments to this title shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted.* Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more [underground] coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment;

(2) if a deceased miner was employed for ten years or more in one or more [underground] coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis; [and]

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, *or that at the time of his death he was totally disabled by pneumoconiosis, as the case may [be.] be;* and

(4) *if a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his*

parent's, his brother's, his sister's or his dependent's claim under this title and it is diagnosed as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement that the miner work in an underground coal mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) *In the case of the child or children of a miner whose death is due to pneumoconiosis or of a miner who is receiving benefits under this part at the time of his death, or who was totally disabled by pneumoconiosis at the time of his death, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three children: Provided, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 402(g); And provided further, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2).*

[3] (4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) *In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or of a miner who is receiving benefits under this part at the time of his death, or of a miner who was totally disabled by pneumoconiosis at the time of his death, and who is not survived by a widow or a child, or in the case of the dependent surviving brother(s) or sister(s) if such a miner who is not survived by a widow, child, or parent, benefits shall be paid under this part to such parent(s), or to such brother(s) or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner): Provided, That no benefits shall be paid to any parent for any month for which a widow or child has established entitlement to such benefits and that no benefits shall be paid to any brother(s) or sister(s) for any month for which a widow, child, or parent has established such entitlement. In determining whether a claimant is a parent, brother, or sister of a miner for purposes of this paragraph, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such miner was domiciled at the time of his death, or, if such miner was not so domiciled in any State, by the courts of the District of Columbia. Claimants who according to such law would have the same status relative to taking intestate personal property as a parent, brother, or sister, shall be deemed such. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claimant, the Secretary has certified for payment for such prior months. As used in this paragraph "dependent" means that such parent, brother, or sister was receiving at least one-half of his support from such miner, as determined in accordance with regulations prescribed by the Secretary, for at least one year immediately preceding the miner's death. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes good cause for purposes of this paragraph shall be made in accordance with regulations of the Secretary.*

(6) *If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, accept an application therefor from such dependent, where necessary, and certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.*

(b) *Notwithstanding subsection (a), benefit payments under this section to a miner or his [widow] widow, child, parent, brother, or sister, shall be reduced, on a monthly or other appropriate basis, by*

an amount equal to any payment received by such miner or his **[widow]** *widow, child, parent, brother, or sister*, under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act. *In applying the provisions of section 224(a) of the Social Security Act to benefits under this part, paragraph (5) thereof shall be deemed to read "100 per centum of his average current earnings"*.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, **[1972,]** 1973, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security **[Act.]** Act, *but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials.* Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable. *The provisions of sections 204, 205 (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l), 206, 207, and 208 of the Social Security Act shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act.*

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

SEC. 414. (a) (1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, **[1972,]** 1973, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, **[1972,]** 1973, whichever is the later.

(2) In the case of a claim by a child or widow, this paragraph shall apply, notwithstanding any other provision of this part.

(A) If such claim is filed within six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, in the case of a widow, and in the case of a child, from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, in the case of a widow, and in the case of a child, from a date twelve months preceding the date such claim is filed or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.

(b) No benefits shall be paid under this part after December 31, [1972,] 1973, if the claim therefor was filed after December 31, [1971,] 1972.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a [widow] widow, child, parent, brother, or sister under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, or (2) the death of such miner occurred prior to January 1, [1973,] 1974.

SEC. 415. (a) Notwithstanding any other provision in this title, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from January 1, 1973, to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

(1) Such claim shall be determined and, where appropriate under this part or section 424 of this title, benefits shall be paid with respect to such claim by the Secretary of Labor.

(2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Secretary of Health, Education and Welfare and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.

(3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this title on or after January 1, 1974.

(4) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in sections 19 (b), (c), and (d) of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended.

(5) Any operator who has been notified of the pendency of a claim under paragraph 4 of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this title and section 422 thereof had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits prior to January 1, 1974.

(b) The Secretary of Labor, after consultation with the Secretary of Health, Education, and Welfare, may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, [1972] 1973

SEC. 421. (a) On and after January 1, [1973] 1974 any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows, children, parents, brothers, or sisters, as the case may be, are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under this part.

(b)(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to

time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to [those] section 402(f) of this title and to those standards established [by section 411], under part B of this title, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder;

(D) any claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 522(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

(c) *Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted.*

SEC. 422. a) During any period after December 31, 1972, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in this subsection and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of [an underground] a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine. In admin-

istering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe; or

(2) for any period prior to January 1, [1973; or] 1974.

[(3) for any period after seven years after the date of enactment of this Act.]

(f) (1) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

(2) *Any claim for benefits under this section in the case of a living miner filed on the basis of eligibility under section 411(c)(4) of this title, shall be filed within three years from the date of last exposed employment in a coal mine or, in the case of death from a respiratory or pulmonary impairment for which benefits would be payable under section 411(c)(4) of this title, incurred as the result of employment in a coal mine, shall be filed within fifteen years from the date of last exposed employment in a coal mine.*

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular [underground] coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i)(1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date

of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

SEC. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of [an underground] a coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

SEC. 424. If a totally disabled miner or a [widow] *widow, child, parent, brother, or sister* is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow, child, parent, brother, or sister the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his [widow] *widow, child, parent, brother, or sister* under this title.

SEC. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agen-

cies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. (a) **[**The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.**]** *The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as are appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with subsections (b), (c), (d), and (e) of section 553 of title 5 of the United States Code.*

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, 1973, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

SEC. 427. (a) *The Secretary of Health, Education, and Welfare is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.*

(b) *The Secretary of Health, Education, and Welfare shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health, Education, and Welfare may deem necessary in the public interest.*

(c) *There is hereby authorized to be appropriated for the purpose of subsection (a) of this section \$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary.*

SEC. 428. (a) *No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis or other respiratory or pulmonary impairment. No person shall cause or attempt to cause an*

operator to violate this section. For the purposes of this subsection the term "miner" shall not include any person who has been found to be totally disabled.

(b) Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. 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 public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

(c) Whenever an order is issued under this subsection granting relief to a miner, at the request of such miner a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

SEC. 429. There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this title. Such sums shall remain available until expended.

SEC. 430. The amendments made by the Black Lung Benefits Act of 1972 to part B of this title shall, to the extent appropriate, also apply to part C of this title.

SEC. 431. The Secretary of Health, Education, and Welfare shall, upon enactment of the Black Lung Benefits Act of 1972, generally disseminate to all persons who filed claims under this title prior to the date of enactment of such Act, the changes in the law created by such Act, and forthwith advise all persons whose claims have been denied for any reason or whose claims are pending, that their claims will be reviewed with respect to the provisions of the Black Lung Benefits Act of 1972.

INDIVIDUAL VIEWS OF MESSRS. JAVITS AND TAFT

The purpose of title 4 of the Coal Mine Health and Safety Act of 1969 was to make up for the almost total failure of State workmen's compensation programs to recognize coal workers' pneumoconiosis—black lung—as a compensable disease, notwithstanding its recognition as a work-related disease in many European countries, starting as long ago as the early 1940's. As a result of the failure of most American workmen's compensation programs to recognize black lung as compensable, thousands of coal miners and their families reaped as their sole reward for long years of service in the most dangerous occupation in the country, total respiratory disability with no remotely adequate recompense.

The purpose of this bill is to remedy certain deficiencies in the title 4 program as originally enacted. Of particular concern to us are the provisions of the bill which extend the date upon which coal mine operators are to assume liability for payment of benefits on new claims filed under this program.

Under present law, commencing on January 1, 1973, all new claims are to be the responsibility of the operator—under State workmen's compensation laws if they meet the criteria set out in title 4, or under the Federal law if the State law does not meet the criteria of title 4. These provisions represent a deliberate compromise on the question of who should bear the cost of paying the benefits under this program. Under normally accepted principles of workmen's compensation, benefits for disability due to black lung should have been made the responsibility of the operators under workmen's compensation long ago; under the compromise agreed to in 1969, however, the law provided that the Federal Government would bear the lifetime cost of claims filed prior to January 1, 1972. The Federal Government also was to pay the cost during 1972 of claims filed in that year. What the compromise really amounted to was that the Federal Government would pick up the lifetime cost of the huge backlog of claims that had accumulated over decades, while the industry would pick up the burden of paying the claims of those still working.

When the conference report of the 1969 act was considered, various estimates of the cost of the program were made in the range of \$40 million to \$100 million per year. Actual experience under the program has demonstrated the inaccuracy of even the highest of these estimates. The actual cost of the program under present law is running close to \$500 million per year. Clearly, this shows that the problem of disability due to black lung is even more widespread than anybody realized in 1969. But it also raises acutely the problem of who should bear the cost of making further improvements in the program.

In the form passed by the House, and as originally considered by this Committee, the bill would have extended Federal responsibility to pay lifetime benefits on claims filed during an additional two-year period. The Social Security Administration estimates such a two-year

extension would add an additional \$1.2 billion to the Federal cost of the program, in addition to \$1.5 billion in additional costs to the Federal government attributable to substantive improvements in the program made by the bill. It seems to us that this exoneration of industry from a liability which they would have been bearing all along is much too high a price to pay to enact the necessary improvements in the existing program.

Accordingly, we offered an amendment in Committee, which was accepted, under which the extension of Federal responsibility was limited to one year.

In addition, our compromise amendment extended eligibility for benefits to surface miners with positive X-rays showing pneumoconiosis, and to both underground and surface miners with at least 15 years working experience in underground mines or comparable positions in surface mines, by creating a rebuttable presumption that such miners were totally disabled from pneumoconiosis if, notwithstanding the fact they did not have a positive X-ray showing of pneumoconiosis, they were totally disabled due to a respiratory or pulmonary impairment. Under this compromise, benefits may no longer be denied solely on the basis of a negative X-ray, one of the aspects of the present program which has received the harshest criticism.

Under this compromise, benefits will be extended to those miners whose respiratory difficulty can reasonably be assumed to have been caused or aggravated by their employment in coal mines. At the same time, the cost of the improvements in the program will be borne approximately 50% by the industry and 50% by the government. Finally, the States will be given additional time to amend their workmen's compensation laws to qualify as adequate under the revised criteria of Title 4.

While we would have preferred to have deleted the two-year extension entirely, we believe that the compromise adopted in the Committee is quite reasonable, both as to extension of Federal responsibility and as to the establishment of a presumption in cases of miners with at least 15 years of experience. Accordingly, we shall support the bill as reported. However, because we strongly believe that a one-year extension of Federal responsibility is the most that can be justified, we do intend to ask for a separate vote on the Committee amendment which reduces the two-year extension of Federal responsibility to one year, in order to make the position of the Senate as clear as possible on this issue.

JACOB K. JAVITS,
ROBERT TAFT, JR.



Calendar No. 712

92D CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 92-743

BLACK LUNG BENEFITS ACT OF 1972

APRIL 10, 1972.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Labor and Public Welfare,
submitted the following

REPORT

[To accompany H.R. 9212]

together with

INDIVIDUAL VIEWS

The Committee on Labor and Public Welfare, to which was referred the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

SUMMARY

The principal purpose of H.R. 9212, both as passed by the House of Representatives and as reported by the Committee on Labor and Public Welfare, is to compensate the miners, and the widows and children of miners, whose lives and health have been sacrificed in the production of that critical energy source—coal.

The Committee fully intends and expects that H.R. 9212, as amended, will more adequately meet the objectives originally sought in Title IV of the Federal Coal Mine Health and Safety Act of 1969 than either the basic law or H.R. 9212 as adopted in the House of Representatives.

To this end, the Committee made a number of significant changes in the legislation. It is anticipated that these changes, if enacted into law, will bring to the disabled coal miner and his family a greater measure of justice than they have known heretofore.

Calendar No. 712

92^D CONGRESS
2^D SESSION

H. R. 9212

[Report No. 92-743]

IN THE SENATE OF THE UNITED STATES

NOVEMBER 11, 1971

Read twice and referred to the Committee on Labor and Public Welfare

APRIL 10, 1972

Reported by Mr. RANDOLPH, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That ~~(a)(1)~~ section 412(a) of the Federal Coal Mine
4 That (a) this Act may be cited as the "Black Lung Bene-
5 fits Act of 1972".

6 (b)(1) Section 412(a) of the Federal Coal Mine
7 Health and Safety Act of 1969 is amended by redesignating
8 paragraph (3) as paragraph (4), and by inserting after
9 paragraph (2) the following new paragraph:
10 “(3) In the case of the child or children of a miner

1 whose death is due to pneumoconiosis or of a miner who is
2 receiving benefits under this part at the time of his death, ~~and~~
3 ~~who leaves no widow,~~ or who was totally disabled by pneumo-
4 coniosis at the time of his death, and in the case of the child or
5 children of a widow who is receiving benefits under this part
6 at the time of her death, benefits shall be paid to such child
7 or children as follows: If there is one such child, he shall be
8 paid benefits at the rate specified in paragraph (1). If
9 there is more than one such child, the benefits paid shall be
10 divided equally among them and shall be paid at a rate
11 equal to the rate specified in paragraph (1), increased by
12 50 per centum of such rate if there are two such children,
13 by 75 per centum of such rate if there are three such chil-
14 dren, and by 100 per centum of such rate if there are more
15 than three such children: *Provided*, That benefits shall only
16 be paid to a child for so long as he meets the criteria for
17 the term 'child' contained in section ~~402(g).~~ 402(g): *And*
18 *provided further*, That no entitlement to benefits as a child
19 shall be established under this paragraph (3) for any month
20 for which entitlement to benefits as a widow is established under
21 paragraph (2)."

22 (2) Section 412 (a) of such Act is further amended
23 by adding at the end thereof the following new ~~paragraph:~~
24 *paragraphs:*

25 "(5) In the case of the dependent parent or parents

1 of a miner whose death is due to pneumoconiosis, or of a
2 miner who is receiving benefits under this part at the time
3 of his death, or of a miner who was totally disabled by
4 pneumoconiosis at the time of his death, and who is not
5 survived by a widow or a child, or in the case of the de-
6 pendent surviving brother(s) or sister(s) of such a miner
7 who is not survived by a widow, child, or parent, benefits
8 shall be paid under this part to such parent(s), or to such
9 brother(s) or sister(s), at the rate specified in paragraph
10 (3) (as if such parent(s) or such brother(s) or sister(s).
11 were the children of such miner): Provided, That no bene-
12 fits shall be paid to any parent for any month for which a
13 widow or child has established entitlement to such benefits
14 and that no benefits shall be paid to any brother(s) or
15 sister(s) for any month for which a widow, child, or par-
16 ent has established such entitlement. In determining whether
17 a claimant is a parent, brother, or sister of a miner for
18 purposes of this paragraph, the Secretary shall apply such
19 law as would be applied in determining the devolution
20 of intestate personal property by the courts of the State
21 in which such miner was domiciled at the time of his
22 death, or, if such miner was not so domiciled in any State,
23 by the courts of the District of Columbia. Claimants who
24 according to such law would have the same status relative
25 to taking intestate personal property as a parent, brother, or

1 sister, shall be deemed such. Any benefit under this para-
2 graph for a month prior to the month in which a claim for
3 such benefit is filed shall be reduced to any extent that may
4 be necessary, so that it will not render erroneous any benefit
5 which, before the filing of such claimant, the Secretary has
6 certified for payment for such prior months. As used in
7 this paragraph 'dependent' means that such parent, brother,
8 or sister was receiving at least one-half of his support from
9 such miner, as determined in accordance with regulations
10 prescribed by the Secretary, for at least one year immediately
11 preceding the miner's death. Proof of such support shall be
12 filed by such claimant within two years after the month in
13 which this amendment is enacted, or within two years after the
14 miner's death, whichever is the later. Any such proof which is
15 filed after the expiration of such period shall be deemed to have
16 been filed within such period if it is shown to the satisfaction
17 of the Secretary that there was good cause for failure to
18 file such proof within such period. The determination of
19 what constitutes good cause for purposes of this para-
20 graph shall be made in accordance with regulations of the
21 Secretary.

22 "~~(5)~~ (6) If an individual's benefits would be increased
23 under ~~clause~~ paragraph (4) of this subsection because he or
24 she has one or more dependents, and it appears to the
25 Secretary that it would be in the interest of any such de-

1 pendent to have the amount of such increase in benefits (to
2 the extent attributable to such dependent) certified to a
3 person other than such individual, then the Secretary may,
4 under regulations prescribed by him, *accept an applica-*
5 *tion therefor from such dependent, where necessary, and*
6 certify the amount of such increase in benefits (to the
7 extent so attributable) not to such individual but di-
8 rectly to such dependent or to another person for the use
9 and benefit of such dependent; and any payment made
10 under this clause, if otherwise valid under this title, shall
11 be a complete settlement and satisfaction of all claims,
12 rights, and interests in and to such payment."

13 ~~(b)~~ (c) (1) ~~Section Sections 412 (b), 414(e), and 424~~
14 of such Act *is are* amended by inserting after "widow" each
15 time it appears the following: "~~or child~~ *child, parent,*
16 *brother, or sister*", and section 421(a) is amended by insert-
17 ing after "widows" the following: "*, children, parents,*
18 *brothers, or sisters, as the case may be,*".

19 ~~(2)~~ Section 402 of such Act is amended by adding at
20 the end thereof the following new subsection:

21 "~~(g)~~ The term 'child' means an individual who is un-
22 married and ~~(1)~~ under eighteen years of age, or ~~(2)~~ inca-
23 pable of self-support because of physical or mental disability
24 which arose before he reached eighteen years of age or, in
25 the case of a student, before he ceased to be a student, or

1 ~~(2)~~ a student. Such term includes stepchildren, adopted
 2 children, and posthumous children. For the purpose of this
 3 subsection the term 'student' means an individual under
 4 twenty-three years of age who has not completed four years
 5 of education beyond the high school level and who is regu-
 6 larly pursuing a full-time course of study or training at an
 7 institution which is—

8 “(1) a school or college or university operated or
 9 directly supported by the United States, or by a State
 10 or local government or political subdivision thereof;

11 “(2) a school or college or university which has
 12 been accredited by a State or by a State-recognized or
 13 nationally recognized accrediting agency or body;

14 “(3) a school or college or university not so ac-
 15 credited but whose credits are accepted, on transfer, by
 16 at least three institutions which are so accredited, for
 17 credit on the same basis as if transferred from an institu-
 18 tion so accredited; or

19 “(4) an additional type of educational or training
 20 institution as defined by the Secretary of Health, Edu-
 21 cation, and Welfare.

22 Such an individual is deemed not to have ceased to be a
 23 student during an interim between school years if the interim
 24 is not more than four months and if he shows to the satis-
 25 faction of the Secretary that he has a bona fide intention

1 of continuing to pursue a full-time course of study or train-
2 ing during the semester or other enrollment period immedi-
3 ately after the interim or during periods of reasonable
4 duration in which, in the judgment of the Secretary, he is
5 prevented by factors beyond his control from pursuing his
6 education. A student whose twenty-third birthday occurs
7 during a semester or other enrollment period is deemed a
8 student until the end of the semester or other enrollment
9 period."

10 (2) Section 402(a) of such Act is amended to read:

11 "(a) The term 'dependent' means—

12 "(1) a child as defined in subsection (g) without
13 regard to subparagraph (2) (B) (ii) thereof; or

14 "(2) a wife who is a member of the same house-
15 hold as the miner, or is receiving regular contributions
16 from the miner for her support, or whose husband is a
17 miner who has been ordered by a court to contribute to
18 her support, or who meets the requirements of section
19 216(b) (1) or (2) of the Social Security Act. The
20 determination of an individual's status as the 'wife' of a
21 miner shall be made in accordance with section 216(h)
22 (1) of the Social Security Act as if such miner were the
23 'insured individual' referred to therein. The term 'wife'
24 also includes a 'divorced wife' as defined in section 216
25 (d) (1) of the Social Security Act who is receiving at

1 *least one-half of her support, as determined in accordance*
2 *with regulations prescribed by the Secretary, from the*
3 *miner, or is receiving substantial contributions from the*
4 *miner (pursuant to a written agreement), or there is in*
5 *effect a court order for substantial contributions to her*
6 *support from such miner.”.*

7 (3) Section 402(e) of such Act is amended to read:

8 “(e) The term ‘widow’ includes the wife living with
9 or dependent for support on the miner at the time of his
10 death, or living apart for reasonable cause or because of
11 his desertion, or who meets the requirements of section
12 216(c)(1), (2), (3), (4), or (5), and section 216(k) of
13 the Social Security Act, who is not married. The deter-
14 mination of an individual’s status as the ‘widow’ of a
15 miner shall be made in accordance with section 216(h)(1)
16 of the Social Security Act as if such miner were the ‘insured
17 individual’ referred to therein. Such term also includes a
18 ‘surviving divorced wife’ as defined in section 216(d)(2)
19 of the Social Security Act who for the month preceding the
20 month in which the miner died, was receiving at least one-
21 half of her support, as determined in accordance with regu-
22 lations prescribed by the Secretary, from the miner, or was
23 receiving substantial contributions from the miner (pursuant
24 to a written agreement) or there was in effect a court order

1 *for substantial contributions to her support from the miner*
 2 *at the time of his death."*

3 *(4) Section 402 of such Act is amended by adding at*
 4 *the end thereof the following new subsection:*

5 *"(g) The term 'child' means a child or a step-child who*
 6 *is—*

7 *"(1) unmarried; and*

8 *"(2) (A) under eighteen years of age, or*

9 *"(B) (i) under a disability as defined in section*
 10 *223(d) of the Social Security Act,*

11 *"(ii) which began before the age specified in section*
 12 *202(d)(1)(B)(ii) of the Social Security Act, or,*
 13 *in the case of a student, before he ceased to be a student;*

14 *or*

15 *"(3) a student.*

16 *The term 'student' means a 'full-time student' as defined in*
 17 *section 202(d)(7) of the Social Security Act, or a 'student'*
 18 *as defined in section 8101(17) of title 5, United States Code.*

19 *The determination of an individual's status as the 'child' of*
 20 *the miner or widow, as the case may be, shall be made in*
 21 *accordance with section 216(h) (2) or (3) of the Social*
 22 *Security Act as if such miner or widow were the 'insured*
 23 *individual' referred to therein."*

24 ~~(3)~~ *(5) (A) Section 413 (b) of such Act is amended by*

1 adding at the end thereof the following new sentence: "In
2 ~~carrying out his responsibilities under this part, the Secretary~~
3 ~~may prescribe regulations consistent with the provisions of~~
4 ~~sections 204, 205(j), 205(k), and 206 of the Social Security~~
5 ~~Act.~~" *"The provisions of sections 204, 205 (a), (b), (d),*
6 *(e), (f), (g), (h), (j), (k), and (l), 206, 207, and 208*
7 *of the Social Security Act shall be applicable under this*
8 *part with respect to a miner, widow, child, parent, brother,*
9 *sister, or dependent, as if benefits under this part were benefits*
10 *under title II of such Act."*

11 *(B) Only section 205 (b), (g), and (h) of those sec-*
12 *tions of the Social Security Act recited in subparagraph (A)*
13 *of this paragraph shall be effective as of the date provided in*
14 *subsection (d) of this section.*

15 ~~(4)~~ (6) Section 414 (a) of such Act is amended by in-
16 serting "(1)" after "(a)" and by adding the following new
17 ~~paragraph~~ paragraphs at the end thereof:

18 "(2) In the case of a claim by a ~~child~~, child this para-
19 graph shall apply, notwithstanding any other provision of
20 this part.

21 "(A) If such claim is filed within six months following
22 the month in which this paragraph is enacted, and if entitle-
23 ment to benefits is established pursuant to such claim, such
24 entitlement shall be effective retroactively from Decem-
25 ber 30, 1969, or from the date such child would have been

1 first eligible for such benefit payments had section 412 (a)
2 (3) been applicable since December 30, 1969, whichever is
3 the lesser period. If on the date such claim is filed the claim-
4 ant is not eligible for benefit payments, but was eligible *at*
5 *any period of time* during the period from December 30,
6 1969, to the date such claim is filed, entitlement shall be
7 effective for the duration of eligibility during such period.

8 “(B) If such claim is filed after six months following
9 the month in which this paragraph is enacted, and if entitle-
10 ment to benefits is established pursuant to such claim, such
11 entitlement shall be effective retroactively from a date twelve
12 months preceding the date such claim is filed, or from the
13 date such child would have been first eligible for such benefit
14 payments had section 412 (a) (3) been applicable since
15 December 30, 1969, whichever is the lesser period. If on
16 the date such claim is filed the claimant is not eligible for
17 benefit payments, but was eligible *at any period of time* dur-
18 ing the period from a date twelve months preceding the date
19 such claim is filed, to the date such claim is filed, entitlement
20 shall be effective for the duration of eligibility during such
21 period.

22 ~~“(C) Any benefit under subparagraph (A) or (B) for~~
23 ~~a month prior to the month in which a claim is filed shall be~~
24 ~~reduced, to any extent that may be necessary, so that it will~~
25 ~~not render erroneous any benefit which, before the filing of~~

1 such claim, the Secretary has certified for payment for such
2 prior month.

3 ~~“(D)~~ (C) No claim for benefits under this part, in
4 the case of a claimant who is a child of a miner or widow
5 ~~(as described in section 412(a)(3))~~ shall be considered
6 unless it is filed within six months after the death of his
7 father or mother such miner or widow (whichever last oc-
8 curred) or by December 31, ~~1972~~, 1973, whichever is the
9 later.

10 *“(D) Any benefit under subparagraph (A) or (B) for*
11 *a month prior to the month in which a claim is filed shall be*
12 *reduced, to any extent that may be necessary, so that it will*
13 *not render erroneous any benefit which, before the filing of*
14 *such claim, the Secretary has certified for payment for such*
15 *prior month.*

16 *“(3) No claim for benefits under this part, in the case of*
17 *a claimant who is a parent, brother, or sister shall be con-*
18 *sidered unless it is filed within six months after the death of*
19 *the miner or by December 31, 1973, whichever is the later.”*

20 *(d) Except as otherwise provided in this section, the*
21 *amendments made by this section shall be effective as of*
22 *December 30, 1969.*

23 ~~“(5)~~ Subsections ~~422~~ (e) and (d) of such Act are
24 amended by striking out ‘section 412(a)’ wherever it ap-

1 ~~appears and inserting in lieu thereof 'section 412(a) (1), (2),~~
 2 ~~and (4)'. "~~

3 SEC. 2. (a) Section 412 (b) of the Federal Coal Mine
 4 Health and Safety Act of 1969 is amended by adding at the
 5 end thereof the following: "~~This part shall not be considered~~
 6 ~~a workmen's compensation law or plan for purposes of sec-~~
 7 ~~tion 224 of such Act.~~" *"In applying the provisions of section*
 8 *224(a) of the Social Security Act to benefits under this part,*
 9 *paragraph (5) thereof shall be deemed to read '100 per*
 10 *centum of his "average current earnings"', or."*

11 (b) The amendment made by this section shall be
 12 effective as of December 30, 1969.

13 SEC. 3. ~~(a) Sections 401, 411(e)(1), 411(e)(2),~~
 14 ~~and 422(h) of the Federal Coal Mine Health and Safety Act~~
 15 ~~of 1969 are each amended by striking out "underground".~~

16 ~~(b) Sections 402(b), 402(d), 422(a), and 423(a)~~
 17 ~~of such Act are each amended by striking out "an under-~~
 18 ~~ground" and inserting "a" in lieu thereof.~~

19 ~~(c) The amendments made by this section shall be~~
 20 ~~effective as of December 30, 1969.~~

21 SEC. 3. (a) Section 402(b) of the Federal Coal Mine
 22 Health and Safety Act of 1969 is amended by striking out
 23 all after the word "lung" and inserting the following new

1 phrase: ", including its sequelae, arising out of employment
2 in a coal mine."

3 (b) Section 402(f) is amended to read as follows:

4 "(f) The term 'total disability' has the meaning given
5 it by regulations of the Secretary of Health, Education, and
6 Welfare, except that such regulations shall provide that a
7 miner shall be considered totally disabled when pneumo-
8 coniosis prevents him from engaging in gainful employment
9 requiring the skills and abilities comparable to those of any
10 employment in a mine or mines in which he previously en-
11 gaged with some regularity and over a substantial period of
12 time. Such regulations shall not provide more restrictive cri-
13 teria than those applicable under section 223(d) of the Social
14 Security Act."

15 (c)(1) Section 411(a) of such Act is further amended
16 by adding at the end thereof the following: "or who at the
17 time of his death was totally disabled by pneumoconiosis."

18 (2) Section 401 is amended by inserting after the word
19 "disease" each place it appears the following: "or who were
20 totally disabled by this disease at the time of their deaths"

21 (3) Section 411(c)(3) is amended by inserting after
22 "pneumoconiosis," the following: "or that at the time of his
23 death he was totally disabled by pneumoconiosis."

24 (d) Section 411(c) of such Act is amended by striking
25 the word "and" at the end of paragraph (2), by striking

1 *the period at the end of paragraph (3), inserting “; and”,*
2 *and by adding at the end thereof the following new para-*
3 *graph:*

4 “(4) if a miner was employed for fifteen years or
5 more in one or more underground coal mines, and if
6 there is a chest roentgenogram submitted in connection
7 with such miner’s, his widow’s, his child’s, his parent’s,
8 his brother’s, his sister’s, or his dependent’s claim under
9 this title and it is interpreted as negative with respect to
10 the requirements of paragraph (3) of this subsection, and
11 if other evidence demonstrates the existence of a totally
12 disabling respiratory or pulmonary impairment, then
13 there shall be a rebuttable presumption that such miner
14 is totally disabled due to pneumoconiosis, that his death
15 was due to pneumoconiosis, or that at the time of his
16 death he was totally disabled by pneumoconiosis. In the
17 case of a living miner, a wife’s affidavit may not be used
18 by itself to establish the presumption. The Secretary shall
19 not apply all or a portion of the requirement of this para-
20 graph that the miner work in an underground mine where
21 he determines that conditions of a miner’s employment
22 in a coal mine other than an underground mine were
23 substantially similar to conditions in an underground
24 mine. The Secretary may rebut such presumption only
25 by establishing that (A) such miner does not, or did not,

1 *have pneumoconiosis, or that (B) his respiratory or*
2 *pulmonary impairment did not arise out of, or in con-*
3 *nection with, employment in a coal mine.”*

4 *(e) Section 411(b) is amended by inserting immedi-*
5 *ately after the penultimate sentence thereof the following*
6 *new sentence: “Final regulations required for implementation*
7 *of any amendments to this title shall be promulgated and*
8 *published in the Federal Register at the earliest practicable*
9 *date after the date of enactment of such amendments, and in*
10 *no event later than the end of the fourth month following the*
11 *month in which such amendments are enacted.”*

12 *(f) Section 421(b)(2)(C) of such Act is amended*
13 *by striking the word “those” and inserting in lieu thereof*
14 *“section 402(f) of this title and to those standards”, and by*
15 *substituting for the words “by section 411” the words “under*
16 *part B of this title”.*

17 *(g) The first sentence of section 413(b) of such Act*
18 *is amended by inserting before the period at the end thereof*
19 *the following: “, but no claim for benefits under this part*
20 *shall be denied solely on the basis of the results of a chest*
21 *roentgenogram. In determining the validity of claims under*
22 *this part, all relevant evidence shall be considered, including,*
23 *where relevant, medical tests such as blood gas studies, X-ray*
24 *examination, electrocardiogram, pulmonary function studies,*
25 *or physical performance tests, and any medical history, evi-*

1 dence submitted by the claimant's physician, or his wife's
 2 affidavits, and in the case of a deceased miner, other appropri-
 3 ate affidavits of persons with knowledge of the miner's physi-
 4 cal condition, and other supportive materials."

5 (h) The amendments made by this section shall be
 6 effective as of December 30, 1969.

7 SEC. 4. Title IV of the Federal Coal Mine Health and
 8 Safety Act of 1969 is amended—

9 (1) by striking out "1971" where it appears in
 10 section 414 (b), and inserting in lieu thereof "~~1973~~,"
 11 "1972",

12 (2) by striking out "1972" each place it appears
 13 and inserting in lieu thereof "~~1974~~", "1973", other than
 14 in section 421(b)(1),

15 (3) by striking out "1973" each time it appears
 16 and inserting in lieu thereof "~~1975~~", "1974", and

17 ~~(4) by striking out "seven" where it appears in~~
 18 ~~section 422(e) and inserting in lieu thereof "nine".~~

19 (4) by adding a new subsection (c) to section 421
 20 thereof as follows:

21 "(c) Final regulations required for implementation of
 22 any amendments to this part shall be promulgated and pub-
 23 lished in the Federal Register at the earliest practicable date
 24 after the date of enactment of such amendments, and in no

1 event later than the end of the fourth month following the
2 month in which such amendments are enacted.”,

3 (5) by amending section 426(a) of such Act to read
4 as follows:

5 “SEC. 426. (a) The Secretary of Labor and the Sec-
6 retary of Health, Education, and Welfare are authorized to
7 issue such regulations as are appropriate to carry out the
8 provisions of this title. Such regulations shall be issued in
9 conformity with subsections (b), (c), (d), and (e) of
10 section 553 of title 5 of the United States Code.”,

11 (6) by inserting immediately after section 426 there-
12 of, the following new section:

13 “SEC. 427. (a) The Secretary of Health, Education, and
14 Welfare is authorized to enter into contracts with, and make
15 grants to, public and private agencies and organizations and
16 individuals for the construction, purchase, and operation of
17 fixed-site and mobile clinical facilities for the analysis, ex-
18 amination, and treatment of respiratory and pulmonary im-
19 pairments in active and inactive coal miners. The Secretary
20 shall coordinate the making of such contracts and grants
21 with the Appalachian Regional Commission.

22 “(b) The Secretary of Health, Education, and Welfare
23 shall initiate research within the National Institute for Occu-
24 pational Safety and Health, and is authorized to make re-
25 search grants to public and private agencies and organiza-

1 tions and individuals for the purpose of devising simple and
2 effective tests to measure, detect, and treat respiratory and
3 pulmonary impairments in active and inactive coal miners.
4 Any grant made pursuant to this subsection shall be condi-
5 tioned upon all information, uses, products, processes, patents,
6 and other developments resulting from such research being
7 available to the general public, except to the extent of such
8 exceptions and limitations as the Secretary of Health, Educa-
9 tion, and Welfare may deem necessary in the public interest.

10 “(c) There is hereby authorized to be appropriated for
11 the purpose of subsection (a) of this section \$10,000,000 for
12 each of the fiscal years ending June 30, 1973, June 30, 1974,
13 and June 30, 1975. There are hereby authorized to be ap-
14 propriated for the purposes of subsection (b) of this section
15 such sums as are necessary.”,

16 (7) by adding at the end thereof the following new
17 section:

18 “SEC. 428. (a) No operator shall discharge or in any
19 other way discriminate against any miner employed by him
20 by reason of the fact that such miner is suffering from
21 pneumoconiosis or other respiratory or pulmonary impair-
22 ment. No person shall cause or attempt to cause an operator
23 to violate this section. For the purposes of this subsection the
24 term ‘miner’ shall not include any person who has been found
25 to be totally disabled.

1 “(b) Any miner who believes that he has been dis-
2 charged or otherwise discriminated against by any person
3 in violation of subsection (a) of this section, or any repre-
4 sentative of such miner may, within ninety days after
5 such violation occurs, apply to the Secretary for a review
6 of such alleged discharge or discrimination. A copy of the
7 application shall be sent to such person who shall be the
8 respondent. Upon receipt of such application, the Secre-
9 tary shall cause such investigation to be made as he deems
10 appropriate. Such investigation shall provide an oppor-
11 tunity for a public hearing at the request of any party to
12 enable the parties to present information relating to such
13 violation. The parties shall be given written notice of the
14 time and place of the hearing at least five days prior to
15 the hearing. Any such hearing shall be of record and shall
16 be subject to section 554 of title 5 of the United States Code.
17 Upon receiving the report of such investigation, the Secre-
18 tary shall make findings of fact. If he finds that such vio-
19 lation did occur, he shall issue a decision, incorporating
20 an order therein, requiring the person committing such viola-
21 tion to take such affirmative action as the Secretary deems
22 appropriate, including, but not limited to, the rehiring or re-
23 instatement of the miner to his former position with back pay.
24 If he finds that there was no such violation, he shall issue an

1 order denying the application. Such order shall incorporate
2 the Secretary's findings therein.

3 “(c) Whenever an order is issued under this subsection
4 granting relief to a miner at the request of such miner, a sum
5 equal to the aggregate amount of all costs and expenses (in-
6 cluding the attorney's fees) as determined by the Secretary to
7 have been reasonably incurred by such miner for, or in con-
8 nection with, the institution and prosecution of such proceed-
9 ings, shall be assessed against the person committing the
10 violation.”,

11 (8) by adding at the end thereof the following new
12 section:

13 “SEC. 429. There is authorized to be appropriated to the
14 Secretary of Labor such sums as may be necessary to carry
15 out his responsibilities under this title. Such sums shall re-
16 main available until expended.”, and

17 (9) by adding at the end thereof the following new
18 section:

19 “SEC. 430. The amendments made by the Black Lung
20 Benefits Act of 1972 to part B of this title shall, to the extent
21 appropriate, also apply to part C of this title.”

22 SEC. 5. The first sentence of section 413(b) of such
23 Act is amended by inserting before the period at the end
24 thereof the following: “, but no claim for benefits under

1 this part shall be denied solely on the basis of the results
2 of a chest roentgenogram”.

3 *SEC. 5. (a) Sections 401, 411(c)(1), 411(c)(2), and*
4 *422(h) of the Federal Coal Mine Health and Safety Act of*
5 *1969 are each amended by striking out “underground.”*

6 *(b) Sections 402(b), 402(d), 422(a), and 423(a) of*
7 *such Act are each amended by striking out “an underground”*
8 *and inserting “a” in lieu thereof.*

9 *(c) The amendments made by this section shall be*
10 *effective as of December 30, 1969.*

11 *SEC. 6. Title IV of the Federal Coal Mine Health and*
12 *Safety Act of 1969 is amended by adding “or” at the end*
13 *of section 422(e)(1) thereof, by striking “; or” at the end*
14 *of section 422(e)(2) thereof and inserting a period, and by*
15 *striking section 422(e)(3) thereof.*

16 *SEC. 7. Title IV of the Federal Coal Mine Health and*
17 *Safety Act of 1969 is amended by adding at the end thereof*
18 *the following new section:*

19 *“SEC. 431. The Secretary of Health, Education, and*
20 *Welfare shall, upon enactment of the Black Lung Benefits*
21 *Act of 1972, generally disseminate to all persons who filed*
22 *claims under this title prior to the date of enactment of such*
23 *Act the changes in the law created by such Act, and forthwith*
24 *advise all persons whose claims have been denied for any rea-*
25 *son or whose claims are pending, that their claims will be re-*

1 *viewed with respect to the provisions of the Black Lung*
2 *Benefits Act of 1972."*

3 *SEC. 8. Title IV of the Federal Coal Mine Health and*
4 *Safety Act of 1969 is amended by adding at the end of part*
5 *B thereof the following new section:*

6 *"SEC. 415. (a) Notwithstanding any other provision in*
7 *this title, for the purpose of assuring the uninterrupted re-*
8 *ceipt of benefits by claimants at such time as responsibility*
9 *for administration of the benefits program is assumed by*
10 *either a State workmen's compensation agency or the Secre-*
11 *tary of Labor, any claim for benefits under this part filed*
12 *during the period from January 1, 1973 to December 31,*
13 *1973, shall be considered and determined in accordance with*
14 *the procedures of this section. With respect to any such*
15 *claim—*

16 *"(1) Such claim shall be determined and, where*
17 *appropriate under this part or section 424 of this title,*
18 *benefits shall be paid with respect to such claim by the*
19 *Secretary of Labor.*

20 *"(2) The manner and place of filing such claim*
21 *shall be in accordance with regulations issued jointly by*
22 *the Secretary of Health, Education, and Welfare and the*
23 *Secretary of Labor, which regulations shall provide,*
24 *among other things, that such claims may be filed in*
25 *district offices of the Social Security Administration and*

1 thereafter transferred to the jurisdiction of the Depart-
2 ment of Labor for further consideration.

3 “(3) The Secretary of Labor shall promptly notify
4 any operator who he believes, on the basis of infor-
5 mation contained in the claim, or any other information
6 available to him, may be liable to pay benefits to the
7 claimant under part C of this title for any month after
8 December 31, 1973.

9 “(4) In determining such claims, the Secretary of
10 Labor shall, to the extent appropriate, follow the proce-
11 dures described in sections 19 (b), (c), and (d) of
12 Public Law 803, 69th Congress (44 Stat. 1424, ap-
13 proved March 4, 1927), as amended.

14 “(5) Any operator who has been notified of the
15 pendency of a claim under paragraph 4 of this subsection
16 shall be bound by the determination of the Secretary of
17 Labor on such claim as if the claim had been filed pur-
18 suant to part C of this title and section 422 thereof had
19 been applicable to such operator. Nothing in this para-
20 graph shall require any operator to pay any benefits for
21 any month prior to January 1, 1974.

22 “(b) The Secretary of Labor, after consultation with
23 the Secretary of Health, Education, and Welfare, may issue
24 such regulations as are necessary or appropriate to carry out
25 the purpose of this section.”

1 *SEC. 9. Section 422(f) of title IV of the Federal Coal*
2 *Mine Health and Safety Act of 1969 is amended by inserting*
3 *“(1)” after “(f)” and by adding a new paragraph (2) as*
4 *follows:*

5 *“(2) Any claim for benefits under this section in the case*
6 *of a living miner filed on the basis of eligibility under section*
7 *411(c)(4) of this title, shall be filed within three years from*
8 *the date of last exposed employment in a coal mine or, in the*
9 *case of death from a respiratory or pulmonary impairment*
10 *for which benefits would be payable under section 411(c)(4)*
11 *of this title, incurred as the result of employment in a coal*
12 *mine, shall be filed within fifteen years from the date of last*
13 *exposed employment in a coal mine.”*

Passed the House of Representatives November 10, 1971.

Attest:

W. PAT JENNINGS,

Clerk.

Calendar No. 712

92nd CONGRESS
2nd SESSION

H. R. 9212

[Report No. 92-743]

AN ACT

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

NOVEMBER 11, 1971

Read twice and referred to the Committee on Labor
and Public Welfare

APRIL 10, 1972

Reported with amendments

BLACK LUNG BENEFITS ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 712, H.R. 9212, and that it be made the pending business for consideration on Monday next.

The PRESIDING OFFICER. The Clerk will report the bill.

The assistant legislative clerk read as follows:

Calendar No. 712, H.R. 9212, a bill to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The Senate proceeded to consider the bill which had been reported by the Committee on Labor and Public Welfare with amendments.

been had with the chairman of the Committee on Labor and Public Welfare, the Senator from New Jersey (Mr. WILLIAMS), with the distinguished ranking minority member of that committee, the Senator from New York (Mr. JAVITS), and with other Senators, and I am advised by the distinguished majority leader to propound the following unanimous-consent request which has been discussed with the very able assistant Republican leader:

Mr. President, I ask unanimous consent that time for debate on H.R. 9212 be limited to 3 hours, to be equally divided between and controlled by the distinguished manager of the bill, the Senator from West Virginia (Mr. RANDOLPH) and the distinguished ranking minority member of the committee, the Senator from New York (Mr. JAVITS); providing further that time on any committee amendment be limited to 1 hour, to be equally divided between the aforesaid Senators; provided further that time on any other amendment be limited to 30 minutes, to be equally divided and controlled by the mover of such amendment and the distinguished manager of the bill, and in any case in which the manager of the bill may favor such amendment, that the time in opposition thereto be under the control of the distinguished assistant Republican leader or his designee, that time on any motion or appeal, with the exception of nondebatable motions, be limited to 30 minutes, to be equally divided between the mover of such motion or appeal and the manager of the bill, unless the manager of the bill favors such motion or appeal, in which case the time would be controlled by the mover of the motion and the distinguished assistant Republican leader, or his designee; provided further, that no nongermane amendments may be in order; provided finally, that Senators in control of time on the bill may yield therefrom to any Senator on any amendment, appeal, or motion, except nondebatable motions.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, and I shall not object, I want to indicate, as the distinguished acting majority leader has said, that this matter has been cleared with all Senators on both sides who might have a particular interest so far as we know. In my own case, I have cleared the matter with the distinguished ranking minority member of the committee, with the distinguished Senator from Colorado (Mr. DOMINICK), the distinguished Senator from Ohio (Mr. TAFT), who has taken particular interest in this matter in committee, and also with the distinguished Senator from Maryland (Mr. BEALL). So far as I know, there is no objection to the measure.

Mr. ROBERT C. BYRD. I thank the distinguished Republican whip.

The PRESIDING OFFICER. Without objection, it is so ordered.

The unanimous-consent agreement reads as follows:

Ordered, That, effective on April 17, 1972, during the further consideration of the bill H.R. 9212. An act to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoco-

UNANIMOUS-CONSENT AGREE-
MENT—TIME LIMITATION ON H.R.
9212

Mr. ROBERT C. BYRD. Mr. President, I have consulted with the distinguished manager of the black lung bill, my senior colleague from West Virginia (Mr. RANDOLPH) and consultations have also

niosis, and for other purposes, debate on any amendment (except committee amendments which shall be limited to one hour each), motion, or appeal, except non-debatable motions, shall be limited to 30 minutes, to be equally divided and controlled by the mover of any such amended or motion and the Senator from W. Va. (Mr. RANDOLPH): *Provided*, That, in the event Mr. Randolph is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the assistant minority leader or some Senator designated by him.

Ordered further, That, on the question of the final passage of the said bill, debate shall be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from West Virginia (Mr. Randolph) and the Senator from New York (Mr. JAVITS): *Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion or appeal: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will my distinguished senior colleague yield for two unanimous-consent requests before he begins his opening remarks?

Mr. RANDOLPH. I am happy to yield.

BLACK LUNG BENEFITS ACT OF 1972

The PRESIDING OFFICER. At this time, in accordance with the previous order, the Chair lays before the Senate the unfinished business, H.R. 9212, which the clerk will report.

The legislative clerk read as follows:

Calendar No. 712, H.R. 9212, a bill to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Debate on the bill is controlled and limited. Three hours has been specified, the time to be equally divided between the Senator from West Virginia (Mr. RANDOLPH) and the Senator from New York (Mr. JAVITS). Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally charged against both sides on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum can be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. RANDOLPH. Mr. President, I yield myself such time as I may desire.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

PRIVILEGE OF THE FLOOR

Mr. RANDOLPH. Mr. President, I ask unanimous consent that Gerald M. Feder, Eugene Mittelman, Richard Siegel, and Robert R. Humphreys of the staff of the Committee on Labor and Public Welfare, and Philip V. McGance, my legislative assistant, be permitted on the floor during the consideration of and voting on H.R. 9212.

BLACK LUNG BENEFITS ACT OF 1972

The Senate continued with the consideration of the bill (H.R. 9212) to amend the provision of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

Mr. RANDOLPH. Mr. President, we begin in this Chamber a discussion, and later today a determination, of important legislation that concerns itself with the further commitment of the Members of this body to justice and equity. We shall make such a commitment if we approve today what we call the Black Lung Benefits Act of 1972. "Pneumoconiosis" is a rather long word and, indeed, for some persons difficult to pronounce, but pneumoconiosis or black lung is a dread disease which has stricken tens and tens and tens of thousands of the miners of this country who go beneath the earth to bring forth coal which has been necessary for fuel to energize this Nation and to provide for our people.

I think we have an overdue debt that we are going to be able to pay in part with the passage of this legislation. It will be paid to a vital working population in our country. I believe my colleagues agree it is a debt which our society as a whole—not one segment, not one section, but society as a whole—owes to the coal miners who for so many years worked in the underground mines to bring forth millions and millions of tons of coal to, as I have said, energize this Nation.

The stark realization of the total inadequacy of Government policy and programs to protect the health and safety of the coal miner came to us—the distinguished Presiding Officer in this Chamber will recall—once again with a tragic and sorrowful period after November 20, 1968. That was a day of tragedy and of disaster. I hope we shall never forget the violent explosion that occurred on that date near Farmington, W. Va. The lives of 78 miners were lost in that disaster.

In a sense, in this country we so often act after the fact. That is human nature. But what took place then was the impetus for the Congress to enact the Federal Coal Mine Health and Safety Act of 1969, giving proof to the adage that "dead miners have always been the most powerful influence in securing mining legislation." Under the leadership of the Senator from New Jersey (Mr. WILLIAMS)—the Senator from New Jersey is chairman of the Labor and Public Welfare Committee at the present time; at that time he was chairman of our Subcommittee on Labor—and the leadership of the Senator from New York (Mr. JAVITS), we worked within the Subcommittee on Labor and we brought here to the Senate Chamber a strong and effective and a fair measure.

That was the way I characterized the legislation at the time it was considered. It was to protect the lives of miners and to improve their working conditions. If ever we had a milestone in this type of legislation, that was it. This was an effort—a very real effort at the national level—to insure the safe working conditions for a large segment of the working men and women of this country.

No longer, I believe, do officials of Government tend to dismiss incidents of unhealthful or unsafe conditions as being isolated. Rather, there has been generated by the Federal Coal Mine Health and Safety Act of 1969 a real responsiveness to possible dangers in the lives of the working men and women in all industries—not only in this type of industry but, later, in other industries through the Occupational Health and Safety Act. It is right that we should not falter or relax until we have provided, not just the minimum, not even the median, but the maximum degree of safety and health protection for the workers in industry throughout this Nation.

With this specific legislation, Congress has responded to more than just the immediate disaster which caused the death of 78 miners, for in that legislation Congress laid the groundwork for eliminating from the lives of the Nation's coal miners the threat of the dread disease called coal workers' pneumoconiosis, commonly known as black lung, and we have provided, under title IV of the Act, a system of benefit payments and minimum compensation standards for miners and the widows of miners who had been totally disabled by that disease.

It was my responsibility and privilege to sponsor with the cosponsorship of my colleague from West Virginia (Mr. ROBERT C. BYRD) and Senators WIL-

LIAMS, PROUTY, JAVITS, COOPER, SCOTT, COOK, SCHWEIKER, and SAXBE, the amendment accepted unanimously on the Senate floor to provide a program of payments to miners totally disabled by black lung.

I remember the support, the response of the Senators here to the challenge to do what was right, and to do it then.

This was the first time, Mr. President, that Federal legislation recognized the inadequacy of compensation for this dread disease which afflicts coal miners. I want to be very fair: Not all coal miners, but it afflicts many, many coal miners.

As the Senate report on the original act stated, this irreversible disease was "believed to have afflicted 100,000 of the Nation's active and retired miners." President Nixon, in his March 1969 message which called for a new coal mine health and safety act, said:

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.

Mr. President, this is a disease which creeps into the body progressively and leads to that period, sometimes several years away, sometimes in years near at hand, when the miner becomes incapacitated, even though many, many times he is a relatively young man.

At the time the Coal Mine Health and Safety Act was signed into law, only 2½ years ago, it was generally thought that coal miners' occupational breathing disabilities were encompassed by the term "pneumoconiosis." I so thought, Mr. President, and most Members of Congress, I believe, so understood the situation. The knowledgeable press—and there was close attention to this legislation—and many physicians believed that that was the case. It was generally believed that title IV of the act relating to black lung benefits would be a satisfactory means of compensating miners who were incapacitated by respiratory diseases, as well as the surviving widows and children of miners who had died from the dread black lung.

Since the passage of that basic, necessary, desirable, urgent act, however, experience has taught us that all is not as we expected. As of March 3, 1972, 356,857 claims had been filed since the effective date of the act, December 30, 1969. According to the Social Security Administration, 91,784 disabled miners and 74,809 widows have received benefits, for a total of 166,593 claims, while 169,999 claims have been denied.

The total of those receiving benefits, I repeat, is 166,593.

Not only have the number of claims far exceeded those earlier expectations of Congress, indicating a more widespread and more serious problem than they anticipated, but also the rate of denials—more than 50 percent nationwide, and as high as 72 percent in some States—suggests strongly that the solution has not been nearly as complete as we in Congress had believed and expected it would be.

Clearly the implementation of the black lung benefits of the Coal Mine Health and Safety Act is not—I repeat, is not—reaching and aiding the large num-

ber of miners and survivors who urgently need assistance and whom Congress in 1969, I think, intended to aid.

The approval or denial of black lung benefits—the determination of disability—for a miner in many instances constitutes a matter of life and death. It very often determines whether a miner and survivors will be able to maintain a half-way decent standard of living. Black lung benefits can mean the difference between adequate or substandard housing; sufficient diet or undernourishment; and minimal medical care or no medical care for a miner and his family. An issue having such a bearing on the lives of people—thousands of people—demands thorough and timely attention of Congress and affirmative action.

Mr. President, may I ask the Chair how much time I have consumed?

The PRESIDING OFFICER. The Senator has 62 minutes remaining.

Mr. RANDOLPH. How much time have I consumed?

The PRESIDING OFFICER. Nineteen minutes in all, and the quorum call consumed 9 minutes of the Senator's time. 62 minutes remain.

Mr. RANDOLPH. That the Congress intended a significantly more substantial degree of aid under black lung benefits is, I believe, entirely clear. As chief sponsor of the amendment, title IV, I believe I know what the thinking of the sponsors of the amendment was and what was intended. We did not anticipate the circumstances of the existing program under which so many disabled miners and survivors are unable to secure assistance.

At the time of the enactment of the black lung benefits program, the Congress was required to make a medical decision based on a limited amount of what we call hard information and under severe time limitations. That decision to base a program on the determination of "complicated pneumoconiosis" was thought to take into consideration the unique and extensive health problems created by the frequency of pulmonary or respiratory diseases among coal miners—these impairments working their way to the final result, pneumoconiosis or black lung disease—and the resultant inability of miners to continue working due to these diseases. This record is open and well known.

We know today that the legislation as written did not encompass the complexity or scope of respiratory diseases among miners. It did not recognize the unusual and dramatic problem so well described by the ranking minority member of our subcommittee, Senator JAVITS, when he called attention to "our sublime insensitivity to what is probably the worst occupational disease in the country—black lung" and stressed that "there exist today in the United States literally thousands of former coal miners who have reaped, as their sole reward for long and faithful service underground, ravaged lungs, enlarged hearts, and retirement years spent as semi or complete invalids, slowly choking to death. All because of coal dust."

We know today in far greater detail the case histories of miners whose work

in the mines has resulted in totally disabling respiratory diseases. I have listened to these case histories. I have reviewed them carefully. I have attempted to document them with the Senator from Pennsylvania (Mr. SCHWEIKER). We have gone into the field, into West Virginia and Pennsylvania. We have heard the testimony, and we have talked with these people.

These respiratory impairments not only prevent miners from engaging in gainful employment but also cause a continued physical deterioration which makes normal daily activity extremely painful, if not impossible.

We know today, based on extensive hearings in Washington and in the coal fields of West Virginia, the terrible burden being borne by disabled miners whose claims are being denied after 35 and 40 years in the mines. When you meet and talk to these men, you know without doubt that they are disabled by respiratory diseases. Many of them—and this is not an exaggeration—do not have the breathing capacity to carry on a normal conversation.

The degree of suffering of these men is attested to by the following statement of a miner the Subcommittee on Labor interviewed in Beckley, W. Va. He said:

I have worked in the coal mines 37 years. I started in there when I was 16 years old. I ran motors for about 37 years, and in the last work I had done, I worked about 8 years. My lungs went bad on me, and I had to go into the hospital. I did not know what was the matter with me. I could not get no breath, I would get tired, I would work a half a day, and that is all I could stand, I would have to go home.

I had to crawl to work, and with the smoke, the bad air, I then went into the hospital, and they told me, they said your lungs were peeling off, so I said all right. They made me stay there in the hospital, I expect for 10 days, and I got a little better, and they went down in me, and they found inside a growth.

For about 6 weeks, they could not take it out, and I come to Beckley Hospital to have it taken out, and they told me in Beckley, they said, "You know what is the matter with you, you say you worked 37 years in the coal mines, you know what is wrong with you." I said, "Yes, I know," and I ain't never been able to do a thing since.

I signed up on this, and I did not think I would have any trouble at all, getting my black lung. I then signed up for 2 years. I have been turned down twice.

I cannot eat, I cannot sleep. I have got to prop up in the bed. I cough that stuff up all night long. Sometimes I get full of it, and it is that it shuts my wind off. I have got to get up.

I sleep 2 hours a night, just about on the average. Sometimes not that much. If I get a little bit of cold, I have to sit up and put a quilt around me. When I lay down, I just rasp, and there is nobody around me that can sleep. I cannot sleep either. Sometimes around in the morning, I will get coughed out, and maybe I will doze off and sleep a little bit. When I get up, I ain't got enough wind left.

I spit coal dust up for about 5 years, and now it just looks like cotton, big balls of stuff, just looks like white cotton.

Mr. President, I want to be fair. I said at the outset that not all miners become afflicted with black lung. I want to make that very clear. But what I do say with emphasis today is that when a miner has contracted the dread disease, black lung, pneumoconiosis—and Congress has pro-

vided in the 1969 act, title IV, benefits for that miner and the widow—we have a right to expect that he will not be denied benefits by the Social Security Administration. In the pending legislation, we provide that a miner will not be denied black lung benefits solely upon the basis of an X-ray. We want other matters to be considered. Many, many people can help in the determination of whether he has or does not have black lung.

Mr. President, what I have just said about one miner is not an isolated case. I wish there were fewer stories such as that, but they are, over and over again, the case histories we have heard.

The miners of this country and their families have paid a terribly high price to provide us with the fuel and energy which our industrial society has demanded. I believe it our responsibility as a Nation to insure that they receive deserved and urgently needed compensation for their labors.

I think we should remember today that about 54 percent of all the thermal power in this country used to fuel and energize our industrial society comes from coal.

All over America, in every State, the results of what the miners have done relative to the production of coal has been vital to the well-being of this country and its people—even to the security and the safety of its men and women.

An estimated 10 percent of each individual personal income expenditure goes for energy, either directly or in the production of consumer goods or the furnishing of consumer services. Coal represents, as I stated, some 54 percent of this energy or 600 million tons each year—3 tons for each person. Approximately 28 percent of the increased household use of electricity in the last 10 years was due to new air conditioning and space heating, and this demand has been most difficult to satisfy in such large urban areas as New York City. Whereas early

man consumed about 2,000 calories per day, the average U.S. citizen today uses more than 200,000 calories per day to feed himself and to account for the consumption by various industries that support him. We have increased our energy consumption by a factor of at least 100 in providing the machinery, so to speak, that relieves us of physical burden.

This fantastic increase in our standard of living has been accomplished through abundant sources of low cost and reliable energy with more than half of today's energy being derived from coal.

Miners are absolutely essential to the production of this energy. They and their families have suffered agony in satisfying the energy needs of our industrial society. The miner will be absolutely essential to meeting future energy needs.

But the miners will not be there in the future unless the Congress and our Nation continue to take affirmative action to minimize the risks of this dangerous occupation and to lessen the suffering and anguish when injury and disease strike.

Mr. President, we must remember that today we have a strong country because of the strength of these men that I have mentioned.

I shall talk about it a little more later on, but someone might say the black lung program is costing more than was anticipated. Early today, I heard the distinguished Senator from Wisconsin (Mr. PROXMIRE) talk about some of the physical hardware of this country where the costs are above what was anticipated. We know that this takes place time and time again. For example, the "cost growth" of many defense contracts is well known. I would like, at this point in the RECORD, to place a chart of some cost overruns.

There being no objection, the chart was ordered to be printed in the RECORD, as follows:

"COST GROWTH" IN CERTAIN GOVERNMENT PROGRAMS

(In millions)

Defense Department	Navy S3A aircraft	CSA aircraft	F-111 aircraft	DD963 destroyer	Improved Hawk missile	Seavon 8 and 9
Planning estimate.....	\$1,763.8	\$3,423.0	\$4,686.6	\$1,784.4	\$335.5	\$946.5
Current estimate through completion.....	3,138.8	4,555.2	6,667.9	2,715.2	752.1	1,233.8
"Cost growth" or overrun.....	1,375.0	1,132.2	1,981.3	903.8	416.6	287.3

Source: General Accounting Office.

Mr. RANDOLPH. Mr. President, we attempt to cope here, however, with the heartbeat of a human being rather than the hard facts of physical hardware of one kind or another.

This legislation is very important to people in all parts of our Nation, and I know that it is considered so in this body.

I have said that it is not sectional. It is not. I would point out that we have cosponsors other than the original cosponsors and the members of the committee who joined in reporting this measure to the Senate. I recall the cosponsorship of the Senator from Alabama (Mr. ALLEN), the Senator from Indiana (Mr. BAYH), and the Senator from Minnesota (Mr. HUMPHREY).

Now, Mr. President, I should like very

quickly to state the scope of this program and have placed in the RECORD as I have the opportunity to do so, some charts, graphs, figures, and statistics relating to this measure. I should say now that we have a table showing the State-by-State breakdown on current beneficiaries. This table also includes counties in the various States.

Are the claims being paid only in the Appalachian region? Is it in Ohio? Is it in Pennsylvania? Is it in West Virginia or Kentucky? Yes, it is all of these areas. But they are also being paid in New York. They are being paid in New Jersey. In New Jersey 1,900 were paid. So we know that the benefits, based upon the determination of black lung, the dread disease, are being paid throughout the 50 States; 62 in Manhattan alone. We

emphasize, of course, that this legislation is to help those who need help, those who have given of themselves in the production of the necessary fuel, almost to the point of life and death.

Mr. President, I ask unanimous consent to have printed in the RECORD these statistics.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

NUMBER OF BLACK LUNG CLAIMS ALLOWED, TOTAL CUMULATIVE PAYMENTS SINCE ENACTMENT AND TOTAL MONTHLY PAYMENTS, BY STATE OF CURRENT BENEFICIARY RESIDENCE, AND COUNTIES, WITH 50 OR MORE CLAIMS ALLOWED—AS OF DEC. 31, 1971

State and county	Claims allowed	Monthly payment amount	Total cumulative amount
Alabama	6,301	\$1,237,762	\$24,503,194
Bibb	207	40,886	842,503
Cullman	61	12,776	215,707
Etowa	56	11,280	159,300
Jefferson	3,581	701,474	14,387,897
Marion	162	32,549	625,974
St. Clair	82	17,247	269,929
Shelby	179	36,232	675,436
Tuscaloosa	158	32,439	618,748
Walker	1,463	284,284	5,714,670
Alaska	5	918	19,834
Arizona	241	46,445	764,618
Marcopa	153	29,461	484,169
Arkansas	659	126,055	2,455,765
Franklin	88	16,874	307,772
Johnson	146	28,024	549,238
Logan	121	24,398	520,687
Sebastian	219	41,091	799,953
California	765	137,495	2,277,267
Los Angeles	302	53,850	877,837
Orange	61	11,054	191,690
Colorado	452	106,949	1,895,949
Boulder	86	15,684	308,658
Denver	72	13,500	219,721
Huerfano	65	12,619	205,905
Ns Animas	134	25,235	461,456
Connecticut	426	75,120	1,327,734
Fairfield	200	35,613	638,455
Hartford	76	12,879	228,593
New Haven	121	21,072	377,283
Delaware	141	24,803	470,152
New Castle	120	20,749	385,841
District of Columbia	77	13,875	231,692
Florida	1,313	253,270	4,397,997
Brevard	77	14,055	229,514
Broward	101	18,824	321,121
Dade	96	17,366	290,241
Hillsborough	130	25,496	442,276
Orange	102	19,591	341,143
Pinellas	168	32,808	606,179
Volusia	64	12,484	223,645
Georgia	117	21,007	349,720
Hawaii	3	473	10,393
Idaho	20	3,746	69,561
Illinois	8,533	1,591,468	25,437,026
Christian	274	48,606	831,870
Clinton	73	13,383	139,939
Cook	266	45,753	718,787
Franklin	2,119	399,454	7,339,462
Fulton	162	29,531	445,365
Jackson	186	34,698	575,113
Jefferson	52	10,248	172,230
Macoupin	362	63,342	892,573
Madison	171	30,331	369,730
Marion	109	20,688	256,880
Montgomery	110	20,154	248,289
Peoria	75	12,964	188,097
Perry	376	69,612	1,107,175
Randolph	173	31,947	475,677
St. Clair	152	28,592	358,116
Saline	817	157,224	2,502,623
Sangamon	349	62,899	904,383
Tazewell	51	9,330	134,689
Vermilion	430	80,848	1,091,267
Williamson	1,579	303,621	4,945,549
Indiana	2,058	372,463	6,187,114
Clay	73	13,454	210,304
Gibson	100	18,165	335,151
Green	160	27,783	489,919
Knox	250	44,460	802,604
Lake	63	11,473	193,560
Marion	96	17,323	286,318
Sullivan	206	36,481	587,008
Vanderburgh	51	8,834	130,634
Vermilion	159	28,424	449,401
Vigo	288	51,590	867,539
Iowa	849	158,410	2,202,012
Appanoose	299	57,160	813,320
Marion	82	14,799	196,203
Monroe	113	21,152	284,196
Polk	107	19,432	250,657
Kansas	161	27,448	396,811
Crawford	77	12,928	208,667

State and county	Claims allowed	Monthly payment amount	Total cumulative amount	State and county	Claims allowed	Monthly payment amount	Total cumulative amount
Kentucky	10,789	\$2,094,994	\$41,370,293	Bedford	249	\$46,715	\$850,950
Bell	873	173,425	3,756,029	Berks	132	22,686	416,591
Boyd	77	14,080	230,277	Blair	60	10,097	182,114
Breathitt	62	13,035	264,905	Bucks	252	44,789	827,628
Clay	160	35,277	695,779	Butler	143	25,675	455,497
Fayette	57	10,172	186,238	Cambria	4,263	771,103	15,504,509
Floyd	1,065	196,046	4,032,981	Carbon	1,564	282,001	5,984,535
Harlan	1,453	283,015	6,290,206	Centre	206	38,611	697,657
Hopkins	600	117,118	1,987,637	Chester	81	13,569	254,043
Jefferson	93	16,373	254,041	Clarion	218	41,622	688,781
Johnson	265	51,323	968,733	Clearfield	1,113	206,966	3,729,892
Knott	168	33,123	659,814	Columbia	469	87,146	1,752,666
Knox	244	47,839	939,007	Cumberland	78	13,908	240,648
Laurel	127	25,509	476,359	Oauphin	550	92,985	1,839,865
Lawrence	75	15,009	292,480	Oelaware	222	38,928	707,907
Leslie	91	18,903	393,226	Elk	187	34,209	627,970
Letcher	692	134,052	2,567,475	Erie	83	14,579	256,959
McCreary	293	58,297	1,201,277	Fayette	3,215	594,970	11,114,235
Martin	108	21,524	460,539	Green	739	136,014	2,528,238
Muhlenberg	521	100,064	1,612,540	Huntingdon	220	41,192	775,459
Ohio	80	15,318	218,493	Indiana	1,436	262,579	5,005,371
Perry	588	117,361	2,382,965	Jefferson	450	85,349	1,508,380
Pike	1,627	311,618	6,547,849	Lackawanna	8,517	1,528,068	29,085,071
Union	102	19,504	264,600	Lancaster	79	13,957	252,807
Webster	223	41,972	695,256	Lebanon	70	11,989	220,463
Whitley	366	71,899	1,410,857	Luzerne	115	19,587	342,212
Louisiana	23	4,012	64,789	Monroe	17,883	3,184,221	64,567,144
Maine	1	123	5,756	Montgomery	64	12,137	217,704
Maryland	1,708	281,530	4,666,496	Montomery	210	36,735	645,568
Allegheny	846	131,545	2,164,858	Montour	59	9,963	189,461
Anne Arundel	69	11,572	186,280	Northampton	118	21,073	398,652
Baltimore	113	19,022	314,886	Northumberland	2,893	520,168	10,314,090
Baltimore City	124	20,743	348,138	Philadelphia	430	77,796	1,399,381
Garrett	222	38,706	628,207	Schuylkill	8,228	1,447,322	30,332,164
Montgomery	73	12,710	223,156	Somerset	2,016	380,126	7,563,380
Prince Georges	142	25,006	404,291	Sullivan	69	12,025	197,940
Massachusetts	54	9,806	150,153	Susquehanna	287	51,382	990,403
Genesee	54	10,034	146,565	Tioga	97	16,788	330,585
Macomb	88	15,832	255,246	Washington	2,410	433,580	8,542,534
Oakland	133	24,519	275,376	Wayne	164	30,610	558,362
Wayne	750	133,258	2,084,855	Westmoreland	1,927	351,294	6,152,291
Minnesota	11	2,284	44,814	Wyoming	1,50	27,686	498,478
Mississippi	26	4,539	68,702	Puerto Rico	3	535	9,926
Missouri	212	38,524	494,616	Rhode Island	10	1,682	25,484
Montana	109	18,110	269,997	South Carolina	54	10,462	177,072
Nebraska	10	1,835	15,705	South Dakota	4	917	16,094
Nevada	30	5,382	77,331	Tennessee	4,205	834,904	15,659,545
New Hampshire	7	1,147	11,115	Anderson	554	110,699	2,250,030
New Jersey	1,891	337,234	5,841,844	Campbell	783	156,676	3,238,018
Bergen	112	18,858	323,025	Claiborne	183	36,506	768,054
Camden	112	20,521	374,430	Cumberland	74	13,993	213,555
Essex	328	60,888	1,038,100	Fentress	77	14,831	236,542
Hudson	127	22,422	391,775	Grundy	280	56,378	1,083,635
Mercer	94	16,552	303,549	Hamilton	197	37,534	550,635
Middlesex	209	35,929	653,421	Knox	191	39,710	718,907
Morris	70	11,865	228,172	Marion	262	53,104	984,086
Passaic	128	22,381	387,118	Morgan	104	20,585	394,550
Somerset	108	20,194	363,426	Putnam	63	13,314	274,335
Union	232	50,340	821,109	Roane	394	78,050	1,444,242
New Mexico	273	44,954	788,041	Scott	212	23,683	493,469
Colfax	79	15,335	247,636	Sullivan	216	40,931	722,549
McKinley	68	12,665	270,315	Washington	52	10,439	176,100
New York	1,263	223,707	3,793,005	White	188	35,308	513,399
Broome	144	25,449	430,801	Texas	116	22,387	353,434
Erie	176	31,210	509,805	Utah	479	91,855	1,423,400
Kings	126	22,578	377,169	Carbon	293	56,741	885,306
Monroe	65	11,702	204,035	Salt Lake	72	13,475	192,623
Nassau	50	8,752	154,676	Vermont	3	535	8,144
New York	62	10,863	178,831	Virginia	6,727	1,358,528	27,055,936
Niagra	68	11,949	182,033	Alexandria City	55	9,753	174,499
Queens	117	21,933	386,944	Bristol City	80	15,952	309,300
Westchester	60	10,556	181,477	Buchanan	566	124,088	2,448,168
North Carolina	321	58,737	1,081,897	Dickenson	442	91,525	1,897,099
North Dakota	10	1,863	24,390	Lee	633	129,928	2,830,822
Ohio	5,392	993,019	15,714,114	Montgomery	61	11,206	167,950
Athens	356	65,623	941,942	Norton City	228	43,357	873,967
Belmont	663	118,438	1,772,266	Roanoke City	75	13,904	248,615
Butler	83	16,064	243,926	Russell	457	94,337	1,881,805
Cuyahoga	769	139,588	2,224,755	Scott	90	17,343	390,280
Franklin	445	83,079	1,503,831	Smyth	88	17,909	326,494
Gallia	110	20,686	348,567	Tazewell	1,404	286,368	5,950,792
Hamilton	220	40,046	663,926	Washington	96	20,058	377,685
Harrison	65	11,845	181,484	Wise	1,347	266,021	5,455,258
Jackson	59	11,366	183,884	Wythe	166	33,255	487,061
Jefferson	295	53,616	769,807	Washington	200	35,729	511,706
Lawrence	61	12,160	200,506	King	50	8,377	120,272
Lorain	103	18,234	291,365	Kittitas	76	13,742	170,325
Lucas	96	17,750	295,299	Barbour	26,365	5,251,455	103,894,646
Mahoning	67	11,819	191,563	Boone	304	57,602	1,003,068
Meigs	93	19,271	295,083	Braxton	867	173,065	3,363,137
Montgomery	308	54,948	883,857	Brooke	66	13,589	269,879
Muskingum	73	14,864	230,912	Brooke	78	15,568	289,137
Perry	123	21,826	307,263	Cabell	152	28,578	527,489
Stark	125	24,471	373,596	Clay	149	30,720	556,278
Summit	159	27,632	445,562	Fayette	2,902	566,406	11,698,026
Trumbull	74	13,960	222,826	Greenbrier	397	77,038	1,451,449
Tuscarawas	72	12,620	228,349	Harrison	691	133,764	2,324,227
Oklahoma	506	93,195	1,598,396	Kanawha	1,686	319,579	5,980,266
LeFlore	105	20,157	364,647	Lincoln	190	39,442	763,562
Okmulgee	86	15,454	273,869	Logan	2,362		

State and county	Claims allowed	Monthly payment amount	Total cumulative amount
Monongalia.....	738	\$141,349	\$2,503,725
Monroe.....	69	13,447	257,266
Nicholas.....	322	64,321	1,139,568
Ohio.....	217	42,114	689,450
Preston.....	285	59,532	969,750
Putnam.....	107	20,550	315,015
Raleigh.....	3,887	764,973	16,377,341
Randolph.....	215	42,332	811,202
Summers.....	73	14,675	275,749
Taylor.....	124	24,219	421,030
Tucker.....	125	23,546	456,908
Upshur.....	125	25,707	426,463
Wayne.....	136	28,262	524,545
Webster.....	208	43,931	853,453
Wyoming.....	1,771	355,716	6,083,637
Wyominasin.....	51	8,992	145,000
Wyoming.....	525	97,590	1,828,792
Lincoln.....	54	10,104	200,419
Sweetwater.....	378	71,062	1,359,875
Total claims allowed.....	149,595	27,995,037	532,609,728

Mr. President, I cannot overstress the great urgency in securing the enactment of this responsible legislation. This sense of urgency is something I share with you and thousands of miners, their widows, and children who are anxiously awaiting what we are doing here. Those of us who went into the coalfields to hold hearings on improvements to the black lung benefits program know the anxiety felt by the coal miners and their families. Those of us who were in Beckley, W. Va., or Scranton, Pa., came away heartsick after hearing the quiet, anguished, but proud pleas for help from miners and wives and widows and children. They came to us not seeking a handout; they came seeking a helping hand. They came with the high purpose of the widow whose husband worked 28 years in the mines, and since his death she had raised seven children on her own. I call this woman gallant. I shall never forget what she said:

I have been denied and I am testifying not to help myself, perhaps, but to help the miners of the future and their families.

Mr. President, when you hear such a story and you know what the expenditures for our physical hardware are in this country, you realize that we in Congress have a responsibility, as we have never had it before, to do now, without delay, what should be done to help these persons.

Our subcommittee returned from those hearings with a deep determination to assist the miners and families who now wait for the results of our action here in the Senate. We cannot and must not disappoint them.

We cannot and must not ignore the needs of thousands of persons who have been shocked when they are advised that they do not qualify for benefits under the black lung program. Many of these persons have spent 20 and 30 and sometimes 40 and 50 years working underground in the dark and damp atmosphere bringing forth coal which has enabled the people of this country to achieve a per capita energy consumption rate six times higher than the world average.

Mr. President, day in and day out, under the threat of roof falls, electrical fires, rock falls, poison gas, penetrating moisture, and always the ever-present coal dust, these men have performed

loyal and faithful service. Although the mines have been improved—and I commend those companies and their officials who have worked so diligently for improvement—these same conditions continue to exist in many areas. We cannot ignore the needs of these men.

So now we earnestly desire to help those that need our help, those who form the mining population of this country. We will not ignore in this body the health and well-being of these people. I do not believe, when we can so easily turn on a light, press the television button, or adjust the air conditioner, that we will not realize the terrific flow of power for all Americans, which has been coming from the miners of this country through the production of coal—a production which will necessarily have to be increased in order to meet the future energy requirements of this country.

Mr. President, I said at the beginning that I think society—not a part of society but all of society—has a real debt to those thousands of miners who have been fueling the Nation. H.R. 9212, as reported by the Committee on Labor and Public Welfare—given very careful attention by the subcommittee and the committee, given attention by the distinguished member of the committee who is now presiding over this Chamber, the distinguished Senator from Iowa (Mr. HUGHES), given the attention of men regardless of party, and reported unanimously to this Chamber—is the legislation on which I hope in a few hours we will have a positive determination.

I urge the passage of the bill.

Mr. President, although the estimates of cost are eminently fair, certain of the coal associations have expressed displeasure with the committee bill through telegrams to Members of the Senate. I would like at this point to insert in the RECORD a copy of that telegram, along with a telegram which I have sent to all Members of the Senate.

WASHINGTON, D.C.,
April 17, 1972.

HON. JENNINGS RANDOLPH,
Senate Labor and Public Welfare Committee,
Washington, D.C.:

The undersigned associations, representing more than 80 percent of U.S. bituminous coal production, respectfully request the Senate Committee on Labor and Public Welfare to reconsider its amendments to H.R. 9212, the so-called black lung extension bill, for the following reasons:

1. To secure and give careful consideration to the estimates of additional costs to both government and industry of liberalization of the present program as provided in the senate amendments. At present we are advised only that the projected costs would be a staggering 12 to 15 billion over the next 10 years, with a large but undetermined portion of that to be borne by the coal industry, the total volume of coal sales in 1971 amounted to less than \$4 billion.

2. To ascertain the effect of such increased costs of the thousands of small companies that produce almost half the nation's coal. The 20 largest coal companies produce almost half the nation's coal. The 20 largest coal companies produce 55 percent of the annual coal tonnage from 350 mines. The remaining 45 percent is produced in 5,200 mines most of them run by small independent coal producers. Thus, a major share of the cost of liberalized program would fall

on the small and medium-sized producers.

3. To reevaluate the proposed standards for diagnosing black lung. The expanded standards of the House bill, H.R. 9212, are adequate to take care of those applications already rejected by what is regarded to be an overly restrictive interpretation of the 1969 law by the Social Security Administration.

4. To reexamine enlargement of the program to cover respiration and pulmonary diseases, such as chronic bronchitis and emphysema.

5. To give further consideration to the proposed extension of this program to brothers, sisters, parents, and other collateral relatives. The number of beneficiaries under the present program already exceeds 240,000 including 91,000 mines and 74,000 widows. To put this in perspective, it must be noted that only about 120,000 miners are currently employed in the coal industry.

6. To give careful thought to whether a disaster-type program originally conceived as a temporary measure to terminate in 1976 should be converted into a permanent program under what amounts to a federalized workmen's compensation plan. The Senate bill would give the States only one additional year to adjust their compensation laws to provide for assumption of this complex and costly program.

To fully assess the effects of this program on the continued economic viability of the coal industry, on the national economy and the consumer who, in the end, would have to pay the bill in the form of higher rates for electricity and other essential goods and services.

We again respectfully request the committee to reconsider its amendments to H.R. 9212. The coal industry generally is on record as supporting the House bill. But the Senate amendments not only could be disastrous for the coal industry—they would have a profound effect on the U.S. economy.

Joseph E. Moody, President, Bituminous Coal Operators Assn. Inc., Carl Bagge, President, National Coal Assoc., Louis H. Hunter, Executive Secretary, National Independent Coal Operators Assn., Allen Overton, Jr., Executive Vice President, American Mining Congress.

TELEGRAM

I am very, very deeply disappointed that the coal industry associations are opposing the black lung benefits bill that will be brought to decision in the Senate on Monday. I refer to Senate Labor and Public Welfare Committee amendments to H.R. 9212. Four associations representing the bituminous coal industry have circulated a telegram to Senators decrying the costs of the black lung benefits program, and in doing so they have grossly overestimated the costs.

Both the Federal government and the coal operators will pay for the benefits provided and proposed to be provided for those persons and their dependents who have directly and indirectly mined the coal which has fueled and energize this country. In 1970 alone 54 percent of all the thermal power generated was from coal. I believe that coal's opposition to an equitable payment of the costs of this program is unwarranted.

JENNINGS RANDOLPH,
U.S. Senator.

Mr. President, the committee bill reflects a fair and equitable distribution of cost responsibility for the program, both as to Government and industry.

The cost estimates for both the Federal and the industry portions of the program so reflect. I ask unanimous consent that cost figures provided by the Social Security Administration be inserted at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COST EFFECTS OF H.R. 9212 AS REPORTED BY THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

(Memorandum from Lawrence Alpern, Deputy Chief Actuary, Social Security Administration)

The table below shows estimates of additional benefit payments under Title IV of P.L. 91-173, over and above expenditures under present law, that would result from enactment of H.R. 9212 as reported by the Senate Committee on Labor and Public Welfare, by jurisdiction of source of payments, fiscal years 1972-81 (in millions).

Fiscal year	Additional benefit payments ¹ under title IV of Public Law 91-173, resulting from H.R. 9212 as reported		Additional benefit payments from the Federal disability insurance trust fund
	Pt. B	Pt. C ²	
1972	\$10		
1973	985	-\$14	\$7
1974	441	-47	3
1975	389	30	3
1976	369	79	2
1977	354	206	2
1978	340	407	2
1979	326	479	2
1980	313	547	2
1981	300	609	2
Total, 1972-81	3,831	2,296	25

¹ The estimates reflect the increase in black lung benefits that results from the 5.5-percent increase in the annual salary rate of Federal Government employees at step 1 of GS-2, effective in January 1972 and are based on the assumption that there will be no future increases in black lung benefit rates after January 1972. It is recognized that Federal salaries may increase in the future. It is not possible, however, to predict either the rate of increase or the timing when such increases would be reflected in salary scales and hence in benefit rates.

² It is recognized that there may be Federal jurisdiction over some payments under pt. C. It is not possible, however, to separate these expenditures from the total expenditures under pt. C. Negative amounts represent reductions in costs that result from the 1-year extension of Federal jurisdiction over initial claims under pt. B.

ESTIMATES OF BLACK LUNG BENEFIT PAYMENTS UNDER PRESENT LAW

(Memorandum from Lawrence Alpern, Deputy Chief Actuary, Social Security Administration)

Current estimates of benefit payments under present Title IV of P.L. 91-173 (black lung), by jurisdiction of source of payment, are shown below in millions.

Fiscal year	Black lung benefit payments ¹ title IV, by jurisdiction of source of payment	
	Pt. B	Pt. C ²
1972	\$401	
1973	470	\$14
1974	457	75
1975	413	124
1976	393	166
1977	375	123
1978	358	
1979	342	
1980	327	
1981	312	
Total	3,848	502

¹ The estimates reflect the increase in black lung benefits that results from the 5.5-percent increase in the annual salary rate of Federal Government employees at step 1 of GS-2, effective in January 1972 and are based on the assumption that there will be no future increases in black lung benefit rates after January 1972. It is recognized that Federal salaries may increase in the future. It is not possible, however, to predict either the rate of increase or the timing when such increases would be reflected in salary scales and hence in benefit rates.

² Under sec. 422(e)(3) of present law, no payment of benefits shall be required for any period after 7 years after the date of enactment (Dec. 30, 1969). It is recognized that there may be Federal jurisdiction over some payments under pt. C. It is not possible, however, to separate these expenditures from the total expenditures under pt. C.

ESTIMATED NUMBER OF PERSONS WHO BECOME IMMEDIATELY ELIGIBLE FOR BENEFITS UNDER PROVISIONS OF H.R. 9212 AS REPORTED BY SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

(Memorandum from Lawrence Alpern, Deputy Chief Actuary)

The number of persons who become immediately eligible for benefits as a result of the proposed changes in present law that are contained in H.R. 9212 are shown below, by category:

Survivors of deceased miners who were disabled at time of death:	
Orphans	2,000
Widows, based on relaxed eligibility requirements	10,000
Dependent parents, brothers, sisters	3,000
Children, where widow has remarried	8,000
Liberalized requirements for establishing pneumoconiosis	35,000
Expanded definition of disability	71,000
Surface miners and their widows	20,000

Mr. SCHWEIKER. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, as a Senator from Pennsylvania and as the sponsor of this legislation in its original stage and as a member of the Subcommittee on Labor which drafted this legislation, I strongly urge that the Senate adopt H.R. 9212, the Black Lung Benefits Act of 1972. This bill, as the Senator from West Virginia, my good friend, so ably outlined, is of vital importance to the coal miners of this Nation, their widows, and their children.

It moves to correct the shortcomings of the original black lung compensation program enacted as part of the Federal Coal Mine Health and Safety Act of 1969. That legislation has proved to be an excellent first step in paying this Nation's enormous obligation to the men who have mined the coal. But it is only a first step, for under the law as Congress wrote it in 1969, the coal miners and their widows have had only a 50-50 chance nationwide of having their claims approved.

As of March 3, 1972, out of 336,592 claims filed and processed, 166,593 have been approved, and 169,999 have been denied.

In my State of Pennsylvania alone, 24,579 coal miners and 11,071 widows have been denied benefits under this program. Fortunately, another 71,999 coal miners and their widows in Pennsylvania have been awarded their benefits.

Pennsylvania does have the highest rate of approval of claims—67 percent—among all major coal producing States. There is some reason for this, and it relates to the nature of coal mining in Pennsylvania. In Pennsylvania we have deposits of anthracite, hard coal, as well as bituminous, soft coal. In fact, the hard coal causes more cases and more serious cases of black lung than does soft coal. The anthracite coal areas in Pennsylvania have a higher incidence of the disease and have a higher rate of claims approved because the smaller size of the hard coal particles makes these particles easier to be inhaled into a miner's lungs. These particles literally cover the lungs with a black coating. Hence, we have the name black lung. That is really the cause of this disease that so tragically brings

havoc and ruin to the lives of those who have mined the coal for our Nation. But the fact that Pennsylvania does have a 67 percent approval rate, the highest among the coal-producing States, does not help the 35,650 miners and widows in Pennsylvania who are going without their black lung benefits today.

In most cases that is because of the deficiencies and inequities of the present law. And it is certainly no comfort to the many who have been denied their claims for black lung benefits in the other States that also have extensive coal mining operations.

Mr. President, that is why I joined with my subcommittee and committee in recommending beneficial changes in the black lung program. Our subcommittee was headed ably and with such strong dedication by my friend, the distinguished Senator from West Virginia (Mr. RANDOLPH).

This version of H.R. 9212 is the result. The subcommittee held several days of hearings in different locations, two of them in the coal fields themselves—in Beckley, W. Va., on January 6, and in Scranton, Pa., on January 10.

I regret, I point out to my friend, the Senator from West Virginia, that our colleagues could not have been in some of those hearing rooms to see and hear the individuals who testified. The first thing that one noticed about the hearing rooms was that everyone in the hearing room was coughing because they have some degree of the disease of coal miners—miner's asthma, pneumoconiosis, black lung, or whatever one chooses to call it, that is an impingement on the heart-lung process. One could not help noticing that the people in the room were different from average Americans. They have already paid the price for mining our coal. As pointed out so ably by the Senator from West Virginia, 54 percent of our Nation's fuel supply is produced from coal. When we flick that switch to turn on the disposal or go to the refrigerator, we should all realize that someone had to go into the coal mines for 20 or 30 years and breathe the coal dust and get the black lung disease and have his life cycle and that of his family disrupted in order to produce that power.

I get a little bit short of patience with those people who say that this is a bill for West Virginia, Pennsylvania, or Kentucky, because those States happen to have coal mines located in them. I point out to those individuals that when one leaves the Pennsylvania borders, there is no Berlin Wall to stop the power that has been made possible in Pennsylvania from going to other States where it is utilized to the benefit of people in other States. There is no Berlin Wall across the railroad tracks to stop coal produced in Pennsylvania from leaving the borders and being of benefit to the people in other States.

We all benefit from the labor of those people who have sacrificed so much to give us that power. Only belatedly is the Nation having its conscience awakened to what these people have been doing for the Nation and what they have been suffering for all these years.

I get a little concerned when I hear

people say that this is a bill that benefits only a few coal-producing States, when the truth is that if those people had not been willing to mine coal and to sacrifice their limbs and their lives—and that is the plain truth—we never would have had the great industrial progress that this country has enjoyed. Certainly to say that this is a sectional bill is the furthest thing from the truth.

Today, the electricity made possible by the coal miners affects everyone who turns on an electric switch, everyone who enjoys the benefits of the modern technology in which we live.

There are no boundaries to stop the power produced by the coal that is mined from going out to the other States. The people in the other States enjoy the product for which the coal miners have paid such a tragic price. It is our desire to make sure that we afford some compensation, if not to those who cannot survive, at least to their survivors.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. SCHWEIKER. I would be delighted to yield to the distinguished Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I think that the distinguished Senator from Pennsylvania might be charged with speaking emotionally. However, it would be a charge which should be one of honor. Here there are not only the humanitarian questions involved, but there are also the facts which make him speak out as he has.

One should think not only of turning the switch on the television, but he should also think of the willing hands of surgeons who operate under intense lights in thousands of hospitals all over the country in an attempt to ease pain and sustain life for literally thousands and thousands of people every 24 hours of the day in this country.

We should get closer to home where we turn on the power to realize what the power produced by these miners is used for.

It is a matter of life and death and the strength of the Republic and the well being of all our people.

I think the distinguished Senator from Pennsylvania.

Mr. SCHWEIKER. Mr. President, I thank the distinguished Senator.

I am reminded very much of one hearing we held in Washington that was not a very pleasant hearing. Perhaps that is why I did raise my voice a moment ago. One cannot have a hearing on a disease that is the largest occupational killer in the world today without it having some impact on him.

I remember Dr. I. E. Buff, who was from the Senator's home State, when he came before our committee in 1969. He came in a rather unorthodox way—a way that I am sure put us all on the edges of our chairs—when he very dramatically brought out a lung from one of the latest autopsies he had to perform.

He placed it before us. It was completely colored black, to the point that if one had not been advised what it was he would not even be able to under-

stand what it was that he was trying to tell us. He was trying to tell us he was getting tired of being the sole spokesman, the sole leader in this field. He told of autopsy after autopsy being performed that showed a lung so covered with coal it had become black, and had stopped the vital functions of life to the point where it could not pump blood. It was a sensational way to relate a message to the committee. One cannot attend committee hearings, see the pictures, and hear the witnesses, including miners themselves, without getting the message that these Americans have been neglected for years. Only belatedly are we beginning to realize that we all have a responsibility, the industry, the unions, and most important of all, the country.

Mr. President, that is what this bill is about and what it tries to do. It is a national bill; it is not a sectional bill, it is not a regional bill; it is a national bill. I hope we keep that in mind.

In our field hearings this year, we heard the miners and the widows tell their stories directly to us, while hundreds of other miners and widows sat as spectators, but no doubt with similar stories to tell if time had permitted.

In Scranton, for example, we heard testimony from miners who have worked 40 to 50 years in anthracite mines, who cough and wheeze continually, who cannot climb the stairs at night because their breathing is so impaired. They have to sleep in their living rooms because they cannot go upstairs to their bedrooms at night; it is too hard on their lungs.

This is a forgotten side of America. It is a problem we have forgotten and pushed under the rug. They have to bring their beds downstairs to the living room because they cannot climb the stairs to go to the bedroom at night. That is the kind of story we heard at the hearings, and it is the kind of story the Senator from West Virginia (Mr. RANDOLPH) and I are trying to tell to our colleagues today, and it is why we get somewhat emotionally involved in telling the story.

Those people cannot climb the stairs at night because their breathing is so impaired. They need to go to clinics three times a week for oxygen, and for one technical reason or another they have been unable to collect black lung benefits under the present law. They have to go to the clinic to get a concentration of oxygen because their black lungs filter out the normal oxygen we use; they cannot get by with normal oxygen and they have to get a high concentration of oxygen to get it past the imbedded particles of black dust in their lungs. That is why they need this treatment.

Just as impressive, if not more so, was the testimony in Scranton of several widows of miners. Their husbands had displayed all the same symptoms during their lifetime. Yet the widows, because of the way existing law is written, were barred from receiving benefits they justly deserve under the intent of the original law.

In H.R. 9212, then, we have made several key changes to existing law to make it more equitable.

I. MORE INDIVIDUALS COVERED

First of all, we have extended the law to many more individuals who were overlooked when the 1969 law was written.

Surface—or strip—miners and their families will be covered by the program for the first time. Under present law, only underground coal miners and their families are eligible for benefits.

Children of coal miners who have neither their father nor mother living will be eligible to receive benefits for the first time. Up to now, benefits have gone only to a living parent and these benefits were increased on behalf of the children.

And finally, in an amendment I introduced in the committee, a miner's surviving parents, brothers or sisters will be eligible for benefits if, when the miner dies, he leaves no surviving wife or children and if his parents, or brothers or sisters were dependent on him for support.

A number of cases in Pennsylvania came to my attention in which the miner had died leaving no wife or children, but was survived by a dependent sister who lived with him and kept house for him. I felt that in such cases, for example, this dependent sister should not be disqualified from receiving benefits.

II. "BLACK LUNG" AND "TOTAL DISABILITY" CRITERIA LIBERALIZED

Second, we have liberalized the criteria for determining whether a miner has black lung and whether he is totally disabled from it.

No miner applying for benefits will be turned down solely because of a negative X-ray. Other tests for pneumoconiosis will have to be employed. Under present law, as administered by the Social Security Administration, the principal test used has been the X-ray, even though medical opinion is divided on how reliable the X-ray is as a test for black lung. So in H.R. 9212, we have given miners the benefit of the doubt.

In addition, if a miner has worked 15 years in the mines and is disabled from emphysema, chronic bronchitis or another respiratory ailment, he will be presumed to have black lung, even if he cannot show a positive X-ray. This will allow many more veteran miners, thus far turned down because of negative X-rays, to qualify for black-lung benefits.

The distinguished Senator from West Virginia was most helpful in sponsoring this amendment which I shared with him as a cosponsor, because it is rather ironic the way we operate now. A Social Security examiner can find that a person has a pulmonary dysfunction and is entitled to pulmonary disability benefits and has an excellent case and can prove it; his heart and lungs are not working correctly. However, simply because those black specks do not show up on an X-ray—and they may only show up on an autopsy—the worker is not eligible for benefits. A man by our standards fails the pulmonary test but he is dis-

qualified simply because the X-ray does not show these particles. Fortunately, this bill will rectify that problem, and the Senator from West Virginia played a very important role in connection with the measure.

Finally, the bill takes a new look at the criteria for "total disability" as applied to coal miners. The bill provides that a coal miner with black lung will be deemed totally disabled, and thus eligible for black lung benefits, if he is unable to do work similar to his work in the mines. Up to now the rule has been that a disabled miner who could still do "any substantial gainful activity" on some other job could not qualify for benefits. This may be a fair rule nationally, but coal miners, in their 40s and 50s, simply do not find many alternative jobs outside coal mining in their home areas. So we felt it was only fair to simplify the disability test for coal miners with black lung.

III. SPECIAL PROVISIONS FOR WIDOWS

Third, we have made two important changes in the law to eliminate technical and procedural roadblocks that have kept thousands of Pennsylvania widows from receiving their rightful black lung benefits.

In the bill, widows will have to establish only that their husbands were totally disabled from pneumoconiosis at the time of his death. Under present law, the widow has to show that the miner has actually died from pneumoconiosis or the widow receives no black lung benefits. This unnecessarily onerous test alone has kept thousands of widows in Pennsylvania from qualifying. As the committee report states at page 8:

Under the operation of the law as it now exists, a widow is at the mercy of circumstance. Although her husband clearly had totally disabling pneumoconiosis, and would have been eligible were he alive, he may have died in a rock fall, an accident, or even a heart attack which may not be established medically to be causally related to pneumoconiosis. Under these circumstances his widow would not be eligible. However, the widow's neighbor, whose husband died of natural causes after receiving title IV benefits, is entitled to the widow's benefits of title IV. Such a result would seem to be unduly harsh with respect to widows whose husbands gave their health, and in many cases their lives, in the service of the nation's critical coal needs.

Another provision of importance to widows is the guarantee of a widow's right to submit lay medical evidence on her husband's condition when she applies for black lung benefits. Many widows in Pennsylvania and elsewhere have been simply unable to produce physicians' documents in support of their claim.

Pneumoconiosis, although it has been with us for years, has not been known by that terminology until recently, and still the medical experts cannot agree on just how it can be diagnosed and what tools are needed. Yet we have put the burden on widows to go back 5 or 10 years and try to prove medically what happened before, when in fact we are just learning at this time what the medical implications of this dread disease are—a rather inequitable provision of the law.

There are many reasons why widows are unable to produce physicians' rec-

ords. In the case of miners deceased for several years, there is a good chance that the doctors they went to are also deceased and their office records are not intact. Even in cases where physicians' records may be retrievable, they may be of little value. After all, for decades black lung was not recognized by any physicians as either an illness or a contributing cause of death.

Thus I felt it essential, and pressed for appropriate language in the bill, to guarantee a widow a right to file affidavits from herself, from fellow workers of her husband, neighbors—anyone, in short, with knowledge of the husband's condition that would have some bearing on whether or not he was disabled.

IV. AID TO NEW AND EXISTING BLACK LUNG CLINICS

Fourth one of the most important findings our subcommittee made in its hearings was of the need for additional funds for examination and treatment clinics for miners with black lung and other pulmonary and respiratory diseases.

On February 10, I made a personal visit to the Anthracosilicosis Treatment project at Wilkes-Barre General Hospital, in the heart of the Pennsylvania anthracite region. This clinic is headed by Dr. Charles Myers, a dedicated and widely-respected lung and chest specialist.

As an indication of the community support for this clinic, the Anthracosilicosis League of Pennsylvania, a grassroots organization of black lung victims, has collected funds from its members in 25 cents and 50 cents contributions and has donated over \$25,000 to the project since it began in 1966.

In this clinic the visitor sees patient after patient taking dosages of pure oxygen on a several-times-a-week basis—the aftermath of all the years these men have spent toiling underground in anthracite mines, where the dust comes in smaller particles than in soft coal mines, and thus is more lethal to the miner.

Dr. Myers has done pioneer work at Wilkes-Barre, often in spite of meager resources. It is our aim in the bill to make it a direct Federal commitment to bring clinical services such as these to all the black lung victims who need them, both by helping existing projects go on and by expanding services to outlying areas not now being served.

Dr. Myers himself, in a statement contained as part of our subcommittee's hearing record, proposes new satellite clinics for black lung examination and treatment, using established centers such as his project as a central point of reference. He points out that many of his 400 current patients at the clinic have transportation problems reaching the clinic for their routine visits. Furthermore, there are certainly thousands of additional patients who need such care but are not getting it either because of transportation problems or the limitations of the size of the project.

Seeing this clinic in operation in Wilkes-Barre convinced me all the more of the importance of direct Federal aid to black lung clinics, and I was pleased to support inclusion of this section in our bill.

V. FEDERAL PHASE OF PROGRAM EXTENDED 1 YEAR—WHOLE PROGRAM MADE PERMANENT

Fifth, and finally, this bill extends, for 1 year, the Federal Government's full liability for all new black lung claims filed and approved. This means that through the end of 1972, claims filed will, if approved, be paid for life by the Federal Government. For claims filed during 1973, the Federal Government will pay benefits only during that year, and for later years, the coal industry employers will be liable for these 1973 claims. After January 1, 1974, all claims will be paid by the coal industry employers.

I favor this additional extension of Federal responsibility, and in fact, co-sponsored, with the Senator from West Virginia (Mr. RANDOLPH) his bill S. 2675, which included a 2-year, rather than a 1-year, extension of the Federal Government's liability for black lung claims. The committee, however, adopted only a 1-year extension. State governments need additional time to gear up their workmen's compensation systems for this additional caseload and financial burden. This is the position of my own State of Pennsylvania, which, incidentally, has done more than any other State thus far to compensate black lung victims, out of general taxpayer funds as well as through the regular workmen's compensation system, which relies on employer contributions.

This program also becomes, by action of this bill, a permanent program, instead of expiring in 1976. This will assure all future applicants for benefits that their benefits, like the ones already awarded under the program, will be for the miner's or widow's lifetime. It eliminates the possibility that if there is no suitable State action by the end of 1976, benefits being drawn by that time would be cut off.

Mr. President, in summary I feel that this bill is a worthwhile one, as a further response to our obligation, as a Nation, toward the coal miner and his family, who have sacrificed so much in life and limb, in this most hazardous of occupations, so that all of us in this Nation could have heat and energy for our daily needs.

In 1969, Mr. President, Congress saw the need to take direct Federal action to compensate the victims of black lung. By this legislation, Mr. President, we continue in that spirit to improve and make the Federal Black lung benefits program fairer to all. I urge that the Senate act promptly to pass H.R. 9212.

THE PRESIDING OFFICER. Who yields time?

Mr. SCHWEIKER. Mr. President, I yield such time as he may consume to the Senator from Ohio (Mr. TAFT).

THE PRESIDING OFFICER. The Senator from Ohio.

Mr. TAFT. Mr. President, I am pleased today to rise in support of H.R. 9212, the Black Lung Benefits Act of 1972. This measure will eliminate inequities that have arisen under title IV of the Federal Coal Mine Health and Safety Act of 1969.

The bill now before the Senate represents a compromise which I helped to fashion out of the original bill introduced by the distinguished Senator from West Virginia (Mr. RANDOLPH).

There are basically two issues under this bill. The first goes to the question of what benefits shall be available and the second goes to the question of who shall pay the cost of this program.

None of us in this Chamber would do anything other than to subscribe to the very strong and very appropriate remarks already made by the distinguished Senator from West Virginia (Mr. RANDOLPH) and my distinguished colleague from Pennsylvania (Mr. SCHWEIKER) as to the need for this bill, as to the justification for it, and as to the equities that are involved.

As to benefits, the existing law provides that benefits shall be paid only to miners or their widows. Under this law if a miner and his spouse are both deceased, the surviving children are not able to claim any benefits. I do not believe that this problem was foreseen by the drafters of the 1969 act, and there has been no question on the part of committee members about extending the act in this regard.

The bill also expands the ability of widows to secure benefits under the act. Under this bill, if a coal miner was totally disabled by pneumoconiosis at the time of his death, his widow may obtain benefits, notwithstanding the fact that his death was from a cause unrelated to pneumoconiosis and notwithstanding the fact that he was not receiving benefits at the time of his death. In effect, what this law says is, if a miner was totally disabled and could have been receiving benefits if the present law had been in effect during his lifetime, then his widow shall be entitled to benefits under this act.

It seems to me that the present rule to deny benefits to a widow whose husband had not applied under the act but to allow benefits for a comparable widow whose husband had made application for benefits is very harsh and arbitrary. The mere fact that a coal miner totally disabled by pneumoconiosis failed to make an application for benefits, perhaps not even knowing of them or of his condition, should not of itself deny his widow the benefits to which she would have otherwise been entitled.

The most important feature of this bill is the provision that benefits can no longer be denied solely on the basis of a negative X-ray. This X-ray rule has also proven to be a harsh and unfair requirement under the existing law. Testimony is clear that a negative X-ray does not establish the absence of pneumoconiosis. Autopsies of coal miners indicate that pneumoconiosis does exist in a great number of cases where the chest X-ray was negative. Testimony has indicated that there is an error factor of approximately 25 percent in diagnosis when the X-ray alone is used.

The distinguished Senator from West Virginia has already mentioned that we have had a turndown of almost 50 percent of the claims nationwide, with 160,000 claims being turned down. If you take 25 percent of that figure, you can see we are dealing with a not insubstantial num-

ber of claims which have been denied on the basis of the X-ray.

On the other hand the evidence is also clear that there is no medical test, other than an autopsy or biopsy that will determine the presence of pneumoconiosis with certainty. If we are to recognize that the X-ray alone will not reveal all cases of pneumoconiosis and if we are to go beyond X-ray evidence, then we must honestly admit that we cannot differentiate with precision between pneumoconiosis and other respiratory and pulmonary ailments.

The committee was faced with a seemingly difficult dilemma. On one hand we could continue to rely on the X-ray knowing that we would not be providing benefits for all miners who were disabled with pneumoconiosis. On the other hand we could utilize other tests of respiratory and pulmonary disability knowing that we would be thereby providing benefits for some miners who were suffering from disabilities other than pneumoconiosis.

I developed and secured Senator RANDOLPH's agreement to a compromise approach which is largely embodied in this bill. This compromise in general terms is as follows. Under this bill benefits are to be paid to those who are suffering from pneumoconiosis and its sequelae. Second, benefits will be paid to all miners with a positive X-ray whether they have worked underground or in strip mines.

I might say I feel this to be particularly important in my own area of Ohio, where a great many strip mining operations have been carried on, and where, due to high coal dust concentrations and for other reasons, some of the jobs create conditions very similar to those created in underground mines. Third, if miners have a negative X-ray, if they have worked for a period of 15 years or more in an underground mine or above ground at a job with a high coal dust level and if they can establish other evidence that they are suffering from pulmonary and respiratory disability, there shall be a rebuttable presumption that they are disabled, because of pneumoconiosis. This presumption can be rebutted upon showing either that they do not have pneumoconiosis or that their disability is not occupationally related. Lay evidence alone will not be sufficient to raise the presumption of pneumoconiosis. As the committee report states on page 13, as to miners who have worked fewer than 15 years in a coal mine, "a mere showing of a respiratory or pulmonary impairment will not be sufficient to establish a claim for benefits." Miners with less than 15 years' service in the mines may receive benefits but only if they establish the burden of proof that they are totally disabled from pneumoconiosis. They shall not have the benefit of the rebuttable presumption that the miners with 15 years of service will enjoy. This compromise is based upon the testimony of the Surgeon General in 1969, who stated:

For work periods less than 15 years underground, the occurrence of pneumoconiosis among miners appears to be spotty and showed no particular trend. For work peri-

ods greater than 15 years underground, there was a linear increase in the prevalence of the disease with years spent underground.

With respect to the definition of total disability, the committee has determined that a miner shall be considered totally disabled when he is unable to engage in gainful employment in the mines, because of pneumoconiosis. We recognize that some former miners may now be employed in other occupations and agree that this shall not preclude them from obtaining benefits under this act. They will, however, be subject to the earnings offset which will reduce their benefits to the point where a former miner, otherwise eligible, earning \$6,000 a year, will obtain only \$164 in benefits under this act.

The second major issue under this bill is the question of who should pay how much of the cost of the program. Under the present law beginning on January 1, 1973, all claims were to be the responsibility of the coal operators. This responsibility was to be undertaken through States' workmen's compensation laws if they meet the criteria established in title IV or under Federal law if such criteria are not met. As the distinguished Senator from New York (Mr. JAVIRS) and I stated in our individual views:

Under normally accepted principles of workmen's compensation, benefits for disability due to black lung should have been made the responsibility of the operators under workmen's compensation long ago; under the compromise agreed to in 1969, however, the law provided that the Federal government would bear the lifetime cost of claims filed prior to January 1, 1972. The Federal government also was to pay the cost during 1972 of claims filed in that year. What the compromise really amounted to was that the Federal government would pick up the lifetime cost of the huge backlog of claims that had accumulated over decades, while the industry would pick up the burden of paying the claims of those still working.

The bill introduced by the distinguished Senator from West Virginia (Mr. RANDOLPH), however, would have extended the Federal program for 2 years. The effect of this would be to bail out the large coal operating companies from what should be their financial responsibilities and throw the cost of the program on to the Federal taxpayers. I believe that such an extension would have been indefensible.

What American corporations would be the principal beneficiaries of such a bail out? The Department of Health, Education, and Welfare has furnished me with a list of the largest bituminous coal producers in the United States for the year 1970. I ask unanimous consent to have printed in the RECORD at this point a reproduction of that chart showing the eight largest bituminous coal companies, the names of the parent corporations, the annual sales of the parent corporations, and the number of employees.

There being no objection, the chart was ordered to be printed in the RECORD, as follows:

Name of coal company	Parent corporation	Parent annual sales (millions)	Parent total employees	Name of coal company	Parent corporation	Parent annual sales (millions)	Parent total employees
U.S. Steel Corp.	(U.S. Steel Corp.)	Over \$4,000	200,730 (5,290 miners in 1968)	Republic Steel Corp.	(Republic Steel Corp.)	Over \$1,000	47,726 (1,505 miners in 1968)
Bethlehem Miners Corp.	Bethlehem Steel Corp.	\$2,900	130,000 (4,090 miners in 1968)	Island Creek Coal Co.	Occidental Petroleum Corp.	Over \$2,000	33,000
General Dynamics Group.	General Dynamics Corp.	Over \$2,000	85,000	Peabody Coal Co.	Kennecott Copper Co.	\$1,000 to \$1,200	25,000
Pittsburgh & Midway Coal Mining Co.	Gulf Oil Corp.	Over \$3,000	54,200	Ayshire	American Metal Climax	\$600 to \$850	17,000

Mr. TAFT. Preferably the cost of this program should have been carried by the industry all along, but the knowledge of the disease was not sufficient to bring it about. The 1969 law was a compromise that quite frankly recognized the financial burden that would be imposed upon the industry in picking up the backlog of claims that had arisen from decades of injury. Even if we pass no extension at all the Federal Government will still pay lifetime benefits to all those whose claims have been filed prior to January 1, 1972, and would pay during 1972 the cost of benefits to those whose claims had been filed during that year.

These amounts certainly are not insubstantial. I think it is important that the Senate have before it some estimate of the costs under this bill, the costs under the present law, and the costs under the House version of the bill as it came to the Senate from the other body.

I ask unanimous consent to have printed at this point in the RECORD three tables provided by the Deputy Chief Actuary of the Social Security Administration, Mr. Lawrence Alpern, which set out these figures in detail.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

ESTIMATES OF BLACK LUNG BENEFIT PAYMENTS UNDER PRESENT LAW

Current estimates of benefit payments under present Title IV of P.L. 91-173 (black lung), by jurisdiction of source of payment, are shown below in millions:

Fiscal year	Black lung benefit payments ¹ under title IV, by jurisdiction of source of payment	
	Pt. B	Pt. C ²
1972	\$401	
1973	470	\$14
1974	457	75
1975	413	124
1976	393	166
1977	375	123
1978	358	
1979	342	
1980	327	
1981	312	
Total	3,848	502

¹ The estimates reflect the increase in black lung benefits that results from the 5.5-percent increase in the annual salary rate of Federal Government employees at step 1 of GS-2, effective in January 1972 and are based on the assumption that there will be no future increases in black lung benefit rates after January 1972. It is recognized that Federal salaries may increase in the future. It is not possible, however, to predict either the rate of increase or the timing when such increases would be reflected in salary scales and hence in benefit rates.

² Under sec. 422(e)(3) of present law, no payment of benefits shall be required for any period after 7 years after the date of enactment (Dec. 30, 1969). It is recognized that there may be Federal jurisdiction over some payments under pt. C. It is not possible, however, to separate these expenditures from the total expenditures under pt. C.

BENEFIT PAYMENTS UNDER PUBLIC LAW 91-173, MODIFIED BY H.R. 9212 AS PASSED BY THE HOUSE OF REPRESENTATIVES

The table below shows estimates of total benefit payments that would result if Title

IV of P.L. 91-173 were modified by the enactment of H.R. 9212 as passed by the House of Representatives. The estimates are presented by fiscal year of payment and by jurisdiction of source of payment (in millions):

Fiscal year	Total benefit payments ¹ under title IV of Public Law 91-173, as modified by House-passed H.R. 9212		Additional benefit payments from the Federal disability insurance trust fund
	Pt. B	Pt. C ²	
1972	\$411		
1973	921		\$15
1974	734		6
1975	736	\$15	6
1976	674	80	5
1977	640	132	5
1978	612	176	5
1979	584	128	4
1980	558		4
1981	532		4
Total	6,402	531	54

¹ The estimates reflect the increase in black lung benefits that results from the 5.5-percent increase in the annual salary rate of Federal Government employees at step 1 of GS-2, effective in January 1972 and are based on the assumption that there will be no future increases in black lung benefit rates after January 1972. It is recognized that Federal salaries may increase in the future. It is not possible, however, to predict either the rate of increase or the timing when such increases would be reflected in salary scales and hence in benefit rates.

² Under sec. 422(e)(3) of present law, as modified, no payment of benefits shall be required for any period after 9 years after the date of enactment (Dec. 30, 1969). It is recognized that there may be Federal jurisdiction over some payments under pt. C. It is not possible, however, to separate these expenditures from the total.

COST EFFECTS OF H.R. 9212 AS REPORTED BY THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

The table below shows estimates of additional benefit payments under title IV of P.L. 91-173, over and above expenditures under present law, that would result from enactment of H.R. 9212 as reported by the Senate Committee on Labor and Public Welfare, by jurisdiction of source of payments, fiscal years 1972-81 (in millions):

Fiscal year	Additional benefit payments ¹ under Title IV of Public Law 91-173, resulting from H.R. 9212 as reported		Additional benefit payments from the Federal disability insurance trust fund
	Pt. B	Pt. C ²	
1972	\$10		
1973	989	-\$14	\$7
1974	441	-47	3
1975	389	30	3
1976	369	79	2
1977	354	206	2
1978	340	407	2
1979	326	479	2
1980	313	547	2
1981	300	609	2
Total, 1972-81	3,831	2,296	25

¹ The estimates reflect the increase in black lung benefits that results from the 5.5-percent increase in the annual salary rate of Federal Government employees at step 1 of GS-2, effective in January 1972 and are based on the assumption that there will be no future increases in black lung benefit rates after January 1972. It is recognized that Federal salaries may increase in the future. It is not possible, however, to predict either the rate of increase or the timing when such increases would be reflected in salary scales and hence in benefit rates.

² It is recognized that there may be Federal jurisdiction over some payments under pt. C. It is not possible, however, to separate these expenditures from the total expenditures under pt. C.

Mr. TAFT. I will outline these tables briefly for the Senate.

As for the present law, under part B of title 4, the total estimated cost is \$3,848 million. Under part C, this would be an additional \$502 million, of which it is estimated that one-third probably would be picked up by the Federal Government for companies that have gone out of business.

As to the House bill, the total cost we are talking about, as outlined in this estimated table would be as follows: Under part B, the total cost under the House bill would be \$6,402 million. Under part C, it would be \$531 million, of which it is estimated that approximately one-third would be picked up by the Federal Government.

As to the Senate bill—the one before us at this time, without changes—the table prepared by Mr. Alpern estimates that the additional benefit under title IV, part B, picked up by the Federal Government, would be \$3,831 million. For part C, that amount would be \$2,296 million, of which it is estimated that approximately one-third would be picked up by the Federal Government.

Of the changes being made in this bill, by far the heaviest load is being picked up by the Federal Government, as compared to the private carriers or the workmen's compensation coverage, the ratio being approximately \$3.8 to \$2.2 billion.

The compromise reached in the committee, to which I subscribed, if anything goes too far in the direction of bailing out the coal industry from the responsibilities which it has under the present law and which it should have had all along. The agreement, reached on this issue, was part of an overall compromise on the bill, and consequently I support this 1-year extension as now contained in the committee bill. I would, however, vigorously oppose any effort to have the American taxpayers relieve this industry of any more of its obligations than is done under the present law.

Finally, let me outline very briefly the modifications agreed to by the distinguished Senator from West Virginia in working on the compromise under this bill. I commend him for his cooperation and his statesmanship in working out these details. I think he has done so with a great deal of diligence and knowledge that he obviously has accumulated over many years of service and many years of concern in this very difficult area.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. RANDOLPH. Mr. President, I feel that within the committee there was an

understanding by the members of the need for careful consideration of the proposed legislation. There also was an understanding of the need, where it was necessary, for accommodation of viewpoints. I think it has been done in a well-reasoned way in this bill. I thank the Senator from Ohio for having made his contribution within the committee, and I thank him for his very gracious words directed toward me at this time.

Mr. TAFT. I thank the Senator from West Virginia.

I should like to review briefly what those modifications were.

First, we have limited the extent to which coverage will be applicable to surface miners. Unlike the bill as introduced, this compromise will be applicable to surface miners only if they have a positive X-ray, or if they have worked in an underground mine or surface occupation with a high concentration of coal dust for a period of 15 years and have other evidence of pulmonary and respiratory disability. Under this compromise such surface miners will be afforded the same presumption of pneumoconiosis as underground miners. The bill will not, however, apply to truck drivers, power shovel operators, and other strip mine employees who do not have a positive X-ray or who do not meet the requirements for the presumption. I believe that this limitation is very important. If we were to have a benefit program for all respiratory and pulmonary impairments of truck drivers working at strip mines, there is no reason why the same benefits should not apply to all truck drivers everywhere in America. What this compromise is attempting to do is to provide benefits for pneumoconiosis which is occupationally related to coal mine employment.

Second, the bill is on its face, limited to pneumoconiosis and its sequelae. Unlike the original Senate bill as drawn, this bill does not cover all pulmonary and respiratory disabilities. To have done so would have been grossly unfair to other industrial employees, such as foundry workers, textile workers, and beryllium workers who have respiratory ailments associated with their employment. By limiting this bill to pneumoconiosis we have made a conscious effort to protect the State workmen's compensation concept.

Third, we have limited the Federal program extension to 1 year instead of 2, as I have indicated. I am informed by HEW that this will involve a saving of approximately \$620 million to the American taxpayers.

Fourth, we have succeeded in obtaining a 100-percent offset for social security disability benefits when, combined with benefits under this act, they would exceed average hourly earnings.

Fifth, we have stricken the provision that would have prohibited the denial of benefits solely on the basis of breathing tests.

Sixth, we have limited the use of lay evidence and prohibited the use of a wife's affidavit to create a presumption in the case of living miners.

These limitations which have been accepted as a part of the compromise, in

my judgment, do not restrict the ability of coal miners to obtain benefits for pneumoconiosis and its sequelae. We have sought to reach to the fullest extent the particular medical problems of coal mine employees. But we have done so in a way that will not cover ailments which are not occupationally related.

I believe that this bill, with these modifications, should be accepted by the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Mr. President I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time be charged equally against both sides on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TUNNEY). Without objection, it is so ordered.

BLACK LUNG BENEFITS ACT OF 1972

The Senate continued with the consideration of the bill (H.R. 9212) to amend the provision of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

Mr. JAVITS. May I check on the time. Mr. President? Who has the time and how much is it?

The PRESIDING OFFICER (Mr. TUNNEY). The time is divided between the distinguished Senator from West Virginia (Mr. RANDOLPH), who has 37 minutes, and the distinguished Senator from New York (Mr. JAVITS), who has 30 minutes.

Who yields time?

Mr. JAVITS. Mr. President. I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 10 minutes.

Mr. JAVITS. Mr. President. I support this bill as amended by the Committee on Labor and Public Welfare. It makes highly desirable changes in the provisions of title IV which will enable thousands of totally disabled miners who have heretofore been denied benefits, to receive benefits under the black lung program. At the same time, the bill is consistent with the compromise embodied in the 1969 law under which new claims for benefits after a certain date were made the responsibility of the coal mine operators.

As many of those who were here when the Coal Mine Health and Safety Act of 1969, was enacted may remember, the issue of who should bear the cost of the black lung program was one of the most difficult to resolve in the conference on the bill.

Under a compromise which I offered, and which was embodied in the conference bill which became law, the Federal Government was made responsible to pay lifetime benefits to those whose claims were filed before January 1, 1972, and the cost during 1972 of claims filed during that year. Commencing January 1, 1973, the responsibility for payment of benefits was placed on the operators under State workmen's compensation laws or, if State laws did not meet the criteria of title 4, under Federal law. If no solvent operator liable for benefits could be found, then the claims were to be paid by the Secretary of Labor.

Under a proposal offered by myself and Senator TAFT, which was accepted by the committee, the date for this assumption of liability on the part of the operators

is extended for only 1 year, rather than 2 years proposed in the House bill.

At the same time, a rebuttable presumption of disability due to pneumoconiosis is created in favor of the miner who is totally disabled as a result of a respiratory or pulmonary impairment, and who has had 15 years experience in underground mining, or comparable experience in surface mining, notwithstanding the absence of a positive X-ray showing of pneumoconiosis.

Now, Mr. President, the industry has come in—and that is the heavy and important factor in this bill—and asked for a 2-year extension. I will discuss this 2-year extension in greater detail later. We have made it for 1 year.

I wish to make it crystal clear that on this 1-year proposition, we are, and I am sure the Senator will agree with me, absolutely firmly fixed. We will do our utmost, if this bill goes to conference, to sustain the 1-year proposition. We believe that otherwise there is grave danger of a most unconscionable overreaching of the U.S. Government and the taxpayers of the United States. We shall do our utmost to fight against it and prevent it.

Mr. RANDOLPH. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. RANDOLPH. The Senator from New York correctly states the situation within the committee as to the understanding and the compromise. When the bill would conceivably go to conference, as reported from the committee and passed by the Senate, I will stand with the Senator from New York and the Senator from Ohio, as I know others will stand with him who are conferees, to work diligently for the Senate version.

Mr. JAVITS. On the 1 year?

Mr. RANDOLPH. Yes.

Mr. JAVITS. That is very helpful and I am deeply obliged to the Senator from West Virginia for having said it so early in this debate.

Mr. President, I know that the Senator from West Virginia has resisted the pressure now being brought by the industry to gain another year's delay in assuming responsibility for paying their claims, and I commend him for the statement he issued yesterday in reply to the industry's telegram. I ask unanimous consent that Senator RANDOLPH'S release of April 16, 1972, be printed in the RECORD.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

WASHINGTON, April 16.—"I am very, very deeply disappointed that the coal industry associations are opposing the black lung bill that will be brought to decision in the Senate on Monday," Senator Jennings Randolph (D-W. Va.) said here Sunday.

Four associations representing the bituminous coal producers, Randolph revealed, "have circulated a telegram to Senators decrying the costs of the black lung benefits program, and they have grossly overestimated those costs.

"This legislation is fair and equitable in its distribution of responsibilities," the Senator remarked, and added:

"Both the Federal government and the coal operators will pay for the benefits to be provided those persons and their dependents who have directly and indirectly mined the

coal which has fueled and energized this country. In 1970 alone, 54 percent of all the thermal power generated was from coal.

"I believe that coal's opposition to an equitable payment of the costs of this program is unwarranted."

JENNINGS RANDOLPH.

Mr. JAVITS. Mr. President, though this is a very good bill, even the 1-year extension is not so hot for the U.S. Government.

The committee report on the House bill indicated that such was not the intent of the House bill.

According to the Social Security Administration's original estimates, the cost of the changes in existing law which would be made by the committee bill would have been shared approximately 50-50 between the Federal Government and the operators over the next 10 years. However, the Social Security Administration has recently submitted revised cost estimates which indicate that the incremental cost of the committee bill will amount to \$3.831 billion for the Federal Government, and \$2.296 billion for the operators over the next 10 years.

Mr. President, I emphasize that because the original cost as estimated to us by the Social Security Administration was \$3,412,000,000 for the Federal Government and \$3,479,000,000 for the operators. So already there has been an adverse development here of about \$400 million so far as the Federal Government is concerned; but, nonetheless, we have made a compromise and we will stick with it.

Even this new, lower estimate of cost to the industry does not take into account that a substantial number of claims filed after January 1, 1974, are not really going to be paid by the industry at all, but rather by the Secretary of Labor, because there is not going to be any operator around who can be charged with liability.

That is due to conditions in the industry, so we will go through with our proposition even though it is more adverse than originally represented to us. But we will certainly fight tooth and nail against any further extension—to wit, the 2-year basis. This is costing a great deal of money. No one would deny that fact, least of all myself. The Senate should be thoroughly aware of what is involved here in terms of annual expenditures.

Estimating it on a 1-year basis, Mr. President, I ask unanimous consent to have printed in the RECORD a table showing the expenditures year by year of the United States and of the operators under the 1-year extension proposition. The table shows the United States expending a high of \$989 million in 1973 down to a low of \$300 million in 1981. It goes down quickly after 1973, but the 1973 bulge, attributed to retroactivity, places a high price tag on this proposition.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

MEMORANDUM

From: Lawrence Alpern.

Subject: Cost Effects of H.R. 9212 as Reported by the Senate Committee on Labor and Public Welfare.

The table below shows estimates of additional benefit payments under Title IV of

P.L. 91-173, over and above expenditures under present law, that would result from enactment of H.R. 9212 as reported by the Senate Committee on Labor and Public Welfare, by jurisdiction of source of payments, fiscal years 1972-81 (in millions).

Fiscal year	Additional benefit payments ¹ under title IV of Public Law 91-173, resulting from H.R. 9212 as reported		Additional benefit payments from the Federal disability insurance trust fund
	Part B	Part C ²	
1972	\$10		
1973	989	-\$14	\$7
1974	441	-47	3
1975	389	30	3
1976	369	79	2
1977	354	206	2
1978	340	407	2
1979	326	479	2
1980	313	547	2
1981	300	609	2
Total, 1972-81	3,831	2,296	25

¹ The estimates reflect the increase in black lung benefits that results from the 5.5-percent increase in the annual salary rate of Federal Government employees at step 1 of GS-2, effective in January 1972, and are based on the assumption that there will be no future increases in black lung benefit rates after January 1972. It is recognized that Federal salaries may increase in the future. It is not possible, however, to predict either the rate of increase or the timing when such increases would be reflected in salary scales and hence in benefit rates.

² It is recognized that there may be Federal jurisdiction over some payments under part C. It is not possible, however, to separate these expenditures from the total expenditures under part C. Negative amounts represent reductions in costs that result from the 1-year extension of Federal jurisdiction over initial claims under part B.

Mr. RANDOLPH. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. RANDOLPH. I believe that the Senator would want to indicate that that figure included the retroactive figures for 1972.

Mr. JAVITS. I just have. The bulge figure is the attributed retroactivity for 1972. In fact, the figure in the table is only \$10 million for 1972; so that for the 2 years, it averages out within the order of magnitude that it does for the succeeding 10. But the price tag is high. We so state that clearly.

At the same time, we feel that the workers who have suffered for no reason of their own, but because, somehow or other, this is a backward industry and serious questions are presented by it, should not be made to bear the burden. We simply have to proceed, as we have neglected them for many years in Congress, within the realm of possibility. So there are some desirable changes incorporated in the bill.

We believe, the Senator from Ohio (Mr. TAFT), I, and others on the committee, that the 1-year extension under the circumstances is warranted, but we see no ground for any more. I think it would be unconscionable to have more.

Here are the changes, the liberalizing changes, of which we highly approve, that have been made, naturally increasing the cost of the bill, and we think justifiably so. A rebuttable presumption of disability due to black lung is created in favor of the miner totally disabled as a result of pulmonary or respiratory impairment, who has had 15 years' experience in underground mining or comparable mining experience in surface mines, and this notwithstanding the absence of a positive X-ray showing the absence of black lung.

In addition, amendments were adopted by the committee which make it clear that the liberalizing changes made by the committee in favor of orphans and miners with negative X-rays are fully applicable when the operators assume liability for the program starting January 1, 1974. That is not the intent of the House bill.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 additional minutes.

Mr. JAVITS. Finally, the committee adopted an amendment which made the operator's responsibility to pay benefits under this program under either State workmen's compensation laws or pursuant to the Longshoremen and Harbor Workers' Act, if State law is inadequate, permanent. Under existing law their responsibility to pay such benefits ended on December 30, 1976.

Mr. President, that is critically important because under the existing law the responsibility to pay benefits would be ended December 30, 1976. I count that as one of the most important things that this measure does.

Mr. President, by way of a short summary as to the provisions of the bill which are materially improved, I ask unanimous consent that a chart showing nine main provisions which constitute material improvements be printed at this point in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF MAJOR PROVISIONS OF BLACK LUNG BILL

1. Eliminates X-ray as sole criterion and establishes presumption that total disability is due to pneumoconiosis of miner is totally disabled from respiratory or pulmonary impairment and has worked 15 years in underground mine or comparable surface work.
2. Covers orphans.
3. Covers surface miners whose employment was comparable to underground miners.
4. Relates criteria for determining "total disability" by keying it to ability to work as miner (rather than perform any work).

5. Delays assumption of responsibility by operators for one year.
6. Makes operator responsibility permanent. (Part C of present law expires December 30, 1976.)
7. Changes social security disability offset to 100% of earnings, rather than 80%.
8. Allows widows to claim benefits if miner was totally disabled due to pneumoconiosis when he died (present law covers only death due to pneumoconiosis).
9. Provides for establishment of clinical treatment facilities.

Mr. JAVITS. Mr. President, we must take a look now at this situation which we face so far as employers are concerned, because there is a provision in the House bill that would allow 2 years instead of a 1-year extension. I would like to give the cost figures with reference to that.

Mr. President, the Social Security Administration estimates that granting an additional 1-year reprieve to the industry would cost the Federal Government \$600 million. That is the money difference to the Federal Government itself, the difference between a 1- and a 2-year extension.

We understand that the coal mining industry is opposed to the Senate amendments which would reduce the extension from 2 years to 1 year. They also oppose making the program permanent. They themselves would not like to see the liberalized changes made by the bill applicable to what they have to pay as well as to what the Federal Government has to pay. We make it applicable to both.

Mr. President, I wish to emphasize again that the bill in its present form represents the absolute outer limit to which we in good conscience can go in having the Federal Government pay for decades of utter neglect by the coal mining industry of the life and health of the coal miners.

As long ago as 1942 it was known that coal mining was a hazard to the health of the coal miners. In that year Great Britain began paying compensation to miners who had contracted what is known as black lung or pneumoconiosis. Along with recognition of black lung as a compensable disease in European countries came efforts to limit the amount of respirable coal dust to which miners

were exposed during their working lives.

For over 25 years the hazardous nature of coal dust was simply ignored in this country. No efforts were made to control it in the mines, nor was compensation available for the thousands of miners who become respiratory cripples because of it. It was not until we wrote the Coal Mine Health and Safety Act of 1969 that industry was forced to come to grips with the problem, and even then, it is worth noting that the industry vigorously resisted efforts to establish a level of respirable coal dust which would guarantee that no miner would become disabled because of black lung. And while it is not directly relevant to the problem with which this bill seeks to deal, it is certainly interesting to note that notwithstanding the industry's contention that the reduction is dust levels mandated by the new law would not be feasible, according to the latest information released by the Bureau of Mines, 90 percent of U.S. coal mines are meeting the 3 milligram standard established by the 1969 Act, and 75 percent are meeting the 2 milligram standard.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for an additional 5 minutes.

Mr. JAVITS. There is no justification whatsoever for us now to agree to the 2-year extension which would amount to a bail-out of the industry. On the contrary, the time is long past for this industry to start meeting its responsibilities to its employees.

Mr. President, the coal mining industry is not a weak industry. It is a very strong industry.

Mr. President, I ask unanimous consent that a list of coal mining companies, including some of the most powerful corporations in the United States, together with the total number of their employees and their annual sales, be printed at this point in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Name of coal company	Parent corporation	Parent annual sales	Parent total employees, 1972
U.S. Steel Corp.	(U.S. Steel Corp.)	Over \$4,000,000,000	200,730 (5,290 miners in 1968).
Bethlehem Miners Corp.	Bethlehem Steel Corp.	\$2,900,000,000	130,000 (4,090 miners in 1968).
General Dynamics Group	General Dynamics Corp.	Over \$2,000,000,000	85,000.
Pittsburgh & Midway Coal Mining Co.	Gulf Oil Corp.	Over \$3,000,000,000	54,200.
Republic Steel Corp.	(Republic Steel Corp.)	Over \$1,000,000,000	47,726 (1,505 miners in 1968).
Island Creek Coal Co.	Occidental Petroleum Corp.	Over \$2,000,000,000	33,000.
Peabody Coal Co.	Kennecott Copper Co.	\$1,000,000,000 to \$1,200,000,000	25,000.
Ayshire	American Metal Climax	\$600,000,000 to \$850,000,000	17,000.
Pittston Co.	(Pittston Co.)	\$505,000,000	16,000 (3,650 miners in 1968).
Consolidation Group	Pittsburgh Consolidation	\$13,000,000	12,100.
Eastern Assn. Coal Corp.	(Eastern Assn. Coal Corp.)	\$215,000,000	5,500.
Westmoreland Group	Westmoreland Coal Co.	\$150,000,000	3,750.
North American	North American Coal Corp.	Over \$56,000,000	3,400.
Old Ben Group	Old Ben Coal Corp.	\$60,000,000 to \$70,000,000	2,000.
Utah Construction	Utah Construction & Mining Co.	\$90,000,000 to \$100,000,000	1,900.
Valley Co.	Valley Camp Coal Co.	\$80,000,000	1,600.
Rochester & Pittsburgh Coal Co.	(Rochester & Pittsburgh Coal Co.)	\$25,000,000 to \$50,000,000	1,350 (790 miners in 1968).
Bell & Zoller Coal Co.	Zeigler Coal Co.	\$15,000,000 to 25,000,000	993.
Carbon Fuel Sales Co., Inc.	Carbon Fuel Co.	\$30,000,000	900.
Southwestern Illinois	(Southwestern Illinois Corp.)	\$24,000,000	349.

Mr. JAVITS. Mr. President, it is sad to say, but the coal industry has up to now hardly exemplified the best aspects of our system in terms of conservation of the lands, the health and safety the lives of thousands of coal miners, and competition and free collective bargaining like other American industries; on the contrary, its conduct throughout the years of its business and labor relations, as shown by a whole series of court decisions, and our own committee's present investigation, presents one of the worst examples of our system.

Certainly, the coal industry has serious problems, not all of its own making, nor do I deny that this bill and the new health and safety standards are going to cost the industry money. Some of these costs are going to have to be passed on to the consumer, but that is also true of other industries with serious problems. The point is that the coal industry ought to pay its way just like the others, including whatever it may cost to insure that disabled coal miners are adequately compensated for physical impairment suffered in getting out the coal.

Thus, I hope very much that no attempt will be made to strike out of the Senate bill the 1-year provisions I have mentioned. There is no justification I cannot see for more than a 1-year delay in the assumption of liability for new claims by the operators. Nor is there any reason not to make the part C program permanent; miners who are totally disabled by black lung are not going suddenly to regain their health in 1977, and will need benefits just as much during and after that year as they do now.

Finally, there is certainly no warrant for exonerating operators from the liberalizing changes made by this bill in connection with the coverage of orphans, the elimination of the X-ray and the establishment of a rebuttable presumption after 15 years of experience in underground mines or comparable employment in surface mines, upon a showing of total respiratory or pulmonary impairment. In connection with the presumption, it bears emphasis that under many workmen's compensation laws, including the Longshoremen and Harbor Workers' Compensation Act, the burden is on the employer to establish that a disability is not occupationally related. The worker is thus normally given the benefit of the doubt, and that is really all that this bill does for coal miners.

The differences in medical opinion which exist on the question of whether such a presumption is justified, and the incidence of disabling respiratory impairment among coal miners, as compared to the general population, are merely evidence of our almost total neglect, until very recently, of occupational health problems generally—and coal workers' health problems in particular. In the absence of definitive evidence one way or the other, the committee, properly, in my judgment, has resolved the issue in favor of the totally disabled miner.

Some of the costs of this bill are going to have to be passed on to the consumers. However, other industries with serious problems have had the same sit-

uation. The point is that the coal mining industry ought to pay its way just as other industries have to pay their way. If that means that it will cost more for coal to insure that the health of coal miners is adequately treated, then I would say that a sense of fairness and justice of the American people will indicate that the increased cost is justifiable.

As I said before, this is not necessarily a weak industry. Surely, there are a lot of small operators.

They have no more eloquent champion than the Senator from Kentucky (Mr. COOPER), the Senator from West Virginia (Mr. RANDOLPH), the junior Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from Pennsylvania (Mr. SCHWEIKER), and other Senators similarly situated. But it is also a very big part of the industries that pride themselves on labor-employee relations. So I hope the Senate will pass the bill.

I know the Senator from Ohio (Mr. TAFT), I, and others on the committee will be "dug in" on this matter of the 1-year extension. I am very pleased that the manager of the bill, Senator JENNINGS RANDOLPH, who made this literally a life's work, affirmed his belief in the same formula. I hope very much the chairman of our committee, the Senator from New Jersey (Mr. WILLIAMS) who is here, and who will be heard from shortly, will be able to do the same thing. In that way we can serve the miners, the United States and its taxpayers, and the industry, and do justice to these thousands of men who have given the best part of their lives and health to producing for the Nation a natural resource which is absolutely indispensable to its operation and survival.

Again I would like to emphasize the great job that I think has been done by the Senator from West Virginia (Mr. RANDOLPH) in connection with this matter. He was able to get this bill out of the subcommittee almost by his personal prestige. He got it through the main committee through the dint of hard labor and application of an individual Senator, with the elucidation for which he is uniquely capable.

Now, he is bringing to the floor of the Senate this matter and I hope he will be successful. It should be a great day for him and I hope the bill is acted on favorably.

Mr. RANDOLPH. Mr. President, I am grateful for the generous remarks of the able Senator from New York on the general subject matter of the legislation that now is before the Senate.

Personally, of course, I am appreciative for the words he has spoken with respect to my application in the subcommittee and on the committee in bringing, together with him and others on the committee, legislation which meets the needs, distributes fairly the cost, and does what Congress must do in committing itself to the health and safety of the coal miner. I shall long cherish what he said in the Senate today in respect to my work.

Mr. President, I yield such time as he may desire to the distinguished chairman of the Committee on Labor and Public Welfare.

Mr. WILLIAMS. Mr. President, I thank my colleague and I commend him for the long history of his dedication to justice for coal miners and their families. This has been a work of long duration for the Senator from West Virginia. I can recall the history as vividly as if it were just yesterday, the beginning in 1969 when we started legislating to do justice for these particular workers in our economy who are so vital to our Nation.

Mr. President, I would like to include in the Record a statement from Andrew J. Biemiller, Department of Legislation, AFL-CIO, who states that the AFL-CIO supports H.R. 9212, the black lung bill. He states that "this legislation is badly needed to improve the plight of thousands of American workers whose health and well-being has been irreparably damaged on the job."

Our legislative response to the needs of both workers and their families, in the legislation that passed and was signed in the closing weeks of 1969—and I cannot recall any other legislation that has produced so much interest—show many expressions of gratitude as a result of the bill meeting the harshest kind of economic problems of families. The State of New Jersey that I am honored to represent is not a coal mining State, and yet we are neighbors to the State of Pennsylvania that is. I have thousands of constituents who have retired from the mines or who have been forced from employment because of disabilities contracted in the mines. Many of them, who live in New Jersey, have expressed to me what the original legislation has meant to them in being able to maintain the integrity of their families, because the black lung legislation has brought benefits to them which otherwise they would not have had and they would have been subjected in many other cases to being recipients of welfare payments. These payments are a matter of right for people who have labored long and hard in hazardous employment. This program we now extend is vital to people who certainly have earned it.

On November 20, 1968, an explosion in the Consolidation Coal Co. No. 9 mine in Farmington, W. Va., snuffed out the lives of 78 coal miners. Many of those miners are still buried in that mine. That disaster shook the Nation and reminded all of us of our major debt to the Nation's coal miners. Congress, the following year, took a major step in repaying that national debt by enacting legislation designed to provide safer working conditions for the Nation's miners, to guarantee a healthier work atmosphere to insure against the dread disease, black lung, and to bring a minimum standard of decent surviving years to the miners and the survivors of miners who had been disabled by black lung. This major piece of legislation, the Coal Mine Health and Safety Act of 1969, in this body, was the result of the work of many, many Members. As chief sponsor of that act, it was gratifying to have the tireless support of the members of the Labor Committee and the overwhelming approval of the Members of this body.

During the debate on the floor, the Senate added a new title 4 to the Federal Coal Mine Health and Safety Act.

which established the first Federal black lung benefits program. The chief sponsors of the amendment creating that program were my two distinguished colleagues from West Virginia, Senator RANDOLPH, the ranking majority member of the Labor and Public Welfare Committee and Senator BYRD, the assistant majority leader. They led the unanimous effort to provide financial security to victims of pneumoconiosis, black lung disease.

Coal workers pneumoconiosis is caused by the inhalation of fine particles of respirable coal dust. It is a chronic respiratory disease for which there is no known treatment. Once contracted, its progression is irreversible. And, it only affects men who work with coal.

During our deliberations on the 1969 act, it was estimated by the Surgeon General that approximately 20 percent of the Nation's inactive miners and 10 percent of the active miners suffered from this disease. He also testified that "data from postmortem examinations would indicate an even higher prevalence of this disease."

There were those who scoffed at these figures and accused the members of the Labor Committee of statistical gamesmanship. Unfortunately, the Surgeon General, if inaccurate, erred on the conservative side. To date, over 91,000 miners and 74,000 widows have obtained black lung benefits. And, despite these totals, tens of thousands of disabled miners, men who cannot walk up a flight of stairs because of breathlessness, have been denied benefits.

This legislation, which I was proud to cosponsor, will relieve these men and their survivors of the insurmountable technical burdens which unjustifiably bar them from benefits.

Before I proceed further with a discussion of the desperate need, in my judgment, for the pending legislation, I will say that we all recognize the Nation's special responsibility to the coal miner. Indeed, the jurisdiction of the Labor Committee, which of course is concerned with the welfare of all working men, specifies that the "welfare of miners" is a special responsibility of the Labor Committee. I think we all know why.

Death faces the coal miner every day of his life. It faces him in the mines as well as out of the mines. If he survives the Farmington type disasters, he must also survive the daily risk of death by roof-fall, death by small-scale explosion, death by electrocution. He must survive the pitfalls of the most hazardous occupation in this country. But even if he survives those disasters, and survives the safety hazards, he is indeed the fortunate exception if he can live out his life without, to put it bluntly, coughing up his own guts every day of the week.

Members of this body know well that very few of the miners are not touched, one way or the other by the devastating health and safety conditions in the mines. But those very few miners know that when their work day is over, they are not free from the hazards of coal mining. For even in the middle of the

night, as they rest in their beds, or as they prepare for breakfast, they must fear the onslaught of the rampaging refuse piles. They must fear the Buffalo Creek type disaster—which has so far taken at least 120 lives, with dozens of persons still missing and unaccounted for.

Life is extremely hazardous for the coal miner 24 hours a day. So his lot in life is, and should be, of special concern to the Congress and to the Nation.

As of December 31, 1971, over 330,000 black lung cases have been processed under the Federal Coal Mine Health and Safety Act of 1969. Of those processed cases, more than 50 percent have been denied. Undoubtedly, some of them have been denied because the claimants were not the intended beneficiaries of that legislation. But, our committee has learned during the course of hearings chaired by Senator RANDOLPH, of the frustration of the intent of Congress by defects in the original law, as administered by the Social Security Administration. Tens of thousands of intended beneficiaries have been found ineligible. So, for example, although we knew in 1969 that the failure of a coal miner to be able to produce positive X-ray evidence of pneumoconiosis did not necessarily mean that he was not suffering from that disease, we find today that thousands of coal miners are being denied benefits solely on a basis of that negative X-ray. We find miners who, although they are theoretically capable of performing some lightweight task someplace are being denied benefits in spite of the fact that in real life they are not able to earn a livelihood for their families.

We found miners and widows who could not prove eligibility because the hospitals which had their medical records no longer exist. And we found that orphans were regrettably not included within the language of the original act.

Mr. President, the original black lung benefits program was passed in this body by a roll call vote of 91 to 0. Every State in this Nation was recorded in favor of the legislation. And this was appropriate. For this is not a West Virginia or Pennsylvania or Kentucky problem. It is not a burden which exists solely in the 19 coal producing States. It is a national problem and, therefore, the black lung benefits program is a national program. Residents of each of the 50 States receive benefits under this program. Indeed, in my State, where no coal is produced, almost 1,900 claims have been allowed. In my own county, Union County, in the northern part of the State, almost 300 families are obtaining black lung benefits. And if we cross the Hudson River, over 60 families in Manhattan alone are benefitting under this program.

As an aside, I would say to my colleague from New York, that he and I, apparently, are not the only Broadway coal miners.

Mr. President, the bill before the Senate is estimated to benefit immediately 149,000 miners or their survivors. But some would argue that neither the Nation nor the industry can afford to provide these benefits. And, it will be noted

today that the black lung benefits program is an expensive program.

I suggest that neglect is always expensive.

If industry and government had recognized and fulfilled their responsibilities decades ago and had cleaned up the mines we all might have been paying slightly higher electricity bills but we would not be faced suddenly with the need for a costly benefit program.

But let us each look at this very same problem from the miner's perspective. If industry and government had fulfilled their responsibilities decades ago, he might be enjoying the retiring years of his life instead of suffering each day till his death.

Who can put a price tag on another human being's pain and suffering? To my colleagues in this body, I say, we owe an enormous debt to the coal miners. And we must pay that debt. More importantly, we must no longer expect the coal miner to subsidize our energy bill with his life.

Mr. President, I strongly urge that the Senate approve the extension and expansion of this program.

As chairman of the Labor and Public Welfare Committee, I cannot close my remarks without a special note of congratulations and appreciation to four members of the committee. Senator RANDOLPH gave of himself untiringly in moving the bill through the legislative process. At my request, he assumed the obligations of chairing the Labor Subcommittee hearings and guiding the bill through the committee. The fact that the committee amendments were reported to the Senate unanimously is a tribute to his efforts.

To Senators JAVITS, SCHWEIKER and TAFT, we also owe our appreciation. Their conscientious attention to the needs of the miners and their cooperative efforts enabled this legislation to move with both complete consideration yet with dispatch.

Mr. JAVITS, Mr. President, I would like to ask the Senator from New Jersey a question. Will the Senator yield for that purpose?

Mr. WILLIAMS, I yield.

Mr. JAVITS, I would like to ask the Senator about the feeling that the Senator from West Virginia (Mr. RANDOLPH) expressed, and which I and the Senator from Ohio have expressed, about the 1-year extension. Will the Senator feel a rather special obligation to stay with that? I will explain to the Senator our problem.

This bill is more expensive than the bill that came from the House, even though we have cut the cost by the 1-year extension. It is still more expensive to the Federal Government because of the presumption we introduced of black lung and other liberalizing provisions; and so it is much more fair and much more understanding with respect to the cumulative years of the worker.

But if this 1 year were allowed to go to 2 years it would really break the back of what we are trying to do and be too costly. So I would greatly appreciate any expression of the chairman of our committee, who will be the principal

conferee, and any statement he will be prepared to make respecting a 1-year extension in the Senate.

Mr. WILLIAMS. I support it for all the reasons expressed here in debate, although I have not been able to hear the full debate. This legislation has my strong support.

Mr. JAVITS. I thank the Senator.

Mr. WILLIAMS. I am familiar with all or most of the reasons that prompted it and I will join my colleagues, the Senator from West Virginia and the Senator from New York, in maintaining and fighting for the Senate position on this matter.

Mr. JAVITS. Good. I thank my colleague very much.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. What is the time remaining?

The PRESIDING OFFICER. The Senator from West Virginia has 29 minutes remaining and the Senator from New York has 10 minutes remaining.

Mr. JAVITS. Mr. President, I yield 5 minutes to the Senator from Kentucky but first I make this parliamentary inquiry. Is not time also available to the Senator from New York on the first amendment?

Mr. RANDOLPH. I have not said anything. I will give him some of my time.

The PRESIDING OFFICER. It is not stipulated that the Senator would have time.

Mr. RANDOLPH. I will yield him time.

Mr. JAVITS. Mr. President, I yield 5 minutes to the Senator from Kentucky.

Mr. COOPER. Mr. President, I have a number of questions to ask, and it may take more than 5 minutes. I do not know that I will offer an amendment, but if I am limited in time, I may offer an amendment to yield myself time.

Mr. RANDOLPH. Mr. President, I will yield to my colleague.

Mr. COOPER. If I do not have enough time, I will offer an amendment, not necessarily to be voted on, but to secure time to address some questions to the sponsors of the bill.

Let me say I appreciate very much the statements of the Senator from New York (Mr. JAVITS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Ohio (Mr. TAFT).

As I said, I do not expect at this time to offer any amendments, but this is a very expensive and a very important bill. I believe there should be an explanation of at least two sections.

I refer first to title IV which continues the present program for 1 year rather than 2 years provided by the House bill; and, second, the sections dealing with beneficiaries or dependents who would receive benefits under the bill.

Let me say at the outset I do not think I have to argue my interest in the plight of the miners of this country, who work in perhaps the most dangerous industry in the United States, and who for years, with few exceptions in some States, have not been receiving relief from the dread disease, pneumoconiosis. I have a difficult time pronouncing the word pneumoconiosis.

The original title—title IV providing

benefits to miners was not a title developed in the Labor and Public Welfare Committee in 1969. It was adopted on the floor of the Senate as a result of an amendment to the coal mine safety and health bill offered by the two Senators from West Virginia (Mr. RANDOLPH and Mr. ROBERT C. BYRD), myself, and other cosponsors. I do not think there is any necessity for this debate to portray a great battle between the operators and the miners. Both have a common interest in the success of the industry—for its survival and for jobs for miners.

The overtone always seems to run in these debates. Perhaps I have used it in the past. During my service my interest has not been the big operators, although they are entitled to justice as much as any other person. My interests have always been with the thousands of small operators who are steadily being driven out of business.

In the 1950's I was the author of an amendment, the first substantive amendment to the original Mine Safety Act, for protection of mining. It was reported by the Committee on Labor and Public Welfare, but when it came to the Senate it suffered the fate of most of such amendments, because we could not get the support of the United Mineworkers and some operators. Be that as it may, I do want to indicate my interest in this bill.

I do raise the question of the provision for 1 year as against 2 years. When our original black lung amendment was adopted in 1969, that amendment provided that a period of 3 years should be given to industry and the States to assume a share or perhaps the total cost of the bill. We provided that for the first 3 years the cost was to be borne by the Federal Government. It has run 2½ years. There are 6 months left. The bill introduced by the Senators from West Virginia (Mr. RANDOLPH and Mr. ROBERT C. BYRD), myself, and other Senators, provided a 2-year extension of the original bill.

Let me say this to the Senator from New York, who is temporarily absent. Whether it is 1 year or 2 years, the result is the same—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. RANDOLPH. Mr. President, I am glad to yield 10 minutes to my colleague, the Senator from Kentucky.

Mr. COOPER. An extension of 2 years would not increase the total cost of the program, but it does, of course, increase the cost to the Federal Government for the additional years. If it is extended 2 years, I want to make it plain that it has no effect on the benefits secured for the miners. It would provide to them the same benefits whether a federally subsidized program for 2 years, or if after 1 year the cost is divided between the Federal Government, and either the operators or through a workmen's compensation program.

The reason why I argue another year should be provided is upon the following grounds: The committee has made extensive changes, and in the main I support those changes. The first extensive change is in broadening the class of beneficiaries and their ability to secure bene-

fits. A large part of this amendment is in the bill which the Senators from West Virginia (Mr. RANDOLPH and Mr. ROBERT C. BYRD) and I and other Senators introduced. It provides that the test of disability shall not be limited to X-ray, but to other methods, if those methods could reach reasonably the same conclusion where the miner has been subjected to certain conditions, and a presumption arises of total disability from pneumoconiosis.

Another extension provides that if conditions which might lead to a diagnosis of pneumoconiosis were found, if there are other pulmonary diseases, disability can be adjudged.

Mr. RANDOLPH. That would be after 15 years in the mines.

Mr. COOPER. After 15 years. That is correct.

Thus the bill would allow benefits for thousands of miners who thus far have been found ineligible for benefits. I do not join those who say it is the fault of the Social Security Administration. It is a consequence of the fact that the bill we passed 3 years ago did not provide the necessary criteria. I support these provisions, but the effect will be to enlarge immediately the classes which will be able to secure relief in the form of benefits because of the incidence of this awful disease.

The second section—section 402—would enlarge the class of "dependents." Under the present law, as I recall, the social security law—and I am recalling most of this, because this bill came up hurriedly by a unanimous-consent agreement—would provide benefits to the man, to his widow, and to his children for certain specified conditions.

This amendment, which I am sure was offered in the committee—it was not in any bill, as I remember—would extend benefits not only to children for whom the head of the family is responsible, and to the widow—both classes—for whom, of course, he has the chief obligation, but to parents, brothers and sisters, and as I read the explanation—if I am wrong I hope I will be corrected—to any other persons who, by reason of the devolution laws of the State, would be considered heirs. One could, of course, expand that to any degree.

My thought is that it should be limited to the widow, to the children, to the parents, to a sister, or to a brother if disabled. I am informed that the Senate Committee on Finance is about to report out social security amendments, which would have those provisions, I have no doubt it will be approved, and there are humanitarian reasons for it. If a widow is left without means—whether she is or not, she is a widow—parents, old and aged, sisters, certainly, but I do not see why a brother should be a beneficiary, unless he is unable to take care of himself—disabled and dependent.

I am simply arguing that we ought to follow the social security system, so we would have this question of beneficiaries, whether it is for veterans' benefits, social security recipients, or black lung victims, the same.

I shall not offer any amendment. I know it would be useless to offer it, for several reasons: first, because the

Chamber is nearly empty; second, because you cannot get anyone to listen to you on an amendment of this type; and, third, that when you mention health and safety, you cannot get anyone to listen to you, and there is no way to impress anyone with the impact of the amendment. I had that trouble several years ago, when we considered the mine health and safety bill.

I hope, though, that the RECORD will show that questions have been raised about these amendments, so that perhaps in conference the conferees will know that everyone in Senate does not agree wholly with every provision of this bill. We have a right to raise these questions.

So I should like again to make my position clear, first, that as far as dependents are concerned, I would like to see the same categories of dependents for this bill that, I understand, will be provided in the social security bill by the Finance Committee. I make this argument because I think it is just, and I think it is fair. I do not think that this measure is intended to take care of every working brother or aunt or uncle according to the laws of devolution of estates. It does not necessarily represent the will of the Senate; and so I believe that should be very strongly considered in conference.

The second point goes to the 1- to 2-year extension. It would not change the total cost, and, also, it does not deny any benefit to any miner or dependent if it is extended for 2 years. It would, of course, cause the Federal Government to bear the burden for an additional year.

I speak for no operator; I want the Senator to know that.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. COOPER. I ask for 1 more minute.

Mr. RANDOLPH. I yield the Senator 2 additional minutes.

Mr. COOPER. I say that, with this unknown cost, in a short period of time, thrown on an industry, which does not affect, in any way, the benefits of these miners, I believe that it would be better to make it 2 years instead of one.

Of course, as Senators know, my State is the largest coal producing State in the Union today, and naturally, I am interested in that industry, not alone for the operators, but for the miners who work in the industry and for the economy as a whole. There are great problems as to how we will be able to take care of the energy needs of this country. Additional burdens have been thrown upon the industry by the large amounts which go into the miners' welfare fund, by the costs of the health and safety program which was passed by Congress, and for the benefit of the industry—which comprehends the miner as well as the operator—I think this extension should be considered.

Let me tell the Senate what is happening in the mining industry. I do not take any great joy in it, although I predicted it when we had the safety bill before us 2 or 3 years ago. We are driving the deep mine operators out of business, who employ large numbers of

miners, and they are all going into strip mining, with the consequent threat to the environment of this country. So I hope Senators will consider the relation of these problems to each other, and in conference extend the time to 2 years.

That is about all I have to say. At some time later, I should like to ask further questions on this question of dependents. But I shall not take the time of others to do so now.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. Mr. President, there is no reason for me to take more time. However, I shall not yield back my time at the moment.

Mr. COOPER. Mr. President, will the Senator yield for a question?

Mr. RANDOLPH. Yes, I do.

Mr. COOPER. Is the Senator yielding back the time on the amendment?

Mr. RANDOLPH. I said I would not yield back my time now. I am simply holding my time, so that we may have a colloquy between the Senator from Kentucky and the Senator from Pennsylvania (Mr. SCHWEIKER), who is familiar with the subject matter. He offered the amendment which was adopted in the committee. He has now come to the Senate floor, and I am sure would accommodate himself to a colloquy on this subject.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. I yield to the Senator from Kentucky. Would it be agreeable to yield the Senator 7 minutes at this point?

Mr. COOPER. I thank the Senator. I should like to address questions concerning the meaning of section 402, on dependents. Just for the record, I notice it says "a wife who is a member of the same household." Does that include married wives and common law wives, as well?

Mr. SCHWEIKER. This would be covered in the current social security definition of wives. We did intend our amendment to conform to the social security law in this respect.

Mr. COOPER. I just wanted to know for interpretation. Does it include a common law as well as a wedded wife?

Well, I have raised the question. The Senator says it is in accordance with the definition under social security.

Second, section 402 does include a divorced wife if she receives at least one-half of her support from her former husband.

Now I should like to ask about children. I understand it follows social security. Am I correct that it means an orphan, an unmarried child under 18 years of age or under disability; and in some cases, a student?

Mr. SCHWEIKER. That is correct.

Mr. COOPER. I find no fault.

The amendment of the Senator from Pennsylvania also would include a mother and a father. Would that mean a mother and a father where there is no widow or no children living, or orphan?

Mr. SCHWEIKER. Yes. I should like to explain that.

Mr. COOPER. I am not against it.

Mr. SCHWEIKER. It would only go to these other beneficiaries if the miner dies leaving no wife or children. So that

in 99 percent of the cases, my amendment would not even apply, because if a wife or a child is living, that would preclude any further beneficiary from receiving it. They only receive benefits if there is no wife or child. Only then, if there is no wife or child living, would these other members of the miner's immediate family get it if they have been dependent upon that person. So just having a mother, father, brother, or sister alive is not the criterion. The test is whether they have been dependent and whether they have been supported by that coal miner. So it just does not include all people who have surviving brothers and sisters. The brothers and sisters must be dependent; and if they are working, they obviously are not dependents. It would only include families with no wife or child living and in which an immediate member of the family has been a dependent, under the conditions as covered.

Mr. COOPER. I understand. If there is no widow, the mother and father would be eligible. If there is no mother and father, then the brothers and sisters would be eligible. Is that correct?

Mr. SCHWEIKER. Only if they were dependent.

Mr. COOPER. I know that. I am just getting the description of the beneficiaries.

Would it go beyond brothers and sisters?

Mr. SCHWEIKER. No, it would not. It would stop there.

Mr. COOPER. I believe that I read in the explanation that beneficiaries shall be determined by the law of devolution in the State, with respect to personal property? Does the amendment go only to the brothers and sisters, or does it go beyond brothers and sisters?

Mr. SCHWEIKER. In a legal dispute over whether a person is a brother or sister or parent, the State law would help determine that. That is what it means.

Mr. COOPER. The criterion uses the term "dependent"; but it is a fact, is it not, that under the present social security law, or the proposed social security amendments that we have heard will be presented by the Finance Committee, the benefits would be limited to a widow, children, parents, sisters, and disabled brothers? Am I correct?

Mr. SCHWEIKER. The present social security law?

Mr. COOPER. No; it does not go far in the social security law. I am speaking of amendments which I understand will be reported to the Senate.

Mr. SCHWEIKER. The Senator is correct in that that is the present law; but the bill coming from the Finance Committee, H.R. 1, does extend social security coverage to dependent sisters and dependent disabled brothers. Parents are already covered under social security survivors' benefits.

So I am applying the same principle to this black lung bill.

If we do not put it in this bill, we will once again have put the coal miners and their families behind the rest of the population. H.R. 1, as amended by the Senate Finance Committee, now covers sisters and brothers, and that is the prin-

ciple I am applying. We are corresponding to the new measure coming out of the Senate Finance Committee and making is similar to that provision of the bill H.R. 1.

Mr. COOPER. I hope that if the bill is reported by the Finance Committee, the conference will stick with whatever provision they use. My information is somewhat different from that of the Senator from Pennsylvania, but he may have more direct information.

Is it also correct that in a case in which there are more than two children, the amount available in benefits shall be enlarged?

Mr. SCHWEIKER. Will the Senator repeat that, please?

Mr. COOPER. Is it correct that in the case of a miner or his widow, the full 100 percent benefit would be made available; but if the dependents increase in number—that is, a larger class available for benefits—the benefit which the miner would have secured is enlarged? I read here that in one case it would be enlarged by 50 percent, in another case by 75 percent. Is that correct?

Mr. SCHWEIKER. That is correct. If there is one beneficiary alone, that person receives the base amount. If there are two beneficiaries, the base amount is increased by 50 percent, and the two people split the amount. If there are three beneficiaries, the base amount increases 75 percent and this is split the three ways. For over three beneficiaries, the base amount is raised 100 percent and split as many ways as there are beneficiaries.

Mr. COOPER. My point in raising all these matters is to go back to the point I made earlier. I am not objecting to the class of dependents except that I believe that in conference it ought to be made compatible with the same standards which will be contained in H.R. 1.

Second, because of the increase in the class of beneficiaries, and because of the new definition of the tests by which we can secure benefits, and because the amount available to beneficiaries can be enlarged by 50 or 75 percent, I think all these things ought to be taken into consideration. I believe, because of this additional cost, which is inevitable, to be placed on an industry which is under large strain from various causes, that it would be fair and not at least a bit harmful to continue the Federal program as passed by the House, for an additional year, as the bill which Senator RANDOLPH, Senator BYRD, and I and others introduced provide.

We are suddenly becoming concerned about the cost to the Federal Government. But the bills that come out of the Senator's committee, a great committee, account for a large share, I would say, of the increasing cost of the Government of the United States. I do not know why the Committee is so suddenly concerned about the cost of an additional year. I think it is a question of fairness.

I have made my case, and I am finished.

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. TAFT. The time to be divided equally.

The PRESIDING OFFICER. Is there objection?

Mr. RANDOLPH. Mr. President, how much time do we have?

The PRESIDING OFFICER. The proponents have 6 minutes, and the opponents have 5 minutes.

Under Senate precedents, there is not enough time for a quorum call, except by unanimous consent.

Mr. RANDOLPH. I yield myself such time as I may require.

Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

Mr. TAFT. Mr. President, I am constrained to object at this point.

The PRESIDING OFFICER. Objection is heard.

Mr. TAFT. Mr. President, I might explain to the Senator my reason for objecting. The Senator from New York (Mr. JAVITS) wished to be present at the time the committee amendments would be offered. I do not believe that he will come up with any objection and believe that I will be able to withdraw my objection by that time. As has been indicated at an earlier point, the purpose of the discussion we have had today relating to the 1-year or the 2-year extension is affected by the question of the committee amendments, and that is the question of whether a separate vote should be asked for on those committee amendments. I would simply say that I will hold the floor until the Senator from New York is ready to comment.

Mr. RANDOLPH. I appreciate the understanding of the Senator from Ohio during the absence of the Senator from New York. I renew my request and ask unanimous consent that the committee amendments be considered en bloc.

Mr. JAVITS. Mr. President, reserving the right to object, as I understand it, all that means is that when the vote comes on the committee amendments, they will be considered en bloc; is that correct?

The PRESIDING OFFICER. (Mr. ROY). The Chair would like to state that is correct. However, amendments to the amendments must be considered while the committee amendments are pending.

Mr. JAVITS. In other words, as I understand the situation, one vote on all the committee amendments, but each committee amendment may be amended on a motion from the floor, and there would be a separate vote on that amendment to a committee amendment.

The PRESIDING OFFICER. That is correct.

Mr. COOPER. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield to the Senator from Kentucky.

Mr. COOPER. I understand that this would embrace all the amendments that refer to the one or two year extensions. I have already stated that it will prevail but, nevertheless, I want to express my views about the 1- and 2-year extensions. If they are being voted on sepa-

ately, I would vote for the 2-year extension. I know there is no possibility of that.

The PRESIDING OFFICER. (Mr. ROY). Is there objection to the request of the Senator from West Virginia (Mr. RANDOLPH)? The Chair hears none, and it is so ordered.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the bill, as amended, be considered as original text.

Mr. JAVITS. Mr. President, reserving the right to object, does that in any way change the previous amendment—the previous unanimous consent?

The PRESIDING OFFICER. Yes, it does change it.

Mr. JAVITS. In what way?

The PRESIDING OFFICER. If this request is agreed to, the committee amendments will still be open to amendment.

Mr. JAVITS. Even if this unanimous consent is agreed to, how does it change the previous unanimous consent?

The PRESIDING OFFICER. It does not change the previous unanimous consent.

Mr. JAVITS. The effect remains the same except that the amendments may now be offered in the first and second degrees to any committee amendment if this request is agreed to.

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. I thank the Chair. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Without objection, the committee amendments are agreed to and the bill, as thus amended will be considered as original text.

The amendments agreed to en bloc are as follows:

On page 1, at the beginning of line 3, strike out "That (a) (1) section 412(a) of the Federal Coal Mine" and insert "That (a) this Act may be cited as the 'Black Lung Benefits Act of 1972'"; at the beginning of line 6, insert "(b) (1) Section 412(a) of the Federal Coal Mine"; on page 2, line 2, after the word "death," strike out "and who leaves no widow," and insert "or who was totally disabled by pneumoconiosis at the time of his death,"; in line 17, after the word "section", strike out "402(g)." and insert "402(g): And provided further, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month or which entitlement to benefits as a widow is established under paragraph (2)."; in line 23, after the word "new", strike out "paragraph" and insert "paragraphs"; after line 24, insert:

"(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or of a miner who is receiving benefits under this part at the time of his death, or of a miner who was totally disabled by pneumoconiosis at the time of his death, and who is not survived by a widow or a child, or in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived by a widow, child, or parent, benefits shall be paid under this part to such parent(s), or to such brother(s) or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were

the children of such miner): *Provided*, That no benefits shall be paid to any parent for any month for which a widow or child has established entitlement to such benefits and that no benefits shall be paid to any brother(s) or sister(s) for any month for which a widow, child, or parent has established such entitlement. In determining whether a claimant is a parent, brother, or sister of a miner for purposes of this paragraph, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such miner was domiciled at the time of his death, or, if such miner was not so domiciled in any State, by the courts of the District of Columbia. Claimants who according to such law would have the same status relative to taking intestate personal property as a parent, brother, or sister, shall be deemed such. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claimant, the Secretary has certified for payment for such prior months. As used in this paragraph 'dependent' means that such parent, brother, or sister was receiving at least one-half of his support from such manner, as determined in accordance with regulations prescribed by the Secretary, for at least one year immediately preceding the miner's death. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes good cause for purposes of this paragraph shall be made in accordance with regulations of the Secretary.

On page 4, at the beginning of line 22, strike out "(5)" and insert "(6)"; in line 23, after the word "under", strike out "clause" and insert "paragraph"; on page 5, line 4, after the word "him", insert "accept an application therefor from such dependent, where necessary, and"; at the beginning of line 13, strike out "(b)" and insert "(c)"; in the same line, after "1)", strike out "Section" and insert "Sections"; in the same line, after "(b)", insert "414(e), and 424"; in line 14, after the word "Act", strike out "is" and insert "are"; in line 15, after the word "following", strike out "or child" and insert "child, parent, brother, or sister", and section 421(a) is amended by inserting after "widows" the following: ", children, parents, brothers, or sisters, as the case may be."; after line 18, strike out:

(2) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'child' means an individual who is unmarried and (1) under eighteen years of age, or (2) incapable of self support because of physical or mental disability which arose before he reached eighteen years of age or, in the case of a student, before he ceased to be a student, or (3) a student. Such term includes stepchildren, adopted children, and posthumous children. For the purpose of this subsection the term 'student' means an individual under twenty three years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

"(1) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

"(2) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

"(3) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

"(4) an additional type of educational or training institution as defined by the Secretary of Health, Education, and Welfare.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration in which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose twenty-third birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period."

And, in lieu thereof, insert:

(2) Section 402(a) of such Act is amended to read:

"(a) The term 'dependent' means—

"(1) a child as defined in subsection (g) without regard to subparagraph (2)(B)(ii) thereof; or

"(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 216(b)(1) or (2) of the Social Security Act. The determination of an individual's status as the 'wife' of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the 'insured individual' referred to therein. The term 'wife' also includes a 'divorced wife' as defined in section 216(d)(1) of the Social Security Act who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner."

(3) Section 402(e) of such Act is amended to read:

"(e) The term 'widow' includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216(c)(1), (2), (3), (4), or (5), and section 216(k) of the Social Security Act, who is not married. The determination of an individual's status as the 'widow' of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the 'insured individual' referred to therein. Such term also includes a 'surviving divorced wife' as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial con-

tributions to her support from the miner at the time of his death."

(4) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'child' means a child or a step-child who is—

"(1) unmarried; and

"(2) (A) under eighteen years of age, or

"(B) (i) under a disability as defined in section 223(d) of the Social Security Act,

"(ii) which began before the age specified in section 202(d)(1)(B)(ii) of the Social Security Act, or, in the case of a student, before he ceased to be a student; or

"(3) a student.

The term 'student' means a 'full-time student' as defined in section 202(d)(7) of the Social Security Act, or a 'student' as defined in section 8101(17) of title 5, United States Code. The determination of an individual's status as the 'child' of the miner or widow, as the case may be, shall be made in accordance with section 216(h)(2) or (3) of the Social Security Act as if such miner or widow were the 'insured individual' referred to therein."

On page 9, at the beginning of line 24, strike out "(3)" and insert "(5)(A)"; on page 10, line 1, after the word "sentence," strike out "In carrying out his responsibilities under this part, the Secretary may prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act." and insert "The provisions of sections 204, 205(a), (b), (d), (e), (f), (g), (h), (j), (k), and (l), 206, 207, and 208 of the Social Security Act shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act."; after line 10, insert:

(B) Only section 205 (b), (g), and (h) of those sections of the Social Security Act recited in subparagraph (A) of this paragraph shall be effective as of the date provided in subsection (d) of this section.

At the beginning of line 15, strike out "(4)" and insert "(6)"; at the beginning of line 17, strike out "paragraph" and insert "paragraphs"; in line 18, after the word "a", where it appears the second time, strike out "child," and insert "child"; on page 11, line 4, after the word "eligible", where it appears the second time, insert "at any period of time"; in line 17, after the word "eligible", insert "at any period of time"; after line 21, strike out:

"(C) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

On page 12, at the beginning of line 3, strike out "(D)" and insert "(C)"; in line 4, after the word "child", strike out "of a miner or widow (as described in section 412(a)(3))"; in line 6, after the word "of", insert "his father or mother"; in line 7, after the amendment just above stated, strike out "such miner or widow"; in line 8, after "December 31", strike out "1972" and insert "1973"; after line 9, insert:

"(D) Any benefit under subparagraph (A)

or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

"(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later."

(d) Except as otherwise provided in this section, the amendments made by this section shall be effective as of December 30, 1969.

After line 22, strike out:

"(5) Subsections 422 (c) and (d) of such Act are amended by striking out 'section 412 (a)' wherever it appears and inserting in lieu thereof 'section 412(a) (1), (2), and (4)'."

On page 13, line 5, after the word "following", strike out "This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act." and insert "In applying the provisions of section 224(a) of the Social Security Act to benefits under this part, paragraph (5) thereof shall be deemed to read '100 per centum of his "average current earnings", or " ; after line 12, strike out:

Sec. 3. (a) Sections 401, 411(c) (1), 411(c) (2), and 422(h) of the Federal Coal Mine Health and Safety Act of 1969 are each amended by striking out "underground".

(b) Sections 402(b), 402(d), 422(a), and 423(a) of such Act are each amended by striking out "an underground" and inserting "a" in lieu thereof.

(c) The amendments made by this section shall be effective as of December 30, 1969.

And, in lieu thereof, insert:

Sec. 3. (a) Section 402(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out all after the word "lung" and inserting the following new phrase: ", including its sequelae, arising out of employment in a coal mine."

(b) Section 402(f) is amended to read as follows:

"(f) The term 'total disability' has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, except that such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time. Such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act."

(c) (1) Section 411(a) of such Act is further amended by adding at the end thereof the following: "or who at the time of his death was totally disabled by pneumoconiosis."

(2) Section 401 is amended by inserting after the word "disease" each place it appears the following: "or who were totally disabled by this disease at the time of their deaths."

(3) Section 411(c) (3) is amended by inserting after "pneumoconiosis," the following: "or that at the time of his death he was totally disabled by pneumoconiosis."

(d) Section 411(c) of such Act is amended by striking the word "and" at the end of paragraph (2), by striking the period at the end of paragraph (3), inserting "; and", and by adding at the end thereof the following new paragraph:

"(4) if a miner was employed for fifteen

years or more in one, or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine."

(e) Section 411(b) is amended by inserting immediately after the penultimate sentence thereof the following new sentence: "Final regulations required for implementation of any amendments to this title shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted."

(f) Section 421(b) (2) (C) of such Act is amended by striking the word "those" and inserting in lieu thereof "section 402(f) of this title and to those standards", and by substituting for the words "by section 411" the words "under part B of this title".

(g) The first sentence of section 413(b) of such Act is amended by inserting before the period at the end thereof the following: ", but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials."

(h) The amendments made by this section shall be effective as of December 30, 1969.

On page 17, line 10, after the word "thereof", strike out "1973" and insert "1972"; in line 13, after the word "thereof", strike out "1974" and insert "1973", other than in section 421 (b) (1),"; in line 16, after the word "thereof", strike out "1975" and insert "1974"; in the same line, after the amendment just above stated, strike out "and"; after line 16, strike out:

(4) by striking out "seven" where it appears in section 422(e) and inserting in lieu thereof "nine".

And, in lieu thereof, insert:

(4) by adding a new subsection (c) to section 421 thereof as follows:

"(c) Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest prac-

ticable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted."

On page 18, after line 2, insert:

(5) by amending section 426(a) of such Act to read as follows:

"Sec. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as are appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with subsections (b), (c), (d), and (e) of section 553 of title 5 of the United States Code."

After line 10, insert:

(6) by inserting immediately after section 426 thereof, the following new section:

"Sec. 427. (a) The Secretary of Health, Education, and Welfare is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

(b) The Secretary of Health, Education, and Welfare shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health, Education, and Welfare may deem necessary in the public interest.

"(c) There is hereby authorized to be appropriated for the purpose of subsection (a) of this section \$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary."

On page 19, after line 15, insert:

(7) by adding at the end thereof the following new section:

"Sec. 428. (a) No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis or other respiratory or pulmonary impairment. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term 'miner' shall not include any person who has been found to be totally disabled.

"(b) Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. 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 public hearing at the request of any party to enable the parties to present information relating to such violation. The

parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

"(c) Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecuting of such proceedings, shall be assessed against the person committing the violation."

On page 21, after line 10, insert:

(8) by adding at the end thereof the following new section:

"Sec. 429. There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this title. Such sums shall remain available until expended.", and

After line 16, insert:

(9) by adding at the end thereof the following new section:

"Sec. 430. The amendments made by the Black Lung Benefits Act of 1972 to part B of this title shall, to the extent appropriate, also apply to part C of this title."

After line 21, strike out:

Sec. 5. The first sentence of section 413(b) of such Act is amended by inserting before the period at the end thereof the following: ", but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram".

And, in lieu thereof, insert:

Sec. 5. (a) Sections 401, 411(c)(1), 411(c)(2), and 422(h) of the Federal Coal Mine Health and Safety Act of 1969 are each amended by striking out "underground."

(b) Sections 402(b), 402(d), 422(a), and 423(a) of such Act are each amended by striking out "an underground" and inserting "a" in lieu thereof.

(c) The amendments made by this section shall be effective as of December 30, 1969.

On page 22, after line 10, insert a new section, as follows:

Sec. 6. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding "or" at the end of section 422(e)(1) thereof, by striking "or" at the end of section 422(e)(2) thereof and inserting a period, and by striking section 422(e)(3) thereof.

After line 15, insert a new section, as follows:

Sec. 7. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following new section:

"Sec. 431. The Secretary of Health, Education, and Welfare shall, upon enactment of the Black Lung Benefits Act of 1972, generally disseminate to all persons who filed claims under this title prior to the date of enactment of such Act the changes in the law

created by such Act, and forthwith advise all persons whose claims have been denied for any reason or whose claims are pending, that their claims will be reviewed with respect to the provisions of the Black Lung Benefits Act of 1972."

On page 23, after line 2, insert a new section, as follows:

Sec. 8. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end of part B thereof the following new section:

"Sec. 415. (a) Notwithstanding any other provision in this title, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from January 1, 1973 to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

"(1) Such claim shall be determined and, where appropriate under this part or section 424 of this title, benefits shall be paid with respect to such claim by the Secretary of Labor.

"(2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Secretary of Health, Education, and Welfare and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.

"(3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this title for any month after December 31, 1973.

"(4) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in sections 19 (b), (c), and (d) of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended.

"(5) Any operator who has been notified of the pendency of a claim under paragraph 4 of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this title and section 422 thereof had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

"(b) The Secretary of Labor, after consultation with the Secretary of Health, Education, and Welfare, may issue such regulations as are necessary or appropriate to carry out the purpose of this section."

And, at the top of page 25, insert a new section, as follows:

Sec. 9. Section 422(f) of title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting "(1)" after "(f)" and by adding a new paragraph (2) as follows:

"(2) Any claim for benefits under this section in the case of a living miner filed on the basis of eligibility under section 411(c)(4) of this title, shall be filed within three years from the date of last exposed employment in a coal mine or, in the case of death from a respiratory or pulmonary impairment for which benefits would be payable under section 411(c)(4) of this title, incurred as the result of employment in a coal mine, shall be filed within fifteen years from the date of last exposed employment in a coal mine."

Mr. JAVITS. Mr. President, is the bill open to further amendment?

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. JAVITS. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 1 minute.

Mr. RANDOLPH. Mr. President, I know from the discussion with the chairman of the committee that he has an amendment, which we have discussed with the ranking minority member of the committee. I know that he will proceed in his own way in a moment but I want to say that we have discussed the matter and we have an understanding on it.

Mr. WILLIAMS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read the amendment as follows:

On page 20, between lines 16 and 17 insert the following:

"Each hearing examiner presiding under this section and under the provisions of Titles I, II and III of this Act shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of Title 5, United States Code."

Mr. WILLIAMS. Mr. President, the legislation now before the Senate represents a long-overdue governmental recognition of the suffering and the perils faced by the men who provide an indispensable part of this Nation's need for fuel and energy. This bill, together with the amendment I propose today, completes a circle of protection begun with the Coal Mine Health and Safety Act of 1969.

The Federal Coal Mine Health and Safety Act, like the Occupational Safety and Health Act of 1970, is plainly so complex and vital to our national welfare as to require the highest qualified hearing examiners for its enforcement. Such statutes, which require a determination of critical safety questions in complex and technical basic industries, clearly must be implemented by persons of mature judgment and great technical competence. It is for this reason that we in the Congress expressly provided that hearing examiners administering the Occupational Safety and Health Act be classified, at no less than grade GS-16.

Through an oversight, however, the Coal Mine Health and Safety Act failed to include a similar provision. The result has been a gross inequity that severely hampers the effective administration of the law designed for the protection of the very same coal miners whose fair treatment is our concern today.

The Interior Department, which enforces this vital legislation, is now faced with a pressing shortage of hearing examiners caused by a more than hundredfold increase in the penalty charges assigned for hearing in the past 12 months alone.

To recruit and retain examiners qualified to determine complex questions of law and fact in the coal mining industry, and to resolve questions involving the amendment of the act itself in individual cases, that Department must compete with all other agencies administering Federal health and safety programs, but it must compete on an unequal footing.

Every safety program administered by the Federal Government offers a minimum grade of GS-16 to hearing examiners, with the sole exception of the coal mine safety and health program. These areas include safety and health standards, for public contracts and public works, railway, motor carrier, and air transportation, and pesticides, as well as the Occupational Safety and Health Act itself which covers virtually all American industry.

We in Congress who have investigated the complex and difficult circumstances surrounding the work of the miner know—as well as one can possibly know—that our Nation's miners need and deserve the best protection offered by the Federal administrative judicial system. There can be no question of the parity of importance, complexity, and responsibility that exists between safety and health issues in the mines and those in other Federal safety and health programs.

To complete the protection we have begun, this unintended pay differential must be eliminated.

Continuance of this inequity will prevent the Interior Department from competing with other agencies in attracting GS-16 examiners, who are vitally needed for coal mine cases. It will also severely weaken the ability of that Department to retain the eleven fully experienced examiners, six of whom now work exclusively on coal mine safety and health cases but are classified at grade GS-15.

Recognizing this dilemma, the Interior Department has repeatedly, but unsuccessfully, sought the upgrading of this position in applications to the Civil Service Commission. Corrective action by the Congress is thus critically needed, since the Civil Service Commission has failed to recognize the importance and complexity of coal mine safety and health cases. Indeed, in its November 1971 evaluation of this matter the Commission concluded that such cases "do not involve complicated questions of law and fact, and the cases do not appear to be of a precedent-setting nature."

If we in Congress now refuse to correct this manifest inequity, we will be saying, in effect, that safety in the mines is a less important or less complex matter than the safety of any other working place in the Nation. Such a result would be unacceptable, since it would reflect a major misconception of the coal mining industry and the complex safety and health dangers that threaten the Nation's miners. Nor could such a result stand in the face of the overwhelmingly contrary findings of Congress and the President in connection with the Coal Mine Health and Safety Act. As clearly recognized in its legislative history, this act is "not only

one of the most important pieces of legislation" ever written, "it is one of the most complex." Surely the coal miners and their families are entitled to no less than the same level of qualifications of hearing examiners as that of hearing examiners in all other fields of Federal safety and health enforcement.

Putting aside the success of an important part of our system for protecting the miner, I also ask my colleagues to note that the hearing examiners of the Department of the Interior are depending on us to correct a clear violation of the principle of equal pay for equal work. To correct this inequity, and to guarantee this right of the miner, the amendment I propose prescribes that such hearing examiners will be classified at no less than grade GS-16.

Mr. President, as I have just stated, the explanation of the amendment is simple. It puts the examiners under this legislation on the same footing as examiners under the Occupational Health and Safety Program. It is a matter, I think, of basic fairness and equity to those who are engaged in comparable employment.

Mr. COOPER. Mr. President, may I ask the Senator from New Jersey one or two questions?

Mr. WILLIAMS. I yield.

Mr. COOPER. How many examiners are now employed?

Mr. WILLIAMS. The last available number I have, at this point, would be six, here in Washington.

Mr. COOPER. How many?

Mr. WILLIAMS. Six.

Mr. COOPER. What would be the effect of the amendment. Does it relate only to compensation?

Mr. WILLIAMS. That is all. Yes. This designates the grade so that the only change would be as to their compensation. All other aspects of their employment would remain the same.

Mr. COOPER. It has no effect except to increase the compensation, is that correct?

Mr. WILLIAMS. That is the only effect.

Mr. COOPER. But there are six examiners?

Mr. WILLIAMS. That is right—six.

Mr. COOPER. I am not in a bad humor today, I know, but I would like to say, I wish the Senate could increase the number of examiners, and also tell the examiners to do their duty. I assume these are the same people who are supposed to pass upon violations of the Health and Safety Act and to impose fines and, if there are appeals, to hear them; is that not correct?

Mr. WILLIAMS. I agree with the Senator. This is a necessary step. I recognize that there are inadequacies, too. We try, in our oversight activities in the committee, where there may be lapses of judgment; perhaps, that the Bureau of Mines should pay greater attention to the—

Mr. COOPER. Are these the men who hear the cases arising from alleged violations of the Health and Safety Act, and then to hear the appeals—is that correct?

Mr. WILLIAMS. That is correct. There has been a problem of recruiting. I understand that one of the ways to help the

whole recruiting process is to upgrade the examiners.

Mr. COOPER. The Senator says there are only six examiners. I know the program is not going well but I am astounded to be told that there are only six examiners to hear the cases involving penalties proposed for violations of the act, and appeals.

Mr. JAVITS. Mr. President, I ask unanimous consent that it may be in order to ask for the yeas and nays on final passage.

The PRESIDING OFFICER (Mr. ROTK). Unanimous consent is not required.

Mr. JAVITS. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. COOPER. Mr. President, this is one of the problems which has arisen. The fines have been imposed arbitrarily on people without having any appearance or due process. That is the reason that very few appeals are taken. They cannot take a true appeal because they are under a veiled threat of harsher fines. I must say that there should be due process, in all fairness, but arbitrary rulings are now the rule.

I will vote for the amendment. I hope that it will encourage due process, and give to both the operators and the miners.

Mr. RANDOLPH. Mr. President, I yield back the remainder of my time.

Mr. WILLIAMS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. JAVITS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 21, line 16 strike "and".

On page 21 between lines 16 and 17, insert the following new paragraph:

"(9) by striking "7" in Section 422(a), and". Renumber the succeeding paragraph.

Mr. JAVITS. Mr. President, I ask unanimous consent that the two amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, the purpose of this amendment is to make it clear that the provisions in section 7, Longshoremen's and Harbor Workers' Compensation Act, which require employers to provide medical benefits to injured or disabled employees are applicable to operators under part C. Under the present law, the Secretary of Labor has authority to prescribe regulations under part C "not inconsistent" with section 7 of the Longshoremen's Act, and I am informed that regulations which would apply section 7 to operators under part C are under active consideration by the Department of Labor at the present time. All this amendment would do would be to establish, as a matter of law, that the provisions of section 7 are applicable under part C.

Mr. President, I point out that there

may be resort to the Longshoremen's Act in the bill. I believe that this is a very intelligent model to follow in this regard.

I hope that the Senate will act favorably on the amendment.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. JAVITS. Mr. President, I yield to the Senator from New York.

Mr. COOPER. Mr. President, under the bill reported to the Senate by the committee, would the parties involved—whether the Government, the operator or whomsoever it may be, or whether it comes under the workmen's compensation law—be required to pay such benefits as the Senator has been discussing?

Mr. JAVITS. Mr. President, assuming that the regulations are issued according to the contemplation of the Secretary of Labor, the answer would be "yes". And by adoption of the amendments, we would assure that.

Mr. COOPER. Was this taken up in the committee?

Mr. JAVITS. My recollection is that it was not. However, I will explain to the Senator that we proposed to deal with it in the conference in 1969. The reason that we did not do so is because we were unable to do it because it was not dealt with in either the House or the Senate bill.

The committee staff on both the majority and minority side have gone into the matter very thoroughly and believe that it is necessary.

Mr. COOPER. Mr. President, is there any other applicable statute, other than the Longshoremen's Act, that could be used?

Mr. JAVITS. State laws are a good precedent for this matter as well. Incidentally, the Federal Department has called to our attention the desirability of including this section. Although the administration does not agree with the bill, they call to our attention the fact that this is a desirable change.

Mr. COOPER. Mr. President, is that a matter which would be compatible with the Workmen's Compensation Act?

Mr. JAVITS. The Senator is correct.

Mr. COOPER. Mr. President, is this an amendment to federalize the Workmen's Compensation Act with respect to this particular provision?

Mr. JAVITS. No. It is just an effort to apply in this case the lessons we have learned from the Workmen's Compensation Act.

Mr. COOPER. This is merely another illustration of the problems that we face. We have a tremendously important bill, which I will vote for, and one which, as I said before, was first introduced and became law 3 years ago. All kinds of amendments added in committee are before us which, for the most part, are very good amendments. However, we propose to keep on adding amendments. I must say that I do not know anything about this amendment and I doubt if one-tenth of the Senators know a thing about it.

I do not know what its consequences would be. I just wish that we would not continue to add on amendments when they have not been considered in committee, and force them on those of us

who have an interest in the coal industry, and, I repeat, not alone in the operators, but in the miners as well.

I must register my opposition to blindly accepting amendments that we do not know anything about and that may impose great liability on the industry. The amendments may be good. I do not know. I really do not know what will happen.

Mr. JAVITS. Mr. President, I say in explanation to the Senator that this is rather a traditional workmen's compensation model. It does not federalize workmen's compensation. It merely does something which the Department of Labor was going to do by regulation anyhow. It is in the Senate bill. If the Senate approves the amendment, it will be subject to conference and the Department will have adequate opportunity to look into the matter. So will the Senator from Kentucky.

I can assure the Senator from Kentucky that this does not reach any major aspect with respect to the bill. Many such bills have so many specialized details connected with them.

I am sure that the Senator will vote for the bill, even though it is a matter with which the Senator is not uniquely equipped by expertise to judge—and, for that matter, neither am I.

Mr. COOPER. I am probably more familiar with coal problems and operations than is the Senator from New York.

Mr. JAVITS. I am sure the Senator is.

Mr. COOPER. I have been concerned with them ever since I came to the Senate. I served as a member on the Committee on Labor and Public Welfare that dealt with mining problems and am familiar with them as a practical matter.

Mr. JAVITS. Mr. President, I am sure that the Senator from Kentucky knows a great deal more about the totality of all of the provisions in this measure and the expertise involved very much more than I do. My only function has been as the ranking minority member of the committee. Precisely because I do not have a sectional interest, I have been able to serve a very useful purpose and to actually pound out the legislation.

I assure the Senator that this is exactly the same tradition involved in workmen's compensation. Indeed, it is a deficiency which the department itself picked up. If anything, I think it will promote and assist the worker who, I know, is the dearest consideration of the Senator from Kentucky and other Senators as well.

Mr. President, I am ready to yield back the remainder of my time if the Senator from West Virginia is. Is the Senator from West Virginia willing to accept the amendment?

Mr. RANDOLPH. Mr. President, I have discussed the amendment not only with the Senator from New York but also with members of the majority on the committee. We do believe that it is a program that possibly would have been brought into the bill by the Labor Department without legislation.

I do agree that it is appropriate to do at this time what the amendment

seeks to do. I therefore am willing to accept the amendment and point out that I have consulted with other Members.

I do want fully to state by way of reinforcement what the Senator from New York has said. We have the very highest respect for the knowledgeability of the Senator from Kentucky in all aspects of legislation that attempt to cope with the strengthening of the fabric of coal mine health and safety in this country.

In conference we shall continue possibly to probe the situation. We feel it is a matter of the utmost importance in connection with the overriding issues involved in this measure. I, therefore, support it.

The PRESIDING OFFICER. Is all time yielded back?

Mr. JAVITS. I yield back my time.

Mr. RANDOLPH. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 9212) was read a third time.

Mr. RANDOLPH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from West Virginia has 2 minutes remaining and the Senator from New York 1 minute remaining.

Mr. RANDOLPH. Mr. President, I yield my 2 minutes to my distinguished colleague from Kentucky (Mr. Cook).

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOK. Mr. President, it was my intention to introduce an amendment to extend this act for 2 years rather than for 1 year. Under the circumstances and the tenor of the debate it would not be possible to get such an amendment agreed to. However, we have worked on it, and we did draw it up.

Briefly, I would like to acknowledge the work of my esteemed colleagues of the Committee on Labor and Public Welfare and congratulate them for their expeditious handling of H.R. 9212, "The Black Lung Benefits Act of 1972." Basically, the act would provide for an extension of black lung benefits to orphans whose fathers have died of pneumoconiosis. It would also redefine the term, "total disability" so to surely negate the previously insurmountable burden of proving disability. Such corrective measures as contained in H.R. 9212 are essential in returning justice to a system which, unintentional though it may be, has been languishing since the passage of the original act in 1969. I urge all of my colleagues to lend their unanimous approval to these measures.

For years the millstone has hung around the miner's neck. The conditions under which a miner was expected to work were extremely hazardous. He in-

haled, physical coal dust, endured extreme physical hardships, and risked the rate of cave-ins.

While the 1969 act has attempted to improve these conditions, the misfortunes of our coal miners have not abated. It seems that for all of their toil and hardship, they have been rewarded with a crippling disease known in laymen's terms as "black lung." It is a painful disease causing deterioration of the lung tissue. No cure is available, and no pills lessen the pain. President Nixon, in his March 1969 address which called for a new Coal Mine Health and Safety Act, said:

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 . . .

Recognizing its responsibility to compensate those coal workers who became incapacitated with the dreaded black lung, Congress enacted the Federal Coal Mine Health and Safety Act of 1969. Again Congress is considering, and hopefully will pass, legislation which will satisfy the intentions of 1969. As of March of this year, 355,000 claims had been filed. Of this number, 50 percent have been denied. However, in my State of Kentucky, the denial rate has been devastating—75 percent. I am hopeful that the measure before us today will correct this problem.

However, there are two provisions which I believe need to be examined more thoroughly.

Title IV of the Federal Coal Mine Health and Safety Act of 1969 provides for benefits to coal miners totally disabled due to pneumoconiosis, and to widows and dependent children. The cost of claims filed prior to December 31, 1971, is to be borne by the Federal Government under part B of title IV, and claims filed thereafter to be borne by the coal industry under part C of title IV, either under a State workmen's compensation law or under procedures established by the Secretary of Labor.

In 1969, the total cost of coverage for black lung benefits as reflected in the legislative history was variously estimated from \$40 to \$170 million. HEW has projected the 10-year cost of this original program at \$4.792 billion from Federal revenue funds, and \$2.225 billion to coal operators, a total of \$7.017 billion, or more than 40 times the original highest estimate.

The Department of Health, Education, and Welfare reports that as of March 3, 1972, approximately 356,857 claims have been filed and that claims have been approved covering 91,000 miners and 74,000 widows, plus dependent children, reflecting a total of 240,000 beneficiaries. To put this in perspective, employment in the coal industry currently approximates 120,000 miners. This program has incurred costs of more than \$500 million in benefits paid, with monthly payments currently in excess of \$28 million. Approximately 2,500 new claims are being approved each month.

In 1971, the House passed H.R. 9212 by the overwhelming vote of 312 to 78. This measure provided for benefits to

orphans, inadvertently omitted from the original act, and further provided that no claim shall be rejected solely on the basis of a negative X-ray. It also extended the obligation of the Federal Government to claims filed prior to December 31, 1974, with the coal industry assuming the cost of claims filed after that date.

Last October, S. 2675 was introduced in the Senate incorporating many of the provisions of the House-passed bill, but also containing many sections which vastly enlarged the number of potential beneficiaries as well as tremendously increasing the cost of the program by redefining "total disability," and including coverage for all respiratory and pulmonary impairments, such as chronic bronchitis and emphysema.

The Senate Labor and Public Welfare Committee during its consideration of this measure reduced the period of future Government liability from 2 years to 1 and further liberalized the criteria under which claimants qualify for benefits, and included parents, brothers and sisters as potential beneficiaries. The committee also approved provisions to make permanent the obligations of the industry, thus converting a temporary benefit program to the equivalent of a federalized workmen's compensation plan.

The full economic impact of title IV of the 1969 act and the expanded provisions of the House-passed bill, coupled with those of the Senate-reported version, have been projected by HEW to cost over \$10 billion in a 10-year period.

The Senate Labor Committee report lists the sum of \$571 million covering retroactive payments for 1972 and 1973 under the Senate amendments. It then lists the projected cost of new claims for 5 years as follows:

1973	-----	\$428,000,000
1974	-----	441,000,000
1975	-----	389,000,000
1976	-----	369,000,000
1977	-----	364,000,000

These projected costs to the Government for the 5-year period 1973-77 total \$1.981 billion. Adding to this the \$571 million covering retroactive payments, reflects a 6-year total of \$2.552 billion to be paid from General Revenue Funds. But the report does not refer to HEW's projected 6-year cost to the Federal Government of claims under title IV of the original act of \$3.151 billion. Thus, the 6-year projected total of Federal liability, as amended by the Senate Labor Committee, is \$5.413 billion.

There is no estimate in the committee report of additional operator costs liability under the Senate Committee amendments. However, HEW, as of this morning, estimated operator costs under title IV of the 1969 act to be \$502 million. An additional \$2.296 billion will be added by the Senate committee version of H.R. 9212.

The consideration of a measure with so great a financial liability to the coal industry has resulted in the introduction of a resolution in the Kentucky General Assembly urging Congress to assume the entire responsibility for financing black

lung benefits. I ask unanimous consent that Senate Resolution No. 94 be printed at this point in my remarks.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

SENATE RESOLUTION No. 94

A resolution urging the Congress of the United States to assume the entire responsibility for financing black lung benefits.

Whereas, Payments into the workmen's compensation Special Fund for Black Lung Benefits in Kentucky constitute a significant drain on all other industries in the Commonwealth; and

Whereas, Sudden imposition of the entire burden of Black Lung Payments on the underground coal industry of Kentucky could lead to extinction of that industry; and

Whereas, Any balancing of the burden between the coal industry in Kentucky and other industries must take into account conditions in competitive states; and

Whereas, Too great a burden on general industry could lead to a loss of industry to other states, while too great a burden on the underground coal industry could lead to increased strip mining in Kentucky, and loss of mining to other States; and

Whereas, The miners in Kentucky and other coal mining states who have black lung contracted the disease while mining coal that was used almost entirely by the residents of the other 49 states to produce their electricity, steel, necessities and luxuries of life, and by the nation to provide energy and materials for three major wars; and

Whereas, The price of coal over the past four decades, the period when miners became infected with black lung, never included an amount to rightly compensate coal miners for the disease; and

Whereas, The federal government through the 1969 Federal Mine Safety and Health Act has required the coal producing States to assume the financial obligation for financing black lung benefits although most of the coal-producing states, including Kentucky, have neither the funds nor the resources for assuming this obligation, such a request being a threat to the financial stability of state government; and

Whereas, The continued prosperity of the coal industry and other industry is needed to help finance State government in Kentucky, the welfare of its people, and to help maintain the security of the United States; Now, therefore,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky: That Governor Wendell Ford be, and he hereby is, requested to urge the Congress of the United States to take whatever action is necessary to relieve the Commonwealth of Kentucky and the other coal-producing states and industry of all responsibility for financing black lung benefits for any and all persons employed in the coal mines of the nation on or before December 31, 1969, said obligation for financing black lung benefits being a deferred social obligation of the entire nation rather than of the individual states.

Mr. COOK. Mr. President, many feel the contention lies that a sudden imposition of the entire burden of black lung payments on the underground coal industry in Kentucky could lead to the extinction of that industry, especially the small operators. Thousands of people in Appalachia who depend for their livelihood on coal would lose their jobs. Strip mining would sharply increase resulting in the further destruction of our environment. It would also affect the shortage of

an energy producing commodity which currently is the source of 70 percent of all fuel.

The underground production of coal has, in the past, far exceeded the surface production. Only recently has surfaced mined coal drawn close to coal produced from underground mines. In 1970, for the first time, the tonnage of surfaced mined coal actually surpassed the production of underground mined coal. The statistics for the year 1971, show an ever-widening gap between underground and surface produced coal. In that year, 66.5 million tons of coal were produced from surface mines while 52.6 million tons were extracted from underground mines.

This disheartening conclusion is that underground mines are closing their doors because operating costs are forcing them out of business under the 1969 act. If the assertion is correct, under the Senate version the operator liability will eventually result in the extinction of underground mines, especially the smaller ones. An assessment of future energy needs appearing in yesterday's Washington Post states that by 1990 our needs for energy will quadruple. At a time when oil and gas supplies are being depleted. A measure which could effect the production of coal so as to eliminate one-half of the entire supply is a serious matter.

I do not intend to imply that the payment of benefits to coal miners afflicted with an occupational disease is a social obligation that belongs to all 50 States instead of just the coal industry. Rather, I believe there is much to be said of the statement by Mr. Stephen Kurzman who, testifying on behalf of the Department of Health, Education, and Welfare before the Committee on Labor and Public Welfare said:

In short, except for the residual federal responsibility provided under the present Act, the cost of payments of benefits to coal miners and their dependents should be placed where it belongs—on the industry as part of its production cost. To do otherwise would weaken the incentive of the coal mining industry to improve conditions in the mines in order to remove pneumoconiosis as an occupational disease.

Yet, to place this burden upon the industry within too short a period without sufficient study may not be desirable. Therefore, I planned to introduce two amendments to the Black Lung Benefits Act of 1972. The first would have extended the Federal responsibility of picking up black lung claims for an additional 2 years. I still feel this is worthy of consideration. I also considered sending to the desk an amendment which would have created an interdepartmental commission composed of representatives from the Department of Health, Education, and Welfare; the Department of Labor, and the Department of the Interior. This commission would have been charged with the responsibility of assessing the cost, and the effects thereof, of the Coal Mine Health and Safety Act as amended which would be imposed upon the various States, the coal industry, and specifically, the small coal operators upon the expiration of part B of the act.

The reasons for considering introducing these amendments are, I think, clear.

When Congress enacted the Coal Mine Health and Safety Act in 1969, the intention was for the sharing of responsibility between the Federal Government and the coal industry. The Government would pick up the backlog of claims filed under part B of the act, and thereafter the state and industry through acceptable Workmen's Compensation laws would assume the responsibility for claims filed thereafter. Those cases which form the backlog of claims—both those which have been denied previously and those which are newly covered under these amendments will be the responsibility of the Federal Government. All future claims will be the responsibility of the coal industry.

However, because 2,500 new claims are being approved each month, I am convinced that the backlog may not have been adequately picked up. Furthermore, the liberalized criteria for determining disability as contained in the Senate bill will immediately result in an additional increase of 149,000 new claimants who would qualify for benefits. Therefore, it would appear that the consideration should be given to extending the Federal responsibility for claims from 1 year to 2 years. This, I feel, would not only provide sufficient time for all backlogged claims to be processed, but it would also give the State workmen's compensation systems an opportunity to meet the dire needs of the disabled miners and their survivors.

Many in the coal industry are fearful of the consequences that this legislation will have not only upon themselves, but also upon the economy as well. It is important that we acknowledge these apprehensions and explore this potential problem so that it cannot be said that Congress acted blindly.

With a cost projection in the neighborhood of nearly \$3 billion, it is clear that the costs to the coal industry will be staggering. But at this time, it is impossible to ascertain its total liability under this new legislation. All of the figures, estimates, and projections are just what they imply—only estimates. We can only make offhand guesses. At this time, no one knows for certain what the actual costs will be. However, there is considerable room for doubt in the present \$3 billion estimate, particularly when one recognizes that the original HEW cost estimate of the black lung program turned out to be 40 times below what was actually incurred. If this situation applies to HEW's new estimates, can it be true that the \$3 billion cost projection is, in reality, 40 times below what the actual cost will be?

Mr. President, the point is that the full financial impact on the coal industry, particularly with respect to the survival of smaller producing units, the impact on the national economy, and the effect on the consumer, as reflected in the costs of the goods and services, has never been thoroughly considered. The 20 largest coal companies employing half the work force produce 55 percent of the annual tonnage from 350 mines. Forty-five percent of the annual tonnage is produced by the other half of the work force in the smaller 5,200 mines. Thus, a major

portion of the cost of this legislation will fall on the small independent coal producers who may not be able to afford insurance to cover his expected costs under this program. Moreover, the ability of all coal producers, large and small, to meet the present and future energy demands of the Nation may be seriously impaired. Also, the much-needed coal export market may be threatened. No one has assessed its impact on the balance of payments.

In conclusion, let me say once again, that I am totally in favor of liberalizing the requirements of proving disability and extending benefits to orphans. But at the same time, I urge that fairness apply in this situation and that Congress initiate a study to ascertain the full ramifications of this act.

Mr. President, I did discuss my amendment with the distinguished Senator from New York. In perusing the membership it became very obvious that the amendment would not pass and merely would take up a great deal of time.

Mr. ROBERT C. BYRD. Mr. President, I wish to urge the speedy passage of H.R. 9212, the black lung benefits bill which was reported by the Senate Committee on Labor and Public Welfare on April 10, 1972. I am a cosponsor of S. 2675, which is incorporated in this measure, and I have appeared before the committee to testify in support of the legislation here in Washington, D.C., and at a field hearing which was held in Beckley, W. Va. The full text of my statement at this hearing in Beckley, which is my hometown, can be found on page S10 of the CONGRESSIONAL RECORD of January 19, 1972. In that testimony, and previously, I urged the Congress to correct the serious defects and omissions of the Federal Coal Mine Health and Safety Act of 1969. Specifically, I urged approval by the committee of S. 2675, which would amend the 1969 act to correct these deficiencies in the existing law. Some of the major provisions of S. 2675 were:

Extension of the life of the program, since many States have not yet established adequate programs.

Extension of benefits to eligible children or orphans of miners disabled by black lung.

Establishment that black lung benefits are not a form of workmen's compensation for purposes of social security, in order to prevent unfair offsets from social security benefits of black lung payments.

An absolute prohibition against denying black lung benefits solely on basis of X-ray evidence.

I will not detail every provision of this legislation, but I am pleased to note that H.R. 9212, as reported by the Senate Committee on Labor and Public Welfare, includes most of the provisions of S. 2675. I believe H.R. 9212 will correct many of the inequities and oversights of title IV of the Federal Coal Mine Health and Safety Act of 1969, as it is being presently administered.

The legislation extends until January 1, 1975, the timetable for the Federal Government to transfer to the States the responsibility for processing benefit

claims for miners who have contracted pneumoconiosis—black lung—and for their surviving widows and dependent children. It was felt that present circumstances indicated the need for an additional year for the States to enact legislation and develop programs to handle black lung claims. In addition, this bill makes the Federal and non-Federal aspects of the Federal black lung program permanent, so that all black lung claimants and beneficiaries, now and in the future, will be eligible for, and entitled to, lifetime benefits.

Another serious omission of title IV of the Federal Coal Mine Health and Safety Act of 1969 relates to the rights of orphans. In instances where both a miner and his spouse are deceased there is no basis under existing legislation for claiming benefits on the part of the children, and in cases where the miner and his widow were receiving benefits—which may have been increased by dependent children—the benefits have ceased when both the miner and his widow died. This was a tragic oversight which should not have occurred and I am pleased that this bill includes provisions to correct this inequity.

H.R. 9212 will also limit and eliminate the existing policy of the Social Security Administration of treating black lung benefits as workmen's compensation. I do not believe that the Congress ever intended the black lung benefits program to be considered a workmen's compensation plan and I am pleased that H.R. 9212 clarifies the language in the present act to prevent these unfair offsets.

Now, Mr. President, I come to what I consider one of the most important aspects of this bill and that is the provision which will eliminate the heavy dependence on X-ray evidence by the Social Security Administration for approving black lung benefits. It has been demonstrated, time and time again, that a negative X-ray is not proof positive of the absence of pneumoconiosis. I hope that this bill will put an end to the unjust treatment of those unfortunate miners who have been denied benefits based on inconclusive X-ray evidence.

This bill also writes into law a rebuttable presumption that disabled miners who have worked in underground mines for 15 years, or on surface mines, when employed under environmental conditions similar to those experienced by underground mines, are presumed totally disabled by pneumoconiosis if they have a totally disabling respiratory or pulmonary impairment. When I testified before the Committee on Labor and Public Welfare in support of this legislation, I stated:

Let us stop quibbling with dying men as to whether their lungs are riddled with black lung or whether they are affected with miners asthma, or silicosis, or chronic bronchitis.

That is still my position, and I sincerely hope that H.R. 9212 will insure that all of these disabled and needy miners and their dependents will not be deprived of their much deserved benefits because their respiratory disability does not fit into a particular scientific category.

This bill contains many other correc-

tions, clarifications, and improvements to the 1969 act, all of which are designed to assist the eligible miner and the eligible dependent in obtaining his or her black lung benefits.

Two years ago, the Congress, with both wisdom and compassion, enacted the Federal Coal Mine Health and Safety Act to help eliminate hazardous working conditions in the mining industry and to attempt to compensate those miners who had the misfortune to fall victim to pneumoconiosis. This was a good law which brought many new and needed safety and health regulations to the mining industry. However, like any new program, there have been opportunities, since its enactment, to assess the need for improvements—due to both oversight in the original act and to misinterpretation by those administering the program. I believe that H.R. 9212, if enacted into law, will correct many of these shortcomings, and provide the Government agencies administering the black lung benefits program with a clear indication of congressional intent regarding the interpretation of this program.

I have always believed that the American people owe a tremendous debt to the miners of this country, who have labored in the mines during war and peace to provide fuel and energy with which to run this Nation. The passage of H.R. 9212 will be another step toward payment of this just debt, and I urge its passage.

BLACK LUNG AMENDMENTS

MR. HARTKE. Mr. President, this is an historic day for the coal miner's of America—2 years ago, Congress established a compensation program for miners afflicted with black lung disease—pneumoconiosis. Today, H.R. 9212, as amended, makes it possible for us to take action to assure that most of the inequities and omissions of the basic law are corrected.

On July 15, 1971, I introduced S. 2289. This legislation sought to broaden the disability definition for purposes of title IV of the Coal Mine Health and Safety Act to assure that any miner could receive disability payments if it can be shown by medical or nonmedical evidence that he is no longer capable of using his skills as a miner.

I am pleased to note that, in the report of the Committee on Labor and Public Welfare on H.R. 9212, it is recognized that the current disability definition being applied for black lung purposes is inadequate. That definition, "inability to engage in any substantial gainful activity," is the same one applied in the case of social security disability applications. It is an inappropriate definition for coal miners, and I am happy that the committee so termed it.

It is unrealistic to expect that a person who has spent all of his adult life working in the mines and who is now medically unfit to return to that work, to seek employment elsewhere when there are no reasonable employment opportunities available to him.

To meet this problem, both S. 2289 and H.R. 9212, as amended, use the test of inability to engage "in gainful employment in a mine or mines in which he

previously engaged with some regularity and over a substantial period of time." Thus, any miner who cannot return to mines for the medical reasons authorized by title IV, as amended by H.R. 9212, will be eligible for disability benefits.

Mr. President, I fully support H.R. 9212, as amended, and I also wish to congratulate the distinguished senator from West Virginia (Mr. RANDOLPH) for his leadership and dedication to the cause of justice for this Nation's coal miners.

MR. ALLEN. Mr. President, I rise in support of H.R. 9212 as amended by the Committee on Labor and Public Welfare. This is good legislation, and it is urgently needed legislation.

The State of Alabama produces a substantial amount of coal. In 1969, a total of 15,486,000 tons of this vital energy source were extracted from Alabama soil.

Where coal is extracted from the earth, there, too, are those who spend their lives mining that mineral. And where there are coal miners, there is also that terrible occupational disease known to the miner, his family, and all too often to his widow—as "black lung."

Since the enactment of the Federal Coal Mine Health and Safety Act in 1969, there have been more than 17,589 claims for black lung benefits processed in my State. It is a matter of deep concern to me that only 6,702, or 38.1 percent, of those claims have been granted, while 10,887 have been denied—a denial rate of 61.9 percent.

As it has been so eloquently expressed by the distinguished senior Senator from West Virginia (Mr. RANDOLPH), the black lung benefits title of the Federal Coal Mine Health and Safety Act of 1969 clearly is not meeting the need that Congress intended for it to meet.

The Committee on Labor and Public Welfare, with the expert guidance of its ranking majority member, Senator JENNINGS RANDOLPH, has fashioned a bill which will improve the existing law and more accurately reflect Congress' intent in providing for those miners who gave their health and their lives for the Nation's energy needs, along with the widows, children and orphans of those coal miners.

At the same time, the measure would fairly divide the responsibility for payment of such benefits between the Federal Government and the employers of the miner, the coal industry.

I endorse H.R. 9212 and fully support its enactment.

MR. MUSKIE. Mr. President, today the Senate has acted to force the administration to give coal miners suffering from black lung disease and their families the care and treatment they deserve. Since 1969 the administration has callously been denying benefits under the 1969 Coal Mine Safety Act with the use of narrow regulations and procedures. Now we have acted, over the opposition of the coal industry and the administration, to do what is just.

This Nation owes much to the men of coal. The creative comforts that most of us enjoy today rest largely upon the energy which coal supplies to America. But our Nation has used and abused the men who mine the coal, and their families.

Today we have taken a step which will in some small measure provide equitable treatment to this neglected group of American workers.

The dread black lung disease has afflicted men who work in the coal mines of our Nation since coal mining began. For several decades the connection between the inhalation of coal dust by the miners and the high incidence of severe respiratory disease in these men has been well known. But not until the Federal Coal Mine Health and Safety Act of 1969 did the Government of the United States take a significant step toward appropriate recognition of and compensation for this deadly serious work-related disease. In 1969, the Congress of the United States saw fit to deal with the problem and did so by passing legislation designed by Congress to alleviate the suffering of those coal miners, and their families and survivors, who fall victim to black lung disease.

But, in what has been an all-too-familiar pattern for the last 3½ years, the Nixon administration deliberately and callously chose to interpret and enforce the black lung disease provisions of the Federal Coal Mine Health and Safety Act of 1969 as narrowly and conservatively as possible. The Social Security Administration was directed by the Nixon administration to hide behind an X-ray machine and to deny benefits in all cases except those in which positive proof of black lung disease could be ascertained through X-ray. As a result, more than 50 percent of the claims for compensation for black lung disease which have been filed under the 1969 act have been rejected by officials constrained by the callous Nixon administration regulations and interpretations.

Furthermore, the 1969 legislation itself left too many gaps. For example, orphaned children and dependent parents, brothers and sisters, of coal miners who succumb to work-related respiratory ailments were not eligible for benefits under the 1969 legislation. In addition, only underground miners were covered in any way by the 1969 legislation. Although there is no medical dispute about the fact that surface coal mining also subjects the miner to the risk of black lung disease.

All of these problems and more will be alleviated by the tough legislation which the Senate has passed today. Notwithstanding efforts of the Nixon administration and the coal industry to deny to the coal miners of America the simple justice of compensation for black lung disease, the Senate has today done what is right.

Mr. BEALL. Mr. President, as a member of the Labor and Public Welfare Committee, I strongly urge the enactment of H.R. 9212, the Black Lung Benefits Act of 1972.

Before commenting on the bill, I want to congratulate our respected colleague and friend, the distinguished Senator from West Virginia (Mr. RANDOLPH) for his diligence and devotion to the miner and his family. The Congress and the country are indeed fortunate to have as the floor manager of this important legislation one who is so intimately ac-

quainted with mining and the miners. My home is in the western part of Maryland which at one time was a major coal producing center, and I also know the miners and their work.

Mining is a difficult and often dangerous occupation. The occupational health and safety legislation which is now on the books is designed to make major improvements in the working conditions of miners and hopefully prevent some of the health and safety problems that have resulted from working in this demanding environment.

The Nation owes a great debt to the miners. For these men who have worked in this difficult but proud occupation have helped to supply a critical source of energy essential for the growth of our economy and the prosperity of the country. Although the benefits to the Nation have been great, the cost to the miner in many cases has been his good health.

In recognition of this problem in 1969 the Congress passed Public Law 91-173, the Federal Coal Mine Health and Safety Act of 1969. This measure recognized for the first time the inadequacies of compensation to miners disabled by coal workers' pneumoconiosis, or as it is commonly called black lung. This bill would:

Eliminate oversight in present law by extending benefits to orphans and also to dependent parents, brothers, and sisters where no widow or children survive the miner;

Relax the burden of proving eligibility by prohibiting a denial of claims based solely on a negative X-ray and by presuming that miners with 15 years experience who are disabled by respiratory or pulmonary impairment are disabled by pneumoconiosis or black lung;

Changes the definition of total disability to an occupational definition based upon an inability to work in a mine. Present requirement of being able to engage in any gainful employment was found to be unrealistic in many areas of Appalachia;

Extends benefits to surface miners who work under conditions equally as dusty as those endured in underground work;

Allow a widow to claim benefits if her husband was totally disabled by pneumoconiosis when he died;

Make available to widows other means of establishing claims such as providing of affidavits of the husband's disability and allow the use of relevant additional tests, medical and lay evidence to establish eligibility for benefits;

Authorize the construction of clinical treatment facilities for miners with lung impairments;

Accelerate research to develop tests to be used in the analysis of pulmonary and respiratory diseases and impairments;

Prohibit discrimination against a miner solely because he has pneumoconiosis or other respiratory ailments, and;

Require notification of prior claimants that their claims are being considered in view of new amendment.

As of March 3, 1972, 356,857 claims have been filed since the effective date of that act. Of these filed, 166,593 claims have been approved. I am certain these

payments have been welcomed by the eligible miners and dependents. But, more than half, or 169,999 claims have been turned down. In some States the rejection rate has been as high as 72 percent. For my State of Maryland, the latest figures I have available show that 51 percent of the 3,715 black lung claims that have been processed have been allowed for a rejection rate of 49 percent.

My office has worked on many of these claims, and, therefore, I am aware of the difficulties that miners and their families are having in securing benefits under the 1969 act. An overly restrictive interpretation of the act has resulted in rejection of too many meritorious claims. This has occurred because of the heavy dependence on the X-ray. Under present social security procedures, if an X-ray does not show totally disabling pneumoconiosis, no further processing of the claim takes place and the claimant is not allowed to present further evidence of disability.

Sixty-two percent of claims denied have been based on the inability to demonstrate black lung by X-ray. Although the X-ray is and will remain an important tool in diagnosing black lung, it is not infallible. For example, research at the Appalachia Hospital at Beckley, W. Va., indicated that X-rays may fail to detect black lung in at least 25 percent of the cases. Also evidence presented to the committee indicated that an X-ray may be clouded by the presence of emphysema so that black lung does not appear on the X-ray. The committee thus felt medical doubt did exist and that more of these doubts should be resolved in favor of the miner and his dependents. The bill thus prohibits the denial of benefits solely on the basis of an X-ray.

Another problem that my office has encountered in helping to process these claims is the plight of the widow as she attempts to prove her claim. The committee amendment providing that claims for benefits may be established through one or more of a number of tests should help in this regard. By making available to the widow other means of establishing her claim such as providing affidavits of her husband's disability, I believe that more widows' claims will be approved and I certainly hope so. Thus, the legislation would make certain that claims based on affidavits filed by a miner's widow would be considered.

The amendment requiring notification of prior claimants is very important. Under this amendment the Social Security Administration will be required to notify black lung claimants who have been denied benefits or whose claims are still pending through both the communication media and by mail of the new benefits of the Black Lung Benefits Act of 1972. It is contemplated that the Social Security Administration will advise the above claimants that their claims are being automatically considered and reviewed. As a result there will be no need for these claimants to file an application for review.

In summary, Mr. President, the 1969 act has not accomplished its purpose because of too narrow interpretation. This legislation is designed to remedy these

situations and to help deserving miners get the benefits for work related pneumoconiosis and respiratory or pulmonary impairments.

Mr. SPONG. Mr. President, I am pleased that this bill has been called up for consideration so soon after being reported favorably by the Senate Committee on Labor and Public Welfare. The measure is of great importance to thousands of Virginia coal miners and their families. I hope it will be enacted.

My interest in the legislation stems from a substantial number of complaints that black lung claims have been unfairly denied, because of the heavy reliance of the Social Security Administration on X-ray evidence alone. I have personally talked with miners and their widows in the coal-producing areas of Virginia. It is disheartening to hear their accounts of disabilities and hardships, to see their living conditions, and to know that under existing law and procedures they have been unable to obtain full consideration of their efforts to become eligible for black lung benefits.

Mr. President, the committee report on the bill points out that 62 percent of the claims denied by the Social Security Administration are based upon the claimant's failure to demonstrate by X-ray evidence the presence of black lung. On the other hand, there is undisputed testimony from the Surgeon General that data from postmortem examinations indicate a higher prevalence of black lung than can be diagnosed from X-ray examinations.

In addition, Paul Kaufman, of the Appalachian Research and Defense Fund, has testified that research done by ARDF in cooperation with the Appalachian Regional Hospital at Beckley, W. Va., indicates an error of 25 percent in X-ray diagnoses. Mr. Kaufman said:

It was found that approximately 25 percent of a random sample of some 200 coal miners whose medical records based on X-ray findings showed no coalworker's pneumoconiosis were found on post mortem examination to have the disease.

I discussed this problem at some length in testimony submitted for the record of a hearing earlier this year at Beckley, W. Va., and I am pleased that the bill under consideration would:

Prohibit the use of chest X-rays as the sole basis for denying claims for black lung benefits;

Require the Social Security Administration to use tests other than the X-ray to establish the basis for a judgment that a miner is or is not totally disabled due to pneumoconiosis; and

Establish a presumption that miners with 15 years of experience who are disabled by a respiratory or pulmonary impairment are disabled by pneumoconiosis.

Mr. President, the committee also is to be commended for including provisions in the bill which will make it simpler for widows to establish claims. The hearing record contains many examples of the difficulties encountered by widows in their efforts to obtain medical records and other evidence of the disability of their husbands. The amendment requiring the Social Security Administration to consider affidavits from persons who

knew the miner, evidence submitted by a miner's physician and other supporting evidence, should be helpful to widows.

These and other provisions in the bill would enable miners and their families to have at their disposal every available tool to assist them in pursuing their claims for black lung benefits. That is as it should be. That is what Congress intended when it originally enacted the Federal Coal Mine Health and Safety Act of 1969.

I wish to thank the committee members for their efforts to correct several unintentional oversights in the 1969 statute, particularly with respect to benefits for orphans, and to express my support for the bill they have developed.

Mr. RANDOLPH. Mr. President, at this point I want to take time to express appreciation to my colleagues on the Labor and Public Welfare Committee who have toiled so diligently to make this an outstanding legislative effort. The distinguished ranking minority member of the Committee on Labor and Public Welfare, Senator JAVITS, has my deep thanks. My appreciation also goes to Senator SCHWEIKER and to Senator TAFT, who so ably assisted in the development of the legislation.

The able chairman of the committee, Senator WILLIAMS, provided valued guidance and assistance on this measure.

Outside the committee, I extend special thanks to my distinguished colleagues, the assistant majority leader, Senator ROBERT C. BYRD, and to Senator JOHN COOPER.

Additionally, Mr. President, as Senators know, capable and conscientious staff work is essential in the formulation of any legislation which is brought to the Senate floor. That staff work must be the combined efforts and cooperation of majority and minority staff of the concerned committee and the staffs in Senators' offices.

I particularly call attention to the work of the staff members of the Committee on Labor and Public Welfare: Gerald Feder, Eugene Mittenman, and Robert Humphreys; and the following staff personnel of Senators: William Wickens, office of Senator TAFT; Richard Siegel, office of Senator SCHWEIKER; W. R. Haley, office of Senator COOPER; and my staff members, James Harris and Philip McGance.

I extend to them my sincere appreciation and commendation for their assistance on this vital measure.

Finally, I want to express my deep appreciation to certain personnel of the Social Security Administration and the Department of Health, Education, and Welfare who provided unstintingly of their time in giving the committee the benefit of their valuable assistance in technical matters.

These persons whom I single out for special commendation are: Bernard Popick, Director, Bureau of Disability Insurance, Social Security Administration; Samuel E. Crouch, Deputy Director, Bureau of Disability Insurance; Lawrence Alpern, Deputy Chief Actuary, Social Security Administration; Gerald G. Altman, Jr., Cash Benefits Branch Chief, Social Security Division, Office of Gen-

eral Counsel; and Dr. Marcus M. Kay, Director, National Institute of Occupational Safety and Health.

I would also like to express my thanks to Edward L. Binder, technical adviser to the Director, Bureau of Disability Insurance; Harry C. Ballantyne, Assistant to the Deputy Chief Actuary, Social Security Administration; Geraldine Walter, secretary to the Deputy Chief Actuary; Edward Steinhouse, attorney, Office of General Counsel; Dr. J. William Floyd, Occupational Studies Unit Chief, National Institute of Occupational Safety and Health; Hugh L. Johnson, Assistant to the Commissioner, Social Security Administration; Henry Lynn and William Levine, Division of Coverage and Disability Benefits, Office of Program Evaluation and Planning.

Mr. RANDOLPH. Mr. President, do I have 30 seconds remaining?

The PRESIDING OFFICER. Yes.

Mr. RANDOLPH. I wish to state in an earnest manner as we close this debate that the passage of this bill, which is in the form of amendments to the House bill, will bring to conference a fair and equitable measure, fair to the Government that has the responsibility, fair to the coal industry, which has a responsibility, and fair also to the people who need this assistance.

I believe on all counts not only is a Senator justified in voting for this measure, but I believe he should eagerly cast his vote in favor of this important legislation, humanitarian in nature, but based on facts. I would hope that the Senate will repeat its fullest support for this measure as it did in 1969.

I thank my colleagues for their attention to the subject and for their support of the measure.

The PRESIDING OFFICER. All time has been yielded back. The question is on final passage of the bill as amended. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. ELLENDER), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Arkansas (Mr. McCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Wisconsin (Mr. NELSON), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) and the Senator from Montana (Mr. MANSFIELD) are absent on official business.

I also announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Louisiana (Mr.

ELLENDER), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Wyoming (Mr. McGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. SAXBE), the Senator from Vermont (Mr. STAFFORD), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Pennsylvania (Mr. SCOTT) is absent by leave of the Senate on official business.

The Senator from Connecticut (Mr. WEICKER) is absent on official business.

If present and voting, the Senator from Vermont (Mr. STAFFORD) and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 73, nays 0, as follows:

[No. 151 Leg.]

YEAS—73

Aiken	Curtis	Mathias
Allen	Dole	Miller
Allott	Dominick	Mondale
Anderson	Eagleton	Montoya
Baker	Ervin	Moss
Bayh	Fannin	Muskie
Beall	Fong	Pearson
Bennett	Fulbright	Percy
Bible	Gambrell	Proxmire
Boggs	Goldwater	Randolph
Brock	Gravel	Roth
Brooke	Griffin	Schweiker
Buckley	Gurney	Smith
Burdick	Hansen	Spong
Byrd	Hart	Stennis
Harry F., Jr.	Hartke	Stevens
Byrd, Robert C.	Hatfield	Stevenson
Cannon	Hollings	Symington
Case	Hruska	Taft
Chiles	Hughes	Talmadge
Church	Inouye	Thurmond
Cook	Javits	Tunney
Cooper	Jordan, Idaho	Williams
Cotton	Kennedy	Young
Cranston	Magnuson	

NAYS—0

NOT VOTING—27

Bellmon	Mansfield	Pastore
Bentsen	McClellan	Pell
Eastland	McGee	Ribicoff
Ellender	McGovern	Saxbe
Harris	McIntyre	Scott
Humphrey	Metcalf	Sparkman
Jackson	Mundt	Stafford
Jordan, N.C.	Nelson	Tower
Long	Packwood	Weicker

So the bill (H.R. 9212) was passed.
Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical corrections in the engrossed bill.

The PRESIDING OFFICER. Without objection, the Secretary of the Senate will be so authorized.

92^D CONGRESS
2^D SESSION

H. R. 9212

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1972

Ordered to be printed with the amendments of the Senate numbered

AN ACT

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~(1) That (a) (1) section 412(a) of the Federal Coal Mine~~
4 *That (a) this Act may be cited as the "Black Lung Bene-*
5 *fits Act of 1972".*

6 *(b) (1) Section 412(a) of the Federal Coal Mine*
7 Health and Safety Act of 1969 is amended by redesignating
8 paragraph (3) as paragraph (4), and by inserting after
9 paragraph (2) the following new paragraph:

10 “(3) In the case of the child or children of a miner

1 whose death is due to pneumoconiosis or of a miner who is
 2 receiving benefits under this part at the time of his death,
 3 ~~(2)and who leaves no widow,~~ or who was totally disabled by
 4 pneumoconiosis at the time of his death, and in the case of the
 5 child or children of a widow who is receiving benefits under
 6 this part at the time of her death, benefits shall be paid to
 7 such child or children as follows: If there is one such child,
 8 he shall be paid benefits at the rate specified in paragraph
 9 (1). If there is more than one such child, the benefits paid
 10 shall be divided equally among them and shall be paid at a
 11 rate equal to the rate specified in paragraph (1), increased
 12 by 50 per centum of such rate if there are two such children,
 13 by 75 per centum of such rate if there are three such chil-
 14 dren, and by 100 per centum of such rate if there are more
 15 than three such children: *Provided*, That benefits shall only
 16 be paid to a child for so long as he meets the criteria for
 17 the term 'child' contained in section ~~(3)402(g).~~ 402(g):
 18 *And provided further*, That no entitlement to benefits as a
 19 child shall be established under this paragraph (3) for any
 20 month for which entitlement to benefits as a widow is estab-
 21 lished under paragraph (2)."

22 (2) Section 412 (a) of such Act is further amended
 23 by adding at the end thereof the following new ~~(4)para-~~
 24 ~~graph:~~ paragraphs:

25 ~~(5)~~"(5) In the case of the dependent parent or parents

1 of a miner whose death is due to pneumoconiosis, or of a
2 miner who is receiving benefits under this part at the time
3 of his death, or of a miner who was totally disabled by
4 pneumoconiosis at the time of his death, and who is not
5 survived by a widow or a child, or in the case of the de-
6 pendent surviving brother(s) or sister(s) of such a miner
7 who is not survived by a widow, child, or parent, benefits
8 shall be paid under this part to such parent(s), or to such
9 brother(s) or sister(s), at the rate specified in paragraph
10 (3) (as if such parent(s) or such brother(s) or sister(s),
11 were the children of such miner): Provided, That no bene-
12 fits shall be paid to any parent for any month for which a
13 widow or child has established entitlement to such benefits
14 and that no benefits shall be paid to any brother(s) or
15 sister(s) for any month for which a widow, child, or par-
16 ent has established such entitlement. In determining whether
17 a claimant is a parent, brother, or sister of a miner for
18 purposes of this paragraph, the Secretary shall apply such
19 law as would be applied in determining the devolution
20 of intestate personal property by the courts of the State
21 in which such miner was domiciled at the time of his
22 death, or, if such miner was not so domiciled in any State,
23 by the courts of the District of Columbia. Claimants who
24 according to such law would have the same status relative
25 to taking intestate personal property as a parent, brother, or

1 *sister, shall be deemed such. Any benefit under this para-*
2 *graph for a month prior to the month in which a claim for*
3 *such benefit is filed shall be reduced to any extent that may*
4 *be necessary, so that it will not render erroneous any benefit*
5 *which, before the filing of such claimant, the Secretary has*
6 *certified for payment for such prior months. As used in*
7 *this paragraph 'dependent' means that such parent, brother,*
8 *or sister was receiving at least one-half of his support from*
9 *such miner, as determined in accordance with regulations*
10 *prescribed by the Secretary, for at least one year immediately*
11 *preceding the miner's death. Proof of such support shall be*
12 *filed by such claimant within two years after the month in*
13 *which this amendment is enacted, or within two years after the*
14 *miner's death, whichever is the later. Any such proof which is*
15 *filed after the expiration of such period shall be deemed to have*
16 *been filed within such period if it is shown to the satisfaction*
17 *of the Secretary that there was good cause for failure to*
18 *file such proof within such period. The determination of*
19 *what constitutes good cause for purposes of this para-*
20 *graph shall be made in accordance with regulations of the*
21 *Secretary.*

22 ~~(6)~~“(5) (6) If an individual's benefits would be increased
23 under ~~(7)~~ clause paragraph (4) of this subsection because he
24 or she has one or more dependents, and it appears to the
25 Secretary that it would be in the interest of any such de-

1 pendent to have the amount of such increase in benefits (to
 2 the extent attributable to such dependent) certified to a
 3 person other than such individual, then the Secretary may,
 4 under regulations prescribed by him, ~~(8)~~ *accept an applica-*
 5 *tion therefor from such dependent, where necessary, and*
 6 certify the amount of such increase in benefits (to the
 7 extent so attributable) not to such individual but di-
 8 rectly to such dependent or to another person for the use
 9 and benefit of such dependent; and any payment made
 10 under this clause, if otherwise valid under this title, shall
 11 be a complete settlement and satisfaction of all claims,
 12 rights, and interests in and to such payment."

13 ~~(9)(b)(1)~~ *(c)(1)* ~~(10)~~ *Section Sections 412 (b) (11),*
 14 *414(e), and 424 of such Act (12)is are* amended by insert-
 15 ing after "widow" each time it appears the following:
 16 ~~(13)"or child"~~ *"child, parent, brother, or sister". and sec-*
 17 *tion 421(a) is amended by inserting after "widows" the fol-*
 18 *lowing: ", children, parents, brothers, or sisters, as the case*
 19 *may be,".*

20 ~~(14)(2)~~ *Section 402* of such Act is amended by adding at
 21 the end thereof the following new subsection:

22 ~~"(g)~~ *The term 'child' means an individual who is un-*
 23 *married and (1) under eighteen years of age, or (2) inea-*
 24 *pable of self-support because of physical or mental disability*
 25 *which arose before he reached eighteen years of age or, in*

1 the case of a student, before he ceased to be a student, or
2 ~~(3)~~ a student. Such term includes stepchildren, adopted
3 children, and posthumous children. For the purpose of this
4 subsection the term 'student' means an individual under
5 twenty-three years of age who has not completed four years
6 of education beyond the high school level and who is regu-
7 larly pursuing a full-time course of study or training at an
8 institution which is—

9 “(1) a school or college or university operated or
10 directly supported by the United States, or by a State
11 or local government or political subdivision thereof;

12 “(2) a school or college or university which has
13 been accredited by a State or by a State-recognized or
14 nationally recognized accrediting agency or body;

15 “(3) a school or college or university not so ac-
16 credited but whose credits are accepted, on transfer, by
17 at least three institutions which are so accredited, for
18 credit on the same basis as if transferred from an institu-
19 tion so accredited; or

20 “(4) an additional type of educational or training
21 institution as defined by the Secretary of Health, Edu-
22 cation, and Welfare.

23 Such an individual is deemed not to have ceased to be a
24 student during an interim between school years if the interim
25 is not more than four months and if he shows to the satis-

1 faction of the Secretary that he has a bona fide intention
 2 of continuing to pursue a full-time course of study or train-
 3 ing during the semester or other enrollment period immedi-
 4 ately after the interim or during periods of reasonable
 5 duration in which, in the judgment of the Secretary, he is
 6 prevented by factors beyond his control from pursuing his
 7 education. A student whose twenty-third birthday occurs
 8 during a semester or other enrollment period is deemed a
 9 student until the end of the semester or other enrollment
 10 period."

11 (2) Section 402(a) of such Act is amended to read:

12 "(a) The term 'dependent' means—

13 "(1) a child as defined in subsection (g) without
 14 regard to subparagraph (2)(B)(ii) thereof; or

15 "(2) a wife who is a member of the same house-
 16 hold as the miner, or is receiving regular contributions
 17 from the miner for her support, or whose husband is a
 18 miner who has been ordered by a court to contribute to
 19 her support, or who meets the requirements of section
 20 216(b) (1) or (2) of the Social Security Act. The
 21 determination of an individual's status as the 'wife' of a
 22 miner shall be made in accordance with section 216(h)
 23 (1) of the Social Security Act as if such miner were the
 24 'insured individual' referred to therein. The term 'wife'
 25 also includes a 'divorced wife' as defined in section 216

1 *(d)(1) of the Social Security Act who is receiving at*
2 *least one-half of her support, as determined in accordance*
3 *with regulations prescribed by the Secretary, from the*
4 *miner, or is receiving substantial contributions from the*
5 *miner (pursuant to a written agreement), or there is in*
6 *effect a court order for substantial contributions to her*
7 *support from such miner.”.*

8 *(3) Section 402(e) of such Act is amended to read:*

9 *“(e) The term ‘widow’ includes the wife living with*
10 *or dependent for support on the miner at the time of his*
11 *death, or living apart for reasonable cause or because of*
12 *his desertion, or who meets the requirements of section*
13 *216(c)(1), (2), (3), (4), or (5), and section 216(k) of*
14 *the Social Security Act, who is not married. The deter-*
15 *mination of an individual’s status as the ‘widow’ of a*
16 *miner shall be made in accordance with section 216(h)(1)*
17 *of the Social Security Act as if such miner were the ‘insured*
18 *individual’ referred to therein. Such term also includes a*
19 *‘surviving divorced wife’ as defined in section 216(d)(2)*
20 *of the Social Security Act who for the month preceding the*
21 *month in which the miner died, was receiving at least one-*
22 *half of her support, as determined in accordance with regu-*
23 *lations prescribed by the Secretary, from the miner, or was*
24 *receiving substantial contributions from the miner (pursuant*
25 *to a written agreement) or there was in effect a court order*

1 *for substantial contributions to her support from the miner*
 2 *at the time of his death.”*

3 *(4) Section 402 of such Act is amended by adding at*
 4 *the end thereof the following new subsection:*

5 *“(g) The term ‘child’ means a child or a step-child who*
 6 *is—*

7 *“(1) unmarried; and*

8 *“(2)(A) under eighteen years of age, or*

9 *“(B)(i) under a disability as defined in section*
 10 *223(d) of the Social Security Act,*

11 *“(ii) which began before the age specified in section*
 12 *202(d)(1)(B)(ii) of the Social Security Act, or,*
 13 *in the case of a student, before he ceased to be a student;*
 14 *or*

15 *“(3) a student.*

16 *The term ‘student’ means a ‘full-time student’ as defined in*
 17 *section 202(d)(7) of the Social Security Act, or a ‘student’*
 18 *as defined in section 8101(17) of title 5, United States Code.*

19 *The determination of an individual’s status as the ‘child’ of*
 20 *the miner or widow, as the case may be, shall be made in*
 21 *accordance with section 216(h) (2) or (3) of the Social*
 22 *Security Act as if such miner or widow were the ‘insured*
 23 *individual’ referred to therein.”*

24 ~~(15)(3)~~ *(5)(A) Section 413 (b) of such Act is amended by*

1 adding at the end thereof the following new sentence: **(16)**
2 ~~“In carrying out his responsibilities under this part, the Sec-~~
3 ~~retary may prescribe regulations consistent with the provi-~~
4 ~~sions of sections 204, 205 (j), 205 (k), and 206 of the Social~~
5 ~~Security Act.”~~ *“The provisions of sections 204, 205 (a), (b),*
6 *(d), (e), (f), (g), (h), (j), (k), and (l), 206, 207, and*
7 *208 of the Social Security Act shall be applicable under this*
8 *part with respect to a miner, widow, child, parent, brother,*
9 *sister, or dependent, as if benefits under this part were benefits*
10 *under title II of such Act.”*

11 **(17)(B)** *Only section 205 (b), (g), and (h) of those sec-*
12 *tions of the Social Security Act recited in subparagraph (A)*
13 *of this paragraph shall be effective as of the date provided in*
14 *subsection (d) of this section.*

15 ~~**(18)(4)**~~ *(6)* Section 414 (a) of such Act is amended by in-
16 sserting “(1)” after “(a)” and by adding the following new
17 ~~**(19)**~~ ~~paragraph~~ *paragraphs* at the end thereof:

18 “(2) In the case of a claim by a ~~**(20)**~~ ~~child,~~ child this
19 paragraph shall apply, notwithstanding any other provision
20 of this part.

21 “(A) If such claim is filed within six months following
22 the month in which this paragraph is enacted, and if entitle-
23 ment to benefits is established pursuant to such claim, such
24 entitlement shall be effective retroactively from Decem-
25 ber 30, 1969, or from the date such child would have been

1 first eligible for such benefit payments had section 412 (a)
2 (3) been applicable since December 30, 1969, whichever is
3 the lesser period. If on the date such claim is filed the claim-
4 ant is not eligible for benefit payments, but was eligible
5 ~~(21)~~ *at any period of time* during the period from December
6 30, 1969, to the date such claim is filed, entitlement shall be
7 effective for the duration of eligibility during such period.

8 “(B) If such claim is filed after six months following
9 the month in which this paragraph is enacted, and if entitle-
10 ment to benefits is established pursuant to such claim, such
11 entitlement shall be effective retroactively from a date twelve
12 months preceding the date such claim is filed, or from the
13 date such child would have been first eligible for such benefit
14 payments had section 412 (a) (3) been applicable since
15 December 30, 1969, whichever is the lesser period. If on
16 the date such claim is filed the claimant is not eligible for
17 benefits payments, but was eligible ~~(22)~~ *at any period of time*
18 during the period from a date twelve months preceding the
19 date such claim is filed, to the date such claim is filed, entitle-
20 ment shall be effective for the duration of eligibility during
21 such period.

22 ~~(23)~~ ~~“(C) Any benefit under subparagraph (A) or (B) for~~
23 ~~a month prior to the month in which a claim is filed shall be~~
24 ~~reduced, to any extent that may be necessary, so that it will~~
25 ~~not render erroneous any benefit which, before the filing of~~

1 such claim, the Secretary has certified for payment for such
2 prior month.

3 ~~(24)~~~~“(D)~~ *“(C) No claim for benefits under this part, in the*
4 *case of a claimant who is a child (25)of a miner or widow*
5 *(as described in section 412(a)(3)) shall be considered*
6 *unless it is filed within six month after the death of (26)such*
7 *miner or widow his father or mother (whichever last oc-*
8 *curred) or by December 31, (27)1972, 1973, whichever is*
9 *the later.*

10 ~~(28)~~*“(D) Any benefit under subparagraph (A) or (B) for*
11 *a month prior to the month in which a claim is filed shall be*
12 *reduced, to any extent that may be necessary, so that it will*
13 *not render erroneous any benefit which, before the filing of*
14 *such claim, the Secretary has certified for payment for such*
15 *prior month.*

16 ~~(29)~~*“(3) No claim for benefits under this part, in the case of*
17 *a claimant who is a parent, brother, or sister shall be con-*
18 *sidered unless it is filed within six months after the death of*
19 *the miner or by December 31, 1973, whichever is the later.”*

20 ~~(30)~~*(d) Except as otherwise provided in this section, the*
21 *amendments made by this section shall be effective as of*
22 *December 30, 1969.*

23 ~~(31)~~~~“(5)~~ *Subsections 422 (e) and (d) of such Act are*
24 *amended by striking out ‘section 412(a)’ wherever it ap-*

1 ~~appears and inserting in lieu thereof 'section 412(a) (1), (2),~~
 2 ~~and (4)'.’’~~

3 SEC. 2. (a) Section 412(b) of the Federal Coal Mine
 4 Health and Safety Act of 1969 is amended by adding at the
 5 end thereof the following: ~~(32)~~“~~This part shall not be con-~~
 6 ~~sidered a workmen’s compensation law or plan for purposes~~
 7 ~~of section 224 of such Act.’’~~ “*In applying the provisions of*
 8 *section 224(a) of the Social Security Act to benefits under*
 9 *this part, paragraph (5) thereof shall be deemed to read ‘100*
 10 *per centum of his “average current earnings”’, or.’’*

11 (b) The amendment made by this section shall be
 12 effective as of December 30, 1969.

13 ~~(33)~~SEC. 2. (a) Sections 401, 411(e)(1), 411(e)(2),
 14 and 422(h) of the Federal Coal Mine Health and Safety Act
 15 of 1969 are each amended by striking out “underground”.

16 ~~(b)~~ Sections 402(b), 402(d), 422(a), and 423(a)
 17 of such Act are each amended by striking out “an under-
 18 ground” and inserting “a” in lieu thereof.

19 ~~(c)~~ The amendments made by this section shall be
 20 effective as of December 30, 1969.

21 ~~(34)~~SEC. 3. (a) Section 402(b) of the Federal Coal Mine
 22 Health and Safety Act of 1969 is amended by striking out
 23 all after the word “lung” and inserting the following new
 24 phrase: ”, including its sequelae, arising out of employment
 25 in a coal mine.”

1 (b) Section 402(f) is amended to read as follows:

2 “(f) The term ‘total disability’ has the meaning given
3 it by regulations of the Secretary of Health, Education, and
4 Welfare, except that such regulations shall provide that a
5 miner shall be considered totally disabled when pneumo-
6 coniosis prevents him from engaging in gainful employment
7 requiring the skills and abilities comparable to those of any
8 employment in a mine or mines in which he previously en-
9 gaged with some regularity and over a substantial period of
10 time. Such regulations shall not provide more restrictive cri-
11 teria than those applicable under section 223(d) of the Social
12 Security Act.”

13 (c)(1) Section 411(a) of such Act is further amended
14 by adding at the end thereof the following: “or who at the
15 time of his death was totally disabled by pneumoconiosis.”

16 (2) Section 401 is amended by inserting after the word
17 “disease” each place it appears the following: “or who were
18 totally disabled by this disease at the time of their deaths”

19 (3) Section 411(c)(3) is amended by inserting after
20 “pneumoconiosis,” the following: “or that at the time of his
21 death he was totally disabled by pneumoconiosis.”

22 (d) Section 411(c) of such Act is amended by striking
23 the word “and” at the end of paragraph (2), by striking
24 the period at the end of paragraph (3), inserting “; and”,

1 and by adding at the end thereof the following new para-
2 graph:

3 “(4) if a miner was employed for fifteen years or
4 more in one or more underground coal mines, and if
5 there is a chest roentgenogram submitted in connection
6 with such miner’s, his widow’s, his child’s, his parent’s,
7 his brother’s, his sister’s, or his dependent’s claim under
8 this title and it is interpreted as negative with respect to
9 the requirements of paragraph (3) of this subsection, and
10 if other evidence demonstrates the existence of a totally
11 disabling respiratory or pulmonary impairment, then
12 there shall be a rebuttable presumption that such miner
13 is totally disabled due to pneumoconiosis, that his death
14 was due to pneumoconiosis, or that at the time of his
15 death he was totally disabled by pneumoconiosis. In the
16 case of a living miner, a wife’s affidavit may not be used
17 by itself to establish the presumption. The Secretary shall
18 not apply all or a portion of the requirement of this para-
19 graph that the miner work in an underground mine where
20 he determines that conditions of a miner’s employment
21 in a coal mine other than an underground mine were
22 substantially similar to conditions in an underground
23 mine. The Secretary may rebut such presumption only
24 by establishing that (A) such miner does not, or did not,

1 *have pneumoconiosis, or that (B) his respiratory or*
2 *pulmonary impairment did not arise out of, or in con-*
3 *nection with, employment in a coal mine.”*

4 *(e) Section 411(b) is amended by inserting immedi-*
5 *ately after the penultimate sentence thereof the following*
6 *new sentence: “Final regulations required for implementation*
7 *of any amendments to this title shall be promulgated and*
8 *published in the Federal Register at the earliest practicable*
9 *date after the date of enactment of such amendments, and in*
10 *no event later than the end of the fourth month following the*
11 *month in which such amendments are enacted.”*

12 *(f) Section 421(b)(2)(C) of such Act is amended*
13 *by striking the word “those” and inserting in lieu thereof*
14 *“section 402(f) of this title and to those standards”, and by*
15 *substituting for the words “by section 411” the words “under*
16 *part B of this title”.*

17 *(g) The first sentence of section 413(b) of such Act*
18 *is amended by inserting before the period at the end thereof*
19 *the following: “, but no claim for benefits under this part*
20 *shall be denied solely on the basis of the results of a chest*
21 *roentgenogram. In determining the validity of claims under*
22 *this part, all relevant evidence shall be considered, including,*
23 *where relevant, medical tests such as blood gas studies, X-ray*
24 *examination, electrocardiogram, pulmonary function studies,*
25 *or physical performance tests, and any medical history, evi-*

1 *dence submitted by the claimant's physician, or his wife's*
 2 *affidavits, and in the case of a deceased miner, other appropri-*
 3 *ate affidavits of persons with knowledge of the miner's physi-*
 4 *cal condition, and other supportive materials."*

5 *(h) The amendments made by this section shall be*
 6 *effective as of December 30, 1969.*

7 SEC. 4. Title IV of the Federal Coal Mine Health and
 8 Safety Act of 1969 is amended—

9 (1) by striking out "1971" where it appears
 10 in section 414(b), and inserting in lieu thereof
 11 ~~(35)~~"1973", "1972",

12 (2) by striking out "1972" each place it appears
 13 and inserting in lieu thereof ~~(36)~~"1974", "1973", *other*
 14 *than in section 421(b)(1),*

15 (3) by striking out "1973" each time it appears
 16 and inserting in lieu thereof ~~(37)~~"1975", "1974",
 17 ~~(38)~~and

18 ~~(39)~~(4) by striking out "seven" where it appears in
 19 section ~~422(c)~~ and inserting in lieu thereof "nine".

20 ~~(40)~~(4) by adding a new subsection (c) to section 421
 21 thereof as follows:

22 "(c) Final regulations required for implementation of
 23 any amendments to this part shall be promulgated and pub-
 24 lished in the Federal Register at the earliest practicable date
 25 after the date of enactment of such amendments, and in no

1 event later than the end of the fourth month following the
2 month in which such amendments are enacted.”,

3 (41)(5) by amending section 426(a) of such Act to read
4 as follows:

5 “SEC. 426. (a) The Secretary of Labor and the Sec-
6 retary of Health, Education, and Welfare are authorized to
7 issue such regulations as are appropriate to carry out the
8 provisions of this title. Such regulations shall be issued in
9 conformity with subsections (b), (c), (d), and (e) of
10 section 553 of title 5 of the United States Code.”,

11 (42)(6) by inserting immediately after section 426 there-
12 of, the following new section:

13 “SEC. 427. (a) The Secretary of Health, Education, and
14 Welfare is authorized to enter into contracts with, and make
15 grants to, public and private agencies and organizations and
16 individuals for the construction, purchase, and operation of
17 fixed-site and mobile clinical facilities for the analysis, ex-
18 amination, and treatment of respiratory and pulmonary im-
19 pairments in active and inactive coal miners. The Secretary
20 shall coordinate the making of such contracts and grants
21 with the Appalachian Regional Commission.

22 “(b) The Secretary of Health, Education, and Welfare
23 shall initiate research within the National Institute for Occu-
24 pational Safety and Health, and is authorized to make re-
25 search grants to public and private agencies and organiza-

1 tions and individuals for the purpose of devising simple and
2 effective tests to measure, detect, and treat respiratory and
3 pulmonary impairments in active and inactive coal miners.
4 Any grant made pursuant to this subsection shall be condi-
5 tioned upon all information, uses, products, processes, patents,
6 and other developments resulting from such research being
7 available to the general public, except to the extent of such
8 exceptions and limitations as the Secretary of Health, Educa-
9 tion, and Welfare may deem necessary in the public interest.

10 “(c) There is hereby authorized to be appropriated for
11 the purpose of subsection (a) of this section \$10,000,000 for
12 each of the fiscal years ending June 30, 1973, June 30, 1974,
13 and June 30, 1975. There are hereby authorized to be ap-
14 propriated for the purposes of subsection (b) of this section
15 such sums as are necessary.”,

16 (43)(7) by adding at the end thereof the following new
17 section:

18 “SEC. 428. (a) No operator shall discharge or in any
19 other way discriminate against any miner employed by him
20 by reason of the fact that such miner is suffering from
21 pneumoconiosis or other respiratory or pulmonary impair-
22 ment. No person shall cause or attempt to cause an operator
23 to violate this section. For the purposes of this subsection the
24 term ‘miner’ shall not include any person who has been found
25 to be totally disabled.

1 “(b) Any miner who believes that he has been dis-
2 charged or otherwise discriminated against by any person
3 in violation of subsection (a) of this section, or any repre-
4 sentative of such miner may, within ninety days after
5 such violation occurs, apply to the Secretary for a review
6 of such alleged discharge or discrimination. A copy of the
7 application shall be sent to such person who shall be the
8 respondent. Upon receipt of such application, the Secre-
9 tary shall cause such investigation to be made as he deems
10 appropriate. Such investigation shall provide an oppor-
11 tunity for a public hearing at the request of any party to
12 enable the parties to present information relating to such
13 violation. The parties shall be given written notice of the
14 time and place of the hearing at least five days prior to
15 the hearing. Any such hearing shall be of record and shall
16 be subject to section 554 of title 5 of the United States Code.
17 Each hearing examiner presiding under this section and
18 under the provisions of titles I, II, and III of this Act shall
19 receive compensation at a rate not less than that prescribed for
20 GS-16 under section 5332 of title 5, United States Code.
21 Upon receiving the report of such investigation, the Secre-
22 tary shall make findings of fact. If he finds that such vio-
23 lation did occur, he shall issue a decision, incorporating
24 an order therein, requiring the person committing such viola-
25 tion to take such affirmative action as the Secretary deems

1 *appropriate, including, but not limited to, the rehiring or re-*
2 *instatement of the miner to his former position with back pay.*
3 *If he finds that there was no such violation, he shall issue an*
4 *order denying the application. Such orders shall incorporate*
5 *the Secretary's findings therein.*

6 *“(c) Whenever an order is issued under this subsection*
7 *granting relief to a miner at the request of such miner, a sum*
8 *equal to the aggregate amount of all costs and expenses (in-*
9 *cluding the attorney's fees) as determined by the Secretary to*
10 *have been reasonably incurred by such miner for, or in con-*
11 *nection with, the institution and prosecution of such proceed-*
12 *ings, shall be assessed against the person committing the*
13 *violation.”,*

14 *(44)(8) by adding at the end thereof the following new*
15 *section:*

16 *“SEC. 429. There is authorized to be appropriated to the*
17 *Secretary of Labor such sums as may be necessary to carry*
18 *out his responsibilities under this title. Such sums shall re-*
19 *main available until expended.”,*

20 *(45)(9) by striking “7” in section 422(a), and*

21 *(46)(10) by adding at the end thereof the following new*
22 *section:*

23 *“SEC. 430. The amendments made by the Black Lung*
24 *Benefits Act of 1972 to part B of this title shall, to the extent*
25 *appropriate, also apply to part C of this title.”*

1 ~~(47)~~SEC. 5. The first sentence of section ~~413(b)~~ of such
 2 Act is amended by inserting before the period at the end
 3 thereof the following: “, but no claim for benefits under
 4 this part shall be denied solely on the basis of the results
 5 of a chest roentgenogram”.

6 ~~(48)~~SEC. 5. (a) Sections 401, 411(c)(1), 411(c)(2), and
 7 422(h) of the Federal Coal Mine Health and Safety Act of
 8 1969 are each amended by striking out “underground.”

9 (b) Sections 402(b), 402(d), 422(a), and 423(a) of
 10 such Act are each amended by striking out “an underground”
 11 and inserting “a” in lieu thereof.

12 (c) The amendments made by this section shall be
 13 effective as of December 30, 1969.

14 ~~(49)~~SEC. 6. Title IV of the Federal Coal Mine Health and
 15 Safety Act of 1969 is amended by adding “or” at the end
 16 of section 422(e)(1) thereof, by striking “; or” at the end
 17 of section 422(e)(2) thereof and inserting a period, and by
 18 striking section 422(e)(3) thereof.

19 ~~(50)~~SEC. 7. Title IV of the Federal Coal Mine Health and
 20 Safety Act of 1969 is amended by adding at the end thereof
 21 the following new section:

22 “SEC. 431. The Secretary of Health, Education, and
 23 Welfare shall, upon enactment of the Black Lung Benefits
 24 Act of 1972, generally disseminate to all persons who filed
 25 claims under this title prior to the date of enactment of such

1 *Act the changes in the law created by such Act, and forthwith*
2 *advise all persons whose claims have been denied for any rea-*
3 *son or whose claims are pending, that their claims will be re-*
4 *viewed with respect to the provisions of the Black Lung*
5 *Benefits Act of 1972."*

6 **(51)** *SEC. 8. Title IV of the Federal Coal Mine Health and*
7 *Safety Act of 1969 is amended by adding at the end of part*
8 *B thereof the following new section:*

9 *"SEC. 415. (a) Notwithstanding any other provision in*
10 *this title, for the purpose of assuring the uninterrupted re-*
11 *ceipt of benefits by claimants at such time as responsibility*
12 *for administration of the benefits program is assumed by*
13 *either a State workmen's compensation agency or the Secre-*
14 *tary of Labor, any claim for benefits under this part filed*
15 *during the period from January 1, 1973 to December 31,*
16 *1973, shall be considered and determined in accordance with*
17 *the procedures of this section. With respect to any such*
18 *claim—*

19 *"(1) Such claim shall be determined and, where*
20 *appropriate under this part or section 424 of this title,*
21 *benefits shall be paid with respect to such claim by the*
22 *Secretary of Labor.*

23 *"(2) The manner and place of filing such claim*
24 *shall be in accordance with regulations issued jointly by*
25 *the Secretary of Health, Education, and Welfare and the*

1 *Secretary of Labor, which regulations shall provide,*
2 *among other things, that such claims may be filed in*
3 *district offices of the Social Security Administration and*
4 *thereafter transferred to the jurisdiction of the Depart-*
5 *ment of Labor for further consideration.*

6 *“(3) The Secretary of Labor shall promptly notify*
7 *any operator who he believes, on the basis of infor-*
8 *mation contained in the claim, or any other information*
9 *available to him, may be liable to pay benefits to the*
10 *claimant under part C of this title for any month after*
11 *December 31, 1973.*

12 *“(4) In determining such claims, the Secretary of*
13 *Labor shall, to the extent appropriate, follow the proce-*
14 *dures described in sections 19 (b), (c), and (d) of*
15 *Public Law 803, 69th Congress (44 Stat. 1424, ap-*
16 *proved March 4, 1927), as amended.*

17 *“(5) Any operator who has been notified of the*
18 *pendency of a claim under paragraph 4 of this subsection*
19 *shall be bound by the determination of the Secretary of*
20 *Labor on such claim as if the claim had been filed pur-*
21 *suant to part C of this title and section 422 thereof had*
22 *been applicable to such operator. Nothing in this para-*
23 *graph shall require any operator to pay any benefits for*
24 *any month prior to January 1, 1974.*

25 *“(b) The Secretary of Labor, after consultation with*

1 *the Secretary of Health, Education, and Welfare, may issue*
2 *such regulations as are necessary or appropriate to carry out*
3 *the purpose of this section.”*

4 **(52)** *SEC. 9. Section 422(f) of title IV of the Federal Coal*
5 *Mine Health and Safety Act of 1969 is amended by inserting*
6 *“(1)” after “(f)” and by adding a new paragraph (2) as*
7 *follows:*

8 *“(2) Any claim for benefits under this section in the case*
9 *of a living miner filed on the basis of eligibility under section*
10 *411(c)(4) of this title, shall be filed within three years from*
11 *the date of last exposed employment in a coal mine or, in the*
12 *case of death from a respiratory or pulmonary impairment*
13 *for which benefits would be payable under section 411(c)(4)*
14 *of this title, incurred as the result of employment in a coal*
15 *mine, shall be filed within fifteen years from the date of last*
16 *exposed employment in a coal mine.”*

Passed the Senate with amendments April 17, 1972.

Attest:

FRANCIS R. VALEO,

Secretary.

92^d CONGRESS
2^d SESSION

H. R. 9212

AN ACT

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1972

Ordered to be printed with the amendments of the
Senate numbered

LIAMS, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. EAGLETON, Mr. STEVENSON, Mr. HUGHES, Mr. JAVITS, Mr. SCHWEIKER, Mr. PACKWOOD, Mr. TAFT, and Mr. STAFFORD conferees on the part of the Senate.

BLACK LUNG BENEFITS ACTS OF
1972

Mr. RANDOLPH. Mr. President, at the request of the chairman of the Committee on Labor and Public Welfare (Mr. WILLIAMS), I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9212.

The PRESIDING OFFICER (Mr. Brock) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. RANDOLPH. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WIL-

APPOINTMENT OF CONFEREES ON
H.R. 9212, FEDERAL COAL MINE
HEALTH AND SAFETY ACT

Mr. PERKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees: Messrs. PERKINS, DENT, PUCINSKI, BURTON, GAYDOS, ERLBORN, ESCH, and STEIGER of Wisconsin.

BLACK LUNG BENEFITS ACT OF 1972

MAY 3, 1972.—Ordered to be printed

Mr. RANDOLPH, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 9212]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, having met after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 8, 30, 32, 33, 41, 48, and 49.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 6, 7, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 36, 37, 38, 42, 44, 45, and 47, and agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

“(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or of a miner who is receiving benefits under this part at the time of his death, or of a miner who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, or in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3)

(as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under Title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is—

“(1) (A) under eighteen years of age, or

“(B) under a disability as defined in section 223(d) of the Social Security Act which began before the age specified in section 202(d)(1)(B)(ii) of such Act, or in the case of a student, before he ceased to be a student, or

“(C) a student as defined in section 402(g); or

“(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act, during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, ‘dependent’ means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes ‘living in the miner's household,’ ‘totally dependent upon the miner for support,’ and ‘good cause,’ shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)-(l) of the Social Security Act, as if the benefit under this paragraph were a benefit under section 202 of such Act.

And the Senate agree to the same.

Amendment numbered 13:

That the House recede from its disagreement with the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows:

On page 4, line 14, of the Senate-engrossed amendments strike out “child” and insert *child*; and the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement with the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

On page 7, line 1. of the Senate engrossed amendments, strike out "(3)" and insert (C).

And the Senate agree to the same.

Amendment numbered 34:

That the House recede from its disagreement with the amendment of the Senate numbered 34, and agree to the same with amendments, as follows:

On page 9 of the Senate engrossed amendments, beginning with line 21, strike out all through line 4 on page 10.

On page 10 of the Senate engrossed amendments, strike out line 5 and insert *SEC. 4. (a) Section 402(f) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:*

On page 10, line 17, of the Senate engrossed amendments, strike out "(c)" and insert (b).

On page 11, line 1, of the Senate engrossed amendments, strike out "(d)" and insert (c).

On page 12, line 6, of the Senate engrossed amendments, strike out "(e)" and insert (d).

On page 12, line 14, of the Senate engrossed amendments, strike out "(f)" and insert (e).

On page 12, line 19, of the Senate engrossed amendments, strike out "(g)" and insert (f).

On page 13, line 7, of the Senate engrossed amendments, strike out "(h)" and insert (g).

On page 7, line 18, of the House engrossed bill, strike "4" and insert in lieu thereof 5.

And the Senate agree to the same.

Amendment numbered 35:

That the House recede from its disagreement with the amendment of the Senate numbered 35, and agree to the same with amendments, as follows:

On page 7, line 20, of the House engrossed bill, strike out "1971" and insert "December 31, 1971".

In lieu of the matter proposed to be inserted by such amendment insert "June 30, 1973".

And the Senate agree to the same.

Amendment numbered 39:

That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with amendments as follows:

Restore the matter proposed to be stricken out by the Senate amendment and—

On page 8, line 4, of the House engrossed bill, delete "'nine.'" and insert in lieu thereof "twelve".

And the Senate agree to the same.

Amendment numbered 40 :

That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with amendments as follows :

On page 13, line 19, of the Senate engrossed amendments, strike out "(4)" and insert in lieu thereof (5).

On page 14, line 3, of the Senate engrossed amendments, strike out "fourth" and insert in lieu thereof *sixth*.

And the Senate agree to the same.

Amendment numbered 43 :

That the House recede from its disagreement with the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows :

On page 16 of the Senate engrossed amendments, strike lines 4 and 5 and insert in lieu thereof *pneumoconiosis. No person shall cause or attempt to cause an operator*; and the Senate agree to the same.

Amendment numbered 46 :

That the House recede from its disagreement to the amendment of the Senate numbered 46, and agree to the same with an amendment as follows :

On page 18, line 12, of the Senate engrossed amendments strike the period and insert in lieu thereof a colon and the following: *Provided, That for the purpose of determining the applicability of the presumption established by section 411(c)(4) to claims filed under Part C of this title, no period of employment after June 30, 1971, shall be considered in determining whether a miner was employed at least fifteen years in one or more underground mines.*

And the Senate agree to the same.

Amendment numbered 50 :

That the House recede from its disagreement with the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows :

On page 19, line 8, of the Senate engrossed amendments, strike out "7" and insert 6.

And the Senate agree to the same.

Amendment numbered 51 :

That the House recede from its disagreement with the amendment of the Senate numbered 51, and agree to the same with amendments, as follows :

On page 19, line 21, of the Senate engrossed amendments, strike out "8" and insert 7.

On page 20, line 7, of the Senate engrossed amendments, strike out "January" and insert *July*.

And the Senate agree to the same.

Amendment numbered 52 :

That the House recede from its disagreement with the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows :

On page 21, line 22, of the Senate engrossed amendments, strike out "9" and insert 8.

And the Senate agree to the same.

HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
THOMAS F. EAGLETON,
ADLAI E. STEVENSON III,
HAROLD E. HUGHES,
JACOB K. JAVITS,
RICHARD S. SCHWEIKER,
BOB PACKWOOD,
ROBERT TAFT, JR.,
ROBERT T. STAFFORD,

Managers on the Part of the Senate.

CARL D. PERKINS,
JOHN H. DENT,
ROMAN C. PUCINSKI,
PHILLIP BURTON,
JOSEPH M. GAYDOS,

Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The following Senate amendments made technical, clerical, clarifying or conforming changes: 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 31, 33, 38, 41, 47, 48, and 49.

With respect to these amendments (1) the House either recedes or recedes with amendments which are technical, clerical, clarifying, or conforming in nature; or (2) the Senate recedes in order to conform to other action agreed upon by the committee of conference.

Amendment No. 2: Both the House bill and the Senate amendments provided benefits for orphaned children of miners who died from pneumoconiosis or who were receiving benefits at the time of death.

The Senate amendment added orphaned children of miners who were totally disabled by pneumoconiosis, permitted such children to take benefits where the miner's widow survives him and then dies, and limited the child's entitlement to benefits in such cases to months in which the widow's entitlement is not established. The House recedes.

Amendment No. 5: The Senate amendment permitted dependent parents of a deceased eligible miner to succeed to such miner's benefits if there is no surviving widow or child. If there is no surviving dependent parent, surviving dependent brothers and sisters may succeed to such miner's benefits. Under the Senate amendment, dependent parents, brothers or sisters must have received at least one half of their support from the miner for at least one year prior to his death. The House bill contained no such provision.

The House receded with an amendment that provided that in order to qualify for benefits, parents, brothers and sisters must have been wholly dependent on the miner and must have resided in the miner's household for one year prior to the miner's death. The amendment provided further that in the case of a surviving brother, he would not receive benefits after the age of 18, or if a student, after age 22, unless the surviving brother became disabled before the age of 18 or was disabled at the time of the miner's death. In the case of a surviving sister or brother, the amendment provided that no benefits would be paid to her or him if he or she married or received support from his or her spouse.

The House amendment also removed language in the Senate version specifically requiring the Secretary to apply the relevant State or District of Columbia intestate succession law in determining whether a claimant is a parent, brother, or sister of a miner. The conferees concluded that the Social Security Administration generally refers to such intestacy laws in making such determinations.

Amendment No. 8: The Senate amendment permitted dependent children to file claims for augmented benefits in their own right where necessary. The House bill did not contain such a provision. The Senate recedes. The conferees concluded that the objective of the Senate amendment could be achieved through regulations issued by the Secretary of Health, Education, and Welfare.

Amendment No. 27: Both the House bill and the Senate amendments limited the time for filing by a child. The House bill limited such time to six months after the death of the surviving parent or December 31, 1972, whichever is later. The Senate amendment extended the date certain to December 31, 1973. The House recedes.

Amendment No. 30: The Senate amendments made the provisions of section 1 of the bill retroactive to December 30, 1969, except as otherwise provided therein. The House bill contained no such provision. The Senate recedes.

Amendment No. 32: The House bill required the elimination of the practice of offsetting social security disability insurance benefits of certain miners where the claimant also receives black lung benefits. The Senate amendments limited such offsetting to 100 percent of former earnings. The Senate recedes.

Amendment No. 34: The Senate amendments:

(1) altered the definition of "pneumoconiosis" to include sequelae of the disease". The Senate recedes. The conferees understand that in the administration of the program benefits are now provided for total disability due to the sequelae of pneumoconiosis, such as cor pulmonalae.

(2) altered the definition of "total disability" to provide that a miner is totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring skills comparable to his regular work in a mine. The House bill contained no such provision. The House recedes.

Questions were raised during the conference regarding the Senate language on total disability and whether it expanded the definition so as to include any miner who could no longer perform work in the coal mines. The House receded on the understanding that under the Senate language it is not intended that a miner be found to be totally disabled if he is in fact engaging in substantial work involving skills and abilities closely comparable to those of any mine employment in which he previously engaged with some regularity and over a substantial period of time, or if it is clearly demonstrated that he is capable of performing such work and such work is available to him in the immediate area of his residence.

Once a claimant qualifies as totally disabled, any money he earns at gainful employment will be subject to the excess earnings test in section 412(b) of this Act.

(3) added to the benefit criteria of section 411(a) to permit payment of benefits where a miner was totally disabled by pneumoco-

niosis at the time of his death. The House bill contained no such provision. The House recedes.

(4) added a new paragraph (4) to section 411(c) which established a rebuttable presumption of pneumoconiosis where a miner was employed fifteen or more years in a mine, where a chest roentgenogram is interpreted as negative where such miner has or had a totally disabling respiratory or pulmonary impairment. The Secretary may rebut such presumption by establishing the absence of pneumoconiosis or by establishing that such impairment did not arise out of, or in connection with, employment in a coal mine. A miner who was in whole or in part employed in other than an underground mine may establish this presumption if his conditions of employment were substantially similar to conditions in an underground mine.

The House bill did not contain such a provision.

The House recedes. See Amendment No. 46 concerning the application of these provisions under Part C.

(5) required final regulations with respect to implementation of amendments to title IV to be promulgated by the Secretary of HEW by the end of the fourth month after enactment. The House bill contained no such provision. The House recedes.

(6) required compensation laws on the Secretary of Labor's list to have standards for determining death or total disability due to pneumoconiosis which are substantially similar to those in section 402(f) and others under part B. The House bill contained no such provision. The House recedes.

(7) contained a provision prohibiting the denial of a claim solely on the basis of the results of a chest roentgenogram and also required the consideration of all relevant evidence, including tests, history and affidavits, in establishing the validity of a claim.

The House bill also contained a provision prohibiting the denial of a claim solely on the basis of a chest roentgenogram, but did not contain the other provisions. The House recedes.

Amendments No. 35, 36, and 37: The House bill extended full Federal financial responsibility under part B for two years, while the Senate amendments extended such responsibility for one year. The conferees agreed to extend full Federal financial responsibility for new claims for eighteen months. Temporary financial responsibility of the Federal Government has been shifted from the year 1972, as prescribed in existing law, to the six-month period beginning July 1, 1973, and ending December 31, 1973.

Amendment No. 39: The House bill extended the termination date of part C for two years. The Senate amendment made the program permanent. The Senate recedes with an amendment terminating responsibility for new claims under part C of the program as of December 30, 1981, or an extension of five years beyond existing law. For claims filed on or before December 30, 1981, responsibility under Part C will continue beyond that date.

Amendment No. 40: The Senate amendments required that final regulations under part C to implement any amendments thereunder be promulgated and published no later than the end of the fourth month following enactment. The House bill contained no such provi-

sion. The Senate recedes with an amendment requiring publication no later than the end of the sixth month following enactment.

Amendment No. 42: The Senate amendments authorized the construction, purchase, and operation of clinical facilities for the analysis, examination, and research related treatment of miner's occupational respiratory and pulmonary impairments. The new section required research to be initiated within the National Institute of Occupational Safety and Health to devise tests to measure, detect and treat miner's respiratory and pulmonary impairments. Appropriations for clinical facilities were authorized at \$10 million for each of the three fiscal years 1973, 1974, and 1975, and such sums as are necessary for research. The House bill contained no such provision. The House recedes.

Amendment No. 43: The Senate amendments added a new section 428 to title IV which prohibits discrimination by an operator against any miner employed by him solely by reason of the fact that such miner has pneumoconiosis or other respiratory or pulmonary impairment. Investigation, hearing and enforcement procedures by the Secretary of the Interior, were included. The section also contained a provision requiring compensation of hearing examiners at a rate not less than GS-16.

The House recedes with an amendment which omits the reference to other respiratory or pulmonary impairments.

The conferees note the appropriate jurisdictional concerns of the Post Office and Civil Service Committees of both Houses in this matter, and reluctantly adopted the provision only out of a desire to avert an imminent personnel crisis arising from the existing disparity in the compensation of hearing examiners at the Department of Interior and other Federal agencies. This provision will eliminate the disparity.

Amendment No. 44: The Senate amendments added a new section 429 to authorize appropriations in such sums as are necessary to enable the Secretary of Labor to carry out his responsibilities under title IV. The House bill contained no such provision. The House recedes.

Amendment No. 45: The Senate amendments included an amendment to section 422(a) which requires employers to provide medical benefits to employees under part C. It also required State Compensation laws to include such a requirement in order to qualify as adequate under part C. The House bill contained no comparable provision. The House recedes.

Amendment No. 46: The Senate amendments added a new section 430 to apply all appropriate amendments in part B to part C. The House bill contained no such provision. The House recedes with an amendment which provides that with respect to the rebuttable presumption of section 411(c)(4), such presumption shall only apply for purposes of part C, where the fifteen years employment in a coal mine occurred entirely before July 1, 1971.

The conferees further agree that the elimination of the social security disability insurance offset provision shall not apply to part C.

The conferees note specifically that the provision relating to the prohibition against the denial of a claim solely on the basis of the results of a chest roentgenogram, among other amendments made to part B, applies to part C.

Amendment No. 50: The Senate amendments required the Secretary of HEW to inform claimants under title IV of the changes in the law made by the Black Lung Benefits Act of 1972 and to advise them that their claims will be reviewed. The House bill contained no such provision. The house recedes.

Amendment No. 51: The Senate amendments added a new provision to part B under which the Secretary of Labor is to pay benefits and process claims during the period from July 1, 1973 to December 31, 1973, utilizing the procedures of Section 19 of the Longshoremen's and Harbor Worker's Compensation Act. In processing such claims, potentially liable operators are to be notified and allowed to participate. Operators will be bound under part C on any claim determined under this section. The House bill contained no such provision. The House recedes. It is noted that Section 21 of the Longshoremen's and Harbor Worker's Compensation Act provides for judicial review of awards rendered pursuant to Section 19 of the Act.

Amendment No. 52: The Senate amendments added a limitation on claims filed under part C where eligibility of such claims is based on the rebuttable presumption of section 411 (c) (4). A living miner must in such cases file within three years after last exposed employment and in the case of a deceased miner such claims must be filed within fifteen years after last exposed employment in a coal mine. The House bill contained no such provision. The House recedes.

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The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report, which reads as follows:

CONFERENCE REPORT (S. REPT. No. 92-780)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, having met after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 8, 30, 32, 33, 41, 48, and 49.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 6, 7, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 36, 37, 38, 42, 44, 45, and 47, and agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or of a miner who is receiving benefits under this part at the time of his death, or of a miner who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, or in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under Title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is

"(1) (A) under eighteen years of age, or

"(B) under a disability as defined in section 223(d) of the Social Security Act which began before the age specified in section 202(d)(1)(B)(ii) of such Act, or in the case of a student, before he ceased to be a student, or

"(C) a student as defined in section 402 (g); or

"(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act, during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, 'dependent' means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after the month in

which this amendment is enacted, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes 'living in the miner's household,' 'totally dependent upon the miner for support,' and 'good cause,' shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)-(1) of the Social Security Act, as if the benefit under this paragraph were a benefit under section 202 of such Act."

And the Senate agree to the same.

Amendment numbered 13: That the House recede from its disagreement with the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows:

On page 4, line 14, of the Senate engrossed amendments strike out "child" and insert "child".

And the Senate agree to the same.

Amendment numbered 14: That the House recede from its disagreement with the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

On page 7, line 1, of the Senate engrossed amendments, strike out "(3)" and insert "(C)".

And the Senate agree to the same.

Amendment numbered 34: That the House recede from its disagreement with the amendment of the Senate numbered 34, and agree to the same with amendments, as follows:

On page 9 of the Senate engrossed amendments, beginning with line 21, strike out all through line 4 on page 10.

On page 10 of the Senate engrossed amendments, strike out line 5 and insert "Sec. 4. (a) Section 402(f) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:"

On page 10, line 17, of the Senate engrossed amendments, strike out "(c)" and insert "(b)".

On page 11, line 1, of the Senate engrossed amendments, strike out "(d)" and insert "(c)".

On page 12, line 6, of the Senate engrossed amendments, strike out "(e)" and insert "(d)".

On page 12, line 14, of the Senate engrossed amendments, strike out "(f)" and insert "(e)".

On page 12, line 19, of the Senate engrossed amendments, strike out "(g)" and insert "(f)".

On page 13, line 7, of the Senate engrossed amendments, strike out "(h)" and insert "(g)".

On page 7, line 18, of the House engrossed bill, strike "4" and insert in lieu thereof 5.

And the Senate agree to the same.

Amendment numbered 35: That the House recede from its disagreement with the amendment of the Senate numbered 35, and agree to the same with amendments, as follows:

On page 7, line 20, of the House engrossed bill, strike out "1971" and insert "December 31, 1971".

In lieu of the matter proposed to be inserted by such amendment insert "June 30, 1973".

And the Senate agree to the same.

Amendment numbered 39: That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with amendments as follows:

BLACK LUNG BENEFITS ACT OF 1972—CONFERENCE REPORT

Mr. RANDOLPH. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

I ask unanimous consent for the present consideration of the report.

Restore the matter proposed to be stricken out by the Senate amendment and—

On page 8, line 4, of the House engrossed bill, delete "nine," and insert in lieu thereof "twelve".

And the Senate agree to the same.

Amendment numbered 40: That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with amendments as follows:

On page 13, line 19, of the Senate engrossed amendments, strike out "(4)" and insert in lieu thereof "(5)".

On page 14, line 3, of the Senate engrossed amendments, strike out "fourth" and insert in lieu thereof "sixth."

And the Senate agree to the same.

Amendment numbered 43: That the House recede from its disagreement with the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows:

On page 16 of the Senate engrossed amendments, strike lines 4 and 5 and insert in lieu thereof "pneumoconiosis. No person shall cause or attempt to cause an operator" And the Senate agree to the same.

Amendment numbered 46: That the House recede from its disagreement to the amendment of the Senate numbered 46, and agree to the same with an amendment as follows:

On page 18, line 12, of the Senate engrossed amendments strike the period and insert in lieu thereof a colon and the following: "Provided, That for the purpose of determining the applicability of the presumption established by section 411(c)(4) to claims filed under Part C of this title, no period of employment after June 30, 1971, shall be considered in determining whether a miner was employed at least fifteen years in one or more underground mines."

And the Senate agree to the same.

Amendment numbered 50:

That the House recede from its disagreement with the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows:

On page 19, line 8, of the Senate engrossed amendments, strike out "7" and insert "6". And the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement with the amendment of the Senate numbered 51, and agree to the same with amendments, as follows:

On page 19, line 21, of the Senate engrossed amendments, strike out "8" and insert "7".

On page 20, line 7, of the Senate engrossed amendments, strike out "January" and insert "July".

And the Senate agree to the same.

Amendment numbered 52:

That the House recede from its disagreement with the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows:

On page 21, line 22, of the Senate engrossed amendments, strike out "9" and insert "8".

And the Senate agree to the same.

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With respect to these amendments (1) the House either recedes or recedes with amendments which are technical, clerical, clarifying, or conforming in nature; or (2) the Senate recedes in order to conform to other action agreed upon by the committee of conference.

Amendment No. 2: Both the House bill and the Senate amendments provided benefits for orphaned children of miners who died from pneumoconiosis or who were receiving benefits at the time of death.

The Senate amendment added orphaned children of miners who were totally disabled by pneumoconiosis, permitted such children to take benefits where the miner's widow survives him and then dies, and limited the child's entitlement to benefits in such cases to months in which the widow's entitlement is not established. The House recedes.

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The House amendment also removed language in the Senate version specifically requiring the Secretary to apply the relevant State or District of Columbia intestate succession law in determining whether a claimant is a parent, brother, or sister of a miner. The conferees concluded that the Social Security Administration generally refers to such intestacy laws in making such determinations.

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The House bill did not contain such a provision.

The House recedes. See Amendment No. 46 concerning the application of these provisions under Part C.

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Secretary of Labor's list to have standards for determining death or total disability due to pneumoconiosis which are substantially similar to those in section 402(f) and others under part B. The House bill contained no such provision. The House recedes.

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The House recedes with an amendment which omits the reference to other respiratory or pulmonary impairments.

The conferees note the appropriate jurisdictional concerns of the Post Office Civil Service Committees of both Houses in this matter, and reluctantly adopted the provision only out of a desire to avert an imminent personnel crisis arising from the existing disparity in the compensation of hearing examiners at the Department of Interior and other Federal agencies. This provision will eliminate the disparity.

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ments added a new section 429 to authorize appropriations in such sums as are necessary to enable the Secretary of Labor to carry out his responsibilities under title IV. The House bill contained no such provision. The House recedes.

Amendment No. 45: The Senate amendments included an amendment to section 422(a) which requires employers to provide medical benefits to employees under part C. It also required State compensation laws to include such a requirement in order to qualify as adequate under Part C. The House bill contained no comparable provision. The House recedes.

Amendment No. 46: The Senate amendments added a new section 430 to apply all appropriate amendments in part B to part C. The House bill contained no such provision. The House recedes with an amendment which provides that with respect to the rebuttable presumption of section 411(c)(4), such presumption shall only apply for purposes of part C, where the fifteen years employment in a coal mine occurred entirely before July 1, 1971.

The conferees further agree that the elimination of the social security disability insurance offset provision shall not apply to part C.

The conferees note specifically that the provision relating to the prohibition against the denial of a claim solely on the basis of the results of a chest roentgenogram, among other amendments made to part B, applies to part C.

Amendment No. 50: The Senate amendments required the Secretary of HEW to inform claimants under title IV of the changes in the law made by the Black Lung Benefits Act of 1972 and to advise them that their claims will be reviewed. The House bill contained no such provision. The House recedes.

Amendment No. 51: The Senate amendments added a new provision to part B under which the Secretary of Labor is to pay benefits and process claims during the period from July 1, 1973 to December 31, 1973, utilizing the procedures of Section 19 of the Longshoremen's and Harbor Worker's Compensation Act. In processing such claims, potentially liable operators are to be notified and allowed to participate. Operators will be bound under part C on any claim determined under this section. The House bill contained no such provision. The House recedes. It is noted that Section 21 of the Longshoremen's and Harbor Worker's Compensation Act provides for judicial review of awards rendered pursuant to Section 19 of the Act.

Amendment No. 52: The Senate amendments added a limitation on claims filed under part C where eligibility of such claims is based on the rebuttable presumption of section 411(c)(4). A living miner must in such cases within three years after last exposed employment and in the case of a deceased miner such claims must be filed within fifteen years after last exposed employment in a coal mine. The House bill contained no such provision. The House recedes.

HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
THOMAS F. EAGLETON,
ADLAI E. STEVENSON III,
HAROLD E. HUGHES,
JACOB K. JAVITS,
RICHARD S. SCHWEIKER,
BOB PACKWOOD,
ROBERT TAFT, JR.,
ROBERT T. STAFFORD,

Managers on the Part of the Senate.

CARL D. PERKINS,
JOHN H. DENT,
ROMAN C. PUCINSKI,
PHILLIP BURTON,
JOSEPH M. GAYDOS,

Managers on the Part of the House.

The PRESIDING OFFICER. The time for debate is limited to 1 hour, with 30 minutes under the control of the Senator from West Virginia (Mr. RANDOLPH) and 30 minutes under the control of the Senator from New York (Mr. JAVITS).

Who yields time?

Mr. RANDOLPH. Mr. President, I yield myself such time as I may desire.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, it is with understandable satisfaction that I come into the Senate Chamber to speak on behalf of the Senate conferees on H.R. 9212 and announce to our colleagues that all members of the Senate conference committee have agreed to the conference report on this legislation, the amendments to the Coal Mine Health and Safety Act of 1969, title IV, known as the Black Lung Benefits Act of 1972.

Mr. President, following 2 days in the conference with the managers on the part of the House, we reached an agreement on this important legislation. I do not use the term lightly when I say that "historic" is a word that, in my opinion, can be appropriately used to describe this legislation. Why do I say that to my colleagues? Because, Mr. President, we will, with this measure, bring assistance to disabled coal miners in this country, who have sacrificed, in many instances, their health, and lives in a dedication of their working efforts to the extraction from the earth of that substance—coal—which has been of such extreme importance to fueling and energizing the vast industrial complex of this country over a period of years. Having sponsored the original black lung benefits provision contained in the Coal Mine Health and Safety Act, I know how important this new measure will be to our miners and their families.

I referred, as my colleagues will remember, when we passed our Senate bill on April 17 in this body by a vote of 73 to 0, to the tremendous contribution of these men, as well as the owners of the industry who employ the miners, because coal represents about 54 percent of the thermal power under which this Nation has been able to move forward in its many aspects from the standpoint of electricity and power, not only for our great manufacturing establishments, but for the very operation of life itself.

I think not only of these disabled miners, but also I think it is important for us to speak of their dependents, and the survivors of deceased miners. I feel that there is a significant measure of equity and justice which is being written into law by the Senate of the United States and hopefully by Congress, with the House acting, I trust, in a matter of days, on the conference report. Also, I am very, very hopeful that the President of the United States will sign this legislation when it comes before him, having been agreed to in the Senate and the House of Representatives.

I had the privilege of managing the Senate bill, that is, our own version of H.R. 9212. As my very knowledgeable colleague, the Senator from New York (Mr. JAVITS) who is in the Chamber and who has taken such an active and constructive role in this whole effort since

1969 and until this very hour, will recall, on the date this body gave its stamp of approval, even though there was opposition from the administration and opposition from the industry, there was no lack of unanimity here. There was, I repeat, a rollcall vote of 73 to 0 for that measure.

The Senator from Ohio (Mr. TAFT) is also in the Chamber this afternoon. His activity, within the subcommittee and within the Committee on Labor and Public Welfare, was of an equally constructive nature. He had many questions that had to be resolved in his mind, and yet he, as well as all the rest of us on behalf of the Senate, signed the conference report.

It is my conviction—a very strong conviction, Mr. President—that what we have done in conference is what should be enacted. There were certain compromises in certain respects to the House-passed measure, but what we have done—and it is very important to state this in a very earnest way—is to preserve nearly all the improvements to title IV of the Federal Coal Mine Health and Safety Act, made by the Senate measure enacted here on April 17. Additionally, the final version of H.R. 9212 embodies the basis thrust and concepts contained in S. 2675, which I introduced last year.

I shall now undertake to outline for my colleagues those provisions of H.R. 9212 which were the same in both the House and the Senate versions, as well as to briefly outline the points of difference which were compromised. Both bills, Mr. President, extended title IV benefits coverage to orphan children, with such coverage made retroactive to December 30, 1969. That was the date of enactment, as Senators will recall, of the original program of black lung benefits.

In the second instance, both the House and Senate bills extended coverage to disabled miners other than those who had worked in the underground mines.

Third, the denial of claims based solely on the results of a chest X-ray is prohibited in both measures.

Fourth and last, the House bill and the Senate amendments provide that the Secretary of Health, Education, and Welfare may certify dependents' benefits directly to dependents where it is deemed advisable and desirable to do so.

Aside from the provisions which I have just outlined, H.R. 9212 as passed by the House of Representatives differed considerably from our measure. Under the current law, no payments of benefits under part C of title IV are required to be paid after 7 years following the date of enactment of the Coal Mine Health and Safety Act. This means, I say to my colleagues, that the program will, unless modified, terminate on December 30, 1976. The House bill extended this termination date by 2 years, to December 30, 1978. The Senate measure eliminated the termination date entirely, thus making the program a permanent one.

In the committee of conference, we agreed to a provision which terminates responsibility for the new claims that are filed under part C on December 30, 1981. However, all claims filed prior to

that date and approved for payment would be paid for life.

The existing law requires that Federal responsibility for new claims terminate on December 31, 1972. The House bill would have extended this responsibility for 2 years, until December 31, 1974. The Senate, based on the very persuasive arguments set forth by the Senator from New York and others who joined him in that belief, agreed upon only a 1-year extension. The conference agreement—as the very knowledgeable and able Senator from Pennsylvania (Mr. SCHWEIKER) who is now with us knows—provides not for 1 year, as passed by the Senate, not for 2 years, as passed by the House, but for a so-called compromise extension of 18 months. But, we cut the so-called "swing" or "transition" period from 1 year to 6 months. Therefore, under part C, claims which are to be filed with State workmen's compensation agencies and paid by coal mine operators will actually begin as in the Senate bill on January 1, 1974.

The black lung benefits program is now being interpreted by the Social Security Administration as a workmen's compensation plan. It was not so intended by Congress in 1969. Thus, where a beneficiary, under title IV of the Coal Mine Health and Safety Act of 1969, is receiving social security disability insurance benefits and black lung benefits, the social security payments are reduced by any amount by which the combination of benefits exceeds 80 percent of the average miner's current earnings prior to his disability. The House bill completely eliminated this so-called "offset" provision to permit the full amount of both benefits to be collected. The Senate bill limited the offset to 100 percent of average current earnings. I might say that the bill I introduced last October, S. 2675, like the House bill, eliminated the offset provision entirely. The Senate conferees agreed to the House position.

Total disability under existing law is determined according to regulations of the Secretary of Health, Education, and Welfare. Thus, if a disabled miner has the capacity to work at any job, no matter how menial or far away from his home, he is not now considered to be totally disabled, and is, therefore, not eligible for black lung benefits. The House bill did not change existing law. The Senate bill established a new criterion for total disability which is more in line with reality. If pneumoconiosis prevents a miner from engaging in gainful employment requiring skills comparable to his work in a mine, he will be considered totally disabled. If such miner is in fact doing such work, or if it is clearly demonstrated that such work is available to him in the immediate area of his residence, he will not be considered totally disabled. The conferees accepted the Senate provision.

One of the most prevalent complaints against existing law and its interpretation made by witnesses during hearings held by our Subcommittee on Labor involved the inability of miners or their widows to establish the existence of black lung, even though the miner was clearly

totally disabled. The House and Senate bills did, as I noted earlier, eliminate sole reliance on the X-ray. The Senate bill further provided that where a miner worked 15 years or more in an underground coal mine, or in comparable conditions on the surface, where such miner had a negative X-ray and where such miner had a totally disabling respiratory or pulmonary impairment he is given the benefit of a rebuttable presumption that he was disabled due to pneumoconiosis. The alteration made by the conference committee limited such claims under part C to those in which the 15 years of work took place prior to July 1, 1971.

Existing law limits beneficiaries to miners, their widows, and children. The House bill and Senate bills extended benefits to orphans. The Senate bill, and the conference measure, extends such benefits, where there is no widow or child who survive the miner, to wholly dependent parents. If there are no such parents, then benefits may accrue under certain conditions to wholly dependent brothers and sisters, if any.

Under existing law a widow, if she is to claim black lung benefits, must show that her miner husband died from black lung or a respiratory disease. The House bill did not propose a change in the law. The Senate bill, which was acceptable to the conferees, provided that a widow may also claim benefits if her husband was totally disabled by pneumoconiosis at the time of his death. Thus, if the miner was so disabled, the widow may claim benefits regardless of the cause of death.

The current law, in effect, limits evidence which may be used to support a claim for benefits to the X-ray. As previously mentioned, both the House and Senate bills eliminated sole reliance on the X-ray. The Senate bill, in addition, includes other evidence such as additional medical tests, affidavits, and clinical and work history to support a claim; this provision was accepted by the conference committee.

Not in the House bill nor in the existing law is a provision adopted in the Senate and accepted in conference that applies all sections of part B, including any amendments to the act, to part C, where such provisions are appropriately applied. The only provision of part B not applicable to part C is that related to the offset of social security disability benefits. The applicability to part C of the rebuttable presumption as noted earlier is also limited to situations where work in the mines took place prior to July 1, 1971.

Another provision of the Senate bill which was adopted in conference authorized the Secretary of Health, Education, and Welfare to build clinical facilities for the diagnosis and treatment of lung ailments in coal miners. The provision also authorized research to devise simplified tests to measure lung impairments in miners.

Also agreed to in conference was a Senate provision not contained in the House bill which prohibits discrimination by an operator against any miner employed by him because such miner has

pneumoconiosis. Applicability of this provision to breathing impairments other than pneumoconiosis was deleted at the insistence of the House conferees.

Several other provisions of the Senate version of H.R. 9212 were adopted in conference. These include a section which eases the complications of filing claims during the transition period between part B and part C by requiring the Secretary of Labor to pay claims filed in that period and to assure that operators are bound by claim determinations made during that period. This provision is designed to insure uninterrupted payment of benefits when part C goes into effect.

In other sections of the conference bill, the Secretary of Health, Education, and Welfare must notify all claimants under title IV of changes in the law, and that their claims will be reviewed; regulations with respect to the new law must be promulgated by the Secretary of HEW by the end of the fourth month after enactment, and by the Secretary of Labor within 6 months; claims filed under part C which rely on the rebuttable presumption must be filed within 3 years after last exposed employment in a coal mine in the case of a living miner, or within 15 years after such employment in the case of a deceased miner.

Other miscellaneous provisions of the conference measure authorize appropriations to the Secretary of Labor; require employers to provide medical benefits to employees under part C; and limit the definition of pneumoconiosis with the understanding that the sequelae of the disease are now compensable under administrative regulations.

Mr. President, I am deeply pleased with H.R. 9212 as it now comes before the Senate. It is landmark legislation. It is a measure which the Congress can look to with pride and a sense of great accomplishment.

I want to offer my sincere thanks for a job well done to the managers on the part the House. I single out for special commendation the astute chairman of the Education and Labor Committee, Representative CARL PERKINS, who performed so ably the task of conference committee chairman. My appreciation goes also to Representative JOHN DENT and Representative PHILLIP BURTON and to the other House conferees who, even though they may have disagreed with the final conference bill, cooperated fully in the work of the conference.

The Senate conferees, comprised of the Subcommittee on Labor of the Committee on Labor and Public Welfare, showed intense interest and dedication to the development of this legislation. I want especially to commend the deep personal interest and cooperation of my colleagues, Senators JAVITS, SCHWEIKER, TAFT, and STAFFORD, and the absolutely essential assistance of the chairman of the committee, Senator WILLIAMS.

Without the very substantial help of these able and valued Members of the Senate and their staffs, the Black Lung Benefits Act of 1972 would not have been possible.

Finally, I want to thank the coal miners, their widows and their families for their indulgence in waiting for this ur-

gently needed legislation. I know that this legislation will in some measure ease their very heavy burdens. The Nation owes these proud people of the coal fields a debt. H.R. 9212 will help pay that debt.

Mr. President, I know that Senators who were conferees have certain commitments. Perhaps at this point it would be best, if agreeable to and desired by the Senator from Ohio, who has been very helpful and cooperative on this measure, that I yield the floor and give him an opportunity to speak.

Mr. JAVITS. I yield 5 minutes to the Senator from Ohio.

Mr. TAFT. I thank the Senator from New York, and I thank the Senator from West Virginia, the able chairman of the subcommittee, who has done an exemplary job in moving this rather technical and difficult measure to this point of success.

There are certain areas in which I do not agree entirely with the result of the conference, as set out in the minority views attached to the committee report when it was filed. However, I do feel that this is an essential piece of legislation and one which is fair in every way to those who have been affected by this tragic affliction.

I have made known my views with regard to where the burden for payment for this should lie, both in the past and in the future. Having put those views in the RECORD, I will not repeat them here.

Mr. President, every time we send a man into the mines for coal we are asking him to risk his health and even his life in order that we may have heat, electric power, and industrial production. Without America's coal miners our cities would be dark and our industries would come to a stop. Our country owes a great debt to these men many of whom have sacrificed their health in order that we may continue our high standard of living.

The Black Lung Benefits Act of 1972 recognizes the sacrifice of our Nation's coal miners. It recognizes the injustice of having crippled men denied benefits solely because their disease could not be detected by an X-ray. Yet the evidence is clear from autopsies that approximately 25 percent black lung cases do not show up in X-rays. At the present time, men who have been crippled for life working in our Nation's coal mines are unable to collect, because of the way in which the existing law has been drafted. It is absolutely vital, in my judgment, that this measure be adopted and I hope that my colleagues will support it.

With regard to the conference report, I very much regret that the conferees have relieved the coal mine operators of their responsibilities for an additional period of 18 months. Under traditional workmen's compensation principles, the companies should bear the cost of this program. Under the 1969 law, they would have had to assume this obligation in 1973, yet this bill keeps them out of responsibility for payment for an additional period of 18 months.

Many of the companies which will be the principal beneficiaries are among the largest in America.

At a time when our budget is running

a massive deficit, there is questionable justification for having the American taxpayers relieve these corporations of responsibility to their coal mining employees.

Despite my objections to this provision, however, I strongly support this bill. Failure to pass it would be a cruel setback for America's coal miners and retired coal miners who so desperately need its passage.

Mr. JAVITS. I yield myself 3 minutes.

Mr. President, I feel that this matter should be put into focus for the Senate.

The fact is that if there had been effective workmen's compensation laws to take care of the disability imposed on miners, because of their hazardous occupation through the inhalation of coal dust, we would not be here and we would not have been here before, when the bill was passed.

It is interesting to note the consequences of the improvidence of both the States and the industry. The cost to the industry is likely to be, before we are through with this bill, approximately \$2 billion. We calculate that the cost of the conference bill to the United States could run approximately \$4 billion. All this because of the accumulated injustice of not having adequate workmen's compensation laws on the books for years and years and years and the essentiality of coal production in the interest of the country and the fact that the country has a moral responsibility to the miners who produce this coal at such peril to themselves. That is the first thing to note, Mr. President.

Second, we must note that this is a unique situation, and it is no precedent for other industries which may be impacted in this way or a similar way; and we have made this, for the reasons we have discussed, a case which the lawyers call *sui generis*. It stands on its own, because of its own state of facts.

Third, Mr. President, we tried very hard in the Senate to hold the Federal responsibility to the 1-year level, and this makes a good deal of difference in money. We calculate it would make a difference of as much as \$600 million if there had been an extra year. Our problem was that the other House just could not see it that way. After a long and arduous conference, we settled it at 18 months, which adds \$300 million to the Federal cost. But we must assume that the other body has as much a sense of responsibility as we. We could have held out and wrecked the bill, but that would have been deeply unjust to thousands of miners. So we did not do that, but arrived at a compromise, and one can say the same for them. They felt very strongly about the 2 years in the other body, and they, too, feel that they arrived at a compromise.

Mr. President, it should be noted in this connection that under the Senate bill part C was made permanent. As Senator RANDOLPH has explained, we finally accepted a 10-year limitation. But that is for the filing of new claims. It does not limit payment on claims filed prior to December 30, 1981.

In addition, the liberalizing amendments respecting various presumptions as to how this disease was acquired, and other changes in favor of miners, widows, children and other relatives are applicable as well to the responsibility of the mine operators.

Finally, Mr. President, it should be made known to the Senate that the heavy costs undertaken here by the Federal Government in order to do elementary justice to these afflicted miners only emphasizes and makes us even more interested in the work of the National Commission on State Workmen's Compensation Laws, which is now functioning, chaired by Mr. John Burton of Illinois. Its report is due on July 31, 1972, and I hope they will recommend generic legislation which will result, assuming the report which I believe they will make, doing something about the gross inequalities and inadequacies among the States respecting workmen's compensation to which individuals may be entitled based on their earning power. There is a gross disproportion among the States, let alone, as in this case, the failure to make any provisions at all.

Mr. President, I believe that the Senator from West Virginia (Mr. RANDOLPH) who has personally given so much of his time and interest, with deep devotion, to bringing about a condition of justice for the miners and some relief for them, has really performed almost a miracle in producing this conference report so quickly, after there were so many discouragements about whether the bill could even be considered, let alone enacted into law.

I join him in expressing hope that the President will sign it. It represents, I assure the President, because I participated in every stage of the conference, the best result we could possibly obtain in the two Houses. The equity involved is so great that I would hope the President would not put us through the pain of trying to go through this again, and thus delaying justice to the miners.

Therefore I join the Senator from West Virginia (Mr. RANDOLPH) and other members of the conference committee in that hope.

Before I yield the floor, I should like to pay tribute to the Senator from Ohio (Mr. TAFT) who has just spoken, and who gave a tremendous amount of his time, attention, and help to perfecting the bill, and to the Senator from Pennsylvania (Mr. SCHWEIKER) who, like the Senator from West Virginia (Mr. RANDOLPH), has a deep, a burning, and a human interest in the miners afflicted, and who knows so many personally and whose expertise in this particular field enabled us finally to come to the conclusions we have on the bill.

I think that those concerned, especially the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Pennsylvania (Mr. SCHWEIKER), have every reason to derive enormous satisfaction in a personal as well as a representative sense from the result that has been achieved.

This is a complicated bill. I should like also to pay tribute to the staff members, Mr. Gerald Feder, counsel to the

Subcommittee on Labor, Mr. Robert Humphreys, special counsel to the Committee on Labor and Public Welfare, Mr. Philip McGance, legislative assistant to Senator RANDOLPH and, on the minority side, Mr. Eugene Mittelman, minority counsel to the Committee on Labor and Public Welfare and Richard Siegal, associate minority counsel to the committee, as well as William Wickens, legislative assistant to Senator TAFT. They have done so much to make possible the result we produce today.

Mr. President, I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I wish to compliment my distinguished colleague from West Virginia, Senator RANDOLPH, and the other Senate conferees on the black lung report which is now pending before the Senate. They have done a remarkable job in their work with House conferees on this legislation, and they have done it in a commendably short time.

If this conference report is agreed to by both Houses, and if the legislation is then allowed to become law by the President, it could go a long way toward correcting the defects that existed in the Federal Coal Mine Health and Safety Act of 1969. For example, this legislation will, for the first time, extend benefits to eligible children and orphans of miners disabled or killed by pneumoconiosis. The black lung amendments, which are embraced in this legislation, also firmly establish that black lung benefits are not a form of workmen's compensation. Persons receiving the benefits will no longer see their social security benefits reduced just because they may also be receiving black lung benefits.

I hope that the Senate will adopt the conference report, and I again congratulate my colleague, Senator RANDOLPH, and the other Senates conferees on both sides of the aisle.

Mr. SCHWEIKER. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield to the Senator from Pennsylvania such time as he may require.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I thank the distinguished Senator from New York for yielding me this time and rise in strong support of the conference report now pending before the Senate.

This is truly an historic milestone in the life of the coal miners of this country. More than 2 years ago, under the leadership of the Senator from West Virginia (Mr. RANDOLPH), we passed for the first time a bill that compensated for pneumoconiosis as an occupational disease of coal miners. This meant that those of us who utilize the energy, the fuel resources, and the power produced by those coal miners who go deep down into the bottom of the earth, were recognizing that we had a debt to see that black lung should be compensated as a work-caused disease, at the Federal level at least, because the States had not sufficiently met their obligation. This bill updates that recognition and that work so that we no longer throw the burden of proof upon the miner who has had his

life and, in many cases, his lungs physically impaired by his work. Now we give him a fair day in court and a fairer and more equitable process for filing his claim and for having his claim adjudicated in a way that our first piece of legislation did not do.

We accomplished this in several ways.

First, by broadening the definition of disability, so that for those who come from the coal mining towns of Pennsylvania, West Virginia, and Kentucky, the disability definition reflects the working conditions and the working environment of their towns, since as what other work can they do in most cases if they are disabled by the occupational disease of pneumoconiosis?

Second, the bill will eliminate the X-ray as the sole test of whether a victim has pneumoconiosis. We have learned from many medical authorities that the X-ray is not infallible. In fact, it is not very accurate in detecting the early stages of pneumoconiosis. It was most unfair and unjust previously to rely solely on the X-ray as a determinant of whether a miner had that disease. So, by eliminating the X-ray as the sole determinant in denying claims, we give a much more just and a much more fairer shake to the coal miner in making this determination.

Third, to overcome some of the problems of recognizing cases of pneumoconiosis by X-ray, we have incorporated here; thanks to the Senator from West Virginia (Mr. RANDOLPH), a preliminary presumption of pneumoconiosis, that if a person has worked in the mines for 15 years and if, after that period of time, he is shown to be disabled from a pulmonary or respiratory disease, he will be presumed to have pneumoconiosis even without X-ray evidence of pneumoconiosis, unless there is medical evidence to the contrary.

That is a world of difference between the way the law is written now. It does truly mean the turning over of a new leaf, with a fairer judgment and a fairer adjudication of the claims of many coal miners who actually have the disease but cannot prove it by conventional X-ray techniques. That is, in a case where a miner cannot walk upstairs to his bed so that his bed has to be moved down into the living room on the first floor, where his heart and lungs have been affected, yet it does not show up on an X-ray, when everyone associated with him knows that he has a pulmonary disability, the only fair thing is to give this 15-year-or-more miner a presumption he has pneumoconiosis. Because we do not know, yet, enough about the disease and how to detect it other than the X-ray, or how to find the symptoms before it afflicts the miner and results in permanent, often fatal damage to him, many miners were being unfairly judged not to have the disease when, in fact, they did have it and their pulmonary functions evidenced that they did have the disease.

So the "15-year" pulmonary presumption in this bill is a very important step. Through it, we are giving the coal miners a much more even break and a much more fairer judgment whether or not he is eligible for compensation.

Thus, Mr. President, these three points, expanding the definition of disability, the pulmonary presumption, and eliminating the X-ray as the sole determinant for denying claims, will at long last, give the miners the fair shake they are entitled to in determining whether the lungs, the heart, or the body have been ravaged by the occupational disease of pneumoconiosis.

Mr. President, I want to thank the distinguished Senator from New York (Mr. JAVITS), the ranking minority member of the committee on which I serve, for his help and interest in this problem. I maintain it not only relates to those who mine the coal in Pennsylvania, West Virginia, or Kentucky, but also to everyone who utilizes the coal, who turns on the light switch, who runs the dishwasher, who turns on the television set, who benefits materially from the human havoc and wreck that comes from coal miners producing the energy source from the bottom of the earth. The American people now are accepting their full measure of responsibility in this broadening of the law so that each and every coal miner will get a fair judgment on whether or not he did in fact suffer from this disease.

Finally, I am pleased to report on one of my own amendments, assisting a miner's parents, brothers, and sisters who were dependent on him, providing that if there were no children or wife in that particular family that black lung benefits would go to a brother, sister, or parent if he or she in fact were fully dependent prior to the death of this person although there was no similar House language, I am delighted that my amendment remained in the conference report, with only a few modifications.

Mr. President, in closing I want to say that the Senator from West Virginia (Mr. RANDOLPH), who acted as chairman of the subcommittee and chairman of the Senate conferees, who did so much to advance the cause of miners' health and miners' working conditions, and the recognition of the miners' special health problems, is to be credited with true leadership in this field. It was a pleasure to work with him on the Labor Subcommittee and also on the conference committee.

I am sure that without the guiding hand of the Senator from West Virginia and his intimate knowledge of the life and working problems of the miner, without his skillful ability in their working out of conflicts that are bound to occur in any legislation of this type between various groups whose interests are affected, and without his knowledge and experience we would not have had the very good bill and finally the conference report that we have today.

Mr. President, I rise to support the conference report and to give special commendation to our chairman, the Senator from West Virginia (Mr. RANDOLPH).

Mr. RANDOLPH. Mr. President, how much time remains to me?

The PRESIDING OFFICER. The Senator from West Virginia has 14 minutes remaining. The Senator from New York has 12 minutes remaining.

Mr. RANDOLPH. Mr. President, I am genuinely grateful to the Senator from

New York (Mr. JAVITS), the Senator from Ohio (Mr. TAFT), and the Senator from the Commonwealth of Pennsylvania for their thoughtful expressions concerning my activities on this measure. I thank all concerned for the constructive effort in which not merely one Member of this body, but all of us have joined. I again thank the conferees on the part of the Senate, who were members of the Labor Subcommittee and members of the parent Committee on Labor and Public Welfare.

All of these men were intensely interested in what we were doing. They did not just evidence a cursory interest. They knew what we were doing in our hearings in Pennsylvania and in West Virginia. They knew what we were doing in our subcommittee in the hearings in Washington. They knew what we were doing in attempting to finalize the measure and bring it to the Senate floor as quickly as possible. All of them in a very real sense were participants in what we have done.

And, Mr. President, I express special commendation to my esteemed colleague, Senator ROBERT C. BYRD of West Virginia, the acting majority leader of the Senate. He cosponsored my original amendment in 1969 for payment of victims of pneumoconiosis. He cosponsored the bill which is the basis for this conference agreement. I am personally and officially gratified to recognize his active interest and helpful participation in this legislation. Senator ROBERT C. BYRD testified in both West Virginia and Washington in favor of the measure which I hope we will soon pass by a unanimous vote in this body.

Finally, I extend my genuine appreciation to the many staff members who have given so much of their time, not just during the working day, but also very late at night.

They are the members of the staff of the committee and offices of Senators. The Senator from New York (Mr. JAVITS) earlier mentioned them by name. I wish to reinforce his expression of thanks to these staff members, because we are so dependent on them in this sort of complex study and development of legislation. We need the help of these staff men who stay with us and follow through with us.

Mr. President, I indicated in the beginning of my remarks this afternoon that in a sense this is an historical occasion. This in a very real sense is landmark legislation.

I know that in the coming years the expenditures will be very substantial in cost to both the Federal Government and the coal operators. We have to realize that this is a very costly program. However, in doing this we have recognized the responsibility which we have toward the coal miners of this Nation. It is my belief that the coal industry will accept this joint responsibility with the Federal Government.

Mr. President, I think it is unnecessary to say more. I have covered the essence of the matter. The Senator from New York (Mr. JAVITS), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Ohio (Mr. TAFT), and I have covered these matters in the con-

ference report. This legislation will be fully explained in the proceedings of the Senate.

I just close by reiterating that I think we have treated with equity the responsibility of the Federal Government and also that of the operators of the coal mines. We have also given to the coal miners and their dependents at the levels that have been explained the aid which they fully deserve. So, it is not with any pride that we do this, because I do not want to use that word or even to think of it. What we are doing here is not something which we will point to with pride. It is something which ought to be done, something which needs to be done and which Congress, in response to the need, has done. This is the way it should be on legislation which touches the very lifeblood of the working population of this country and also those who help them.

So, Mr. President, I shall not use more time. I shall yield back the remaining minutes that have been, I think, allotted to me.

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield back his time?

Mr. SCHWEIKER. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SCHWEIKER. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

doing so, he is justly entitled to the credit and gratitude he has been accorded.

Mr. ERLNBORN. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. WAMPLER).

(Mr. WAMPLER asked and was given permission to revise and extend his remarks.)

Mr. WAMPLER. Mr. Speaker, I rise in support of the conference report.

[Mr. WAMPLER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. BEVILL. Mr. Speaker, I rise to offer my support for the conference committee report on amendments to the Coal Mine Health and Safety Act of 1969, title IV, the Black Lung Benefits Act of 1972.

I wish to congratulate and thank the conferees for the expeditious manner in which they handled this report and I must say that I am very pleased with the results of their efforts.

Mr. Speaker, it is my hope that the House will now immediately give approval to this important measure so that the President may sign it into law without delay. Enactment of these amendments will be a major step toward the resolution of an enormous debt which the people of this Nation owe to our coal miners who have been so important in the economic growth of our great Nation. Fifty-four percent of our energy comes from coal and its reserves are expected to continue to play a most important part in our energy needs for the next several hundred years.

One of the provisions of the compromise version which I especially favor is the provision which states that claims will no longer be turned down solely on the basis of a negative X-ray. This change will insure that all diagnostic tools, such as pulmonary function tests and others which may reveal individual differences in disease effects, shall also be a part of the determination for the award or denial of benefits.

The conference committee also adopted the Senate version which provides that where a miner has worked 15 years or more in an underground mine, or in a comparable condition on the surface, where such a miner had a negative X-ray and where such a miner had a totally disabling respiratory or pulmonary impairment, he is given the benefit of a presumption that he was disabled due to pneumoconiosis and this presumption will hold unless it can be proven otherwise.

The compromise version of the bill also includes a provision identical to a provision in my bill, H.R. 8783, which would extend coverage under the act to include surface miners. Anyone who has spent time around a tippie or places where there is a large accumulation of coal dust, knows that it is possible to contract the disease without having actually worked all of the time required underground.

Both bills extend title IV benefits coverage to orphan children, with such coverage made retroactive to December 30, 1969.

The bill would also extend benefits of the program to dependent parents, brothers and sisters of a miner with

black lung if the relative was totally dependent on the miner and lived in his home. Benefits to a sister would terminate if she marries, and a brother would qualify only if he is under 18 years of age, or if he is a student or disabled.

Federal responsibility for payments would be extended until July 1, 1973.

The present law provides that a widow, if she is to claim black lung benefits, must show that her miner husband died from black lung or a respiratory disease. Under the compromise version we are now considering, that widow may also claim benefits if her husband was totally disabled by pneumoconiosis at the time of his death, regardless of the cause of death.

Since the original Federal Coal Mine Health and Safety Act of 1969 has had thousands of claims submitted which were denied under the old provision, it is particularly good to see the automatic review provision. This requires the Secretary of Health, Education, and Welfare to inform all claimants under the original law of the changes made by the Black Lung Benefits Act of 1972. Also, to inform them that their prior claim will be automatically reviewed under the new law without the need to submit additional applications. As many of these disabled miners and widows are up in years this will reduce the effort they might otherwise have to exert to receive their proper benefits.

Mr. Speaker, I feel, very strongly, that this is a good bill. These amendments will help make the Federal Coal Mine Health and Safety Act more responsive to the needs of our miners, their widows and dependent children.

I urge your support and favorable consideration.

Mr. HECHLER of West Virginia. Mr. Speaker, the coal miners and their families throughout the Nation are grateful that at last the Congress is bringing a greater measure of justice to those who have been deprived of their hard-earned compensation for pneumoconiosis by the narrowly restrictive rules of the Social Security Administration. I should like to take this opportunity to commend our colleagues, the Honorable CARL PERKINS of Kentucky and the Honorable JOHN DENT of Pennsylvania for their yeoman efforts in bringing this legislation to the floor. Even more particularly, I want to register the highest praise for the Senator from West Virginia, the Honorable JENNINGS RANDOLPH, who spearheaded this legislation through the other body. Senator RANDOLPH not only was able to include a number of liberalizing amendments during consideration of the bill in the Senate, but he also held very significant field hearings in Beckley, W. Va., and in Pennsylvania, during the course of which very helpful testimony was elicited from coal miners, disabled miners, and widows. From these hearings emerged significant changes and improvements in the legislation to help bring justice to miners, widows, and their families.

When the President signed the Federal Coal Mine Health and Safety Act of 1969 on December 30, 1969, he included a veiled threat that the black lung compen-

sation provisions violated States' rights and should be interpreted narrowly by the Social Security Administration. I believe it was this statement by the President, and subsequent attempts by the Social Security Administration to interpret the law too rigidly, that deprived thousands of deserving miners and widows of their rightful claims. Now if the President dares to veto this conference report, he will bring down on his head the massed anger of the coal miners of this Nation. So I trust the President will sign this important piece of legislation immediately.

Mr. ERLNBORN. Mr. Speaker, I have no further requests for time, and I reserve the remainder of my time.

Mr. DENT. Mr. Speaker, I have no further requests for time.

The SPEAKER. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. HALL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 275, nays 122, not voting 34, as follows:

[Roll No. 141]

YEAS—275

Abbutt	Celler	Garmatz
Abourezk	Clausen,	Gaydos
Abzug	Don H.	Gettys
Adams	Clay	Gialmo
Addabbo	Collins, III.	Gibbons
Alexander	Conyers	Gonzalez
Anderson,	Corman	Goodling
Calif.	Cotter	Grasso
Anderson,	Coughlin	Gray
Tenn.	Culver	Green, Oreg.
Andrews, Ala.	Curlin	Green, Pa.
Annunzio	Daniels, N.J.	Griffiths
Aspin	Danielson	Gubser
Aspinall	Davis, Ga.	Gude
Baker	Davis, S.C.	Hagan
Baring	de la Garza	Halpern
Barrett	Delaney	Hamilton
Begich	Deirums	Hammer-
Bennett	Denholm	schmidt
Bergland	Dent	Hanley
Bevill	Derwinski	Hanna
Biaggi	Diggs	Hansen, Wash.
Biester	Dingell	Harrington
Blatnik	Donohue	Harsha
Boggs	Dorn	Harvey
Boland	Dow	Hathaway
Bolling	Drinan	Hawkins
Brademas	Dulski	Hébert
Brasco	Duncan	Hechler, W. Va.
Bray	Dwyer	Heckler, Mass.
Brinkley	Eckhardt	Heinz
Broomfield	Edwards, Calif.	Helstoski
Brotzman	Eilberg	Henderson
Brown, Mich.	Evans, Colo.	Hicks, Mass.
Brown, Ohio	Evins, Tenn.	Hicks, Wash.
Broyhill, N.C.	Fascell	Hillis
Buchanan	Findley	Hogan
Burke, Fla.	Fish	Holifield
Burke, Mass.	Flood	Horton
Burlison, Mo.	Flowers	Hungate
Burton	Foley	Hunt
Byrne, Pa.	Ford,	Ichord
Byron	William D.	Jacobs
Caffery	Forsythe	Johnson, Calif.
Carey, N.Y.	Fountain	Johnson, Pa.
Carney	Fraser	Jones, Ala.
Carter	Fulton	Jones, Tenn.
Casey, Tex.	Fuqua	Karth

Why do they need it? Simply, these miners, their widows, and their orphans need this bill to bring justice and equity to a law which, for all its merits, unfortunately does have flaws. After 2½ years of experience with this law, we feel that we have been able to pinpoint those legislative and administrative weaknesses and provide amendments which make the essential improvement. And, might I add that we have seen the defects not through the eyes of the Federal Government but through the eyes of the miners and their widows themselves. We have seen it through the eyes of Mrs. Keroy Andreas from Luzerne County, Pa., whose husband spent 22 years in the mines and survived only by means of an oxygen tent, yet she cannot receive benefits; through the eyes of the 80-year-old West Virginia man who worked in the mines for over 35 years and is now bedridden and immobile, yet isn't considered totally disabled under the law; and through the now blank eyes of Charles Howell, who was twice turned down for black lung benefits but whose autopsy later showed that he did indeed have pneumoconiosis before he died.

If ever a bill came from the people, this one did.

And, we in the House of Representatives must not forget the people this bill will effect; we must not forget the human side of this long and, more often than not, poignant story. We must not forget how coal miners worked and literally died to provide the fuel so that this country might grow strong. We must not forget the misery and suffering that they and their families endured both during the time while they worked and the time while they slowly, painfully rotted away with the dreaded black lung. Since I have been in Congress, and long before, we have remembered the farmers, we have remembered the cotton growers, we have remembered the banks, the railroads, and so many others with large sums of money and legislation. But, only in 1969 did we remember the coal miner. Are we going to forget him now, now when we can help him just a bit more?

The conferees have agreed upon historic legislation, fair and equitable in every way. Before pointing out the major provisions of the conference agreement, let me say that all of the provisions embodied in the House bill are contained in the conference report in some form.

The House bill extended retroactive black lung benefit coverage to the orphan children of miners, thereby correcting a tragic oversight of title IV—"Black Lung Benefits"—of the 1969 law. This coverage is contained in the conference report.

The House bill permitted the Secretary of Health, Education, and Welfare to certify dependent benefits directly to dependents in those cases where the Secretary believed it was in the best interests of the dependents to do so. This provision is in the conference report.

The House bill applied certain procedures of the Social Security Act to the black lung benefits program, and these procedures are incidentally incorporated into the conference agreement.

The House bill required the elimination of the practice of reducing social

security disability insurance benefits on account of black lung benefits, and this provision is contained in the conference report.

The House bill extended benefit coverage to surface coal miners, and the conference agreement retains that coverage.

The House bill prohibited the denial of a black lung claim solely on the basis of the results of a negative X-ray, and that prohibition remains in the conference agreement.

Finally, the House bill extended the black lung benefits program for 2 years across the board. The conferees agreed on an 18-month extension with regard to full Federal responsibility for claims, a 6-month "swing" period during which Federal responsibility is temporary, and the eventual termination of the program after 1981.

But there are often important provisions in the conference report, Mr. Speaker; provisions which were contained in the amendments made by the other body, and provisions which have great merit.

Total disability under existing law is determined according to regulations of the Secretary of Health, Education, and Welfare. As administered, if a disabled miner has the capacity to work at any job, no matter how menial or far away from his home, he is not now considered to be totally disabled, and is, therefore, not eligible for black lung benefits. Under the conference report, if pneumoconiosis prevents a miner from engaging in gainful employment requiring skills comparable to his work in a mine, he will be considered totally disabled.

One of the most prevalent complaints against existing law and its interpretation involved the inability of miners or their widows to establish the existence of black lung, even though the miner was clearly totally disabled or had died with the disease. The House bill, as I noted earlier, precluded sole reliance on the X-ray. The conference report, however, further provides that when a miner worked 15 years or more in an underground coal mine, or in comparable conditions on the surface, when such miner had a negative X-ray and when such miner had a totally disabling respiratory or pulmonary impairment, he is given the benefit of a rebuttable presumption that he was disabled due to pneumoconiosis. The agreement limits such claims under part C of the program to those in which the 15 years of employment took place prior to July 1, 1971—the date by which all coal mines were required to meet the 3.0-milligram dust standard prescribed by the Federal Coal Mine Health and Safety Act of 1969.

Existing law limits beneficiaries to miners, their widows, and children. The House bill, as stated earlier, extended benefits to orphans. The conference report further extends such benefits, where there is no widow or child who survive the miner, to wholly dependent parents. If there are no such parents, then benefits may accrue under certain conditions to wholly dependent brothers and sisters, if any.

Under existing law a widow, if she is

to claim black lung benefits, must show that her miner-husband died from black lung or a respiratory disease. The conference agreement provides that a widow may also claim benefits if her husband was totally disabled by pneumoconiosis at the time of his death. Then, if the miner was so disabled, the widow may claim benefits regardless of the cause of death. This same provision is extended to claims by orphans.

Application of current law in effect limits evidence which may be used to support a claim for benefits. The conference report requires the consideration of other evidence such as additional medical tests, affidavits, and clinical and work history.

The conference report also contains a significant provision that applies all sections of part B—Federal responsibility—including amendments to the act, to part C—State and operator responsibility—where such provisions may be appropriately applied. The part B provision relating to the social security disability insurance affair, however, is not applied to part C. And the application of the part B 15-year rebuttable presumption is applied to part C in the limited sense that it relates to situations when the work took place prior to July 1, 1971.

There are other provisions in the conference report, and I believe I have highlighted the major ones. Our final provision is of considerable significance, however, and that is the requirement that the Secretary of Health, Education, and Welfare notify all claimants under title IV of changes in the law and that their claims will be reviewed.

Mr. Speaker, there will be those who will oppose this legislation for one reason or another. But, they will be the same ones who have opposed it from the beginning. They are the ones who are callous enough to think in terms of dollars when the legislation is aimed at salvaging some small part of a human life wrecked by a terrible disease. They are the ones who say billions for defense, billions for farming, billions for industry—yet they refuse to allow a few dollars a month for a poor miner whose lungs are infested with black lung.

I have been in the little coal mining towns; I have seen the people there: I have talked with them. I know that no amount of money can fully compensate them for their suffering. Yet, the small sum which we can provide can help to ease their burdens.

And so, I ask you today to speed this legislation on its way to becoming law. We have remembered 164,000 miners and their widows to this date, but there are still those who have been denied, those who have claims as valid, as just, as deserving as the claims of those who are now receiving benefits. Lest we not forget them, we must pass the Black Lung Benefits Act of 1972.

Mr. Speaker, I would be remiss if I did not make special mention at this point—and in closing—of the tremendous contribution of the gentleman from California (Mr. BURTON), as always, he has devoted uncommon attention and concern to the plight of our Nation's coal miners and their families. And in

made a mistake in not adopting the Senate provision. I am sorry the Senate receded. The result is it is possible for an individual to be compensated at a rate higher for disability than he could earn when he is working in a coal mine.

The other question, of course, is that which relates to the definition of disability and the extension of that definition. I am fearful it will establish a precedent which will haunt this House in later years when we get into questions such as brown lung rather than just black lung. And just as sure as we debate and argue about this conference report today there will be pressure on the part of many in this body on behalf of their constituents who consider themselves to have a disease every bit as serious as pneumoconiosis and come here and press their cases on an equity basis. I am afraid that equity does not rest with this conference report. Therefore, I reluctantly did not sign it, and I urge a vote against adoption of the conference report.

I yield back the remainder of my time.

Mr. DENT. Mr. Speaker. I yield myself 7 minutes.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. DENT. I am happy to yield to the distinguished majority leader.

Mr. BOGGS. Mr. Speaker and Members of the House, I take this time to commend the gentleman from Pennsylvania, the gentleman from Kentucky, the gentleman from California, and all the others who worked on this legislation. As the gentleman from Pennsylvania (Mr. Flood), said earlier, this is indeed a historic piece of legislation, and I hope that the House will adopt it by an overwhelming vote.

Mr. DENT. Mr. Speaker and Members, I do not intend to take any time to try to prove or convince the House that this is a worthwhile piece of legislation. The House itself declared that to be a fact when it passed this legislation with such an overwhelming vote. The arguments today should be on those particular points that have been raised as to whether this legislation goes beyond that which the House considered.

The only points that are in question are those related to the issue of cost. The same social security office which gave the figures to my worthy opponents on the other side, of \$4 billion for one section of the bill, which would be part B, and between \$2.5 and \$3 billion for part C, just 3 weeks ago, issued an earlier estimate in which they had \$7,600,000,000 for part B alone. We now have five sets of estimates from the very same office, signed by the same individual. That is the same group which gave me the estimate of \$40 million when the first bill was passed.

If you remember, I said to you, "This is an estimate from the social security office contained in a letter to Congressman DOMINICK DANIELS of \$40 million." At that time I made you one promise. I promised this House that if we would pass that bill and keep in the bill the criteria for dust a maximum of 2 milligrams, effective 1972, December 1, that

we would eradicate the cause of black lung. We have reached a 3-milligram level in 85 percent of the mines in this country, over the opposition of the operators and over the opposition of experts, and in 75 percent of the mines we have reached a 2-milligram level.

I said to you that as the years went by there would be a diminishing cost. And what is the record? What is the diminishing cost? We have here a set of records that will, I am sure, prove my promise to this House. This is also from the same office. This year the estimate is that in 1973, \$989 million in benefits will be paid under the provisions of this act.

And, then it reduces. In 1974, it is estimated to be \$441 million, and on down to the end of the legislation in 1981 when the estimated cost is \$300 million, or exactly one-third of the cost for 1973.

Why is this? As I told the Members when I begged Congress to pass the legislation but not to pass the black lung benefits unless also we passed the dust levels, it is because I wanted to make sure we would have no new cases of black lung in this country, and we will not have any new cases of black lung. The only cases that will be paid for will be those which have been contracted in the duty mines prior to the 1971 3-milligram dust standards.

In the foreseeable future there will be no more payments, and there will be no more black lung; and this is possible because the Members of the House believed me when I appealed to them to make it a Federal responsibility, because there is no way we can make this an operator responsibility.

A period of time is required for pneumoconiosis to develop into fatal injury. In almost every coal area of the country the miners move from one town to another and from one mine to another. There is no place where we can put the responsibility. That is why we are giving 18 more months in which to decide how many more miners will come under the act.

Why do we do that? We do it for the simple reason that under the old rules which prevailed in the coal mining towns, the only doctor available was the company doctor, and the companies refused to admit or to recognize such a thing as a respiratory disease contracted in the coal mines. So in every coal mine death prior to 4 years ago, when the States of West Virginia, for instance, and Virginia and Kentucky, and about 8 years ago the State of Pennsylvania took action, it was ruled that every coal mine death was either pneumonia or emphysema or heart condition or heart attack or something entirely removed from any kind of association with coal dust.

So we say in this law that any miner who worked 15 full years in a coal mine prior to June 30, 1971, and has a pulmonary or respiratory disability, is presumed to have had black lung. However, it is a rebuttable presumption. If he claims black lung and if it is shown there is no connection between his disability and his work in the mine after other examinations and evidence, then it is shown that he has no pneumoconiosis.

What we are saying is that over 50 percent of these miners have been turned

down, including the widows. Let us take a few practical cases. Mr. Jones worked in the mines for 39 years. He is dead. Mrs. Jones claims compensation as his widow. She is turned down, because Mr. Jones is supposed to have died from an attack of pneumonia.

Now Mrs. Smith's husband worked in the mines 37 years, in the same mine.

Mr. O'NEILL. Mr. Speaker, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Massachusetts.

Mr. O'NEILL. Mr. Speaker, I commend the gentleman from Pennsylvania for the statement he is making on black lung and for his work on black lung.

Mr. DENT. So Mrs. Smith, whose husband worked in the coal mine 37 years died in a city away from the coal mining community, and his death certificate states he died from a pulmonary disease. So we are saying it was impossible for a miner to work 37 years in a coal mine in the pre-dust standard days not to be afflicted with pneumoconiosis.

The English, with 30 years of records, have said that no miner could work 25 years in a mine without having pneumoconiosis or black lung.

So we had to take the body of knowledge from the English. In the first bill I made it a rebuttable presumption of 10 years. They have turned down some 50 percent. So we only extended it to cover the same body of people we had covered before and for the same reasons.

I beg the Members to give support to this legislation. I would now like to go into a rather comprehensive and cogent presentation of the conference report.

Mr. Speaker, I join my distinguished colleague from Kentucky today not only in speaking in favor of the conference report on H.R. 9212, the Black Lung Benefits Act of 1972, but also in emphasizing its importance to all miners and their families throughout this great Nation of ours.

At the outset, I want to commend the chairman (Mr. PERKINS) for the exemplary job which he did in conference to develop a fair and equitable compromise with the conferees of the other body. Might I also laud our counterparts there as well as conferees on our side who supported the position of this body: I believe it is a job well done, a job which will withstand the test of time.

This legislation is considered requisite not only by the conferees but by both Houses of Congress. In this context, let me review the voting. The House passed its legislation by an overwhelming 312-78 vote on November 10, 1971. Our colleagues in the other body unanimously passed their amendments 5 months later by a 73-0 vote. The conferees, realizing the overwhelming need for this legislation, worked hard to set aside personal differences and the differences in the two bills to get a fair and equitable compromise and it was done in 2 days. In turn, the other House immediately passed the conference report, doing it by another unanimous vote—this time without even the formality of a rollcall. I find it hard to imagine that the House of Representatives can do anything less, realizing that the miners of America desperately need this legislation.

The long and short of it is that this bill is a midpoint and very essential between the House-passed bill and the Senate-passed bill. It was signed by most, if not all, of the Senate conferees and by an overwhelming majority of the House conferees. It is going to be approved by an overwhelming majority of this House.

Mr. ERLNBORN. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. SAYLOR).

(Mr. SAYLOR asked and was given permission to revise and extend his remarks.)

Mr. SAYLOR. Mr. Speaker, I rise in support of the conference report on H.R. 9212, the Black Lung Benefits Act of 1972. This act will provide for the correction of several serious deficiencies in the Federal Coal Mine Health and Safety Act of 1969. Public Law 91-173 was signed into law on December 30, 1969 with the primary purpose of protecting the health and safety of the Nation's coal miners. Title IV of the act is entitled "Black Lung Benefits" and deals with the provision of benefits, in cooperation with the States, to coal miners who are totally disabled due to black lung disease and to their surviving dependents. While it was the intent of Congress in enacting the Coal Mine Health and Safety Act, and particularly with regard to title IV of the act, to attempt to provide some belated recognition of the terrible cost to miner's health as a result of years of mining, we have learned in the past 2 years that a number of problems have adversely affected this intent.

First, we have learned that we seriously underestimated the extent of black lung disease within the population of the miners of this country. Original estimates have been exceeded almost five fold. This has produced some problems in the processing of claims and has had some effect on the completion of the task of determining eligibility and for shifting responsibilities to industry within the time frame originally specified.

Second, we learned that the provisions which were intended to provide benefits to disabled miners are not being provided to about half of the miners and their dependents who have filed claims for benefits. This disparity in the assignment of benefits seems to be at least partially due to the difficulty which many miners or their dependents are having in providing the necessary proof of the cause and extent of disability. There seems to have been too much dependence during the processing of claims upon the admittedly less than foolproof X-ray determination of the degree of lung impairment. There has been sufficient attention given to the evidence of prolonged unemployability, family doctor's records, and local witness statements regarding a claimant's extent of disability. There has been particular difficulty on the part of dependent's claims when records of the death of the spouse are not adequate to furnish specific data on the extent of black lung disease. I am sure that you realize how difficult it must be to try to reconstruct

a health record within families where the visit to a doctor is an uncommon event. Testimony given at the various hearings on H.R. 9212 continues to emphasize the pride of work evidenced by the coal miners of this Nation. These men only quit when they are physically unable to work. To disregard the record of disability and unemployability solely on the basis of a specific size of a mark on an X-ray is to deny the facts of life in a coal miners work environment. The decision to award benefits should be realistically based upon a composite of factors derived from detailed examination of the occupational history, clinical examinations, employability, and with the X-ray use as a guide during the interpretation of the proceeding forms of evidence.

Third, in the act of 1969 was the provision which resulted in an interpretation that benefits could only be paid to miners or to their widows. The surviving children have no basis for claim for benefits. H.R. 9212 provides for a correction of this deficiency by providing for benefits for dependent children or for dependent parents, brothers, or sisters; however, it would have been a better bill had the committee written an age limitation for brothers and sisters.

We have come a long way in the past 2 years but the problem of improving the environment of the working coal miner and assisting in his care after disablement is not completely solved. We have a commitment, enacted in law, to assist the miners of this country. Progress is being made toward the improvement of the work environment. We need to insure that some comfort is provided for the disabled miners in return for their sacrifices in securing vitally needed fuel resources. We need to insure help for the disabled miners in the care of their dependents who also suffer when the miner is disabled from an occupationally derived respiratory impairment.

H.R. 9212 will correct these serious deficiencies in existing law. By extending full Federal support of benefits, the miner will have assurance of continuing benefits and the States and industry will be better able to assume their responsibilities for providing benefits. The bill will provide statutory authority for the utilization of all relevant evidence submitted by the claimant and will include the provision that no claim for benefits under the bill shall be denied solely on X-ray. Since tests of a desirable accuracy are not available for the determination of the degree of impairment due to black lung or other occupationally derived respiratory disease, the bill also authorizes the Secretary of the Department of Health, Education, and Welfare to develop tests and devices as necessary to detect and evaluate pulmonary and respiratory impairment. The Secretary will also be authorized to construct clinical treatment facilities for miners with lung impairments.

In response to recommendations from several sources the bill will also protect the miner against discrimination in employment as a result of pneumoconiosis. In addition, the bill also provides for several improvements in administrative

procedures and extends benefits to surface coal miners under certain circumstances.

I think that all of these changes are necessary and are actually a clarification and refinement for the most part of the original intent of the act of 1969. As with most complicated and innovative legislation, application frequently reveals deficiencies and amendment is required to insure equitable achievement of objectives. H.R. 9212 provides for the changes necessary to provide benefits to the coal miners of this Nation and to their dependents. I urge you to approve this bill.

Mr. ERLNBORN. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. STEIGER).

(Mr. STEIGER of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Speaker, at the time that this House passed the Coal Mine Safety Act, I was one of those who was a part of the effort on both sides of the aisle in wanting to insure that pneumoconiosis should be compensated.

That black lung provision was retained and the provision is now a part of the law of the land. Thus, black lung compensation is not the issue here.

I served as a conferee on this bill, H.R. 9212, on the question of what to do about extending black lung compensation, and I did not sign the conference report. I did not do so, I must say in all honesty, reluctantly because there is no question that the eloquent gentleman from Pennsylvania (Mr. FLOOD) portrays well the suffering those who have this disease.

But, I think there are on balance substantive questions which can and should be raised about the wisdom of the House extending, as this legislation does, the Federal responsibility. It is for an 18-month period. The Social Security Administration estimates in the period from 1972 to 1981—\$4 billion plus for part B in terms of cost to the Federal Government and slightly over \$2 billion for part C.

I am fearful that when the 18-month period expires we may find States and industries and coal miners back here asking for a further extension of the Federal responsibility.

The House bill provided 2 years and the Senate a year and thus the 18-month extension is at least superior to the House bill.

But even with that, I think it would be inadvisable for the House this afternoon to adopt this conference report.

There are two other questions which legitimately can be raised about this legislation. The first is that which was mentioned by the gentleman from Illinois in his remarks which, in effect, is that the other body receded and accepted the House version on the limitation of payments. The House had an opportunity when it considered the bill to adopt the amendment offered by the gentleman from Wisconsin (Mr. BYRNES). It turned that amendment down. It should have adopted that amendment.

But the conference committee I think

DENT's district or Mr. PERKINS' district and try to tell them that PERKINS, DENT, and Flood are down here as mouthpieces for coal operators, they will say you are out of your cottonpicking mind. Imagine? They have been against this for a hundred years. Imagine us being any mouthpiece for the coal companies and you are crazy. This will help people who cannot assume the burden of proof.

The opponents say let them prove they have black lung, or if they are dead, let their widows prove that they died of black lung.

They demand: Where is the evidence? Where are the hospital records? Where are the X-rays, huh? "OK, prove it and we pay it."

Dear God.

You should have seen those hospitals, or the things that went by the name of hospitals, and the doctors who were on the company payrolls going around with a horse and buggy. What records? What evidence? Those doctors did not keep records even of the feed they gave to their horses, let alone the kind of records demanded by social security, and the experts today of evidence of what we in the hard coal fields then called miner's asthma, or hard coal asthma, better called black lung today in both the hard and soft coal fields.

Records? X-rays? There are doctors who are members of the medical profession in this House who will tell you—and I am not an amateur on X-rays myself, God forbid, and I am sure that you know, that in England, Germany, and Japan—in fact, all over the world it has been established in these countries X-rays do not conclusively show this condition. And we have thousands of cases paid out by social security with additional letters submitted and additional evidence when available where the X-rays are not infallible, they are not the sole and infallible proof.

This is unfair. This is not right medically, historically, or any other way; they must have a chance to present additional evidence other than a mere X-ray about these difficult conditions.

That is all this bill does on this point permits additional evidence, nothing else.

And then over the years, the other lung conditions, emphysema and heart condition—why, the death certificates say in thousands of these cases, "heart condition." The guy's heart stopped.

Now, is that not something? His heart stopped, and he died. Is that not extraordinary? But the hospital records and the death certificates say "heart attack, heart attack." That is the end of that.

How silly can you get? He died, his heart stopped. Yes, he died from the heart stopping, but did you ever see some of these people try to breathe? You should be in my neighborhood. Men who went to high school with me who worked in the mines—and I never worked in the mines, I worked outside as a track layer—but I have seen them spit out their guts and die because they could not breathe—sure their hearts stopped.

This is historic. My congratulations to the committee, to the Senate, and to this House.

Mr. Speaker, the conference report to accompany H.R. 9212 which comes before this body today is nothing less than historic, and I would maintain that it brings benefits not only to those long suffering coal miners and their families, but to the entire Nation.

In supporting this conference report, I am thinking not only of those miners disabled by "black lung." I am thinking not only of those who are made widows and orphans at an early age. But rather I am thinking of all of us who use the products of their labors underground. When we turn on a light, when we need medication, when we forge steel, when we do a thousand other things derived from coal, we should keep in mind that these miners deserve the full measure of equity under the law that is possible—Mr. Speaker, I am convinced that this measure before us today provides that "full measure of equity."

When the provisions of the bill before us today are closely examined, it is clearly shown that progress has been made in the light of more than 2 years of experience in providing benefits to disabled miners and relief to their families. With the adoption of the following provisions, those benefits will be more just, and the relief more complete:

First, by broadening the definition of disability, the bill recognizes the debilitating nature of black lung disease. Many times I have seen men out of work because they could not catch their breath, even while sitting down—yet under the law as it now stands they are not classified disabled—this must end.

Second, the bill will eliminate the X-ray as the sole test of whether a victim has pneumoconiosis. It has long been shown by medical authorities that the X-ray is not infallible and indeed it is usually inaccurate when it comes to detecting early signs of the disease. I have seen men who worked as miners in the dustiest part of the mine for many years, and who were hardly able to move about from black lung—yet under the law as it now stands, their negative X-ray excludes them from the benefits of the law—this must end.

Third, the bill will presume a miner to have pneumoconiosis if he has worked in the mines for 15 years and after that period of time is shown to be disabled from a pulmonary or respiratory disease. I have seen men who worked in the mines for 30 years—and many of those years at the "face" which is the dustiest part—and who took one-half hour to climb a flight of steps—yet under the law as it now stands, there was no assumption that they were suffering from the disease—this must end.

Mr. Speaker, by the adoption of this conference report today, no longer will we throw the burden of proof upon the miner who has had his life and, in most cases, his lungs impaired by his work. Now is the time to give the miner a fair hearing and due process in the filing of his claim. The sole object of the bill in this broadening of the law is to give each and every coal miner fair judgment on whether or not he did in fact suffer from this disease.

Furthermore, by extending coverage to orphans and in certain other cases

dependents, this bill recognizes what those of us who live in coal mining areas have known for a long time—black lung disease takes the lives of miners at an early age. By demanding full equity for these men, we must provide full protection to their families.

In conclusion, I would like to thank the distinguished gentleman from Kentucky (Mr. PERKINS) the chairman of the Education and Labor Committee as well as the gentleman from Pennsylvania (Mr. DENT) the chairman of the Subcommittee on Labor for their consistent hard work and judicious consideration of this bill: I have worked with them for years, every coal miner and their families also thank them as they will us for the adoption of this conference report.

Mr. DENT. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. BURTON).

(Mr. BURTON asked and was given permission to revise and extend his remarks.)

Mr. BURTON. Mr. Speaker, we have all heard much of this debate in the three previous times this House has voted on this measure. We are all aware of the enormous contributions made by the distinguished chairman of the Committee on Appropriations on Labor, Health, Education, and Welfare, our distinguished colleague, the gentleman from Pennsylvania (Mr. Flood) who has effectively assured that the policy of this House was fully funded by his subcommittee, the full committee, and the Congress.

We are aware of the enormous concern of the gentleman from Kentucky (Mr. PERKINS) the chairman of our full committee, and the gentleman from Pennsylvania (Mr. DENT), the chairman of our subcommittee, to see that all of these lung functions having to do with work in the coal industry be given some recompense for having acquired this dread disease. And the performance of the gentleman from Pennsylvania (Mr. DENT) is the entire history of this law has been nothing less than incredibly exemplary. He has been a veritable mountain of strength and forcefulness for the coal miner and his family.

Mr. Speaker, we are really painfully reminded of the stubborn and willful continued opposition of our ranking minority member. But this legislation is beyond all that and has passed continually with bipartisan support, and it will pass again today because the legislation has merit.

It was our colleague, our ranking member on the subcommittee, the gentleman from Illinois (Mr. ERLBORN) who just a few years ago supported legislation suggesting that the Federal Government have 7 full years of full responsibility. He remembers that. I remember that. Maybe most of us have forgotten it. Perhaps he did it for a ploy. Perhaps he did it because he meant it—but he did do it.

Mr. Speaker, I take it if the gentleman from Illinois was serious to us that we should get into the business of helping industrial accidents like broken backs and roof falls—but if the gentleman is serious, I will join with him on an amendment to move into the workmen's compensation field.

Now, they were a bit worried. The Senate went a little bit farther than the House did. It looked like they would be under the same burdens as the Federal Treasury when we used the presumption that any man working 15 years in the mines would be presumed to have the disease if he had a pulmonary impairment. It was strange to see some of our friends in the conference scramble for a while in order to try to help the industry out on this phase, and they did. We do not use the same presumption for the coal mine operator as we do for social security when we are making payments out of the Treasury.

So, we have sweetened this up a little more for the coal mine operators by giving them a little less of a burden when it becomes their responsibility.

Mr. Speaker, this is a bad conference report. It represents an unconscionable raid on the Treasury of the United States. It is unfair to others engaged in work in the coal mining industry who have suffered injuries and disability but who are entitled to equity.

It is, really, the first step, as I said before—and I am more convinced now—toward a Federal takeover of workmen's compensation which has worked well as a State-operated compensation system.

Mr. Speaker, I reserve the balance of my time, and ask for the defeat of this conference report.

Mr. DENT. Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. KOCH).

CLOSING OF THE HOUSE GALLERIES TODAY

(Mr. KOCH asked and was given permission to proceed out of order.)

(Mr. KOCH asked and was given permission to revise and extend his remarks.)

Mr. KOCH. Mr. Speaker, I would like to pose a question to the Speaker.

This is my fourth year in the House and during all of that time we have had a number of problems, but we have never, to the best of my knowledge, closed the public galleries.

I am distressed today that the public galleries have been closed.

I ask the Speaker whether he would not direct the galleries to be opened.

If there are people who engage in behavior that cannot be tolerated, I assume the Capitol police are capable of handling such a matter.

The SPEAKER. Is the gentleman making a parliamentary inquiry?

Mr. KOCH. I am, Mr. Speaker.

The SPEAKER. The Chair will read the rule to the gentleman:

He, being the Speaker, shall preserve order and decorum and in case of disturbance or disorderly conduct in the galleries or in the lobbies may cause the same to be cleared.

The Speaker has received information from what he regards as responsible authorities, including the Capitol police, that there is danger of disturbances and recommends that the Chair not permit the galleries to be opened for the time being.

The Chair reluctantly accepted this advice.

Mr. KOCH. I respectfully ask the Speaker to reconsider this. I do not think

it is helpful to the House to close the galleries.

The SPEAKER. The Chair has answered the gentleman's question.

Mr. DENT. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. MORGAN).

(Mr. MORGAN asked and was given permission to revise and extend his remarks.)

Mr. MORGAN. Mr. Speaker, in 1969 Congress took the sorely needed first steps toward recognizing black lung disease as an occupational disease and providing for compensation to diseased miners and their widows. Title IV of the Federal Coal Mine Health and Safety Act of 1969 has as its purpose the elimination of the threat of black lung as well as to provide benefit payments and minimum compensation standards for miners and their widows who had been totally disabled by black lung disease. But during the 2 years since the passage of the Coal Mine Health and Safety Act of 1969, shortcomings of title IV have become obvious.

The current law, while providing for claims based on totally disabling pneumoconiosis as diagnosed by use of a chest X-ray is insensitive to the fact that the miner is easy prey for other respiratory ailments which may be brought on by his working conditions. H.R. 9212 returns to the original intention of the 1969 act to recompense the totally disabled miner for mine-related disease by recognizing other forms of respiratory disease besides black lung as cause for disability under certain conditions of employment.

In addition, this act of 1972 recognized the inadequacy and injustice of the present tests for the existence of black lung disease and the tests which determine if a miner is totally disabled. Experience has proven that a single roentgenogram does not always detect the existence of black lung—especially if the disease is in its early stages. As of April 30, 1971, 58 percent of miners' claims nationwide had been denied on the basis of this often inconclusive diagnostic tool, a single chest X-ray.

The tests used to determine degree of disability are unjust and are not particularly suited to black lung disease. One-third of the black lung claims are denied because total disability was not proven by a test which measures the ability to breathe air into the lungs, while the problem created by black lung is not inability to inhale, but the inability to transfer oxygen from the inhaled air to the blood.

H.R. 9212 would alleviate these shortcomings of title IV by prohibiting the denial of a claim solely on the basis of an X-ray, and by assuming the presence of pneumoconiosis in a person who has worked 15 or more years in a coal mine and has respiratory or pulmonary disability. The bill also calls for the modification of the definition of total disability to permit claims upon an inability to work at a mining job in which the miner was employed over a substantial period of time.

Besides this expansion of coverage, H.R. 9212 seeks to expand compensation eligibility to orphans of deceased miners

as well as to dependent parents, brothers, or sisters, and to allow a widow to claim benefits if her husband was totally disabled by pneumoconiosis at time of death, even though it may not have been the cause of death.

As originally conceived, title IV provided for a shared responsibility of bearing the cost of paying benefits. Full Federal responsibility for new claims now must be extended. At the time the bill was being considered, the estimate of the cost of these provisions to the Federal Government ranged from \$4 to \$100 million per year. But experience has proven the actual cost was grossly underestimated and actually approaching \$500 million per year—five times the highest original estimate. Because the incidence of the disease is much greater than previously thought and the cost proportionally greater, and because of the expansion of coverage provided for in this bill, it is right that the dual responsibility for payment by industry and Government be adjusted so as to remain equitable and to provide necessary additional time for the States to provide for an adequate workmen's compensation system.

In consideration of the improvements which this bill would make on the Federal Coal Mine Health and Safety Act, I urge the House to approve this bill and provide our miners and their dependents the compensation to which they are entitled. The 1969 act was a start, but because of its flaws it should not stand also as the end product. We must recognize its shortcomings and act to correct them by passing the conference report.

Mr. DENT. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. FLOOD).

(Mr. FLOOD asked and was given permission to revise and extend his remarks.)

Mr. FLOOD. Mr. Speaker, this is an historic occasion, believe me.

My grandfather, God rest his soul, and my father, God rest his soul, were in touch with their Congressmen years and years ago on this very question.

This is not something thought up all of a sudden.

This is no attempt to harangue or raid the Federal Treasury because of some long-haired character with a gimmick; indeed not.

Mr. Speaker, unless you are born and raised, as I have been in the anthracite coalfields of Pennsylvania and as the gentleman from Pennsylvania (Mr. DENT) has been in a soft coal—the bituminous mining area—or the hard coal, the anthracite mining area, you are not able to completely understand the problem. We are not sure that bituminous is even coal, but I will be kind today, but for the purpose of this debate it is coal. We never always wore shoes in the coal fields. We were born and raised in these areas and we know this problem from long sad experience.

Mark this. The gentleman who just left this well indicated or tried to say that this is a boon for the operators; this is a gesture to help the coal operators.

You go to any barroom, church, picnic, or corner store in my district or Mr.

ing the State takeover for 2 years in order to do equity to these diseased coal miners who had been discriminated against by earlier construction of the act. In addition, the States had not made the necessary arrangements to assume this responsibility, it would have been folly for the Committee on Education and Labor to stand idly by and let a situation of this type develop without extending the Federal responsibility to make sure that justice was administered to those in reality disabled from black lung. The 2-year extension was, therefore, no afterthought.

Mr. ERLENBORN. I thank the gentleman for his contribution.

The gentleman has just repeated what he said on the floor before, and I can only answer as I answered before, that anyone who filed a claim under the act as it is today and felt he was improperly treated, had his right to appeal, and that was not affected and would not be affected by the extension of the Federal responsibility.

I might call attention to a communication I received from the Department of Health, Education, and Welfare, the Social Security Administrator, Robert M. Ball, in January of this year, in which he addressed himself in part to this question of claims that were denied. He says:

About 160,000 claims have been denied because the evidence did not show that the requirements of the law were met. About 100,000 of those denied have thus far requested reconsideration of their claims. Over 60,000 reconsideration decisions have been completed and every effort is being made to speed up final decisions on the remainder, consistent with assuring full reexamination of each applicant's claim.

Anyone who felt aggrieved by denial of his claim had these appeal rights. The appeals were being processed.

Extending the Federal responsibility has no effect on those people who had their claims denied. It is those who will file claims and have claims approved after January 1, 1973, for the next 18 months thereafter, who will become the lifetime responsibility of the Federal Government. They should be the responsibility of the coal mine operators, just as other businesses pay for the costs of accidents and industrial diseases suffered by their employees.

This bill can only be described as a bailout for the coal industry. It is relieving them of the burden of paying hundreds of millions of dollars—in fact, billions of dollars that they otherwise would have been required to pay.

Let me call attention to a memorandum dated May 3 from the Social Security Administration, Lawrence Alpern, Deputy Chief Actuary. In this he tells us the cost of this conference report that is pending and on which we will soon be able to make a decision.

The SPEAKER. The gentleman from Illinois has consumed 10 minutes.

Mr. ERLENBORN. Mr. Speaker, I yield myself an additional 5 minutes.

Over the period of 1972 to 1981 the Federal share of the cost of this bill, over and above the present cost of legislation on the books, will be \$4.215 billion.

The coal mine operators under this bill, when they take the responsibility under part C, will have some \$2 billion. There

are some negative figures in this chart, which indicates the amount they are being specifically relieved of under the cost they would have borne under the present legislation.

So it is quite clear that some \$4 billion will come out of the Federal Treasury that would not otherwise come out of the Treasury as a result of the passage of this bill, and a good part of that is money to be spent out of the Treasury that otherwise would have been spent by the coal mine industry. We are bailing them out. That is all we can say about this bill.

In addition, we are also changing the ground rules for determining who should get compensation. It was quite clear we intended to give compensation to those who suffered from pneumoconiosis. That was described and defined in the bill. Now, because there are those who have

In addition, we are also changing the way the disease, this conference report would impose on the administration of this act a presumption that anyone with any difficulty in breathing, any respiratory ailment, who worked in a coal mine for 15 years, has pneumoconiosis. It is a rebuttable presumption, yes, but how rebuttable? The only way medically one could rebut it is by the use of X-rays that have no showing of pneumoconiosis, yet this conference report before us rules out the use of the X-ray as a means of disproving that the person has pneumoconiosis.

In effect, by adoption of this conference report, should it become law, we will be extending benefits to anyone who worked in the coal mines who has a respiratory ailment whether or not he has pneumoconiosis.

Throughout the conference report the bill passed by the House—and it was a bad bill—was made worse by adoption of the Senate provisions.

Amendment No. 32. The House bill required the eliminating of offsetting social security disability insurance benefits of certain miners. It has no limitation. The Senate put in a 100 percent limitation.

What does this mean? Under the present act anyone getting pneumoconiosis compensation is treated the same as one getting payments under State workmen's compensation. If they are entitled also to social security disability, the social security disability payments are reduced to take into account the fact that they are getting pneumoconiosis benefits. The House bill would have removed this limitation entirely. The Senate bill was at least somewhat more reasonable. It said the combination of pneumoconiosis benefits and social security disability benefits should total no more than 100 percent of what the man was making when he was employed full time.

Now, that does seem fair, does it not? Let the man get compensation equally to what he was earning when employed full time. Was the conference satisfied with this? No. They took the limitation off so that the one getting the compensation may get more than he got when he was employed full time.

Why, I ask you, should the man get more in compensation than he got when

he was employed full time? Yet that is what the conference decided we should do.

Mr. PERKINS. Will the gentleman yield to me?

Mr. ERLENBORN. The gentleman has his own time. Mine is restricted. I am afraid I cannot yield.

The term "total disability" has been redefined as a result of the action of the conference, but it is not redefined in the same way as defined for the administration of the Social Security Act in their disability compensation. We have made it more liberal for the coal miner.

I might ask you, as I did before when we were considering the bill on the floor of the House, what equity is there to the coal miner who has a broken back as a result of a roof fall and is totally disabled getting less in compensation benefits than his fellow worker who has difficulty breathing because of pneumoconiosis? And yet that is the result of this conference report.

The SPEAKER. The time of the gentleman has expired.

Mr. ERLENBORN. Mr. Speaker, I yield myself an additional 5 minutes.

In addition to that, Mr. Speaker, in resolving the differences, as I have mentioned, we have extended the definition so that it will include for all intents and purposes all disabling respiratory and pulmonary impairments and not just black lung disease.

We have eliminated, as I mentioned, the X-ray as the sole means of rejecting a claim. The weight of the medical evidence is, short of a biopsy or a post-mortem, you have to develop it through the use of the X-ray in diagnosing the disease.

We have invaded again, as our Committee on Education and Labor has so often done, the jurisdiction of the Committee on Post Office and Civil Service. We are in this conference report mandating a rate for hearing examiners under this procedure of GS-16. As I understand it, that is even higher than other hearing examiners get doing similar work.

We have an open-ended authorization, as was contained in the Senate bill, and the House again receded to the Senate for an open-end authorization for title IV of the bill.

Mr. Speaker, in sum, what we have done is to take a bad bill as it passed the House and made a worse bill out of it.

We have extended the benefits to those who do not have the disease that we meant to compensate. But the most important thing, I think, is we put an unconscionable burden on the Treasury of the United States to make these payments which when they are made should be made by the coal mine industry.

I was sad that in the House consideration of this bill the leaders of that industry did not join in with their voices in opposing this legislation. They did not because they were getting a 2-year bailout. They were saving billions of dollars as a result of the Federal Treasury taking a responsibility which was rightfully theirs. As a result of the conference report, this is still true.

receded to the Senate with an amendment that in effect provided that such presumption shall not apply to part C unless all of the 15 years' employment in a coal mine occurred entirely before July 1, 1971. The significance of this date is that this is the date under existing law when coal dust particles in an underground mine must be reduced to the 3-milligram level, a level in which all of our present evidence indicates that the danger of contracting this disease will be eliminated.

Also adopted by the conference was a provision contained in the Senate bill but not the House bill that a miner is totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring skills comparable to his regular work in the mine.

A Senate amendment also altered the definition of pneumoconiosis to include sequelae of the disease. The Senate receded to the House on this point with the understanding of the conferees that in the administration of the program under existing law benefits are now provided for total disability due to the sequelae of pneumoconiosis.

The Senate amendments require that final regulations to part C to implement any amendments be promulgated and published no later than the fourth month following the enactment of H.R. 9212. The House bill did not contain any provision of this nature. The House receded with an amendment requiring publication no later than the sixth month following enactment.

In connection with the difficulties of establishing the existence of the disease, pneumoconiosis, to which I have previously alluded, the Senate had an amendment not contained in the House bill authorizing research facilities for the analysis, examination, and research related treatment of miners' occupational, respiratory, and pulmonary impairments. Such research, in my judgment, is essential if we are to be able to adequately treat and detect this disease at an early stage and make accurate medical determinations with respect to coal mine related respiratory diseases. Because the amendment had cost-reducing implications and because the amendment is essential to develop appropriate treatment of miners now suffering from this disease, the House receded to the Senate.

Also adopted in the conference was a Senate amendment requiring employers to provide medical benefits to employees under part C. Such a provision is required under State workmen's compensation laws. This provision was adopted by the House conferees.

Mr. Speaker, these are the major provisions of the conference agreement with the Senate, and in conclusion, let me leave these thoughts with my colleagues. The necessity for the legislation which we conclude today arises out of an effort to write into the law what we intended to do in the enactment of title IV of the Coal Mine Health and Safety Act of 1969. At that time I expressed, which thoughts were shared by many of my colleagues, the Nation's great debt to those miners who have supplied our vital coal at a cost that no man should have to bear by himself. That miners with the dreaded

black lung disease should be forgotten by their Nation is intolerable. That present law is operating inequitably to deny benefits to disabled miners, their widows, their surviving children, and their surviving dependents is unfortunate and an administrative and legislative oversight.

No one can appreciate the years of sacrifice that these workers have extended in the interest of providing this Nation with essential energy sources in times of urgent national crisis and in times of expanding domestic need—unless one has, as I have, gone into the underground mines and can appreciate the ardors of the miners' employment life. I urge my colleagues to join me today in overwhelming approval of the conference report which is just, fair, and consistent with the House action on November 10 in passing this legislation by the vote of 312 ayes to 78 nays.

Mr. Speaker, in bringing back this conference report today on H.R. 9212, the Black Lung Benefits Act of 1972, Members of this body, the Nation, and disabled coal miners owe a deep debt of gratitude to the many legislators who have worked long and diligently to make title IV of the Coal Mine Health and Safety Act of 1969 equitable and just.

In this vein, I wish to extend my deep and sincere appreciation for the diligent work of the gentleman from Pennsylvania (Mr. DENT) who chaired the subcommittee in which the legislation which I introduced was originally considered, to the members of that subcommittee, Mr. HAWKINS, Mrs. MINK, Messrs. BURTON, CLAY, GAYDOS, FORD, BIAGGI, MAZZOLI, PUCINSKI, BRADEMAS, ERLENBORN, BELL, ESCH, LANDGREBE, HANSEN, STEIGER, and KEMP, and to the many Members of this body who provided helpful information and strong support in its passage.

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, I yield myself 10 minutes.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, I rise in opposition to the conference report, H.R. 9212. As may be noted by the Members, the three Republican conferees, the minority conferees, have not signed the conference report, and we do oppose the adoption of the conference report, as we opposed passage of H.R. 9212 in the House.

Mr. Speaker, I do not suppose there are many issues that come before the House with the kind of emotionalism that is endemic to this type of legislation. A few years ago, as a result of an unfortunate coal mine disaster, there was great impetus given to the passage of coal mine safety legislation, and concurrently with that attention was called by coal miners, ex-coal miners, and by the press to the problem of those who suffer from pneumoconiosis or black lung disease. Consequently the two were tied together in the Coal Mine Health and Safety Act.

Coal mine health and safety, of course, we are all for. To make the mines more

safe and more healthy for the coal miners was and is imperative. But with the passage of that act we also enacted this new program for the compensation of those who suffered from pneumoconiosis. At the time we considered that, it was stated that this would be a temporary responsibility of the Federal Government. Compelling arguments were made that it would be impossible to assess the cost of those benefits to the various employers of coal miners who may have been working in the coal fields for the last 30, 40, or 50 years.

It was argued that time must be given to the States to allow them to amend their compensation acts to cover pneumoconiosis, but we were assured that this would be just a temporary Federal responsibility to pick up the backlog. That bill provided, that as of January 1 of 1973, the States through workmen's compensation and more importantly the employers, the coal mine operators, would then take on the burden of compensating those who suffered from this occupational disease, as do most other employers, through State workmen's compensation bear the burden of compensating those who incur diseases as a result of their employment.

There was unfortunately an inadvertent oversight in the drafting of that act a few years ago. We extended compensation to the totally disabled miners, and we extended compensation to his widow should he be deceased, and we increased the compensation for the miner or for his widow to take into account the minor children or dependent children that they have to support, but unfortunately, we overlooked the case where both the coal miner and his widow may be deceased, and there would be dependent children who should be eligible for these benefits, but they have no mother or father receiving benefits, and under the act that is the only way they can get the benefits. This was an unfortunate oversight.

Then last year, when the gentleman from Kentucky introduced a bill to extend the benefits to the so-called double orphans, I immediately agreed this was the only fair and equitable thing to do, but unfortunately this necessity of covering the double orphans has now been used as a vehicle to extend the Federal responsibility, and thereby remove that operator responsibility for lifetime benefits for coal miners who qualify for benefits in the next 18 months.

Mr. PERKINS. Mr. Speaker, will the distinguished gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Kentucky.

Mr. PERKINS. First, let me state when I reintroduced this bill, this H.R. 9212, as I recall, not only did we take care of the double orphans, but also we endeavored to eliminate other inequities in the same piece of legislation. We were prompted by the fact that in some areas 75 percent of the claims may have been paid, and in other areas, 75 percent were denied. In order to provide a sufficient period of time to eliminate these inequities we postponed the State takeover and extended the Federal responsibility for 2 additional years.

So the original bill had in it postpor

CONFERENCE REPORT ON H.R. 9212,
BLACK LUNG BENEFITS ACT OF
1972

Mr. PERKINS. Mr. Speaker, I call up the conference report on the bill (H.R. 9212) to amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the statement.

Mr. PERKINS (during the reading). Mr. Speaker, I ask unanimous consent that the further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. GROSS. Mr. Speaker, reserving the right to object, I take it the gentleman will take ample time to explain the conference report?

Mr. PERKINS. That is correct.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

(For conference report and statement, see proceedings of the House of May 4, 1972).

The SPEAKER. The Chair recognizes the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I am pleased to present to my colleagues in the House today the conference report on the Black Lung Benefits Act of 1972 (H.R. 9212). Today's action culminates a long and careful consideration by the Congress of the administration of title IV of the Federal Coal Mine Health and Safety Act of 1969 and the impact of that title on compensating miners who have been totally disabled or who have died from pneumoconiosis or so-called black lung.

It became apparent after a year's operation of title IV that because of strict and, in some instances, incorrect interpretations, many disabled miners whom we intended to benefit from the black lung provisions of the 1969 act were being denied disability payments. It became obvious in our studies that there were matters which had not been taken into account in the original passage of title IV that in all equity and justice should now be corrected.

Illustrative of one of these inequities is the fact that title IV in the existing law permits augmented payments to a widow on account of the dependent children of a miner who died from pneumoconiosis. It did not, however, provide for payments to dependent children of a miner where there was no surviving widow. Hence, under the existing law, these double orphans are not entitled to benefits. This

tragic oversight was one of the inequities with which we dealt in H.R. 9212 when it passed the House of Representatives by a rollcall vote of 312 yeas to 78 nays on November 10, 1971.

Mr. Speaker, I believe that the conference just concluded has maintained essentially the major thrust and intent of the House-passed legislation with possibly one exception which constituted the major difference between the House and Senate on H.R. 9212. In outlining for my colleagues at this point in the conference agreement, I will begin with this, the most difficult problem for the conferees to resolve.

This major conference difference resulted from the fact that the House-passed bill extended Federal responsibility for the payment of pneumoconiosis claims fully through the year 1973 and partially for the year 1974. Under existing law, full Federal responsibility ended on December 31, 1971, and the Federal Government under existing law assumed responsibility in 1972 only for those claims filed in 1972 and then only for the payments due that year. Claims subsequent to those filed in 1972 and the continuation of payments after 1972 were to be assumed by the States through State workmen's compensation laws under part C.

Contrasted with the House provision, the Senate amendments extended full Federal responsibility only through the year 1972 with partial Federal responsibility through 1973. The conference compromise extended full Federal financial responsibility through June 30, 1973, with partial Federal responsibility during the 6-month period beginning July 1, 1973, extending through December 31, 1973.

Both the House- and Senate-passed bills extended coverage to miners disabled with pneumoconiosis from work in mines other than underground mines. Likewise, both versions of the legislation precluded the denial of claims based solely on the results of negative X-ray findings. Consistent with the practice in social security cases, it permitted the Secretary of Health, Education, and Welfare to certify benefit payments directly to the dependents where it is deemed advisable and desirable to do so. These matters, of course, were retained in the conference.

Part C of existing law deals with compensating miners where death or total disability was due to pneumoconiosis after the Federal responsibility is ended, when State workmen's compensation laws assume this responsibility. Under the existing law, part C would have terminated on December 30, 1976. Under the House-passed bill, this termination date was extended to December 30, 1978. The Senate amendments by contrast made part C permanent. The conference compromise extended part C to December 30, 1981.

The Senate amendment permitted dependent parents of a deceased eligible miner to succeed to such miner's benefits if there is no surviving widow or child. Under this Senate provision where there was no surviving dependent parent,

surviving dependent brothers and sisters may succeed to such miner's benefits. On the basis that the conferees did not wish to make the black lung benefits payments provision less equitable than State workmen's compensation laws, the House conferees receded to the Senate with an amendment that in order for such class of beneficiaries to qualify they must have been wholly dependent on the miner and not just receive one-half of their support from the miner for at least 1 year prior to his death as provided in the Senate amendment, and further—must have resided in the miner's household for 1 year prior to the miner's death. The House amendment to the Senate provision further provided that in case of a surviving brother he would not receive benefits after the age of 18 and if a student after age 22 unless the surviving brother became disabled before the age of 18 or was disabled at the time of the miner's death. With respect to the case of a surviving sister or brother the House amendment to the Senate provision provided that no benefits would be paid to her or him if he or she married or received support from his or her spouse.

Inasmuch as the conferees determined that the objective of the Senate amendment to permit dependent children to file claims for augmented benefits in their own right could be achieved through appropriate regulations issued by the Secretary, the Senate amendment directly permitting this was deleted.

The bill that passed the House on November 10 required the elimination of the practice of offsetting social security disability insurance benefits of miners where the claimant also received black lung benefits. The Senate amendment by contrast limited such offsetting to 100 percent of former earnings. The House provision was directed at the administrative practice of interpreting the black lung benefits provisions as a workmen's compensation law when in actual fact the congressional history of the law itself did not support such a finding. The Senate receded to the House provision in this respect.

As I have stated, both the House and Senate versions of this legislation have provisions precluding the denial of a claim based solely on negative X-ray findings. These provisions address themselves to the problem posed by large numbers of miners who have totally disabling respiratory conditions or who died from such a condition but cannot establish by any degree of medical certainty that such condition was attributable to pneumoconiosis—even though their records indicated extensive employment in an underground mine.

In this connection, the Senate amendment to the House bill added a provision which established a rebuttable presumption of pneumoconiosis where a miner was employed 15 years or more in a mine where such miner has or had a totally disabling respiratory or pulmonary impairment.

Because of the difficulty of establishing precisely the existence or nonexistence of the disease, pneumoconiosis, by other than biopsy or autopsy, the House

Kastenmeter	Nichols	Shoup
Kazen	Nix	Sikes
Kee	Obey	Sisk
Koch	O'Hara	Skubitz
Kyros	O'Konski	Smith, Iowa
Latta	O'Neill	Snyder
Leggett	Patman	Staggers
Link	Patten	Stanton,
Long, La.	Pelly	J. William
Long, Md.	Pepper	Stanton,
Lujan	Perkins	James V.
McClory	Pettis	Steed
McCloskey	Peyster	Steele
McCormack	Pickle	Stephens
McDade	Pike	Stokes
McDonald,	Pirnie	Stratton
Mich.	Powell	Stuckey
McFall	Price, Ill.	Sullivan
McKay	Pucinski	Symington
McKinney	Purcell	Thompson, N.J.
McMillan	Quillen	Udall
Madden	Rallsback	Ullman
Mahon	Randall	Van Deerlin
Malliard	Rees	Vanik
Mallary	Reid	Veysey
Mathias, Calif.	Reuss	Vigorito
Mathis, Ga.	Riegle	Waggonner
Matsunaga	Roe	Waldie
Mazzoli	Rogers	Wampler
Meeds	Roncallo	Whalen
Melcher	Rooney, N. Y.	Whalley
Metcalfe	Rooney, Pa.	White
Mikva	Rosenthal	Whitten
Miller, Ohio	Rostenkowski	Widnall
Minish	Roush	Williams
Mink	Roy	Wilson,
Mollohan	Roybal	Charles H.
Monagan	Runnels	Wolf
Moorhead	Ryan	Wright
Morgan	St Germain	Wyatt
Mosher	Sandman	Yates
Moss	Sarbanes	Yatron
Murphy, Ill.	Saylor	Young, Tex.
Myers	Schneebeli	Zablocki
Natcher	Schwengel	Zion
Nedzi	Seiberling	Zwach
Nelsen	Shipley	

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Hays with Mr. Anderson of Illinois.
 Mr. Rodino with Mr. Hastings.
 Mr. Clark with Mr. Eshleman.
 Mr. Brooks with Mr. Mitchell.
 Mr. Slack with Mr. Gallagher.
 Mr. Tiernan with Mr. Mills of Arkansas.
 Mr. Howard with Mr. Keith.
 Mr. Ashley with Mr. Macdonald of Massachusetts.
 Mr. Kluczynski with Mr. Stubblefield.
 Mr. Podell with Mr. Landrum.
 Mr. Blanton with Mr. Scheuer.
 Mrs. Chisholm with Mr. Galifianakis.
 Mr. Murphy of New York with Mr. Passman.
 Mr. Edmondson with Mr. Badillo.
 Mr. Miller of California with Mr. Rangel.
 Mr. Bingham with Mr. Preyer of North Carolina.

Mr. CASEY of Texas and Mr. HARSHA changed their votes from "nay" to "yea."

Mr. COLMER and Mr. BOB WILSON changed their votes from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NAYS—122

Abernethy	Flynt	Poff
Andrews,	Ford, Gerald R.	Price, Tex.
N. Dak.	Frelinghuysen	Quie
Archer	Frenzel	Rarick
Arends	Frey	Rhodes
Ashbrook	Goldwater	Roberts
Belcher	Griffin	Robinson, Va.
Bell	Gross	Robison, N. Y.
Betts	Grover	Rousselot
Blackburn	Haley	Ruppe
Bow	Hall	Ruth
Broyhill, Va.	Hansen, Idaho	Satterfield
Burleson, Tex.	Hosmer	Scherle
Byrnes, Wis.	Hull	Schmitz
Cabell	Hutchinson,	Scott
Camp	Jarman	Sebelius
Carlson	Jonas	Shriver
Cederberg	Jones, N. C.	Smith, Calif.
Chamberlain	Keating	Smith, N. Y.
Chappell	Kemp	Spence
Clancy	King	Springer
Clawson, Del.	Kuykendall,	Steiger, Artz.
Cleveland	Kyl	Steiger, Wis.
Coiler	Landgrebe	Talcott
Collins, Tex.	Lennon	Taylor
Colmer	Lent	Teague, Calif.
Conable	Lloyd	Teague, Tex.
Conte	McClure	Terry
Crane	McCollister	Thompson, Ga.
Daniel, Va.	McCulloch	Thomson, Wis.
Davis, Wis.	McEwen	Thone
Dellenback	McEvvitt	Vander Jagt
Dennis	Mann	Ware
Devine	Martin	Whitehurst
Dickinson	Mayne	Wiggins
Downing	Michel	Wilson, Bob
du Pont	Mills, Md.	Winn
Edwards, Ala.	Minshall	Wydler
Erlenborn	Mizell	Wylie
Esch	Montgomery	Wyman
Fisher	Poage	Young, Fla.

NOT VOTING—34

Anderson, Ill.	Gallagher	Murphy, N. Y.
Ashley	Hastings	Passman
Badillo	Hays	Podell
Bingham	Howard	Preyer, N. C.
Blanton	Keith	Pryor, Ark.
Brooks	Kluczynski	Rangel
Chisholm	Landrum	Rodino
Clark	Macdonald,	Scheuer
Dowdy	Mass.	Slack
Edmondson	Miller, Calif.	Stubblefield
Eshleman	Mills, Ark.	Tiernan
Galifianakis	Mitchell	



Public Law 92-303
92nd Congress, H. R. 9212
May 19, 1972

An Act

86 STAT. 150

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Black Lung Benefits Act of 1972".

Black Lung
Benefits Act
of 1972.
83 Stat. 794.
30 USC 922.

(b) (1) Section 412(a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or of a miner who is receiving benefits under this part at the time of his death, or who was totally disabled by pneumoconiosis at the time of his death, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term 'child' contained in section 402(g): *And provided further*, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2)."

Orphans,
benefits.

Post, p. 152.

(2) Section 412(a) of such Act is further amended by adding at the end thereof the following new paragraphs:

"(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or of a miner who is receiving benefits under this part at the time of his death, or of a miner who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, or in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is—

Dependent
parents,
brothers or
sisters.

42 USC 401.

"(1) (A) under eighteen years of age, or
(B) under a disability as defined in section 223(d) of the Social Security Act which began before the age specified in section 202(d) (1) (B) (ii) of such Act, or in the case of a student, before he ceased to be a student, or

81 Stat. 868.
42 USC 423.
79 Stat. 370.
42 USC 402.

86 STAT. 151

Post, p. 152.

81 Stat. 868.
42 USC 423.

"Dependent."

Proof of support, filing date.

42 USC 403.
42 USC 402.

Augmented benefits, certification. Ante, p. 150.

83 Stat. 794,
795, 798.
30 USC 922,
924, 934.
30 USC 931.

30 USC 902.

"Dependent." Post, p. 152.

64 Stat. 510;
74 Stat. 950.
42 USC 416.
71 Stat. 519.

"(C) a student as defined in section 402(g); or
"(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act; during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, 'dependent' means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes 'living in the miner's household', 'totally dependent upon the miner for support,' and 'good cause,' shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)-(1) of the Social Security Act, as if the benefit under this paragraph were a benefit under section 202 of such Act.

"(6) If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment."

(c) (1) Sections 412(b), 414(e), and 424 of such Act are amended by inserting after "widow" each time it appears the following: ", child, parent, brother, or sister"; and section 421(a) is amended by inserting after "widows" the following: ", children, parents, brothers, or sisters, as the case may be,".

(2) Section 402(a) of such Act is amended to read:

"(a) The term 'dependent' means—

"(1) a child as defined in subsection (g) without regard to subparagraph (2) (B) (ii) thereof; or

"(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 216(b) (1) or (2) of the Social Security Act. The determination of an individual's status as the 'wife' of a miner shall be made in accordance with section 216(h) (1) of the Social Security Act as if such miner were the 'insured individual'

referred to therein. The term 'wife' also includes a 'divorced wife' as defined in section 216(d)(1) of the Social Security Act who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner."

79 Stat. 377.
42 USC 416.

(3) Section 402(e) of such Act is amended to read:

"(e) The term 'widow' includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216(c)(1), (2), (3), (4), or (5), and section 216(k) of the Social Security Act, who is not married. The determination of an individual's status as the 'widow' of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the 'insured individual' referred to therein. Such term also includes a 'surviving divorced wife' as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death."

"Widow."
93 Stat. 792.
30 USC 902.

72 Stat. 1027.
81 Stat. 888.
71 Stat. 519;
74 Stat. 951.

(4) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'child' means a child or a step-child who is—

"Child."

"(1) unmarried; and

"(2) (A) under eighteen years of age, or

"(B) (i) under a disability as defined in section 223(d) of the Social Security Act,

42 USC 423.

"(ii) which began before the age specified in section 202(d)(1)

(B) (ii) of the Social Security Act, or, in the case of a student, before he ceased to be a student; or

42 USC 402.

"(C) a student.

The term 'student' means a 'full-time student' as defined in section 202(d)(7) of the Social Security Act, or a 'student' as defined in section 8101(17) of title 5, United States Code. The determination of an individual's status as the 'child' of the miner or widow, as the case may be, shall be made in accordance with section 216(h)(2) or (3) of the Social Security Act as if such miner or widow were the 'insured individual' referred to therein."

"Student."
79 Stat. 371;
81 Stat. 860.
81 Stat. 209.

79 Stat. 409.

(5) (A) Section 413(b) of such Act is amended by adding at the end thereof the following new sentence: "The provisions of sections 204, 205 (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l), 206, 207, and 208 of the Social Security Act shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act."

Post, p. 154.

42 USC 404-408.

42 USC 401.

(B) Only section 205, (b), (g), and (h) of those sections of the Social Security Act recited in subparagraph (A) of this paragraph shall be effective as of the date provided in subsection (d) of this section.

Effective date.

(6) Section 414(a) of such Act is amended by inserting "(1)" after "(a)" and by adding the following new paragraphs at the end thereof:

Claims, filing.

"(2) In the case of a claim by a child this paragraph shall apply, notwithstanding any other provision of this part.

83 Stat. 795.
30 USC 924.

"(A) If such claim is filed within six months following the month in which this paragraph is enacted, and if entitlement to benefits is

Retroactive entitlement.

Ante, p. 150.

established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

"(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

"(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

"(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

"(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later."

SEC. 2. (a) Section 412(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following: "This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act."

(b) The amendment made by this section shall be effective as of December 30, 1969.

SEC. 3. (a) Sections 401, 411(c)(1), 411(c)(2), and 422(h) of the Federal Coal Mine Health and Safety Act of 1969 are each amended by striking out "underground".

(b) Sections 402(b), 402(d), 422(a), and 423(a) of such Act are each amended by striking out "an underground" and inserting "a" in lieu thereof.

(c) The amendments made by this section shall be effective as of December 30, 1969.

SEC. 4. (a) Section 402(f) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"(f) The term 'total disability' has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, except that such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time. Such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act."

Benefit pay-
ment offset,
limitation.
83 Stat. 794.
30 USC 922.
42 USC 424a.
Effective date.

30 USC 901,
921, 932.

30 USC 902,
933.

Effective date.

30 USC 902.
"Total dis-
ability."

61 Stat. 868.
42 USC 423.

(b) (1) Section 411(a) of such Act is further amended by adding at the end thereof the following: "or who at the time of his death was totally disabled by pneumoconiosis."

83 Stat. 793.
30 USC 921.

(2) Section 401 is amended by inserting after the word "disease" each place it appears the following: "or who were totally disabled by this disease at the time of their deaths".

30 USC 901.

(3) Section 411(c) (3) is amended by inserting after "pneumoconiosis," the following: "or that at the time of his death he was totally disabled by pneumoconiosis."

(c) Section 411(c) of such Act is amended by striking the word "and" at the end of paragraph (2), by striking the period at the end of paragraph (3), inserting "and", and by adding at the end thereof the following new paragraph:

Rebuttable
presumption.

"(4) if a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine."

(d) Section 411(b) is amended by inserting immediately after the penultimate sentence thereof the following new sentence: "Final regulations required for implementation of any amendments to this title shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted."

Publication
in Federal
Register.

(e) Section 421(b) (2) (C) of such Act is amended by striking the word "those" and inserting in lieu thereof "section 402(f) of this title and to those standards", and by substituting for the words "by section 411" the words "under part B of this title".

30 USC 931.

30 USC 902.

(f) The first sentence of section 413(b) of such Act is amended by inserting before the period at the end thereof the following: ". but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials."

Claims,
validity
determination.
83 Stat. 794.
30 USC 923.

(g) The amendments made by this section shall be effective as of December 30, 1969.

Effective date.

86 STAT. 155

<p>Time extensions. 59 Stat. 792. 30 USC 901. 30 USC 924. 30 USC 931. 30 USC 932.</p>	<p>SEC. 5. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended—</p> <p>(1) by striking out "December 31, 1971" where it appears in section 414(b), and inserting in lieu thereof "June 30, 1973",</p> <p>(2) by striking out "1972" each place it appears and inserting in lieu thereof "1973", other than in section 421(b)(1),</p> <p>(3) by striking out "1973" each time it appears and inserting in lieu thereof "1974",</p> <p>(4) by striking out "seven" where it appears in section 422(e) and inserting in lieu thereof "twelve".</p> <p>(5) by adding a new subsection (c) to section 421 thereof as follows:</p>
<p>Publication in Federal Register. 30 USC 936.</p>	<p>"(c) Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.",</p> <p>(6) by inserting immediately after section 426 thereof, the following new section:</p>
<p>Contract authority.</p>	<p>"SEC. 427. (a) The Secretary of Health, Education, and Welfare is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.</p>
<p>Research grants.</p>	<p>"(b) The Secretary of Health, Education, and Welfare shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health, Education, and Welfare may deem necessary in the public interest.</p>
<p>Appropriation.</p>	<p>"(c) There is hereby authorized to be appropriated for the purpose of subsection (a) of this section \$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary."</p> <p>(7) by adding at the end thereof the following new section:</p>
<p>Discrimination prohibition. "Miner."</p>	<p>"SEC. 428. (a) No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term 'miner' shall not include any person who has been found to be totally disabled.</p> <p>"(b) Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. 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 public hearing at the request of any party to enable</p>

the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Each hearing examiner presiding under this section and under the provisions of titles I, II and III of this Act shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

80 Stat. 384.
30 USC 811,
841, 861.
5 USC 5332
note.

"(c) Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation."

Penalty.

(8) by adding at the end thereof the following new section:

"Sec. 429. There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this title. Such sums shall remain available until expended."

Appropriation.

(9) by striking "7" in section 422(a), and

83 Stat. 796.
30 USC 932.

(10) by adding at the end thereof the following new section:

"Sec. 430. The amendments made by the Black Lung Benefits Act of 1972 to part B of this title shall, to the extent appropriate, also apply to part C of this title: *Provided*, That for the purpose of determining the applicability of the presumption established by section 411(c) (4) to claims filed under part C of this title, no period of employment after June 30, 1971, shall be considered in determining whether a miner was employed at least fifteen years in one or more underground mines."

Applicability.
30 USC 921.
30 USC 931.

Ante, p. 154.

Sec. 6. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following new section:

Claimants,
notification.
Ante, p. 155.

"Sec. 431. The Secretary of Health, Education, and Welfare shall, upon enactment of the Black Lung Benefits Act of 1972, generally disseminate to all persons who filed claims under this title prior to the date of enactment of such Act the changes in the law created by such Act, and forthwith advise all persons whose claims have been denied for any reason or whose claims are pending, that their claims will be reviewed with respect to the provisions of the Black Lung Benefits Act of 1972."

Sec. 7. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end of part B thereof the following new section:

Transition
period,
administration.

"Sec. 415. (a) Notwithstanding any other provision in this title, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed

86 STAT. 157

during the period from July 1, 1973 to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

33 Stat. 793.
30 USC 934.

“(1) Such claim shall be determined and, where appropriate under this part or section 424 of this title, benefits shall be paid with respect to such claim by the Secretary of Labor.

“(2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Secretary of Health, Education, and Welfare and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.

30 USC 931.

“(3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this title for any month after December 31, 1973.

33 USC 914.

“(4) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in sections 19 (b), (c), and (d) of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended.

30 USC 932.

“(5) Any operator who has been notified of the pendency of a claim under paragraph 4 of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this title and section 422 thereof had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

Regulations.

“(b) The Secretary of Labor, after consultation with the Secretary of Health, Education, and Welfare, may issue such regulations as are necessary or appropriate to carry out the purpose of this section.”

Claims,
filing.

SEC. 8. Section 422(f) of title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting “(1)” after “(f)” and by adding a new paragraph (2) as follows:

Ante, p. 154.

“(2) Any claim for benefits under this section in the case of a living miner filed on the basis of eligibility under section 411(c)(4) of this title, shall be filed within three years from the date of last exposed employment in a coal mine or, in the case of death from a respiratory or pulmonary impairment for which benefits would be payable under section 411(c)(4) of this title, incurred as the result of employment in a coal mine, shall be filed within fifteen years from the date of last exposed employment in a coal mine.”

Approved May 19, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORTS: Nos. 92-460 and 92-460, Part II (Comm. on Education and Labor) and No. 92-1048 (Comm. of Conference).

SENATE REPORTS: No. 92-743 (Comm. on Labor and Public Welfare) and No. 92-780 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 117 (1971): Oct. 18, Nov. 9, 10, considered and passed House.

Vol. 118 (1972): Apr. 17, considered and passed Senate, amended.
May 4, Senate agreed to conference report.
May 10, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 21:

May 20, Presidential statement.

Commissioner's Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 124

May 26, 1972

BLACK LUNG BENEFITS AMENDMENTS

To Administrative, Supervisory,
and Technical Employees

On May 19 President Nixon signed into law H. R. 9212 (P. L. 92-303), which extends the Federal Government's responsibility for the black lung benefit provisions of the Federal Coal Mine Health and Safety Act of 1969 and provides various liberalizations in the black lung benefit program.

Under the new legislation, the Department of Health, Education, and Welfare will be responsible for taking claims and paying lifetime benefits with respect to claims filed through June 30, 1973. Responsibility will then shift to the Department of Labor, though we will continue to take claims during the 6-month period ending December 31, 1973. (Under the old law, our responsibility for taking claims for lifetime benefits ended in December 1971; benefits based on applications filed in 1972 were our responsibility for 1972 only.) The new legislation also extends, from 1976 to 1981, the end of the period during which the Department of Labor or the coal mine operators are required to pay benefits in States where State workmen's compensation does not apply.

Other major provisions of the new legislation

--extend benefits to orphans and totally dependent surviving parents, brothers, and sisters, in that order of priority, where there is no survivor of higher priority;

--extend benefits to surface coal miners;

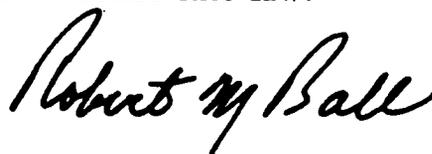
--establish a rebuttable presumption whereby a miner who is totally disabled from a respiratory or pulmonary impairment and who worked for at least 15 years in underground coal mines or in comparable dusty conditions in surface mines, is considered to be totally disabled, or to have died, from pneumoconiosis;

--provide an occupational definition of "total disability" based on skills and abilities used in mining;

--prohibit denial of black lung benefits claims solely on the basis of a negative X-ray;

--provide that black lung benefits payable by the Department of Health, Education, and Welfare are not subject to the workmen's compensation offset provisions of the Social Security Act.

Enclosed is a summary of the provisions of the new legislation and the President's statement upon signing the measure into law.

A handwritten signature in black ink, reading "Robert M. Ball". The signature is written in a cursive style with a large, prominent initial "R".

Robert M. Ball
Commissioner

Enclosures

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

Today I have signed H. R. 9212, the Black Lung Benefits Act of 1972.

This legislation extends for 18 months the Federal responsibility for operating a transitional program enacted in 1969 to provide cash benefits for coal miners disabled by black lung disease.

Under the original law, lifetime monthly benefits have been awarded to more than 260,000 miners, widows and dependents at a Federal cost of more than \$600 million.

The Black Lung Benefits Act of 1972 will mean that tens of thousands of additional miners and their dependents will be eligible for lifetime benefits from the Federal Government, because of its extension of filing time and because it provides for generous liberalization of eligibility requirements.

I am heartened that this legislation provides benefits for orphans of black lung victims, who are excluded in the present law through legislative oversight. Other dependents are covered but not orphans. Under the new law, some 2,000 orphans of black lung victims -- and all such orphans in the future -- will receive the benefits to which they should be fully entitled.

Nevertheless, I sign this legislation with mixed emotions, not over whether miners, widows and their dependents need this assistance -- they do -- but because of the precedent it tends to establish.

This legislation departs from the U. S. tradition that compensation for work-related accidents and diseases should be provided by State workmen's compensation laws, financed by the owners of the industries containing the hazards. Responsibility for black lung compensation clearly should lie with the owners and operators of the mines.

In this case, however, the States have not yet improved their owner-financed laws to meet the challenge posed by black lung -- and there are too many victims of this dread disease for me not to have acted.

Therefore, I have moved to pick up the responsibility that others have neglected -- so that disabled miners and their families will not be deserted by our society in their hour of critical and justified personal need.

The health and safety of coal miners has been a primary concern of this Administration. One of my earliest legislative recommendations was for more effective Federal laws in the area of coal mine health and safety, culminating in the enactment of the Federal Coal Mine Health and Safety Act of 1969. Since that law was enacted, major progress has been made in improving working conditions in our Nation's coal mines and in the protection offered to those who work in them.

The 1969 act established the temporary black lung benefits program. The legislation I have signed today will extend Federal responsibility for this program from January 1, 1972 to June 30, 1973. In the latter half of 1973, the Federal Government will continue to accept applications for black lung benefits but beneficiaries enrolled during this period will be transferred to the State programs on January 1, 1974.

I urge that all mining States review their workmen's compensation programs to make certain that adequate laws exist for the black lung disease by that time.

1972 Act

by pneumoconiosis. This presumption may be rebutted only by establishing that (a) such miner does not, or did not, have pneumoconiosis, or that (b) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

- b. An occupational test of disability which provides that a miner shall be considered totally disabled where pneumoconiosis prevents him from engaging in gainful employment requiring skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time.
 - c. Before a miner's claim may be denied, all evidence relevant to the medical condition must be considered. It will be no longer permissible to deny a claim solely on the basis of X-ray evidence which fails to establish the existence of pneumoconiosis.
 - d. In death cases, if the miner was totally disabled due to pneumoconiosis at the time of death, the claim will be allowed irrespective of the cause of death, e.g., trauma or acute disease.
6. Augmented portion of miner's or widow's benefits may, under certain conditions, be paid directly to the dependent or his representative payee. 5/
7. Black lung benefits under Part B of the black lung provisions no longer considered to be workmen's compensation benefits. Thus, offset of disability benefits under Section 224 of the Social Security Act no longer applicable to black lung benefits. 4/
8. Requires DHEW to (a) generally disseminate information on these changes to all persons who filed claims, and (b) to "forthwith advise" all persons whose claims were denied or are pending that their claims will

1969 Law

Definition of "total disability" as in Social Security Act.

X-ray may be used in determining the presence or absence of pneumoconiosis and, where pneumoconiosis is not found to exist, as a basis for denial. Where pneumoconiosis is found to exist, there must be an impairment that meets the severity prescribed in appendix of Black Lung Regulations, or the breathing test requirement in 410.403(b) of the regulations, or its medical equivalent.

No provision. Benefits payable only where miner's death was due to pneumoconiosis or he was entitled to black lung benefits at death.

No provision

Offset provisions of Social Security Act apply. Black lung benefits are considered workmen's compensation for offset purposes.

No provision

1972 Act

1969 Law

be reviewed with respect to these changes. 3/ (SSA plans to mail a notice to all pending and previously denied claimants informing them that they need not file another application; that their claims will automatically be considered under the new law; and that they will be advised of the results of the review. This will commence upon enactment.)

- | | |
|--|--|
| 9. SSA provisions concerning representative payees, attorney representation, overpayments and underpayments, and fraud are to be applied. <u>3/</u> | No provision |
| 10. Miscellaneous provisions include the following: | |
| a. Do not require benefit payments by Secretary of Labor or coal mine operators (under Part C) after December 30, 1981. | No benefits under Part C after 12-30-76. |
| b. Set time limits for establishing operator liability under the 15-year rebuttable presumption. | No provision |
| c. Authorize \$10 million a year for 3 years to DHEW for establishing and operating clinical facilities for research and treatment of miners' lung impairments and appropriate funds to DHEW for research grants to devise simple and effective tests for measuring, detecting, and treating miners' lung impairments. | No provision |

1/ Except as modified by the 1972 Act, the provisions of the 1969 law continue to apply, including the irrebuttable presumption of total disability when "complicated" pneumoconiosis is involved and the rebuttable presumptions pertaining to "origin" and "respirable disease." The 1969 law also continues to apply with respect to "no retroactivity" of applications.

2/ Effective 12-69 for applications filed within 6 months of enactment. Applications filed more than 6 months after enactment retroactive up to 12 months preceding date of application.

3/ Effective upon enactment.

4/ Effective 12-69.

5/ Effective upon enactment with respect to current and retroactive payments.

Major Features of the Black Lung Benefits Act of 1972 (P.L. 92-303),
As Compared with the Black Lung Benefits Provisions of the 1969 Law 1/

1972 Act

1. 18-month extension of Federal responsibility for Part B miners' claims (i.e., from 12-31-71 to 6-30-73), administered by SSA. Interim period (7-1-73 - 12-31-73) claims of miners are responsibility of Department of Labor not SSA, but claims during this period may be filed in social security offices. 3/ (Benefits under Part B of the Black Lung benefits provisions of the 1969 law are all those based on claims filed prior to June 30, 1973, and are the responsibility of the Department of Health, Education, and Welfare.)
2. Provides benefits for (a) orphans 2/ and (b) parents, 3/ brothers and sisters 3/ living in the miner's household who were totally dependent on the miner in the year immediately preceding his death. A surviving widow or child precludes a parent from succeeding to benefits and a surviving widow, child, or parent precludes brothers and sisters from succeeding to benefits.
3. Eliminates the word "underground" in the law 4/ and thereby extends coverage to surface miners (e.g., strip, auger) and their dependents and to eligible survivors as described in "2" above.
4. Liberalizes the dependency rule for children 3/ and rule on remarriage for widow. 3/ The "deemed dependency" provisions applicable to claims under Title II of the Social Security Act now apply, i.e., only relationship must be established, and a widow can qualify as long as she is not married at the time of application for black lung benefits.
5. Liberalizes the rules for determining total disability or death due to pneumoconiosis 4/
 - a. Provides that if a miner was employed for 15 years or more in one or more underground coal mines, or in comparable dusty conditions in surface mines, and if evidence other than X-ray demonstrates the existence of a totally disabling respiratory or pulmonary impairment, there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled

1969 Law

Transfer to Part C on 1-1-73. Miners' claims filed during 1972 are payable under Part B for that year only. (Part C benefits are all those based on claims filed after December 31, 1972, and are to be administered by the Department of Labor.)

No provision

Only underground coal miners and their eligible dependents and survivors covered.

Definition of "dependent child" as in Federal Employees Compensation Act; and remarriage bars widow from further entitlement.

No provision

92d Congress }
1st Session }

COMMITTEE PRINT

**FEDERAL COAL MINE HEALTH AND SAFETY
ACT OF 1969 (PUBLIC LAW 91-173)
PROPOSED AMENDMENTS TO TITLE IV**

Black Lung Legislation

**BILL TEXT, SECTION-BY-SECTION ANALYSIS, AND
CHANGES IN EXISTING LAW MADE BY**

S. 2675

S. 2289

H.R. 9212

**AND COMPARISON OF THE LEGISLATION WITH
CURRENT LAW**

PREPARED BY THE

SUBCOMMITTEE ON LABOR

OF THE

**COMMITTEE ON LABOR AND
PUBLIC WELFARE
UNITED STATES SENATE**



DECEMBER 1971

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

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WASHINGTON : 1971

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FOREWORD

The need to correct inequities in, and to expand coverage of, the Federal Coal Mine Health and Safety Act of 1969, is urgent. Proposals before the Senate Subcommittee on Labor which would make important changes in the act include H.R. 9212, the legislation passed by the House of Representatives on November 10, 1971; S. 2289, a bill introduced by Senator Hartke; and S. 2675, the measure introduced by Senator Randolph with cosponsorship including Senator Byrd of West Virginia, Senator Hartke, and myself.

The materials on the following pages are designed to inform members of the Committee on Labor and Public Welfare, as well as the Members of the Senate generally, on the several pending proposals.

HARRISON A. WILLIAMS, Jr., *Chairman.*

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C. December 6, 1971.

HON. HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Labor and Public Welfare, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate the opportunity to chair the hearings on Black Lung legislation. As you know, this legislation is of concern to all Americans. It is directly of vital concern to our coal mining population.

As a Senator from a major coal-producing State, I know first-hand the anguish suffered by miners who are totally disabled by pulmonary and respiratory impairments, including pneumoconiosis, more familiarly known as "black lung." Their families live with their anguish and suffer after the diseases have taken their toll.

It is gratifying to me that Congress is proceeding to ease their plight through legislation and request that a committee print be prepared on the legislative proposals.

Sincerely,

JENNINGS RANDOLPH,
Ranking Majority Member.

92^d CONGRESS
1st Session

S. 2675

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1971

Mr. RANDOLPH (for himself, Mr. BYRD of West Virginia, Mr. HARTKE, and Mr. WILLIAMS) introduced the following bill: which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend certain provisions of the Federal Coal Mine Health and Safety Act of 1969 relating to payment of black lung benefits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) section 412 (a) of the Federal Coal Mine Health
4 and Safety Act of 1969 is amended by redesignating para-
5 graph (3) as paragraph (4), and by inserting after para-
6 graph (2) the following new paragraph:

7 “(3) In the case of the child or children of a miner
8 whose death is due to pneumoconiosis or other respiratory
9 or pulmonary impairments or of a miner who is receiving
10 benefits under this part at the time of his death, and who

II

1 leaves no widow, and in the case of the child or children
2 of a widow who is receiving benefits under this part at the
3 time of her death, benefits shall be paid to such child or
4 children as follows: If there is one such child, he shall be
5 paid benefits at the rate specified in paragraph (1). If there
6 is more than one such child, the benefits paid shall be di-
7 vided equally among them and shall be paid at a rate equal
8 to the rate specified in paragraph (1), increased by 50 per
9 centum of such rate if there are two such children, by 75
10 per centum of such rate if there are three such children, and
11 by 100 per centum of such rate if there are more than three
12 such children: *Provided*, That benefits shall only be paid to
13 a child for so long as he meets the criteria for the term
14 'child' contained in section 402 (g)."

15 (b) (1) Section 412 (b) of such Act is amended by
16 inserting after "widow" each time it appears the following:
17 "or child".

18 (2) Section 402 of such Act is amended by adding at
19 the end thereof the following new subsection:

20 "(g) The term 'child' means an individual who is
21 unmarried and (1) under eighteen years of age, or (2)
22 incapable of self-support because of physical or mental dis-
23 ability which arose before he reached eighteen years of age
24 or, in the case of a student, before he ceased to be a student,
25 or (3) a student. Such term includes stepchildren, adopted

1 children, and posthumous children. For the purpose of this
2 subsection the term 'student' means an individual under
3 twenty-three years of age who has not completed four years
4 of education beyond the high school level and who is reg-
5 ularly pursuing a full-time course of study or training at an
6 institution which is—

7 “(1) a school or college or university operated or
8 directly supported by the United States, or by a State or
9 local government or political subdivision thereof;

10 “(2) a school or college or university which has
11 been accredited by a State or by a State-recognized or
12 nationally recognized accrediting agency or body;

13 “(3) a school or college or university not so ac-
14 credited but whose credits are accepted, on transfer, by
15 at least three institutions which are so accredited, for
16 credit on the same basis as if transferred from an institu-
17 tion so accredited; or

18 “(4) an additional type of educational or training
19 institution as defined by the Secretary of Health, Educa-
20 tion, and Welfare.

21 Such an individual is deemed not to have ceased to be a
22 student during an interim between school years if the interim
23 is not more than four months and if he shows to the satisfac-
24 tion of the Secretary that he has a bona fide intention of
25 continuing to pursue a full-time course of study or training

1 during the semester or other enrollment period immediately
2 after the interim or during periods of reasonable duration in
3 which, in the judgment of the Secretary, he is prevented by
4 factors beyond his control from pursuing his education. A
5 student whose twenty-third birthday occurs during a semes-
6 ter or other enrollment period is deemed a student until the
7 end of the semester or other enrollment period.”

8 (3) Section 413 (b) of such Act is amended by adding
9 at the end thereof the following new sentence: “In carrying
10 out his responsibilities under this part, the Secretary may
11 prescribe regulations consistent with the provisions of sec-
12 tions 204, 205 (j), 205 (k), and 206 of the Social Security
13 Act.”

14 (4) Section 414 (a) of such Act is amended by insert-
15 ing “(1)” after “(a)” and by adding the following new
16 paragraph at the end thereof:

17 “(2) In the case of a claim by a child, this paragraph
18 shall apply, notwithstanding any other provision of this part.

19 “(A) If such claim is filed within six months following
20 the month in which this paragraph is enacted, and if benefit
21 payments are made pursuant to such claim, such benefit pay-
22 ments shall be made retroactively from December 30, 1969,
23 or from the date such child would have been first eligible for
24 such benefit payments had section 412 (a) (3) been appli-
25 cable since December 30, 1969, whichever is the lesser

1 period. If on the date such claim is filed the claimant is not
2 eligible for benefit payments, but was eligible during the
3 period from December 30, 1969, to the date such claim is
4 filed, benefit payments shall be made for the duration of
5 eligibility during such period.

6 “(B) If such claim is filed after six months following
7 the month in which this paragraph is enacted, and if benefit
8 payments are made pursuant to such claim, such benefit pay-
9 ments shall be made retroactively from a date twelve months
10 preceding the date such claim is filed, or from the date such
11 child would have been first eligible for such benefit payments
12 had section 412 (a) (3) been applicable since December 30,
13 1969, whichever is the lesser period. If on the date such
14 claim is filed the claimant is not eligible for benefit payments,
15 but was eligible during the period from a date twelve months
16 preceding the date such claim is filed, to the date such claim
17 is filed, benefit payments shall be made for the duration of
18 eligibility during such period.

19 “(C) No claim for benefits under this part, in the case
20 of a claimant who is a child, shall be considered unless it is
21 filed within six months after the death of his father or mother
22 (whichever last occurred) or by December 31, 1972, which-
23 ever is the later.”

24 SEC. 2. (a) Section 412 (b) of the Federal Coal Mine
25 Health and Safety Act of 1969 is amended by adding at

1 the end thereof the following: "This part shall not be con-
2 sidered a workmen's compensation law or plan for purposes
3 of section 224 of such Act."

4 (b) The amendment made by this section shall be ef-
5 fective as of December 30, 1969.

6 SEC. 3. (a) Title IV of the Federal Coal Mine Health
7 and Safety Act is amended by striking out "pneumoconiosis"
8 each time ~~it~~ appears therein, except in sections 411 (c) (3)
9 and 402 (b), and inserting in lieu thereof "pneumoconio-
10 sis, or other respiratory or pulmonary impairments".

11 (b) Section 401 of such Act is amended by striking out
12 "this disease" and inserting in lieu thereof "these conditions".

13 (c) Section 402 (b) of such Act is amended by adding
14 the following new sentence: "The expression 'respiratory or
15 pulmonary impairments' means any respiratory or pul-
16 monary diseases or impairments and their sequelae arising
17 out of employment in an underground coal mine.

18 (d) Section 402 (f) is amended to read as follows:

19 "(f) The term 'total disability' has the meaning given
20 it by regulation of the Secretary of Health, Education, and
21 Welfare, except that such regulations shall provide that a
22 miner shall be considered totally disabled when any respira-
23 tory or pulmonary impairment or impairments resulting from
24 his employment in a mine or mines prevents him from en-
25 gaging in gainful employment requiring the skills and abili-

1 ties comparable to those of any employment in a mine or
2 mines in which he previously engaged with some regularity
3 and over a substantial period of time. Such regulations shall
4 not provide more restrictive criteria than those applicable
5 under section 223 (d) of the Social Security Act.”

6 (e) The first sentence of section 413 (b) of such Act
7 is amended by inserting before the period at the end thereof
8 the following: “, but no claim for benefits under this part
9 shall be denied solely on the basis of the results of a chest
10 roentgenogram or any particular tests of breathing or pul-
11 monary function.”

12 (f) The amendments made by this section shall be
13 effective as of December 30, 1969.

14 SEC. 4. Title IV of the Federal Coal Mine Health and
15 Safety Act of 1969 is amended—

16 (1) by striking out “1971” where it appears in
17 section 414 (b), and inserting in lieu thereof “1973”,

18 (2) by striking out “1972” each place it appears
19 and inserting in lieu thereof “1974”,

20 (3) by striking out “1973” each time it appears
21 and inserting in lieu thereof “1975”, and

22 (4) by striking out “seven” where it appears in
23 section 422 (e) and inserting in lieu thereof “nine”.

SECTION-BY-SECTION ANALYSIS OF S. 2675

SECTION 1

This section amends various provisions in Title IV of the Act to permit benefit payments to certain children.

(a)

Section 412(a).—A new paragraph (3) is added to section 412(a) of the Act. The existing section 412(a) provides for payment of benefits by the Secretary of Health, Education and Welfare to a miner disabled by pneumoconiosis, or to the widow of a miner whose death is due to pneumoconiosis. The new paragraph provides benefit payments to children in the event that the miner and his spouse are both deceased, and adds other respiratory or pulmonary impairments as compensable conditions. Surviving children are entitled to the full amount of benefits paid or due to the miner or his widow. If there is more than one surviving child, benefits are increased by 50 percent in the case of two children, by 75 percent for three, and by 100 percent if more than three.

(b) (1)

Section 412(b).—Adds children to the provisions concerning the relationship between this Federal benefit program and other disability and compensation programs.

(b) (2)

Section 402.—A new subsection (g) is added to section 402, the definition section of Title IV of the Act. The new provision defines "child" as an individual who is unmarried and under eighteen, or incapable of self-support, or a student. The term "student" is also specifically defined.

(b) (3)

Section 413(b).—A sentence is added to this subsection relating to the requirement that, in processing benefit claims under the Act, the Secretary of Health, Education and Welfare utilize to the extent possible the same procedures and personnel used in processing social security disability benefit claims. The new sentence authorizes the Secretary to prescribe regulations consistent with those provisions of the Social Security Act which deal with overpayments and underpayments, certification of payment to other than the claimant, satisfaction of payments made to incompetents, and representation of claimants before the Secretary.

(9)

(b) (4)

Section 414(a).—A new paragraph is added which deals with claims for benefits by children. The new provision requires retroactive payments to December 30, 1969 for a child entitled to such payments who files a claim for benefits within six months after enactment of the paragraph. If a claim is filed after the six month period, retroactive benefits are limited to the twelve month period preceding the date such claim is filed. Claims by a child must, in any event, be filed within six months after the death of the father or mother, whichever last occurred, or by December 31, 1972, whichever is later.

SECTION 2

This section clarifies the effect of offset provisions in the Social Security Act on benefits under Title IV of the Federal Coal Mine Health and Safety Act.

Section 412(b).—A new sentence is added to this subsection which specifies that Part B of Title IV of the Federal Coal Mine Health and Safety Act is not a workmen's compensation law or plan for purposes of section 224 of the Social Security Act. This latter provision requires that if the combination of social security disability benefits and workmen's compensation benefits exceeds 80 percent of "average current earnings" (the larger of the highest monthly wage or the average monthly wage for the five consecutive years of highest income), such social security disability payments are to be reduced by the excess amount. Thus, under the new sentence in section 412(b), benefit payments under the Federal Coal Mine Health and Safety Act could not be taken into account by the Secretary in computing social security disability payments. The new sentence would take retroactive effect as of December 30, 1969.

SECTION 3

This section amends various provisions in Title IV of the Act to broaden its coverage, both as to diseases for which benefits are payable and as to the concept of total disability.

(a)

Title IV.—This subsection provides that throughout Title IV of the Federal Coal Mine Health and Safety Act, the word "pneumoconiosis" is to be stricken, and in its place, the phrase "pneumoconiosis, or other respiratory or pulmonary impairments" is to be inserted. Thus, diseases and conditions other than pneumoconiosis would be compensable in the same way, and to the same extent, as pneumoconiosis is under existing law.

(b)

Section 401.—The words "this disease" are replaced by "these conditions" in the declaration and findings section of Title IV to conform to the expansion of coverage to diseases and conditions other than pneumoconiosis.

(c)

Section 402(b).—A new sentence would be added to that subsection of the definitions section relating to pneumoconiosis. The new sentence defines, for the purposes of Title IV, “respiratory or pulmonary impairments.”

(d)

Section 402(f).—That subsection of the definitions section relating to total disability would be amended to require that regulations on total disability promulgated by the Secretary of Health, Education, and Welfare provide that a miner shall be considered totally disabled when any respiratory or pulmonary impairment resulting from mine employment prevents him from working at a job demanding the same or similar skills as those he used regularly in the mines over a substantial period of time.

(e)

Section 413(b).—A new clause would be added to this subsection to instruct the Secretary of Health, Education and Welfare that no claim for benefits under Part B of Title IV may be denied solely on the basis of the results of a chest roentgenogram (X-ray) or solely on the basis of any particular tests of breathing or pulmonary function. Thus, corroborative evidence of lack of impairment beyond a single test must be used to support a denial of benefits.

(f)

The amendments made under section 3 of the bill are to be effective retroactive to December 30, 1969.

SECTION 4

This section advances two years the operative dates in Title IV of the Federal Coal Mine Health and Safety Act.

(1)

Section 414(b).—This provision extends from December 31, 1971 to December 31, 1973 the deadline for filing claims for benefits under Part B of Title IV.

(2)

This provision strikes all references to the year “1972” in Title IV and inserts in lieu thereof the year “1974”. Such dates relate to the extension time for the filing of claims for benefits under Part B of Title IV (from December 31, 1972 to December 31, 1974), to the extension of time for payment of benefits under section 414(b), and to claims for benefits under Part C of Title IV (claims after December 31, 1972 changed to December 31, 1974). The provision would also change the deadline for publication in the Federal Register by the Secretary of Labor of State workmen’s compensation laws providing adequate

coverage for pneumoconiosis and other respiratory or pulmonary impairments from October 1, 1972 to October 1, 1974. The provision also extends from December 31, 1972 to December 31, 1974 the time after which the Secretary of Labor shall administer the benefit payment program where state laws are certified by him to be inadequate.

(3)

This provision would strike references to the year "1973" wherever it appears in Title IV and insert in lieu thereof the year "1975." In Part B of Title IV the effect would be to change, in section 414(e), the prohibition on benefits payable to a widow whose miner husband died prior to January 1, 1973, to January 1, 1975. In Part C of Title IV the existing provision requires claims after January 1, 1973 for death or total disability to be filed pursuant to State workmen's compensation laws. The amendment would change this requirement to apply to claims filed after January 1, 1975. Similarly, section 422(e)(2) would be amended to provide that payments are not required to be made pursuant to this section prior to January 1, 1975, rather than 1973.

(4)

Section 422(e).—This provision would conform paragraph (3) of section 422(e) to other date extensions by providing that no payment of benefits under section 422 shall be required for any period after nine years after the date of enactment of the Federal Coal Mine Health and Safety Act. Existing law limits payment under the section to seven years after date of enactment.

CHANGES IN EXISTING LAW MADE BY S. 2675

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

Federal Coal Mine Health and Safety Act of 1969

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* arising out of employment in one or more of the Nation's underground coal mines: that there are a number of survivors of coal miners whose deaths were due to **[this disease]** *these conditions*; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments*.

SEC. 402. For purposes of this title—

(a) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110 of title 5, United States Code.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung arising out of employment in an underground coal mine. *The expression "respiratory or pulmonary impairments" means any respiratory or pulmonary diseases or impairments and their sequelae arising out of employment in an underground coal mine.*

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in an underground coal mine.

(e) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

(f) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, *except that such regulations shall provide that a miner shall be considered totally disabled when any respiratory or pulmonary impairment or impairments resulting from his employment in a mine or mines prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time.* [but such] Such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.

(g) The term "child" means an individual who is unmarried and (1) under eighteen years of age, or (2) incapable of self-support because of physical or mental disability which arose before he reached eighteen years of age or, in the case of a student, before he ceased to be a student, or (3) a student. Such term includes stepchildren, adopted children, and posthumous children. For the purpose of this subsection the term "student" means an individual under twenty-three years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(1) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(3) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) an additional type of educational or training institution as defined by the Secretary of Health, Education, and Welfare.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration in which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose twenty-third birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE
DECEMBER 31, [1972] 1974

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him, under this part, make payments of benefits in respect of total disability of any miner due to [pneumococniosis] pneumoconiosis, or other respiratory or pulmonary impairments, and in respect of the death of any miner whose

death was due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments.*

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* and for determining whether the death of a miner was due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments.* Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* was employed for ten years or more in one or more underground coal mines there shall be a rebuttable presumption that his **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* arose out of such employment:

(2) if a deceased miner was employed for ten years or more in one or more underground coal mines and dies from a respirable disease there shall be a rebuttable presumption that his death was due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments*; and

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) *In the case of the child or children of a miner whose death is due to pneumoconiosis or other respiratory or pulmonary impairments or of a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children, as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: Provided, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 402(g).*

[(3)] (4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow *or child* shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow *or child* under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act. *This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act.*

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

Sec. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, **[1972]** 1974, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act, *but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram or any particular tests of breathing or pulmonary*

function. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable. *In carrying out his responsibilities under this part, the Secretary may prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act.*

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because [pneumoconiosis] *pneumoconiosis, or other respiratory or pulmonary impairments* is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

SEC. 414. (a) (1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31 [1972] 1974, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, [1972] 1974, whichever is the later.

(2) *In the case of a claim by a child, this paragraph shall apply, notwithstanding any other provisions of this part.*

(A) *If such claim is filed within six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever ever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from December 30, 1969, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.*

(B) *If such claim is filed after six months following the month in which this paragraph is enacted, and if benefit payments are made pursuant to such claim, such benefit payments shall be made retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, benefit payments shall be made for the duration of eligibility during such period.*

(C) *No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1972, whichever is the later.*

(b) No benefits shall be paid under this part after December 31, [1972] 1974, if the claim therefor was filed after December 31, [1971] 1973.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to [pneumoconiosis] *pneumoconiosis, or other respiratory or pulmonary impairments* prior to his death, or (2) the death of such miner occurred prior to January 1, [1973] 1975.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, [1972] 1974

SEC. 421. (a) On and after January 1, [1973] 1975, any claim for benefits for death or total disability due to [pneumoconiosis] *pneumoconiosis, or other respiratory or pulmonary impairments* shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for [pneumoconiosis] *pneumoconiosis, or other respiratory or pulmonary impairments* they shall be entitled to claim benefits under this part.

(b) (1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for [pneumoconiosis] *pneumoconiosis, or other respiratory or pulmonary impairments* during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, [1972] 1974, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for [pneumoconiosis] *pneumoconiosis, or other respiratory or pulmonary impairments* and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to [pneumoconiosis] *pneumoconiosis, or other respiratory or pulmonary impairments*;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to [pneumoconiosis] *pneumoconiosis, or other respiratory or pul-*

monary impairments are substantially equivalent to those established by section 411, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder:

(D) any claim for benefits on account of total disability or death of a minor due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments*, or the date of such death, as the case may be:

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part: and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments*.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

SEC. 422. (a) During any period after December 31, **[1972]** 1974, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in the subsection and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of an underground coal mine in such State with respect to death or total disability due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* arising out of employment in such mine. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits

under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: *Provided*. That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section such payments shall be equal to the amounts specified in section 412(a) of this title.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe;

(2) for any period prior to January 1, **[1973]** *1975*; or

(3) for any period after **[seven]** *nine* years after the date of enactment of this Act.

(f) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* or, in the case of death due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments*, the date of such death.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments*.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether **[pneumoconiosis]** *pneumoconiosis, or other respiratory or pulmonary impairments* arose out of employment in a particular underground coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator where such apportionment is appropriate.

(i) (1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

SEC. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of an underground coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

SEC. 424. If a totally disabled miner or a widow is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his widow under this title.

SEC. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such

regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, ~~1973~~ 1975, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

92^D CONGRESS
1ST SESSION

S. 2289

IN THE SENATE OF THE UNITED STATES

JULY 15, 1971

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

A BILL

To amend certain provisions of title IV of the Federal Coal Mine Health and Safety Act of 1969 relating to the total disability of certain miners suffering from pneumoconiosis.

1 *Be it enacted by the Senate, and House of Representa-*
2 *tives of the United States of America in Congress assembled.*

3 That (a) section 402 (f) of title IV of the Federal Coal
4 Mine Health and Safety Act of 1969 is amended to read as
5 follows:

6 “(f) The term ‘total disability’ means, in the case of
7 any miner who suffers from pneumoconiosis, inability by
8 reason of such pneumoconiosis to engage in substantial gain-
9 ful activity requiring skills or abilities comparable to those of

II

1 any gainful activity in which he has previously engaged with
2 some regularity and over a substantial period of time.”

3 (b) Section 421 (b) (2) (C) of title IV of such Act is
4 amended by deleting “those” and insert in lieu thereof the
5 following: “section 402 (f) of this title and to those stand-
6 ards”.

7 SEC. 2. The amendments made by this Act shall be effec-
8 tive only with respect to claims filed for benefits under title
9 IV of the Federal Coal Mine Health and Safety Act of
10 1969—

11 (1) on or after the date of enactment of this Act; or
12 (2) prior to the date of enactment of this Act, but
13 only in the case of any such claim, if a final determina-
14 tion with respect thereto has not been made prior to the
15 date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF S. 2289

SECTION 1

This section amends the definition section of Title IV of the Act to broaden the meaning of total disability, and conforms the requirements of the Secretary of Labor's list of State compensation laws thereto.

(a)

Section 402(f).—The subsection defining total disability is amended to provide that the term, in the case of a miner who suffers from pneumoconiosis, means inability, due to the disease, to engage in substantial activity requiring skills comparable to those previously used in any gainful activity regularly over a substantial period of time.

(b)

Section 421(b)(2)(c).—A new clause is inserted in this subparagraph which now requires that, prior to publication by the Secretary of Labor a list of State workmen's compensation laws which provide adequate benefit coverage for pneumoconiosis, he must find that such laws, among other things, have standards for determining death or total disability due to pneumoconiosis which are substantially equivalent to those of section 411 and the Secretary of Health, Education and Welfare's regulations promulgated thereunder. The new clause would add reference to section 402(f) as amended by the bill, which would thus require State laws to have, in addition to the requirement of existing law, standards for total disability substantially equivalent to the meaning given the term by the amended section 402(f).

SECTION 2

This provision states that the amendments to the Act made in section 1 of the bill are effective only with respect to claims filed under Title IV of the Act on or after the bill's date of enactment, or claims filed prior to date of enactment the final determination of which has not been made prior to such date.

(25)

**SHOWING CHANGES IN EXISTING LAW MADE
BY S. 2289**

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Coal Mine Health and Safety Act of 1969

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's underground coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

SEC. 402. For purposes of this title—

(a) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110 of title 5, United States Code.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung arising out of employment in an underground coal mine.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in Part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in an underground coal mine.

(e) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

[(f) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, but such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.]

(f) *The term "total disability" means, in the case of any miner who suffers from pneumoconiosis, inability by reason of such pneumoconio-*

sis to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, 1972

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him, under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more underground coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment:

(2) if a deceased miner was employed for ten years or more in one or more underground coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis; and

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate

equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203 (b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1972, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act.

Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable.

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section: except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

SEC. 414. (a) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1972, or, in the case of a claimant who is a widow,

within six months after the death of her husband or by December 31, 1972, whichever is the later.

(b) No benefits shall be paid under this part after December 31, 1972, if the claim therefor was filed after December 31, 1971.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, or (2) the death of such miner occurred prior to January 1, 1973.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1972

SEC. 421. (a) On and after January 1, 1973, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under this part.

(b) (1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to [those] section 402(f) of this title and to those standards established by section 411, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder;

(D) any claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely

filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

SEC. 422. (a) During any period after December 31, 1972, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in this subsection and except as the Secretary shall by regulation otherwise provide) be applicable to each operator of an underground coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title.

(e) No payment of benefits shall be required under this section:

- (1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe;
- (2) for any period prior to January 1, 1973; or
- (3) for any period after seven years after the date of enactment of this Act.

(f) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular underground coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i) (1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

SEC. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421 (b) each operator of an underground coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments: and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

SEC. 424. If a totally disabled miner or a widow is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his widow under this title.

SEC. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, 1973, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

92^D CONGRESS
1ST SESSION

H. R. 9212

IN THE SENATE OF THE UNITED STATES

NOVEMBER 11, 1971

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) (1) section 412 (a) of the Federal Coal Mine
4 Health and Safety Act of 1969 is amended by redesignating
5 paragraph (3) as paragraph (4), and by inserting after para-
6 graph (2) the following new paragraph:

7 “(3) In the case of the child or children of a miner
8 whose death is due to pneumoconiosis or of a miner who is
9 receiving benefits under this part at the time of his death, and
10 who leaves no widow, and in the case of the child or children

1 of a widow who is receiving benefits under this part at the
2 time of her death, benefits shall be paid to such child or chil-
3 dren as follows: If there is one such child, he shall be paid
4 benefits at the rate specified in paragraph (1). If there is
5 more than one such child, the benefits paid shall be divided
6 equally among them and shall be paid at a rate equal to the
7 rate specified in paragraph (1), increased by 50 per centum
8 of such rate if there are two such children, by 75 per centum
9 of such rate if there are three such children, and by 100 per
10 centum of such rate if there are more than three such chil-
11 dren: *Provided*, That benefits shall only be paid to a child
12 for so long as he meets the criteria for the term 'child' con-
13 tained in section 402 (g)."

14 (2) Section 412 (a) of such Act is further amended by
15 adding at the end thereof the following new paragraph:

16 "(5) If an individual's benefits would be increased
17 under clause (4) of this subsection because he or she has one
18 or more dependents, and it appears to the Secretary that it
19 would be in the interest of any such dependent to have the
20 amount of such increase in benefits (to the extent attributable
21 to such dependent) certified to a person other than such indi-
22 vidual, then the Secretary may, under regulations prescribed
23 by him, certify the amount of such increase in benefits (to
24 the extent so attributable) not to such individual but directly
25 to such dependent or to another person for the use and bene-

1 fit of such dependent; and any payment made under this
2 clause, if otherwise valid under this title, shall be a complete
3 settlement and satisfaction of all claims, rights, and interests in
4 and to such payment.”

5 (b) (1) Section 412 (b) of such Act is amended by
6 inserting after “widow” each time it appears the following:
7 “or child”.

8 (2) Section 402 of such Act is amended by adding at
9 the end thereof the following new subsection:

10 “(g) The term ‘child’ means an individual who is un-
11 married and (1) under eighteen years of age, or (2) inca-
12 pable of self-support because of physical or mental disability
13 which arose before he reached eighteen years of age or, in
14 the case of a student, before he ceased to be a student, or
15 (3) a student. Such term includes stepchildren, adopted
16 children, and posthumous children. For the purpose of this
17 subsection the term ‘student’ means an individual under
18 twenty-three years of age who has not completed four years
19 of education beyond the high school level and who is regu-
20 larly pursuing a full-time course of study or training at an
21 institution which is—

22 “(1) a school or college or university operated or
23 directly supported by the United States, or by a State
24 or local government or political subdivision thereof;

25 “(2) a school or college or university which has

1 been accredited by a State or by a State-recognized or
2 nationally recognized accrediting agency or body;

3 “(3) a school or college or university not so ac-
4 credited but whose credits are accepted, on transfer, by
5 at least three institutions which are so accredited, for
6 credit on the same basis as if transferred from an institu-
7 tion so accredited; or

8 “(4) an additional type of educational or training
9 institution as defined by the Secretary of Health, Edu-
10 cation, and Welfare.

11 Such an individual is deemed not to have ceased to be a
12 student during an interim between school years if the interim
13 is not more than four months and if he shows to the satis-
14 faction of the Secretary that he has a bona fide intention
15 of continuing to pursue a full-time course of study or train-
16 ing during the semester or other enrollment period immedi-
17 ately after the interim or during periods of reasonable
18 duration in which, in the judgment of the Secretary, he is
19 prevented by factors beyond his control from pursuing his
20 education. A student whose twenty-third birthday occurs
21 during a semester or other enrollment period is deemed a
22 student until the end of the semester or other enrollment
23 period.”

24 (3) Section 413.(b) of such Act is amended by adding
25 at the end thereof the following new sentence: “In carrying

1 out his responsibilities under this part, the Secretary may
2 prescribe regulations consistent with the provisions of sec-
3 tions 204, 205 (j), 205 (k), and 206 of the Social Security
4 Act.”

5 (4) Section 414 (a) of such Act is amended by insert-
6 ing “(1)” after “(a)” and by adding the following new
7 paragraph at the end thereof:

8 “(2) In the case of a claim by a child, this paragraph
9 shall apply, notwithstanding any other provision of this part.

10 “(A) If such claim is filed within six months following
11 the month in which this paragraph is enacted, and if entitle-
12 ment to benefits is established pursuant to such claim, such
13 entitlement shall be effective retroactively from Decem-
14 ber 30, 1969, or from the date such child would have been
15 first eligible for such benefit payments had section 412 (a)
16 (3) been applicable since December 30, 1969, whichever is
17 the lesser period. If on the date such claim is filed the claim-
18 ant is not eligible for benefit payments, but was eligible during
19 the period from December 30, 1969, to the date such claim
20 is filed, entitlement shall be effective for the duration of
21 eligibility during such period.

22 “(B) If such claim is filed after six months following
23 the month in which this paragraph is enacted, and if entitle-
24 ment to benefits is established pursuant to such claim, such

1 entitlement shall be effective retroactively from a date twelve
2 months preceding the date such claim is filed, or from the
3 date such child would have been first eligible for such benefit
4 payments had section 412 (a) (3) been applicable since
5 December 30, 1969, whichever is the lesser period. If on
6 the date such claim is filed the claimant is not eligible for
7 benefit payments, but was eligible during the period from
8 a date twelve months preceding the date such claim is filed,
9 to the date such claim is filed, entitlement shall be effective
10 for the duration of eligibility during such period.

11 “(C) Any benefit under subparagraph (A) or (B) for
12 a month prior to the month in which a claim is filed shall be
13 reduced, to any extent that may be necessary, so that it will
14 not render erroneous any benefit which, before the filing of
15 such claim, the Secretary has certified for payment for such
16 prior month.

17 “(D) No claim for benefits under this part, in the case
18 of a claimant who is a child of a miner or widow (as de-
19 scribed in section 412 (a) (3)), shall be considered unless it
20 is filed within six months after the death of such miner or
21 widow (whichever last occurred) or by December 31, 1972,
22 whichever is the later.

23 ~~(5)~~ Subsections 422 (c) and (d) of such Act are
24 amended by striking out ‘section 412 (a)’ wherever it ap-

1 pears and inserting in lieu thereof 'section 412 (a) (1), (2),
2 and (4)'. ”

3 SEC. 2. (a) Section 412 (b) of the Federal Coal Mine
4 Health and Safety Act of 1969 is amended by adding at the
5 end thereof the following: “This part shall not be considered
6 a workmen’s compensation law or plan for purposes of sec-
7 tion 224 of such Act.”

8 (b) The amendment made by this section shall be
9 effective as of December 30, 1969.

10 SEC. 3. (a) Sections 401, 411 (c) (1), 411 (c) (2),
11 and 422 (h) of the Federal Coal Mine Health and Safety Act
12 of 1969 are each amended by striking out “underground”.

13 (b) Sections 402 (b), 402 (d), 422 (a), and 423 (a)
14 of such Act are each amended by striking out “an under-
15 ground” and inserting “a” in lieu thereof.

16 (c) The amendments made by this section shall be
17 effective as of December 30, 1969.

18 SEC. 4. Title IV of the Federal Coal Mine Health and
19 Safety Act of 1969 is amended—

20 (1) by striking out “1971” where it appears in
21 section 414 (b), and inserting in lieu thereof “1973”,

22 (2) by striking out “1972” each place it appears
23 and inserting in lieu thereof “1974”,

1 (3) by striking out "1973" each time it appears
2 and inserting in lieu thereof "1975", and

3 (4) by striking out "seven" where it appears in
4 section 422 (e) and inserting in lieu thereof "nine".

5 SEC. 5. The first sentence of section 413 (b) of such
6 Act is amended by inserting before the period at the end
7 thereof the following: ", but no claim for benefits under
8 this part shall be denied solely on the basis of the results
9 of a chest roentgenogram".

Passed the House of Representatives November 10, 1971.

Attest:

W. PAT JENNINGS,

Clerk.

Section-By-Section Analysis of H.R. 9212

SECTION 1

This section amends various provisions in the Act to permit benefit payments to certain children.

(a) (1)

Section 412(a).—A new paragraph (3) is added to section 412(a) of the Act. The existing section 412(a) provides for payment of benefits by the Secretary of Health, Education and Welfare to a miner disabled by pneumoconiosis, or to the widow of a miner whose death is due to pneumoconiosis. The new paragraph provides benefit payments to children in the event that the miner and his spouse are both deceased. Surviving children are entitled to the full amount of benefits paid or due to the miner or his widow. If there is more than one surviving child, benefits are increased by 50 percent in the case of two children, by 75 percent for three, and by 100 percent if more than three.

(a) (2)

Section 412(a).—A new paragraph (5) is added to section 412(a) of the Act. The new provision authorizes the Secretary of Health, Education and Welfare to certify dependent benefit payments directly to a dependent, or to another person for the use or benefit of such dependent, where it appears to him to be in the interest of the dependent to do so.

(b) (1)

Section 412(b).—Adds children to the provisions concerning the relationship between this Federal benefit program and other disability and compensation programs.

(b) (2)

Section 402.—A new subsection (g) is added to section 402, the definition section of the Act. The new provision defines "child" as an individual who is unmarried and under eighteen, or incapable of self-support, or a student. The term "student" is also specifically defined.

(b) (3)

Section 413(b).—A sentence is added to this subsection relating to the requirement that, in processing benefit claims under the Act, the Secretary of Health, Education and Welfare utilize to the extent possible the same procedures and personnel used in processing social security disability benefit claims. The new sentence authorizes the Secretary to prescribe regulations consistent with those provisions of the

(41)

Social Security Act which deal with overpayments and underpayments, certification of payment to other than the claimant, satisfaction of payments made to incompetents, and representation of claimants before the Secretary.

(b) (4)

Section 414(a).—A new paragraph is added which deals with claims for benefits by children. The new provision requires retroactive payments to December 30, 1969, for a child entitled to such payments who files a claim for benefits within six months after enactment of the paragraph. If a claim is filed after the six month period, retroactive benefits are limited to the twelve month period preceding the date such claim is filed. Benefits for a month prior to the month a claim is filed hereunder shall be reduced to eliminate error in prior benefit payments. Claims by a child must, in any event, be filed within six months after the death of the father or mother, whichever last occurred, or by December 31, 1972, whichever is later.

(b) (5)

Section 422(c) and (d).—This provision amends the reference to section 412(a) in the section dealing with payment of benefits by mine operators to limit the responsibility for such payment to amounts equivalent to those specified in paragraphs (1), (2), and (4). Thus, mine operators would not be required to pay benefits to orphaned children.

SECTION 2

This section clarifies the effect of offset provisions in the Social Security Act on benefits under the Federal Coal Mine Health and Safety Act.

Section 412(b).—A new sentence is added to this subsection which specifies that Part B of Title IV of the Federal Coal Mine Health and Safety Act is not a workmen's compensation law or plan for purposes of section 224 of the Social Security Act. This latter provision requires that if the combination of social security disability benefits and workmen's compensation benefits exceeds 80 percent of "average current earnings" (the larger of the highest monthly wage or the average monthly wage for the five consecutive years of highest income), such social security disability payments are to be reduced by the excess amount. Thus, under the new sentence in section 412(b), benefit payments under the Federal Coal Mine Health and Safety Act could not be taken into account by the Secretary in computing Social Security disability payments. The new sentence would take retroactive effect as of December 30, 1969.

SECTION 3

This section amends various sections of Title IV of the Act to strike out references to underground mines.

(a)

Sections 401, 411(c)(1), 411(c)(2), 422(h).—Each of these sections is amended by striking out the word “underground”. The purpose is to extend Title IV coverage to workers at surface mines as well as those underground.

(b)

Sections 402(b), 402(d), 422(a), 423(a).—Each of these sections is amended by striking out the words “an underground” and inserting in lieu thereof the word “a”. The purpose is the same as described immediately above.

(c)

The amendments made by section 3 of the bill are to be effective retroactive to December 30, 1969.

SECTION 4

This section advances two years the operative dates in Title IV of the Federal Coal Mine Health and Safety Act.

(1)

Section 414(b).—This provision extends from December 31, 1971 to December 31, 1973 the deadline for filing claims for benefits under Part B of Title IV.

(2)

This provision strikes all references to the year “1972” in Title IV and inserts in lieu thereof the year “1974”. Such dates relate to the extension of time for the filing of claims for benefits under Part B of Title IV (from December 31, 1972 to December 31, 1974), to the extension of time for payment of benefits under section 414(b), and to claims for benefits under Part C of Title IV (claims after December 31, 1972 changed to December 31, 1974). The provision would also change the deadline for publication in the Federal Register by the Secretary of Labor of State workmen’s compensation laws providing adequate coverage for pneumoconiosis from October 1, 1972 to October 1, 1974. The provision also extends from December 31, 1972 to December 31, 1974 the time after which the Secretary of Labor shall administer the benefit payment program where state laws are certified by him to be inadequate.

(3)

This provision would strike references to the year “1973” wherever it appears in Title IV and insert in lieu thereof the year “1975”. In Part B of Title IV the effect would be to change, in section 414(e), the prohibition on benefits payable to a widow whose miner husband died prior to January 1, 1973, to January 1, 1975. In Part C of Title IV the existing provision requires claims after January 1, 1973 for death or total disability to be filed pursuant to State workmen’s compensation laws. The amendments would change this requirement to apply to

claims filed after January 1, 1975. Similarly, section 422(e)(2) would be amended to provide that payments are not required to be made pursuant to this section prior to January 1, 1975, rather than 1973.

(4)

Section 422(e).—This provision would conform paragraph (3) of section 422(e) to other date extensions by providing that no payment of benefits under section 422 shall be required for any period after nine years after the date of enactment of the Federal Coal Mine Health and Safety Act. Existing law limits payments under the section to seven years after date of enactment.

SECTION 5

This section amends section 413(b) to instruct the Secretary of Health, Education and Welfare that no claim for benefits under Part B of Title IV may be denied solely on the basis of the results of a chest roentgenogram (X-ray). Thus, corroborative evidence of lack of compensable pneumoconiosis beyond a single test must be used to support a denial of benefits.

CHANGES IN EXISTING LAW MADE BY H.R. 9212

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

Federal Coal Mine Health and Safety Act of 1969

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's [underground] coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

SEC. 402. For purposes of this title—

(a) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110 of title 5, United States Code.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung arising out of employment in [an underground] a coal mine.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in [an underground] a coal mine.

(e) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

(f) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, but such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.

(g) *The term "child" means an individual who is unmarried and (1) under eighteen years of age, or (2) incapable of self-support because of*

physical or mental disability which arose before he reached eighteen years of age or, in the case of a student, before he ceased to be a student, or (3) a student. Such term includes stepchildren, adopted children, and posthumous children. For the purpose of this subsection the term "student" means an individual under twenty-three years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(1) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(3) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) an additional type of educational or training institution as defined by the Secretary of Health, Education, and Welfare.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration in which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose twenty-third birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31,
 [1972] 1974

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him, under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more [under-

ground] coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment:

(2) if a deceased miner was employed for ten years or more in one or more [underground] coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis; and

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organizations, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) *In the case of the child or children of a miner whose death is due to pneumoconiosis or of a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children, as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: Provided, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 402(g).*

[(3)](4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per cen-

tum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) *If an individual's benefits would be increased under clause (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.*

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow or child shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow or child under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act. *This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act.*

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, [1972] 1974, in such manner in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act, *but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram.* Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable. *In carrying out his responsibilities under this part, the Secretary may prescribe regulations consistent with the provisions of sections 204, 205(j), 205(k), and 206 of the Social Security Act.*

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section: except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or

because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

SEC. 414. (a) (1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, [1972] 1974, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, [1972] 1974, whichever is the later.

(2) *In the case of a claim by a child, this paragraph shall apply notwithstanding any other provision of this part.*

(A) *If such claim is filed within six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.*

(B) *If such claim is filed after six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be made retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a) (3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.*

(C) *Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.*

(D) *No claim for benefits under this part, in the case of a claimant who is a child of a miner or widow (as described in section 412(a) (3)), shall be considered unless it is filed within six months after the death of such miner or widow (whichever last occurred) or by December 31, 1972, whichever is the later.*

(b) No benefits shall be paid under this part after December 31, [1972] 1974, if the claim therefor was filed after December 31, [1971] 1973.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, or (2) the death of such miner occurred prior to January 1, [1973] 1975.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, [1972] 1974

SEC. 421. (a) On and after January 1, [1973] 1975, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under this part.

(b) (1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, [1972] 1974, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to those established by section 411, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder;

(D) any claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the

Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis. The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

SEC. 422. (a) During any period after December 31, [1972] 1974, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in this subsection and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of [an underground] a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under [section 412(a)] section 412(a) (1), (2) and (4) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in [section 412(a)] section 412(a) (1), (2), and (4) of this title.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe;

(2) for any period prior to January 1, [1973] 1975; or

(3) for any period after [seven] nine years after the date of enactment of this Act.

(f) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular [underground] coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i) (1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

SEC. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421 (b) each operator of an underground coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments: and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

SEC. 424. If a totally disabled miner or a widow is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his widow under this title.

SEC. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, [1973] 1975, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

*Comparison with title IV of the Federal Coal Mine Health and Safety Act of 1969, of 3 legislative proposals to amend the act:
S. 2675 (Randolph bill), S. 2289 (Hartke bill), and H.R. 9212 (Perkins House-passed bill)*

Present law	Randolph (S. 2675)	Hartke (S. 2289)	Perkins (H.R. 9212)
I. BENEFICIARIES			
Benefits paid to miners and widows only.	Extends benefits to orphans, sets eligibility requirements for child beneficiaries, and includes rate of payment.	No change from present law.	Extends benefits to orphans, sets eligibility requirements for child beneficiaries, and includes rate of payment.
II. OFFSET OF OTHER BENEFITS			
Social Security Administration interprets to permit reduction in social security disability payments by classification of title IV benefits as workmen's compensation.	Prevents reduction in social security payments by specifying title IV benefits not workmen's compensation.	No change from present law.	Prevents reduction in social security payments by specifying title IV benefits not workmen's compensation.
III. DISEASES COMPENSABLE			
Limits benefits under title IV to death or disability due to pneumoconiosis.	Expands benefits to include death or disability due to pneumoconiosis or other respiratory or pulmonary impairments.	No change from present law.	No change from present law.

IV. TOTAL DISABILITY

Permits HEW Secretary to determine total disability for benefit purposes.

Requires HEW Secretary to establish total disability when any respiratory or pulmonary impairment prevents work comparable to previous regular employment in a mine.

Defines total disability from pneumoconiosis as inability to work in activity comparable to previous regular employment, and limits claims under bill to those on or after date of enactment.

No change from present law.

V. EXTENSION OF ACT

Ends Federal payment program in 1973.

Extends Federal payment program 2 years to 1975 and extends for 2 years other provisions relating to claims and benefits.

No change from present law.

Extends Federal payment program 2 years to 1975 and extends for 2 years other provisions relating to claims and benefits.

Comparison with title IV of the Federal Coal Mine Health and Safety Act of 1969, of 3 legislative proposals to amend the act: S. 2675 (Randolph bill), S. 2289 (Hartke bill), and H.R. 9212 (Perkins House-passed bill)—Continued

Present law	Randolph (S. 2675)	Hartke (S. 2289)	Perkins (H.R. 9212)
VI. DENIAL OF BENEFITS			
Permits exclusive use of X-rays to determine existence of pneumoconiosis for claim of benefits under title IV.	Prohibits use of X-rays or other particular tests as sole determinant of pneumoconiosis or other impairments.	No change from present law.	Prohibits use of X-rays as sole determinant of pneumoconiosis.
VII. OCCUPATIONS COVERED			
Limits those eligible for benefits to underground coal miners.	No change from present law.	No change from present law.	Expands occupations covered to surface miners.
VIII. TRANSFER OF BENEFITS			
Permits increase in benefits where dependent children.	No change from present law.	No change from present law.	Allows HEW Secretary to transfer benefits directly to dependent or to another for dependent's benefit.

Public Law 91-173
91st Congress, S. 2917
December 30, 1969

An Act

To provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes.

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".

Federal Coal
Mine Health and
Safety Act of
1969.

FINDINGS AND PURPOSE

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; 83 STAT. 742,
83 STAT. 743

(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal mines cause grief and suffering to the miners and to their families;

(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 prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal mines is a serious impediment to the future growth of the coal mining industry and 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 coal mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education, and Welfare and the Secretary of the Interior to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal miners; (2) to require that each operator of a coal mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal mining industry, research and development and training programs aimed at preventing coal mine accidents and occupationally caused diseases in the industry.

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 between a place in a State and 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, Guam, and the Trust Territory of the Pacific Islands;

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal mine;

(e) "agent" means any person charged with responsibility for the operation of all or a part of a coal mine or the supervision of the miners 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;

(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 in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

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

(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) "mandatory health or safety standard" means the interim mandatory health or safety standards established by titles II and III of this Act, and the standards promulgated pursuant to title I of this Act; and

(m) "Panel" means the Interim Compliance Panel established by this Act.

MINES SUBJECT TO ACT

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

INTERIM COMPLIANCE PANEL

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

Establishment;
membership.

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- (5) Director of the National Science Foundation, or his delegate.
- (b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel. Travel expenses, etc.
- (c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, the Secretary of Labor, and the Secretary shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act. Agency cooperation.
- (d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof. Quorum.
- (e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section 3105 of title 5 of the United States Code shall be applicable to hearing examiners appointed pursuant to this subsection. Hearing examiners, appointment.
80 Stat. 415.
- (f) (1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to this Act and to provide an opportunity for a public hearing, after notice, at the request of an operator of the affected coal mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel may file a petition for review of such decision under section 106 of this Act. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under this Act. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5 of the United States Code. Duties.

Post, p. 754.
- (2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate. 80 Stat. 384.
Annual report to Secretary and Congress.

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, improved mandatory safety standards for the protection of life and the prevention of injuries in a coal mine, and shall, in accordance with the procedures set forth in this section, promulgate the mandatory health standards transmitted to him by the Secretary of Health, Education, and Welfare.

(b) No improved mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners below that provided by any mandatory health or safety standard.

(c) In the development and revision of mandatory safety standards, the Secretary shall consult with the Secretary of Health, Education, and Welfare, the Secretary of Labor, and with other interested Federal

agencies, appropriate representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, and such advisory committees as he may appoint. Such development and revision of mandatory safety standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of safety protection for miners, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other safety statutes.

(d) The Secretary of Health, Education, and Welfare shall, in accordance with the procedures set forth in this section, develop and revise, as may be appropriate, improved mandatory health standards for the protection of life and the prevention of occupational diseases of miners. In the development and revision of mandatory health standards, the Secretary of Health, Education, and Welfare shall consult with the Secretary, the Secretary of Labor, and with other interested Federal agencies, appropriate representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, such advisory committees as he may appoint, and, where appropriate, foreign countries. Such development and revision of mandatory standards shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other health statutes. Mandatory health standards which the Secretary of Health, Education, and Welfare develops or revises shall be transmitted to the Secretary, and shall thereupon be published in the Federal Register by the Secretary as proposed mandatory health standards.

(e) The Secretary shall 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. In the case of mandatory safety standards, except as provided in subsection (f) 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. In the case of mandatory health standards, except as provided in subsection (f) of this section, the Secretary of Health, Education, and Welfare may, upon the expiration of such period and after consideration of all relevant matter presented to the Secretary and transmitted to the Secretary of Health, Education, and Welfare, direct the Secretary to promulgate such standards with such modifications as the Secretary of Health, Education, and Welfare may deem appropriate and the Secretary shall thereupon promulgate such standards.

(f) On or before the last day of any period fixed for the submission of written data or comments under subsection (e) of this section, any interested person may file with the Secretary written objections to a proposed mandatory health or safety standard, stating the grounds therefor and requesting a public hearing 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 mandatory health or safety standards to which objections have been filed and a hearing requested.

Publication in
Federal
Register.

Publication in
Federal
Register.

Objections.

Publication in
Federal
Register.

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(g) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (f) of this section, the Secretary, in the case of mandatory safety standards, or the Secretary of Health, Education, and Welfare, in the case of mandatory health standards, shall issue notice of, and hold, a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary who held the hearing shall make findings of fact which shall be public. In the case of mandatory safety standards, the Secretary may promulgate such standards with such modifications as he deems appropriate. In the case of mandatory health standards, the Secretary of Health, Education, and Welfare may direct the Secretary to promulgate the mandatory health standards with such modifications as the Secretary of Health, Education, and Welfare deems appropriate and the Secretary shall thereupon promulgate the mandatory health standards. In the event the Secretary or the Secretary of Health, Education, and Welfare, as the case may be, determines that a proposed mandatory health or safety standard should not be promulgated or should be modified, he shall within a reasonable time publish his reasons for his determination.

Hearings.

(h) Any mandatory health or safety standard promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary or the Secretary of Health, Education, and Welfare, as appropriate, specifies a later date.

Effective date.

(i) Proposed mandatory health and safety standards for surface coal mines shall be published by the Secretary, in accordance with the provisions of this section, not later than twelve months after the date of enactment of this Act. Proposed mandatory health and safety standards for surface work areas of underground coal mines, in addition to those established for such areas under this Act, shall be published by the Secretary, in accordance with the provisions of this section, not later than twelve months after the date of enactment of this Act.

(j) All interpretations, regulations, and instructions of the Secretary or the Director of the Bureau of Mines, in effect on the date of enactment of this Act and not inconsistent with any provision of this Act, shall be published in the Federal Register and shall continue in effect until modified or superseded in accordance with the provisions of this Act.

Publication in Federal Register.

(k) The Secretary shall send a copy of every proposed standard or regulation at the time of publication in the Federal Register to the operator of each coal mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

Copies.

ADVISORY COMMITTEES

SEC. 102. (a) (1) The Secretary shall appoint an advisory committee on coal mine safety research composed of—

Committee on coal mine safety research, membership.

(A) the Director of the Office of Science and Technology, or his delegate, with the consent of the Director;

(B) the Director of the National Bureau of Standards, Department of Commerce, or his delegate, with the consent of the Director;

(C) the Director of the National Science Foundation, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary may appoint who are knowledgeable in the field of coal mine safety research.

The Secretary shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary on matters involving or relating to coal mine safety research. The Secretary shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grant, and the entering into of contracts for such research.

Conflict of
interest.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

Committee on
coal mine
health
research,
membership.

(b)(1) The Secretary of Health, Education, and Welfare shall appoint an advisory committee on coal mine health research composed of—

(A) the Director, Bureau of Mines, or his delegate, with the consent of the Director;

(B) the Director of the National Science Foundation, or his delegate, with the consent of the Director;

(C) the Director of the National Institutes of Health, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary of Health, Education, and Welfare may appoint who are knowledgeable in the field of coal mine health research.

The Secretary of Health, Education, and Welfare shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary of Health, Education, and Welfare on matters involving or relating to coal mine health research. The Secretary of Health, Education, and Welfare shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grant, and the entering into of contracts for such research.

Conflict of
interest.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary of Health, Education, and Welfare pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(c) The Secretary or the Secretary of Health, Education, and Welfare may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this Act. The Secretary or the Secretary of Health, Education, and Welfare, as the case may be, shall appoint the chairman of each such committee, who shall be an individual who has no economic interest in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government. A majority of the members of any such advisory committee appointed pursuant to this subsection shall be composed of individuals who have no economic

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interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(d) Advisory committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the appropriate Secretary but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

Compensation
and travel
expenses.

34 F.R. 9605.
5 USC 5332
note.
Ante, p. 190.
80 Stat. 499.

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) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether or not there is compliance with the mandatory health or safety standards or with any notice, order, or decision issued under this title. In carrying out the requirements of clauses (3) and (4) of this subsection, no advance notice of an inspection shall be provided to any person. 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 four times a year.

(b)(1) 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.

Right of
entry.

(2) For the purpose of developing improved mandatory health standards, the Secretary of Health, Education, and Welfare or his authorized representative shall have a right of entry to, upon, or through, any coal mine.

Right of
entry.

(3) The provisions of this Act relating to investigations and records shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this Act.

(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 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 subpoenas 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 subpoena 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

Hearings,
subpena power.

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 the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(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, when feasible, 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.

(g) Whenever a representative of the miners has reasonable grounds to believe that a violation of a mandatory health or safety standard exists, or an imminent danger exists, such representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title.

(h) At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Secretary on such inspection.

(i) Whenever the Secretary finds that a mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine other especially hazardous conditions, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals.

FINDINGS, NOTICES, AND ORDERS

Sec. 104. (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 forthwith 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) Except as provided in subsection (i) of this section, 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 but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent 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 representative of the Secretary determines that the violation has been abated.

(c) (1) 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, 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 safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any notice given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within ninety days after the issuance of such notice, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, 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 prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent 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.

(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 or an authorized representative of the Secretary, to eliminate the condition described in the order;

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

(3) any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, 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; and

(4) any consultant to any of the foregoing.

(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 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) A notice or order issued pursuant to this section, except an order issued under subsection (h) of this section, may be modified or terminated by an authorized representative of the Secretary.

(h) (1) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.

(2) Upon the conclusion of such investigation and an opportunity for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(i) If, based upon samples taken and analyzed and recorded pursuant to section 202 (a) of this Act, or samples taken during an inspection by an authorized representative of the Secretary, the applicable limit on the concentration of respirable dust required to be maintained under this Act is exceeded and thereby violated, the Secretary or his authorized representative shall issue a notice fixing a reasonable time for the abatement of the violation. During such time, the operator of

80 Stat. 384.

Post, p. 760.

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83 STAT. 753

the mine shall cause samples described in section 202(a) of this Act to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative 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 the Secretary or his authorized representative has reason to believe, based on actions taken by the operator, that such limit will be complied with upon the resumption of production in such mine. As soon as possible after an order is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person or team of persons, to the extent such persons are available, who are knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentrations. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the coal mine.

Post, p. 760.

REVIEW BY THE SECRETARY

Sec. 105. (a) (1) An operator issued an order pursuant to the provisions of section 104 of this title, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the Secretary for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator issued a notice pursuant to section 104(b) or (i) of this title, or any representative of miners in any mine affected by such notice, may, if he believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the Secretary for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. 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 public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

Hearing.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

80 Stat. 384.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice, 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 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 (1) from any modification or termination of any order, or (2) from any order issued under section 104 of this title, except an order issued under section 104(a) of this title, together with a detailed statement giving reasons for granting such relief. The Secretary may grant such relief, under such conditions as he may prescribe, if—

(1) a hearing has been held in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to the applicant; and

(3) such relief will not adversely affect the health and safety of miners in the coal mine.

No temporary relief shall be granted in the case of a notice issued under section 104 (b) or (i) of this title.

JUDICIAL REVIEW

SEC. 106. (a) Any order or decision issued by the Secretary or the Panel under this Act, except an order or decision under section 109(a) 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, or the United States Court of Appeals for the District of Columbia Circuit, upon the filing in such court within thirty days from the date of such order or decision of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this Act. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Secretary or the Panel, and thereupon the Secretary or the Panel shall certify and file in such court the record upon which the order or decision complained of was issued, as provided in section 2112 of title 28, United States Code.

72 Stat. 941;
80 Stat. 1323.

(b) The court shall hear such petition on the record made before the Secretary or the Panel. The findings of the Secretary or the Panel, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary or the Panel for such further action as it may direct.

(c) (1) In the case of a proceeding to review any order or decision issued by the Secretary under this Act, except an order or decision pertaining to an order issued under section 104(a) of this title or an order or decision pertaining to a notice issued under section 104 (b) or (i) of this title, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(C) such relief will not adversely affect the health and safety of miners in the coal mine.

(2) In the case of a proceeding to review any order or decision issued by the Panel under this Act, the court may, under such condi-

tions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; and

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding.

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

62 Stat. 928.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Secretary or the Panel.

(f) Subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him in any proceeding instituted under this section.

80 Stat. 463.

POSTING OF NOTICES, ORDERS, AND DECISIONS

SEC. 107. (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, orders, and decisions 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, order, or decision 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, order, or decision required by this Act to be given to an operator to be mailed immediately to a representative of the miners 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. Such notice, order, or decision shall be available for public inspection.

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

(d) Each operator of a coal mine shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine and such official shall receive a copy of any notice, order, or decision issued under this Act affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall

receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

INJUNCTIONS

Sec. 108. The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health, Education, and Welfare or his authorized representative, in carrying out the provisions of this Act, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary or the Secretary of Health, Education, and Welfare in furtherance of the provisions of this Act, or (f) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health, Education, and Welfare determines necessary in carrying out the provisions of this Act. Each court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in such orders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it. In actions under this section, subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him. In any action instituted under this section to enforce an order or decision issued by the Secretary after a public hearing in accordance with section 554 of title 5 of the United States Code, the findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

28 USC app.

80 Stat. 663.

80 Stat. 384.

PENALTIES

Sec. 109. (a) (1) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, except the provisions of title 4, shall be assessed a civil penalty by the Secretary under paragraph (3) of this subsection which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory 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, the appropriateness of such penalty to

Post, p. 792.

the size of the business of the operator charged, whether the operator was negligent, 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.

(2) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assessed by the Secretary under paragraph (3) of this subsection, which penalty shall not be more than \$250 for each occurrence of such violation.

(3) A civil penalty shall be assessed by the Secretary only after the person charged with a violation under this Act has been given an opportunity for a public hearing and the Secretary has determined, by decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Where appropriate, the Secretary shall consolidate such hearings with other proceedings under section 105 of this title. Any hearing under this section shall be of record and shall be subject to section 554 of title 5 of the United States Code.

80 Stat. 384.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Secretary shall file a petition for enforcement of such order in any appropriate district court of the United States. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by registered or certified mail to the respondent and to the representative of the miners in the affected mine or the operator, as the case may be, and thereupon the Secretary shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the Secretary or it may remand the proceedings to the Secretary for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a court of appeals under section 106 of this Act, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings, the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, as provided in section 507(b) of title 28 of the United States Code, attorneys appointed by the Secretary may appear for and represent him in any action to enforce an order assessing civil penalties under this paragraph.

80 Stat. 663.

(b) Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 104 of this title, or any order incorporated in a final decision issued under this title, except an order incorporated in a decision under subsection (a) of this section or section 110(b)(2) of this title, shall, upon conviction, be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this Act, punishment shall be by a fine of not more than \$50,000, or by imprisonment for not more than five years, or by both.

(c) Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under subsection (a) of this section or section 110 (b) (2) of this title, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act or any order or decision 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 six months, or by both.

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

ENTITLEMENT OF MINERS

Compensation.

SEC. 110. (a) If a coal mine or area of a coal mine is closed by an order issued under section 104 of this title, all miners working during the shift when such order was issued who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a coal mine or area of a coal mine is closed by an order issued under section 104 of this title for an unwarrantable failure of the operator to comply with any health or safety standard, all miners who are idled due to such order shall be fully compensated, after all interested parties are given an opportunity for a public hearing on such compensation and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Whenever an operator violates or fails or refuses to comply with any order issued under section 104 of this Act, all miners employed at the affected mine who would be withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

Discrimination.

(b) (1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger, (B) has

filed, instituted, or caused to be filed or instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(2) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. 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 public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein. Any order issued by the Secretary under this paragraph shall be subject to judicial review in accordance with section 106 of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the provisions of sections 108 and 109(a) of this title.

80 Stat. 384.

(3) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

REPORTS

SEC. 111. (a) All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported for periods determined by the Secretary, but at least annually.

(b) In addition to such records as are specifically required by this Act, every operator of a coal mine 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. The Secretary is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent other-

Records,
availability.

wise specifically provided by this Act, all records, information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

COVERAGE

Post, p. 791.

Ante, p. 745.

SEC. 201. (a) The provisions of sections 202 through 206 of this title and the applicable provisions of section 318 of title III shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory health standards promulgated by the Secretary under the provisions of section 101 of this Act, and shall be enforced in the same manner and to the same extent as any mandatory health standard promulgated under the provisions of section 101 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 title I of this Act.

(b) Among other things, it is the purpose of this title to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations in the mine atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.

DUST STANDARD AND RESPIRATORY EQUIPMENT

SEC. 202. (a) Each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed. Such samples shall be taken by any device approved by the Secretary and the Secretary of Health, Education, and Welfare and in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretaries shall prescribe in the Federal Register within sixty days from the date of enactment of this Act and from time to time thereafter. Such samples shall be transmitted to the Secretary in a manner established by him, and analyzed and recorded by him in a manner that will assure application of the provisions of section 104(i) of this Act when the applicable limit on the concentration of respirable dust required to be maintained under this section is exceeded. The results of such samples shall also be made available to the operator. Each operator shall report and certify to the Secretary at such intervals as the Secretary may require as to the conditions in the active workings of the coal mine, including, but not limited to, the average number of working hours worked during each shift, the quantity and velocity of air regularly reaching the working faces, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

(b) Except as otherwise provided in this subsection—

(1) Effective on the operative date of this title, each operator shall continuously maintain the average concentration of respira-

ble dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 3.0 milligrams of respirable dust per cubic meter of air.

(2) Effective three years after the date of enactment of this Act, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

(3) Any operator who determines that he will be unable, using available technology, to comply with the provisions of paragraph (1) of this subsection, or the provisions of paragraph (2) of this subsection, as appropriate, may file with the Panel, no later than sixty days prior to the effective date of the applicable respirable dust standard established by such paragraphs, an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the 3.0 milligram standard established by paragraph (1) of this subsection, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue a permit for noncompliance to the operator. If, in the case of an application for a permit for noncompliance with the 2.0 milligram standard established by paragraph (2) of this subsection, the application satisfies the requirements of subsection (c) of this section and the Panel determines that the applicant will be unable to comply with such standard, the Panel shall issue to the operator a permit for noncompliance.

Noncompliance
permit.

(4) In any case in which an operator, who has been issued a permit (including a renewal permit) for noncompliance under this section, determines, not more than ninety days prior to the expiration date of such permit, that he still is unable to comply with the standard established by paragraph (1) of this subsection or the standard established by paragraph (2) of this subsection, as appropriate, he may file with the Panel an application for renewal of the permit. Upon receipt of such application, the Panel, if it determines, after all interested persons have been notified and given an opportunity for a public hearing under section 5 of this Act, that the application is in compliance with the provisions of subsection (c) of this section, and that the applicant will be unable to comply with such standard, may renew the permit.

Permit
renewal.

Ante, p. 744.

(5) Any such permit or renewal thereof so issued shall be in effect for a period not to exceed one year and shall entitle the permittee during such period to maintain continuously the average concentration of respirable dust in the mine atmosphere during each shift in the working places of such mine to which the permit applies at a level specified by the Panel, which shall be at the lowest level which the application shows the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

Permit
termination.

(6) No permit or renewal thereof for noncompliance shall

entitle any operator to an extension of time beyond eighteen months from the date of enactment of this Act to comply with the 3.0 milligram standard established by paragraph (1) of this subsection, or beyond seventy-two months from the date of enactment of this Act to comply with the 2.0 milligram standard established by paragraph (2) of this subsection.

(c) Any application for an initial or renewal permit made pursuant to this section shall contain—

(1) a representation by the applicant and the engineer conducting the survey referred to in paragraph (2) of this subsection that the applicant is unable to comply with the standard applicable under subsection (b) (1) or (b) (2) of this section at specified working places because the technology for reducing the concentration of respirable dust at such places is not available, or because of the lack of other effective control techniques or methods, or because of any combination of such reasons;

(2) an identification of the working places in such mine for which the permit is requested; the results of an engineering survey by a certified engineer of the respirable dust conditions of each working place of the mine with respect to which such application is filed and the ability to reduce such dust to the level required to be maintained in such place under this section; a description of the ventilation system of the mine and its capacity; the quantity and velocity of air regularly reaching the working faces; the method of mining; the amount and pressure of the water, if any, reaching the working faces; the number, location, and type of sprays, if any; action taken to reduce such dust; and such other information as the Panel may require; and

(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

(d) Beginning six months after the operative date of this title and from time to time thereafter, the Secretary of Health, Education, and Welfare shall establish, in accordance with the provisions of section 101 of this Act, a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed below the levels established in this section to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person. Such schedule shall specify the minimum time necessary to achieve such levels taking into consideration present and future advancements in technology to reach these levels.

(e) References to concentrations of respirable dust in this title means the average concentration of respirable dust if measured with an MRE instrument or such equivalent concentrations if measured with another device approved by the Secretary and the Secretary of Health, Education, and Welfare. As used in this title, 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.

(f) For the purpose of this title, the term "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured, during the 18

Reduction
schedule,
establishment.
Ante, p. 745.

"MRE
instrument."

"Average
concentration."

month period following the date of enactment of this Act, over a number of continuous production shifts to be determined by the Secretary and the Secretary of Health, Education, and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary and the Secretary of Health, Education, and Welfare find, in accordance with the provisions of section 101 of this Act, that such single shift measurement will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

Ante, p. 745.

(g) The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this title.

Spot
inspection.

(h) Respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this Act. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this Act.

MEDICAL EXAMINATIONS

SEC. 203 (a) The operator of a coal mine shall cooperate with the Secretary of Health, Education, and Welfare in making available to each miner working in a coal mine the opportunity to have a chest roentgenogram within eighteen months after the date of enactment of this Act, a second chest roentgenogram within three years thereafter, and subsequent chest roentgenograms at such intervals thereafter of not to exceed five years as the Secretary of Health, Education, and Welfare prescribes. Each worker who begins work in a coal mine for the first time shall be given, as soon as possible after commencement of his employment, and again three years later if he is still engaged in coal mining, a chest roentgenogram; and in the event the second such chest roentgenogram shows evidence of the development of pneumoconiosis the worker shall be given, two years later if he is still engaged in coal mining, an additional chest roentgenogram. All chest roentgenograms shall be given in accordance with specifications prescribed by the Secretary of Health, Education, and Welfare and shall be supplemented by such other tests as the Secretary of Health, Education, and Welfare deems necessary. 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 and of such tests shall be submitted to the Secretary and to the Secretary of Health, Education, and Welfare, and, at the request of the miner, to his physician. The Secretary shall also submit such results to such miner and advise him of his rights under this Act related thereto. Such specifications, readings, classifications, and tests shall, to the greatest degree possible, be uniform for all coal mines and miners in such mines.

(b)(1) On and after the operative date of this title, any miner who, in the judgment of the Secretary of Health, Education, and Welfare based upon such reading or other medical examinations, shows

evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 2.0 milligrams of dust per cubic meter of air.

(2) Effective three years after the date of enactment of this Act, any miner who, in the judgment of the Secretary of Health, Education, and Welfare based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 1.0 milligrams of dust per cubic meter of air, or if such level is not attainable in such mine, to a position in such mine where the concentration of respirable dust is the lowest attainable below 2.0 milligrams per cubic meter of air.

(3) Any miner so transferred shall receive compensation for such work at not less than the regular rate of pay received by him immediately prior to his transfer.

(c) No payment may be required of any miner in connection with any examination or test given him pursuant to this title. Where such examinations or tests cannot be given, due to the lack of adequate medical or other necessary facilities or personnel, in the locality where the miner resides, arrangements shall be made to have them conducted, in accordance with the provisions of this title, in such locality by the Secretary of Health, Education, and Welfare, or by an appropriate person, agency, or institution, public or private, under an agreement or arrangement between the Secretary of Health, Education, and Welfare and such person, agency, or institution. The operator of the mine shall reimburse the Secretary of Health, Education, and Welfare, or such person, agency, or institution, as the case may be, for the cost of conducting each examination or test made, in accordance with this title, and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

Autopsy.

(d) If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health, Education, and Welfare is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his surviving next of kin. The results of such autopsy shall be submitted to the Secretary of Health, Education, and Welfare and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for by the Secretary of Health, Education, and Welfare.

DUST FROM DRILLING ROCK

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, or by ventilation, or by any other method or device approved by the Secretary which is at least as effective in controlling such dust. Respiratory equipment approved by the Secretary and the Secretary of Health, Education, and Welfare shall be provided per-

sons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

DUST STANDARD WHEN QUARTZ IS PRESENT

SEC. 205. In coal mining operations where the concentration of respirable dust in the mine atmosphere of any working place contains more than 5 per centum quartz, the Secretary of Health, Education, and Welfare shall prescribe an appropriate formula for determining the applicable respirable dust standard under this title for such working place and the Secretary shall apply such formula in carrying out his duties under this title.

NOISE STANDARD

SEC. 206. On and after the operative date of this title, the standards on noise prescribed under the Walsh-Healey Public Contracts Act, as amended, in effect October 1, 1969, shall be applicable to each coal mine and each operator of such mine shall comply with them. Within six months after the date of enactment of this Act, the Secretary of Health, Education, and Welfare shall establish, and the Secretary shall publish, as provided in section 101 of this Act, proposed mandatory health standards establishing maximum noise exposure levels for all underground coal mines. Beginning six months after the operative date of this title, and at intervals of at least every six months thereafter, the operator of each coal mine shall conduct, in a manner prescribed by the Secretary of Health, Education, and Welfare, tests by a qualified person of the noise level at the mine and report and certify the results to the Secretary and the Secretary of Health, Education, and Welfare. In meeting such standard under this section, the operator shall not require the use of any protective device or system, including personal devices, which the Secretary or his authorized representative finds to be hazardous or cause a hazard to the miners in such mine.

49 Stat. 2036.
41 USC 35
note.

Ante, p. 745.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

COVERAGE

SEC. 301. (a) The provisions of sections 302 through 318 of this title shall be interim mandatory safety standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory safety standards promulgated by the Secretary under the provisions of section 101 of this Act, and shall be enforced in the same manner and to the same extent as any mandatory safety standard promulgated under section 101 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 title I of this Act.

(b) The purpose of this title is to provide for the immediate application of mandatory safety standards developed on the basis of experience and advances in technology and to prevent newly created hazards resulting from new technology in coal mining. The Secretary shall immediately initiate studies, investigations, and research to further upgrade such standards and to develop and promulgate new and

improved standards promptly that will provide increased protection to the miners, particularly in connection with hazards from trolley wires, trolley feeder wires, and signal wires, the splicing and use of trailing cables, and in connection with improvements in vulcanizing of electric conductors, improvement in roof control measures, methane drainage in advance of mining, improved methods of measuring methane and other explosive gases and oxygen concentrations, and the use of improved underground equipment and other sources of power for such equipment.

Modifications. (c) Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners in such mine or other interested party to present information relating to the modification of such standard. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

80 Stat. 384.

(d) In any case where the provisions of sections 302 to 318, inclusive, of this title provide that certain actions, conditions, or requirements shall be carried out as prescribed by the Secretary, or the Secretary of Health, Education, and Welfare, as appropriate, the provisions of section 553 of title 5 of the United States Code shall apply unless either Secretary otherwise provides. Before granting any exception to a mandatory safety standard as authorized by this title, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected coal mine.

ROOF SUPPORT

SEC. 302. (a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. 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 coal mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this title. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent sup-

port unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan and the absence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished the Secretary or his authorized representative and shall be available to the miners and their representatives.

(b) The method of mining followed in any coal mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

(c) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine as the Secretary may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof boltholes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

(d) When installation of roof bolts is permitted, such roof bolts shall be tested in accordance with the approved roof control plan.

(e) Roof bolts shall not be recovered where complete extractions of pillars are attempted, where adjacent to clay veins, or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

(f) Where miners are exposed to danger from falls of roof, face, and ribs the operator shall examine and test the roof, face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

VENTILATION

SEC. 303. (a) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(b) All active workings 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, explosive, noxious, and harmful gases, and dust, and smoke and explosive fumes. 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. The minimum quantity of air in any coal mine reaching each working face shall be three thousand cubic feet a minute. Within three months after the operative date of this title, the Secretary shall prescribe the minimum velocity and quantity of air reaching each working face of each coal mine in order to render harmless and carry away methane and

other explosive gases and to reduce the level of respirable dust to the lowest attainable level. The authorized representative of the Secretary may require in any coal mine a greater quantity and velocity of air when he finds it necessary to protect the health or safety of miners. Within one year after the operative date of this title, the Secretary or his authorized representative shall prescribe the maximum respirable dust level in the intake aircourses in each coal mine in order to reduce such level to the lowest attainable level. 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) (1) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement, where such exception will not pose a hazard to the miners. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(2) The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and noxious gases, dust, and explosive fumes.

(3) Brattice cloth used underground shall be of flame-resistant material.

Pre-shift
examinations.

(d) (1) Within three hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section 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 such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards; test 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 velocity; and examine for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun. Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety 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 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 operator to receive such reports at a designated station on the surface of the mine, before other persons enter the underground areas of such mine to work in such 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 in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

Records.

(2) No person (other than certified persons designated under this subsection) shall enter any underground area, except during any 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, each working section shall be examined for hazardous conditions by certified persons designated by the operator to do so. Any such condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 104(d) of this Act, until the danger is abated. Such examination shall include tests for methane with a means approved by the Secretary for detecting methane and for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary.

Ante, p. 751.

(f) In addition to the pre-shift and daily examinations required by this section, examinations for hazardous conditions, including tests for methane, and for compliance with the mandatory health or safety standards, shall be made at least once each week by a certified person designated by the operator 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 aircourse in its entirety, idle workings, and, insofar as safety considerations permit, abandoned areas. Such weekly examination need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date and time at the places examined, and if any hazardous condition is found, such condition shall be reported to the operator promptly. Any hazardous condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 104(d) of this Act, until such danger is abated. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

Weekly examinations for hazardous conditions.

Records.

(g) At least once each week, a qualified 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 any pair or set of developing entries and the last open crosscut in any pair or set of

Weekly ventilation examinations.

Records.

rooms, the volume and, when the Secretary so prescribes, the velocity reaching each working face, the volume being 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 recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the coal mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

Methane examinations.

(h) (1) At the start of each shift, tests for methane shall be made at each working place immediately before electrically operated equipment is energized. Such tests shall be made by qualified persons. If 1.0 volume per centum or more of methane is detected, electrical equipment shall not be energized, taken into, or operated in, such working place until the air therein contains less than 1.0 volume per centum of methane. Examinations for methane shall be made during the operation of such equipment 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 at any time the air at any working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall contain less than 1.0 volume per centum of methane. While such changes or adjustments are underway and until they have been achieved, power to electric face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine. If at any time such air contains 1.5 volume per centum or more of methane, all persons, except those referred to in section 104(d) of this Act, shall be withdrawn from the area of the mine endangered thereby to a safe area, and all electric power shall be cut off from the endangered area of the mine, until the air in such working place shall contain less than 1.0 volume per centum of methane.

Ante, p. 751.

(i) (1) If, when tested, a split of air returning from any working section contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall contain less than 1.0 volume per centum of methane. Tests under this paragraph and paragraph (2) of this subsection 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.

(2) If, when tested, a split of air returning from any working section contains 1.5 volume per centum or more of methane, all persons, except those persons referred to in section 104(d) of this Act, shall be withdrawn from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area of the mine, until the air in such split shall contain less than 1.0 volume per centum of methane.

(3) In virgin territory, if the quantity of air in a split ventilating the active workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section for the last open crosscut, if the air in the split returning from such workings

does not pass over trolley wires or trolley feeder wires, and if a certified person designated by the 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, except those referred to in section 104(d) of this Act, from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area only when the air returning from such workings contains 2.0 volume per centum or more of methane.

Ante, p. 751.

(j) Air which has passed by an opening of any abandoned area shall not be used to ventilate any working place in the coal 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 certified person designated by the operator 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.

(k) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(l) The Secretary or his authorized representative shall require, as an additional device for detecting concentrations of methane, that a methane monitor, approved as reliable by the Secretary after the operative date of this title, be installed, when available, on any electric face cutting equipment, continuous miner, longwall face equipment, and loading machine, except that no monitor shall be required to be installed on any such equipment prior to the date on which such equipment is required to be permissible under section 305(a) of this title. When installed on any such equipment, such monitor shall be kept operative and properly maintained and frequently tested as prescribed by the Secretary. The sensing device of such monitor shall be installed as close to the working face as practicable. Such monitor shall be set to deenergize automatically such equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage determined by an authorized representative of the Secretary which shall not be more than 1.0 volume per centum of methane. An authorized representative of the Secretary shall require such monitor to deenergize automatically equipment on which it is installed when the concentration of methane reaches a maximum percentage determined by such representative which shall not be more than 2.0 volume per centum of methane.

Methane
monitor.

Post, p. 775.

(m) 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 persons are permitted to enter or work in such areas. 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 approved by the Secretary 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.

(n) 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 methane. If in such examination methane is found in amounts of 1.0 volume per centum or more, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall contain less than 1.0 volume per centum of methane.

(o) A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form within ninety days after the operative date of this title. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every six months.

(p) Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

(q) 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 workings are ventilated with sufficient air to keep the air in open areas along the pillar lines below 1.0 volume per centum of methane.

(r) 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, not in excess of nine months, 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.

(s) In all underground areas of a coal mine, 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 1.0 volume per centum or more, changes or adjustments shall be made at once in the ventilation so that the air shall contain less than 1.0 volume per centum of methane. No shots shall be fired until the air contains less than 1.0 volume per centum of methane.

(t) Each operator shall adopt a plan within sixty days after the operative date of this title 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 working sections, (2) to cut off the power in the mine in a timely manner, (3) to provide for restora-

tion of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the working places and other active workings where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of 1.0 volume per centum or more exists therein, and (±) 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.

(u) 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.

(v) The mine foreman shall read and countersign promptly the daily reports of the pre-shift examiner and assistant mine foremen, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. Where such reports disclose hazardous conditions, they shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 104(d) of this Act, until such danger is abated. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

Reports.

Ante, p. 751.

(w) Each day, the mine foreman and each of his assistants shall enter plainly and sign with ink or indelible pencil in a book approved by the Secretary 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 him or reported to him during the day and what action was taken to remedy such condition. Such book shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and shall be open for inspection by interested persons.

Daily reports.

(x) Before a coal mine is reopened after having been abandoned or declared inactive by the operator, the Secretary shall be notified, and an inspection shall be made of the entire mine by an authorized representative of the Secretary before mining operations commence.

(y) (1) In any coal mine opened after the operative date of this title, the entries used as intake and return aircourses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to the operative date of this title which has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to permit adequately the coursing of intake or return air through such entries, (1) the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate, active working places, and (2) when the belt haulage entries are not

necessary to ventilate the active working places, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane.

(2) In any coal mine opened on or after the operative date of this title, or, in the case of a coal mine opened prior to such date, in any new working section of such mine, where trolley haulage systems are maintained and where trolley wires or trolley feeder wires are installed, an authorized representative of the Secretary shall require a sufficient number of entries or rooms as intake aircourses in order to limit, as prescribed by the Secretary, the velocity of air currents on such haulageways for the purpose of minimizing the hazards associated with fires and dust explosions in such haulageways.

(z) (1) While pillars are being extracted in any area of a coal mine, such area shall be ventilated in the manner prescribed by this section.

(2) Within nine months after the operative date of this title, all areas from which pillars have been wholly or partially extracted and abandoned areas, as determined by the Secretary or his authorized representative, shall be ventilated by bleeder entries or by bleeder systems or equivalent means, or be sealed, as determined by the Secretary or his authorized representative. When ventilation of such areas is required, such ventilation shall be maintained so as continuously to dilute, render harmless, and carry away methane and other explosive gases within such areas and to protect the active workings of the mine from the hazards of such methane and other explosive gases. Air coursed through underground areas from which pillars have been wholly or partially extracted which enters another split of air shall not contain more than 2.0 volume per centum of methane, when tested at the point it enters such other split. When sealing is required, such seals shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine.

(3) In the case of mines opened on or after the operative date of this title, or in the case of working sections opened on or after such date in mines opened prior to such date, the mining system shall be designed in accordance with a plan and revisions thereof approved by the Secretary and adopted by such operator so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion-proof seals or bulkheads.

COMBUSTIBLE MATERIALS AND ROCK DUSTING

SEC. 304. (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 permitted to accumulate in active workings, or on electric equipment therein.

(b) Where underground mining operations in active workings create or raise excessive amounts of dust, water or water with a wetting agent added to it, or other no less effective methods approved by the Secretary or his authorized representative, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, or other no less effective methods approved by the Secretary or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

(c) All underground areas of a coal 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 working faces, unless such areas are inaccessible or unsafe to enter or unless the Secretary or his authorized representative permits an exception upon his finding that such exception will not pose a hazard to the miners. All crosscuts that are less than forty feet from a working face shall also be rock dusted.

(d) Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities 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 aircourses shall be no less than 80 per centum. Where methane is present in any ventilating current, the per centum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane where 65 and 80 per centum, respectively, of incombustibles are required.

(e) Subsections (b) through (d) of this section shall not apply to underground anthracite mines.

Nonapplicability.

ELECTRICAL EQUIPMENT—GENERAL

SEC. 305. (a) (1) Effective one year after the operative date of this title—

(A) all junction or distribution boxes used for making multiple power connections in by the last open crosscut shall be permissible;

(B) all handheld electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment as the Secretary may designate within two months after the operative date of this title which are taken into or used in by the last open crosscut of any coal mine shall be permissible;

(C) all electric face equipment which is taken into or used in by the last open crosscut of any coal mine classified under any provision of law as gassy prior to the operative date of this title shall be permissible; and

(D) all other electric face equipment which is taken into or used in by the last crosscut of any coal mine, except a coal mine referred to in paragraph (2) of this subsection, which has not been classified under any provision of law as a gassy mine prior to the operative date of this title shall be permissible.

(2) Effective four years after the operative date of this title, all electric face equipment, other than equipment referred to in paragraph (1)(B) of this subsection, which is taken into or used in by the last open crosscut of any coal mine which is operated entirely in coal seams located above the watertable and which has not been classified under any provision of law as a gassy mine prior to the operative date of this title and in which one or more openings were made prior to the date of enactment of this Act, shall be permissible, except that any operator of such mine who is unable to comply with the provisions of this paragraph on such effective date may file with the Panel an application for a permit for noncompliance ninety days prior to such date. If the Panel determines, after notice to all interested persons and an opportunity for a public hearing under section 5 of this Act, that such application satisfies the provisions of paragraph (10) of this

Permit for noncompliance.

Ante, p. 744.

subsection and that such operator, despite his diligent efforts, will be unable to comply with such provisions, the Panel may issue to such operator such a permit. Such permit shall entitle the permittee to an additional extension of time to comply with the provisions of this paragraph of not to exceed twenty-four months, as determined by the Panel, from such effective date.

(3) The operator of each coal mine shall maintain in permissible condition all electric face equipment required by this subsection to be permissible which is taken into or used in by the last open crosscut of any such mine.

(4) Each operator of a coal mine shall, within two months after the operative date of this title, file with the Secretary a statement listing all electric face equipment by type and manufacturer being used by such operator in connection with mining operations in such mine as of the date of such filing, and stating whether such equipment is permissible and maintained in permissible condition or is nonpermissible on such date of filing, and, if nonpermissible, whether such nonpermissible equipment has ever been rated as permissible, and such other information as the Secretary may require.

Survey,
publication.

(5) The Secretary shall promptly conduct a survey as to the total availability of new or rebuilt permissible electric face equipment and replacement parts for such equipment and, within six months after the operative date of this title, publish the results of such survey.

Permit for
noncompliance.

(6) Any operator of a coal mine who is unable to comply with the provisions of paragraph (1)(D) of this subsection within one year after the operative date of this title may file with the Panel an application for a permit for noncompliance. If the Panel determines that such application satisfies the provisions of paragraph (10) of this subsection, the Panel shall issue to such operator a permit for noncompliance. Such permit shall entitle the permittee to an extension of time to comply with such provisions of paragraph (1)(D) of not to exceed twelve months, as determined by the Panel, from the date that compliance with the provisions of paragraph (1)(D) of this subsection is required.

Permit
renewal.

(7) Any operator of a coal mine issued a permit under paragraph (6) of this subsection who, ninety days prior to the termination of such permit, or renewal thereof, determines that he will be unable to comply with the provisions of paragraph (1)(D) of this subsection upon the expiration of such permit may file with the Panel an application for renewal thereof. Upon receipt of such application, the Panel, if it determines, after notice to all interested persons and an opportunity for a public hearing under section 5 of this Act, that such application satisfies the provisions of paragraph (10) of this subsection and that such operator, despite his diligent efforts, will be unable to comply with the provisions of paragraph (1)(D), may renew the permit for a period not exceeding twelve months.

Ante, p. 744.

(8) Any permit or renewal thereof issued pursuant to this subsection shall entitle the permittee to use such nonpermissible electric face equipment specified in the permit during the term of such permit.

Permit
limitation.

(9) Permits for noncompliance issued under paragraphs (6) or (7) of this subsection shall, in the aggregate, not extend the period of noncompliance more than forty-eight months after the date of enactment of this Act.

Contents.

(10) Any application for a permit of noncompliance filed under this subsection shall contain a statement by the operator—

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(A) that he is unable to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, within the time prescribed;

(B) listing the nonpermissible electric face equipment being used by such operator in connection with mining operations in such mine on the operative date of this title and the date of the application by type and manufacturer for which a noncompliance permit is requested and whether such equipment had ever been rated as permissible;

(C) setting forth the actions taken from and after the operative date of this title to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, together with a plan setting forth a schedule of compliance with said paragraphs for each such equipment referred to in such paragraphs and being used by the operator in connection with mining operations in such mine with respect to which such permit is requested and the means and measures to be employed to achieve compliance; and

(D) including such other information as the Panel may require.

(11) No permit for noncompliance shall be issued under this subsection for any nonpermissible electric face equipment, unless such equipment was being used by an operator in connection with the mining operations in a coal mine on the operative date of this title.

(12) Effective one year after the operative date of this title, all replacement equipment acquired for use in any mine referred to in this subsection shall be permissible and shall be maintained in a permissible condition, and in the event of any major overhaul of any item of equipment in use one year from the operative date of this title such equipment shall be put in, and thereafter maintained in, a permissible condition, unless, in the opinion of the Secretary, such equipment or necessary replacement parts are not available.

(b) A copy of any permit granted under this section shall be mailed immediately to a representative of the miners 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 title, was classed gassy under any provision of law 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, except where permissible power connection units are used, outby the last open crosscut shall be in intake air.

(e) The location and the electrical rating of all stationary electric apparatus in connection with the mine electric system, including permanent cables, switchgear, rectifying substations, transformers, permanent pumps and trolley wires and trolley feeder wires, and settings of all direct-current circuit breakers protecting underground trolley circuits, shall be shown on a mine map. Any changes made in a location, electric rating, or setting shall be promptly shown on the map when the change is made. Such map shall be available to an authorized representative of the Secretary and to the miners in such mine.

Mine map.

(f) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when

necessary for trouble shooting or testing. In addition, energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of such mine shall require that such person wear approved and tested insulated shoes and wireman's gloves. No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who performed such work, except that, in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by the operator or his agent.

Examinations.

(g) All electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the Secretary and to the miners in such mine.

Records.

(h) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials.

(i) All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(j) Cables shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

(k) All power wires (except trailing cables on mobile equipment, 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-insulated insulators and shall not contact combustible material, roof, or ribs.

(l) Power wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected.

(m) 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. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(n) 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 area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.

(o) All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(p) Each ungrounded, exposed power conductor that leads underground shall be equipped with suitable 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 neutral grounds by a distance of not less than twenty-five feet.

(q) No device for the purpose of lighting any coal mine which has not been approved by the Secretary or his authorized representative shall be permitted in such mine.

(r) An authorized representative of the Secretary may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

TRAILING CABLES

SEC. 306. (a) Trailing cables used in coal mines 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 or other no less effective device approved by the Secretary 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 assure against connecting a trailing cable to the wrong size circuit breaker.

(d) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. 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. As used in this subsection, the term "splice" means the mechanical joining of one or more conductors that have been severed.

"Splice."

(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 equipment.

(g) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

GROUNDING

Sec. 307. (a) All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the Secretary. Metallic frames, casings, and other enclosures of electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded by methods approved by an authorized representative of the Secretary. Methods other than grounding which provide no less effective protection may be permitted by the Secretary or his authorized representative.

(b) The frames of all offtrack direct current machines and the enclosures of related detached components shall be effectively grounded, or otherwise maintained at no less safe voltages, by methods approved by an authorized representative of the Secretary.

(c) The frames of all stationary high-voltage equipment receiving power from ungrounded delta systems shall be grounded by methods approved by an authorized representative of the Secretary.

(d) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test, and maintain protective devices in making such repairs, to be prescribed by the Secretary prior to the operative date of this title.

(e) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

UNDERGROUND HIGH-VOLTAGE DISTRIBUTION

Sec. 308. (a) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

(b) High-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment 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, except that the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he

determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(c) The grounding resistor, where required, 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 for a voltage equal to the phase-to-phase voltage of the system.

(d) Six months after the operative date of this title, high-voltage, resistance grounded systems 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, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available.

(e) (1) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one or more ground conductors having a total cross-sectional area of not less than one-half the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit.

(2) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(f) Couplers that are used with medium-voltage or high-voltage power circuits shall be of the three-phase type with a full metallic shell, except that the Secretary may permit, under such guidelines as he may prescribe, no less effective couplers constructed of materials other than metal. Couplers shall be adequate for the voltage and current expected. All exposed metal on the metallic couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground check 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) All underground high-voltage transmission cables shall be installed only in regularly inspected aircourses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, 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, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(i) 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.

(j) Circuit breakers and disconnecting switches underground shall be marked for identification.

(k) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be

made in accordance with section 306(e) of this title. Terminations and splices in all other high-voltage cables shall be made in accordance with the manufacturer's specifications.

(l) Frames, supporting structures, and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(m) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the Secretary may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the Secretary and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that, when such centers and transformers are moved while energized as permitted under this subsection, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.

Records.

UNDERGROUND LOW- AND MEDIUM-VOLTAGE ALTERNATING CURRENT CIRCUITS

Sec. 309. (a) Low- and medium-voltage power circuits serving three-phase alternating current equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and over-current.

(b) Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, 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 the electrical equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 25 amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(c) Six months after the operative date of this title, low- and medium-voltage resistance grounded systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit

breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(d) Disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected. Trailing cables for mobile equipment shall contain one or more ground conductors having a cross sectional area of not less than one-half the power conductor, and, six months after the operative date of this title, an insulated conductor for the ground continuity check circuit or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Splices made in the cables shall provide continuity of all components.

(e) Single phase loads shall be connected phase to phase.

(f) Circuit breakers shall be marked for identification.

(g) Trailing cables for medium voltage circuits shall include grounding conductors, a ground check conductor, and ground metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

TROLLEY WIRES AND TROLLEY FEEDER WIRES

SEC. 310. (a) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

(b) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(c) Trolley wires and trolley feeder wires, high-voltage cables and transformers shall not be located in by the last open crosscut and shall be kept at least 150 feet from pillar workings.

(d) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires; (2) on both sides of all doors and stoppings; and (3) at man-trip stations. The Secretary or his authorized representatives shall specify other conditions where trolley wires and trolley feeder wires shall be adequately protected to prevent contact by any person, or shall require the use of improved methods to prevent such contact. Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

FIRE PROTECTION

SEC. 311. (a) Each coal mine shall be provided with suitable fire-fighting equipment adapted for the size and conditions of the mine. The Secretary shall establish minimum requirements for the type,

quality, and quantity of such equipment, and the interpretations of the Secretary or the Director of the Bureau of Mines relating to such equipment in effect on the operative date of this title shall continue in effect until modified or superseded by the Secretary. After every blasting operation, an examination shall be made to determine whether fires have been started.

(b) Underground storage places for lubricating oil and grease shall be of fireproof construction. Except for specially prepared materials approved by the Secretary, lubricating oil and grease kept in all underground areas in a coal mine shall be in fireproof, closed metal containers or other no less effective containers approved by the Secretary.

(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. Other underground structures installed in a coal mine as the Secretary may prescribe shall be of fireproof construction.

(d) All welding, cutting, or soldering with arc or flame in all underground areas of a coal mine shall, whenever practicable, be conducted in fireproof enclosures. Welding, cutting or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a qualified person who shall make a diligent search for fire during and after such operations and shall, immediately before and during such operations, continuously test for methane with means approved by the Secretary for detecting methane. Welding, cutting, or soldering shall not be conducted in air that contains 1.0 volume per centum or more of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(e) Within one year after the operative date of this title, fire suppression devices meeting specifications prescribed by the Secretary shall be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic systems of such equipment. Such fluids shall be used in the hydraulic systems of other underground equipment unless fire suppression devices meeting specifications prescribed by the Secretary are installed on such equipment.

(f) Deluge-type water sprays or foam generators automatically actuated by rise in temperature, or other no less effective means approved by the Secretary of controlling fire, shall be installed at main and secondary belt-conveyor drives. Where sprays or foam generators are used they shall supply a sufficient quantity of water or foam to control fires.

(g) Underground belt conveyors shall be equipped with slippage and sequence switches. The Secretary shall, within sixty days after the operative date of this title, require that devices be installed on all such belts which will give a warning automatically when a fire occurs on or near such belt. The Secretary shall prescribe a schedule for installing fire suppression devices on belt haulageways.

(h) On and after the operative date of this title, all conveyor belts acquired for use underground shall meet the requirements to be established by the Secretary for flame-resistant conveyor belts.

MAPS

SEC. 312. (a) The operator of a coal mine shall have in a fireproof repository located in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on scale. Such map shall show the active workings, all pillared, worked out, and abandoned areas, except as provided in this section, entries and air-courses with the direction of airflow indicated by arrows, contour lines of all 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 either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine, and such other information as the Secretary may require. Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned which are inaccessible or cannot be entered safely and on which no information is available. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. Such map shall be kept up to date by temporary notations and such map shall be revised and supplemented at intervals prescribed by the Secretary 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, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing, or residing on surface areas of such mines or areas adjacent to such mines. The operator shall furnish to the Secretary or his authorized representative and to the Secretary of Housing and Urban Development, upon request, one or more copies of such map and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of this Act and in connection with the functions and responsibilities of the Secretary of Housing and Urban Development.

Availability.

(c) Whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal 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 or abandonment 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 by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

Mine closure.

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.

(b) Explosives and detonators shall be kept in separate containers until immediately before blasting. In underground anthracite mines, (1) mudcaps or other open, unconfined shake shots may be fired, if

restricted to battery starting when methane or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots 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; and (3) tests for methane shall be made immediately before such shots are fired and if 1.0 volume per centum or more of methane is present, when tested, such shot shall not be made until the methane content is reduced below 1.0 volume per centum.

(c) Except as provided in this subsection, in all underground areas of a coal mine 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 non-permissible explosives in sinking shafts and slopes from the surface in rock. Nothing in this section shall prohibit the use of compressed air blasting.

(d) Explosives or detonators carried anywhere underground in a coal mine by any person shall be in containers constructed of non-conductive material, maintained in good condition, and kept closed.

(e) Explosives or detonators shall be transported in special closed containers (1) in cars moved by means of a locomotive or rope, (2) on belts, (3) in shuttle cars, or (4) in equipment designed especially to transport such explosives or detonators.

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

(g) Explosives and detonators stored in the working places 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 working 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.

HOISTING AND MANTRIPS

SEC. 314 (a) Every hoist used to transport persons at a coal mine shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist handling platforms, cages, or other devices used to transport persons shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device; with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device; and have a proper margin of safety. Cages, platforms, or other devices which are used to transport persons in shafts and slopes shall be equipped with safety catches or other no less effective devices approved by the Secretary that act quickly and effectively in an emergency, and such 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 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) Other 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 shall be provided.

(d) There shall be at least two effective methods approved by the Secretary of signaling between each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

(e) Each locomotive and haulage car used in an underground coal mine shall be equipped with automatic brakes, where space permits. Where space does not permit automatic brakes, locomotives and haulage cars shall be subject to speed reduction gear, or other similar devices approved by the Secretary which are designed to stop the locomotives and haulage cars with the proper margin of safety.

(f) All haulage equipment acquired by an operator of a coal mine on or after one year after the operative date of this title shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on the operative date of this title shall also be so equipped within four years after the operative date of this title.

EMERGENCY SHELTERS

SEC. 315. The Secretary or an authorized representative of the Secretary may prescribe in any coal mine that rescue chambers, properly sealed and ventilated, be erected at suitable locations in the mine to which persons may go in case of an emergency for protection against hazards. Such chambers shall be properly equipped with first aid materials, an adequate supply of air and self-contained breathing equipment, an independent communication system to the surface, and proper accommodations for the persons while awaiting rescue, and such other equipment as the Secretary may require. A plan for the erection, maintenance, and revisions of such chambers and the training of the miners in their proper use shall be submitted by the operator to the Secretary for his approval.

COMMUNICATIONS

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

MISCELLANEOUS

SEC. 317. (a) Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance

Oil and gas wells.

with State laws and regulations, except that such barriers shall not be less than three hundred feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

Boreholes.

(b) Whenever any working place approaches within fifty feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within two hundred feet of any other abandoned areas 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 working face of such working place and shall be continually maintained to a distance of at least ten feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas 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 miners in such place.

Smoking,
prohibition.

(c) No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

Portable
electric lamps.

(d) Persons underground shall use only permissible electric lamps approved by the Secretary for portable illumination. No open flame shall be permitted in the underground area of any coal mine, except as permitted under section 311 (d) of this title.

(e) Within nine months after the operative date of this title, the Secretary shall propose the standards under which all working places in a mine shall be illuminated by permissible lighting, within eighteen months after the promulgation of such standards, while persons are working in such places.

(f) (1) Except as provided in paragraphs (2) and (3) of this subsection, at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of surface fires, fumes, smoke, and flood water. Escape facilities approved by the Secretary or his authorized representative, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

(2) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has

been made between the two mine openings, and such connections shall be made as soon as possible.

(3) When only one mine opening is available, owing to final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(4) In the case of all coal mines opened on or after the operative date of this title, and in the case of all new working sections opened on or after such date in mines opened prior to such date, the escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as such extension does not pose a hazard to the miners.

(g) After the operative date of this title, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction. Unless structures existing on or prior to such date which are 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 miners underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard and shall be available for inspection by interested persons.

Surface
structures,
fireproofing.

(h) Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations in or on surface coal-handling facilities, but in no event shall methane be permitted to accumulate in concentrations in or on surface coal-handling facilities in excess of limits established for methane by the Secretary within one year after the operative date of this title. Where coal is dumped at or near air-intake openings, provisions shall be made to avoid dust from entering the mine.

(i) 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 Act.

Training
programs.

(j) An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.

(k) On and after the operative date of this title, the opening of any coal mine that is declared inactive by its operator or is permanently closed or abandoned for more than ninety days, shall be sealed by the operator in a manner prescribed by the Secretary. Openings of all other mines shall be adequately protected in a manner prescribed by the Secretary to prevent entrance by unauthorized persons.

(l) The Secretary may require any operator to provide adequate facilities for the miners to change from the clothes worn underground, to provide for the storing of such clothes from shift to shift, and to provide sanitary and bathing facilities. Sanitary toilet facilities shall be provided in the active workings of the mine when such surface facilities are not readily accessible to the active workings.

(m) Each operator shall make arrangements in advance for obtaining emergency medical assistance and transportation for injured

Emergency
medical
assistance.

persons. Emergency communications shall be provided 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 coal 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. In fulfilling each of the requirements of this subsection, the operator shall meet at least minimum requirements prescribed by the Secretary of Health, Education, and Welfare. Within two months after the operative date of this title, each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this subsection.

Self-rescue
device.

(n) A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device.

(o) The Secretary shall prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

Identification
check system.

(p) Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground, and will provide an accurate record of the persons in the mine kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard. Such record shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than sixteen gauge.

(q) The Secretary shall require, when technologically feasible, that devices to prevent and suppress ignitions be installed on electric face cutting equipment.

Tunnels under
water.

(r) Whenever an operator mines coal from a coal mine opened after the operative date of this title, or from any new working section of a mine opened prior to such date, in a manner that requires the construction, operation, and maintenance of tunnels under any river, stream, lake, or other body of water, that is, in the judgment of the Secretary, sufficiently large to constitute a hazard to miners, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of miners working or passing through such tunnels from cave-ins and other hazards. Such permits shall require, in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to such body of water. No plan shall be approved unless there is a minimum of cover to be determined by the Secretary, based on test holes drilled by the operator in a manner to be prescribed by the Secretary. No such permit shall be required in the case of any new working section of a mine which is located under any water resource reservoir being constructed by a Federal agency on the date of enactment of this Act, the operator of which is required by such agency to operate in a manner that adequately protects the safety of miners working in such section from cave-ins and other hazards.

Drinking water.

(s) An adequate supply of potable water shall be provided for drinking purposes in the active workings of the mine, and such water shall be carried, stored, and otherwise protected in sanitary containers.

(t) Within one year after the operative date of this title, the Secretary shall propose standards for preventing explosions from explosive gases other than methane and for testing for accumulations of such gases.

DEFINITIONS

Sec. 318. For the purpose of this title and title II of this Act, the term—

(a) "certified" or "registered" as applied to any person means a person certified or registered 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 or registration is provided or where the program does not meet at least minimum Federal standards established by the Secretary, such certification or registration shall be by the Secretary;

(b) "qualified person" means, as the context requires,

(1) an individual deemed qualified by the Secretary and designated by the operator to make tests and examinations required by this Act; and

(2) an individual deemed, in accordance with minimum requirements to be established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical equipment, and to conduct examinations and tests of all electrical equipment;

(c) "permissible" as applied to—

(1) equipment used in the operation of a coal mine, means equipment, other than permissible electric face 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,

(2) explosives, shot firing units, or blasting devices used in such mine, means explosives, shot firing units, or blasting devices which meet specifications which are prescribed by the Secretary, and

(3) the manner of use of equipment or explosives, shot firing units, and blasting devices, means the manner of use prescribed by the Secretary;

(d) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, 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 4 per centum of free and combined silica (SiO_2), or, where the Secretary finds that such silica concentrations are not available, which does not contain more than 5 per centum of free and combined silica;

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

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

(g) (1) "working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle,

Ante, p.

(2) "working place" means the area of a coal mine in by the last open crosscut,

(3) "working section" means all areas of the coal mine from the loading point of the section to and including the working faces,

(4) "active workings" means any place in a coal mine where miners are normally required to work or travel;

(h) "abandoned areas" means sections, panels, and other areas that are not ventilated and examined in the manner required for working places under section 303 of this title:

(i) "permissible" as applied to electric face equipment means all electrically operated equipment taken into or used in by the last open crosscut of an entry or a room of any coal mine the electrical parts of which, including, but not limited to, associated electrical equipment, components, and accessories, are designed, constructed, and installed, in accordance with the specifications of the Secretary, to assure that such equipment will not cause a mine explosion or mine fire, and the other features of which are designed and constructed, in accordance with the specifications of the Secretary, to prevent, to the greatest extent possible, other accidents in the use of such equipment; and the regulations of the Secretary or the Director of the Bureau of Mines in effect on the operative date of this title relating to the requirements for investigation, testing, approval, certification, and acceptance of such equipment as permissible shall continue in effect until modified or superseded by the Secretary, except that the Secretary shall provide procedures, including, where feasible, testing, approval, certification, and acceptance in the field by an authorized representative of the Secretary, to facilitate compliance by an operator with the requirements of section 305(a) of this title within the periods prescribed therein;

Ante, p. 775.

(j) "low voltage" means up to and including 660 volts; "medium voltage" means voltages from 661 to 1,000 volts; and "high voltage" means more than 1,000 volts;

(k) "respirable dust" means only dust particulates 5 microns or less in size; and

(l) "coal mine" includes areas of adjoining mines connected underground.

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's underground coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

Definitions.

SEC. 402. For purposes of this title—

December 30, 1969 - 51 - Pub. Law 91-173

83 STAT. 793

(a) The term "dependent" means a wife or child who is a dependent as that term is defined for purposes of section 8110 of title 5, United States Code.

80 Stat. 539;
81 Stat. 210.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung arising out of employment in an underground coal mine.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who is or was employed in an underground coal mine.

(e) The term "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried.

(f) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, but such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.

81 Stat. 868.
42 USC 423.

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, 1972

SEC. 411. (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

Publication
in Federal
Register.

(c) For purposes of this section—

(1) if a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more underground coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment;

(2) if a deceased miner was employed for ten years or more in one or more underground coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis; and

(3) if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1972, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable.

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

34 F.R. 9605.
5 USC 5332
note.
80 Stat. 532.
5 USC 8101-
8193.

42 USC 403.
42 USC 402.

68A Stat. 3.
26 USC 1 et
seq.

70 Stat. 815.
42 USC 423.

68 Stat. 1081.
42 USC 421.

SEC. 414. (a) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1972, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1972, whichever is the later.

(b) No benefits shall be paid under this part after December 31, 1972, if the claim therefor was filed after December 31, 1971.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, or (2) the death of such miner occurred prior to January 1, 1973.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1972

SEC. 421. (a) On and after January 1, 1973, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under this part.

(b) (1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to those established by section 411, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder;

(D) any claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be;

Publication in
Federal
Register.

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis. The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

SEC. 422. (a) During any period after December 31, 1972, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) shall (except as otherwise provided in this subsection and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of an underground coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe;

(2) for any period prior to January 1, 1973; or

(3) for any period after seven years after the date of enactment of this Act.

(f) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

(h) The regulations of the Secretary of Health, Education, and Welfare promulgated under section 411 of this title shall also be applicable to claims under this section. The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular underground coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i) (1) During any period in which this section is applicable with respect to a coal mine an operator of such mine who, after the date of enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter referred to in this paragraph as a "prior operator") who was an operator of such mine on or after the operative date of this title shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

Sec. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of an underground coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after

notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

SEC. 424. If a totally disabled miner or a widow is entitled to benefits under section 422 and (1) an operator liable for such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within a reasonable time, or (2) there is no operator who was required to secure the payment of such benefits, the Secretary shall pay such miner or such widow the benefits to which he or she is so entitled. In a case referred to in clause (1), the operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such miner or his widow under this title.

SEC. 425. With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, 1973, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

TITLE V—ADMINISTRATION

RESEARCH

SEC. 501. (a) The Secretary and the Secretary of Health, Education, and Welfare, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate—

(1) to improve working conditions and practices in coal mines, and to prevent accidents and occupational diseases originating in the coal-mining industry;

(2) to develop new or improved methods of recovering persons in coal mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground area of a coal mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal mine;

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83 STAT. 799

(5) to develop epidemiological information to (A) identify and define positive factors involved in occupational diseases of miners, (B) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of miners, and (C) improve mandatory health standards;

(6) to develop techniques for the prevention and control of occupational diseases of miners, including tests for hypersusceptibility and early detection;

(7) to evaluate the effect on bodily impairment and occupational disability of miners afflicted with an occupational disease;

(8) to prepare and publish from time to time, reports on all significant aspects of occupational diseases of miners as well as on the medical aspects of injuries, other than diseases, which are revealed by the research carried on pursuant to this subsection:

(9) to study the relationship between coal mine environments and occupational diseases of miners;

(10) to develop new and improved underground equipment and other sources of power for such equipment which will provide greater safety; and

(11) for such other purposes as they deem necessary to carry out the purposes of this Act.

(b) Activities under this section in the field of coal mine health shall be carried out by the Secretary of Health, Education, and Welfare, and activities under this section in the field of coal mine safety shall be carried out by the Secretary.

(c) In carrying out the provisions for research, demonstrations, experiments, studies, training, and education under this section and sections 301(b) and 502(a) of this Act, the Secretary and the Secretary of Health, Education, and Welfare may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses, products, processes, patents, and other developments resulting from such research, demonstrations, or experiments will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the public interest) be available to the general public.

Availability of information.

(d) The Secretary of Health, Education, and Welfare shall also conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with, or around the products of, coal mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

Studies.

(e) There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out his responsibilities under this section and section 301(b) of this Act at an annual rate of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970, \$25,000,000 for the fiscal year ending June 30, 1971, and \$30,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Secretary of Health, Education, and Welfare such sums as may be necessary to carry out his responsibilities under this Act. Such sums shall remain available until expended.

Appropriation.

(f) The Secretary is authorized to grant on a mine-by-mine basis an exception to any mandatory health or safety standard under this

Exceptions.

Act for the purpose of permitting, under such terms and conditions as he may prescribe, accredited educational institutions the opportunity for experimenting with new and improved techniques and equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners and publishes his findings.

(g) The Secretary of Health, Education, and Welfare is authorized to make grants to any public or private agency, institution, or organization, and operators or individuals for research and experiments to develop effective respiratory equipment.

TRAINING AND EDUCATION

Sec. 502. (a) The Secretary shall expand programs for the education and training of operators and agents thereof, and miners in—

- (1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines; and
- (2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for detecting methane and other explosive gases accurately.

(b) The Secretary shall, to the greatest extent possible, provide technical assistance to operators in meeting the requirements of this Act and in further improving the health and safety conditions and practices in coal mines.

ASSISTANCE TO STATES

Sec. 503. (a) The Secretary, in coordination with the Secretary of Health, Education, and Welfare and the Secretary of Labor, is authorized to make grants in accordance with an application approved under this section to any State in which coal mining takes place—

- (1) to assist such State in developing and enforcing effective coal mine health and safety laws and regulations consistent with the provisions of section 506 of this Act;
- (2) to improve State workmen's compensation and occupational disease laws and programs related to coal mine employment; and
- (3) to promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal mines.

(b) The Secretary shall approve any application or any modification thereof, submitted under this section by a State, through its official coal mine inspection or safety agency, which—

- (1) sets forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of subsection (a) of this section;
- (2) provides research and planning studies to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation to miners for occupationally caused diseases and injuries arising out of employment in any coal mine;
- (3) designates such State coal mine inspection or safety agency as the sole agency responsible for administering grants under this section throughout the State, and contains satisfactory evidence that such agency will have the authority to carry out the purposes of this section;

(4) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal mine inspections within such State;

(5) provides for the extension and improvement of the State program for the improvement of coal mine health and safety in the State, and provides that no advance notice of an inspection will be provided anyone;

(6) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the States under this section;

(7) provides that the designated agency will make such reports to the Secretary in such form and containing such information as the Secretary may from time to time require;

(8) contains assurances that grants provided under this section will supplement, not supplant, existing State coal mine health and safety programs; and

(9) meets additional conditions which the Secretary may prescribe in furtherance of, and consistent with, the purposes of this section.

(c) The Secretary shall not finally disapprove any State application or modification thereof without first affording the State agency reasonable notice and opportunity for a public hearing.

(d) Any State aggrieved by a decision of the Secretary under subsection (b) or (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action be modified or set aside in whole or in part. The court shall hear such appeal on the record made before the Secretary. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the decision of the Secretary, unless the court so orders. The provisions of section 106 (a), (b), and (c) of this Act shall not be applicable to this section.

(e) Any State application or modification thereof submitted to the Secretary under this section may include a program to train State inspectors.

(f) The Secretary shall cooperate with such State in carrying out the application or modification thereof and shall, as appropriate, develop and, where appropriate, construct facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall also cooperate with such State in establishing a system by which State and Federal inspection reports of coal mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

(g) The amount granted to any coal mining State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out such application.

(h) There is authorized to be appropriated \$3,000,000 for fiscal year 1970, and \$5,000,000 annually in each succeeding fiscal year to carry out the provisions of this section, which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved application.

Appropriation.

ECONOMIC ASSISTANCE

72 Stat. 387.
15 USC 636.

SEC. 504. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof “; and”; and

(2) by adding after paragraph (4) a new paragraph as follows:

“(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern operating a coal mine in affecting additions to or alterations in the equipment, facilities, or methods of operation of such mine to requirements imposed by the Federal Coal Mine Health and Safety Act of 1969, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.”

(b) The third sentence of section 7(b) of such Act is amended by inserting “or (5)” after “paragraph (3)”.

(c) Section 4(c) (1) of the Small Business Act, as amended, is amended by inserting “7(b) (5),” after “7(b) (4),”.

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b) (5) of the Small Business Act, as amended pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

79 Stat. 556.
42 USC 3142.

INSPECTORS: QUALIFICATIONS: TRAINING

SEC. 505. 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 or by education. Persons appointed to assist such representatives in the taking of samples of respirable dust for the purpose of enforcing title II of this Act shall be qualified by training, experience, or education. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives and to carry out the provisions of this Act, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall 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, operators, and representatives of miners in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and 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.

Ante, p. 83.
5 USC 3101
note.

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EFFECT ON STATE LAWS

Sec. 506. (a) No State law in effect on the date of enactment of this Act or which may become effective thereafter shall be superseded by any provision of this Act or order issued or any mandatory health or safety standard, except insofar as such State law is in conflict with this Act or with any order issued or any mandatory health or safety standard.

(b) The provisions of any State law or regulation in effect upon the operative 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 any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect on the date of enactment 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 in any order issued or any mandatory health or safety standard, shall not be held to be in conflict with this Act.

ADMINISTRATIVE PROCEDURES

Sec. 507. Except as otherwise provided in this Act, 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, notice, or decision made pursuant to this Act, or to any proceeding for the review thereof.

80 Stat. 381,
392.

REGULATIONS

Sec. 508. The Secretary, the Secretary of Health, Education, and Welfare, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provision of this Act.

OPERATIVE DATE AND REPEAL

Sec. 509. Except to the extent an earlier date is specifically provided in this Act, the provisions of titles I and III of this Act shall become operative ninety days after the date of enactment of this Act, and the provisions of title II of this Act shall become operative six months after the date of enactment of this Act. The provisions of the Federal Coal Mine Safety Act, as amended, are repealed on the operative date of titles I and III of this Act, except that such provisions shall continue to apply to any order, notice, decision, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, decision or findings. All other provisions of this Act shall be effective on the date of enactment of this Act.

Repeal.
55 Stat. 177.
30 USC 451
note.

SEPARABILITY

Sec. 510. 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. 511. (a) Within one hundred and twenty days following the convening of each session of Congress the Secretary shall submit through the President to the Congress and to the Office of Science and Technology 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, the amount and status of each loan made pursuant to this Act, a description and the anticipated cost of each project and program he has undertaken under sections 301(b) and 501, and any other relevant information, including any recommendations he deems appropriate.

(b) Within one hundred and twenty days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the health matters covered by this Act, including the progress toward the achievement of the health purposes of this Act, the needs and requirements in the field of coal mine health, a description and the anticipated cost of each project and program he has undertaken under sections 301(b) and 501, and any other relevant information, including any recommendations he deems appropriate. The first such report shall include the recommendations of the Secretary of Health, Education, and Welfare as to necessary mandatory health standards, including his recommendations as to the maximum permissible individual exposure to miners from respirable dust during a shift.

SPECIAL REPORT

Federal and
State
coordination.

Sec. 512. (a) The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal mine health and safety so as to achieve (1) maximum health and safety protection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) a reduction of delay to a minimum, and (5) most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after the date of enactment of this Act.

JURISDICTION; LIMITATION

Sec. 513. In any proceeding in which the validity of any interim mandatory health or safety standard set forth in titles II and III of this Act is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

Approved December 30, 1969.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-563 accompanying H.R. 13950 (Comm. on Education & Labor) and No. 91-761 (Comm. of Conference).
SENATE REPORT NO. 91-411 (Comm. on Labor & Public Welfare).
CONGRESSIONAL RECORD, Vol. 115 (1969):
Sept. 25, 26, 29, 30, Oct. 1, 2: Considered and passed Senate.
Oct. 27-29: Considered and passed House, amended, in lieu of H.R. 13950.
Dec. 17: House agreed to conference report.
Dec. 18: Senate agreed to conference report.

LISTING OF REFERENCE MATERIALS

U.S. Congress. House. Committee on Education and Labor. General Subcommittee on Labor. *Hearing on H.R. 18, H.R. 42, H.R. 43, and H.R. 5702*. May 10, 1971. 92d Congress, 1st session.

U.S. Congress. House. Committee on Education and Labor. *Hearing on H.R. 18, H.R. 42, H.R. 43, and H.R. 5702*. June 22, 1971. 92d Congress, 1st session.

U.S. Congress. Senate. Committee on Labor and Public Welfare. Subcommittee on Labor. *Hearings on S. 2675, S. 2289, and H.R. 9212*. 92d Congress, 1st and 2d sessions.

U.S. Congress. Senate. Committee on Labor and Public Welfare. Subcommittee on Labor. Committee Print. *Black Lung Benefits Act of 1972. Title IV of the Federal Coal Mine Health and Safety Act of 1969 Showing Changes Made by Public Law 92-303*. June 1972. 92d Congress, 2d session.